



EXPLANATION

Heritage Designation By-law
Re: 470 East 10th Avenue

At a public hearing on January 30, 2012, Council approved recommendations to designate the structure and exterior envelope of the improvements and exterior building materials of The McDonald Residence at 470 East 10th Avenue as protected heritage property. Enactment of the attached By-law will achieve the designation.

Director of Legal Services
February 14, 2012

470 East 10th Avenue
The McDonald Residence

BY-LAW NO. _____

**A By-law to designate certain real property
as protected heritage property**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. Council considers that the real property described as:

Structure and exterior
envelope of the
improvements and
exterior building
materials of the
heritage building

470 East 10th Avenue
Vancouver, B.C.

PID: 002-679-205
Lot 10, Block I25
District Lot 264A
Plan 830 & 1771

has heritage value or heritage character, and that its designation as protected heritage property is necessary or desirable for its conservation.

2. Council designates the real property described in section 1 of this By-law, as protected heritage property under Section 593 of the *Vancouver Charter*.

3. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this _____ day of _____, 2012

Mayor

City Clerk

uph EXPLANATION

Authorization to enter into a
Heritage Revitalization Agreement
Regarding 470 East 10th Avenue

After a public hearing on January 30, 2012, Council resolved to enter into a By-law to authorize an agreement regarding The McDonald Residence at 470 East 10th Avenue, pursuant to Section 592 of the *Vancouver Charter*. Enactment of the attached By-law will achieve this.

Director of Legal Services
February 14, 2012

470 East 10th Avenue
The McDonald Residence

BY-LAW NO. _____

**A By-law to authorize Council entering into a
Heritage Revitalization Agreement
with the Owner of Heritage Property**

PREAMBLE

Council has authority under the *Vancouver Charter*, to enter into a Heritage Revitalization Agreement with the owner of heritage property, including terms and conditions to which Council and the owner may agree.

Certain property bearing the civic address of 470 East 10th Avenue, and the following legal description:

Parcel Identifier: 002-679-205

Lot 10

Block 125

District Lot 264A

Plan 830 & 1771

contains a heritage building.

Council is of the opinion that the building has sufficient heritage value to justify its conservation, and Council and the owner of the property have agreed to facilitate such conservation, by agreeing to the terms and conditions set out in the attached Heritage Revitalization Agreement.

NOW THEREFORE THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. Council authorizes the City to enter into a Heritage Revitalization Agreement with the owner, in substantially the form and substance of the Heritage Revitalization Agreement attached to this By-law, and also authorizes the Director of Legal Services to execute the agreement on behalf of the City, and to deliver it to the owner on such terms and conditions as the Director of Legal Services deems fit.

2. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this _____ day of _____, 2012.

Mayor

City Clerk

LAND TITLE ACT

FORM C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office Use) Page 1 of 14 pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

Signature of Agent

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*

(PID)

(LEGAL DESCRIPTION)

002-679-205

Lot 10 Block 125 District Lot 264A Plans 830 and 1771

3. NATURE OF INTEREST:*

DESCRIPTION

DOCUMENT REFERENCE
(page and paragraph)

PERSON ENTITLED TO INTEREST

SEE SCHEDULE

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) Filed Standard Charge Terms

D.F. No.

(b) Express Charge Terms

Annexed as Part 2

(c) Release

There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharge as a charge on the land described in Item 2.

5. TRANSFEROR(S)/CHARGEHOLDER(S):*

ANDREAS NAUMANN and MARTA ANN FAREVAAG, Joint Tenants

6. TRANSFEREE(S):* (including postal address(es) and postal code(s))*

CITY OF VANCOUVER, 453 West 12th Avenue, Vancouver, B.C., V5Y 1V4

7. ADDITIONAL OR MODIFIED TERMS:*

N/A

8. EXECUTION(S):** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)	Execution Date			Party(ies) Signature(s)
	Y	M	D	
_____ (Solicitor)	11			_____ ANDREAS NAUMANN
_____ (Solicitor)	11			_____ MARTA ANN FAREVAAG

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

**LAND TITLE ACT
FORM D
EXECUTIONS CONTINUED**

8. EXECUTION(S):** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)	Execution Date			Party(ies) Signature(s)
	Y	M	D	
	11			CITY OF VANCOUVER by its authorized signatory:
<hr/> Bruce T. Quayle Solicitor 453 West 12 th Avenue Vancouver, BC, V5Y 1V4 Tel: 604-871-6545				<hr/>

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

**LAND TITLE ACT
FORM E
SCHEDULE**

Enter the Required Information in the Same Order as the Information Must Appear on the Freehold Transfer Form, Mortgage Form or General Document Form.

3. NATURE OF INTEREST:*

DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
Section 219 Covenant	Article 2, pages 8-12	Transferee
Statutory Right of Way	Article 3, page 12	Transferee
Equitable Charge	Article 5, page 13	Transferee

TERMS OF INSTRUMENT - PART 2
Heritage Revitalization Agreement

WHEREAS:

- A. The Owner (as defined below herein) is the registered owner of the lands at 470 East 10th Avenue in City of Vancouver (the “Lands”), which have the legal description shown in the Form C - Part 1 part of this document.
- B. There is a residential building situated on the Lands, known as the McDonald Residence, which is considered to be of heritage value (the “Heritage Building”) and which is listed in the “C” category in the City’s Heritage Register.
- C. The Owner proposes to develop the Lands by:
- (i) rehabilitating the Heritage Building; and
 - (ii) constructing a new Infill One-Family Dwelling at the rear of the Lands (the “New Building”),
- and, under development permit application no. DE414970, the Owner has applied to the City for a development permit for that purpose (the “DP Application”).
- D. The Owner proposes that, in exchange for a number of City by-law variations needed to permit the proposed project as contemplated under the DP Application, the Owner will accept the designation of the Heritage Building as a protected heritage property under the provisions of the *Vancouver Charter* SBC 1953 c.55 and enter into with the City a heritage revitalization agreement in respect of the Heritage Building.

THEREFORE, pursuant to Section 592 of the *Vancouver Charter* SBC 1953 c.55, the parties agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Definitions. In this agreement, unless explicitly used differently elsewhere herein, the terms defined in this section have the meanings given to them here:

- (a) “City” means the municipality of the City of Vancouver continued under the *Vancouver Charter* and “City of Vancouver” means its geographic location and area;
- (b) “City’s Bank of Record” means the City’s primary bank or other financial institution for its banking activities;
- (c) “Conservation Plan” means a written plan and guidelines prepared by and/or under the supervision of a Heritage Consultant and explicitly accepted by the City for the rehabilitation of the Heritage Building as provided for hereunder;
- (d) “Director of Planning” means the chief administrator from time to time of the City’s Planning Department and his or her successors in function and their respective nominees;

- (e) **“Development”** means the proposed development project as described above in the introductory paragraphs hereto to subdivide the Lands and restore and rehabilitate the Heritage Building and construct the New Building on the Lands pursuant to the DP Application;
- (f) **“Development Permit”** means any development permit(s) issued by the City under the DP Application and in respect of the Development, as such permit(s) may be modified or amended from time to time, including, without limitation, all final reports, plans, drawings and specifications relating thereto;
- (g) **“DP Application”** has the meaning given above in the introductory paragraphs hereto;
- (h) **“Heritage Building”** has the meaning given above in the introductory paragraphs hereto;
- (i) **“Heritage Consultant”** means an independent, heritage building rehabilitation and conservation expert, knowledgeable and experienced in and duly qualified for planning and supervising rehabilitation and conservation work for heritage buildings;
- (j) **“Heritage Designation”** means the City’s designation of the Heritage Building as a protected heritage property pursuant to section 593 of the *Vancouver Charter*;
- (k) **“Infill One-Family Dwelling”** has the meaning given in the *Zoning & Development By-law*;
- (l) **“Lands”** has the meaning given above in the introductory paragraphs hereto and includes any other parcels of land into which the Lands may at any time in any way be consolidated or subdivided;
- (m) **“Land Title Act”** means the *Land Title Act*, R.S.B.C. 1996, c.250;
- (n) **“New Building”** means the new Infill One-Family Dwelling proposed for construction on the Lands under the DP Application;
- (o) **“Owner”** means the registered owner or owners of the Lands;
- (p) **“rehabilitate”** and **“rehabilitation”** mean the planning and carrying out of restoration, rehabilitation, construction and conservation work to restore, upgrade, improve and conserve the structure, support and heritage characteristics and features of a heritage building or real property heritage feature so as to revitalize it and extend its life and use as such;
- (q) **“Rehabilitation Work”** has the meaning given below herein;
- (r) **“Vancouver Charter”** means the *Vancouver Charter*, S.B.C. 1953, c.55, as amended from time to time, and any and all replacements thereof or any statute enacted in substitution thereof and all regulations applicable thereto and any amendments, replacements and substitutions thereof;

- (s) **“Zoning & Development By-law”** means the City’s *Zoning and Development By-law No. 3575* and any amendments thereto and replacements thereof.

**ARTICLE 2
SECTION 219 COVENANT**

2.1 Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees, as a covenant and agreement running with, charging and binding the Lands, that, to the satisfaction of the Director of Planning:

- (a) the Owner, at his, her or its expense, within 24 months after the date the Development Permit issued, plus any additional time for which the time limit of the Development Permit may be extended under the provisions of the *Zoning & Development By-law*, will rehabilitate or cause the rehabilitation of the Heritage Building and will do so in accordance with this agreement, the Development Permit and the Conservation Plan (the **“Rehabilitation Work”**);
- (b) the Owner, at his, her or its expense, will ensure that a Heritage Consultant supervises the Rehabilitation Work;
- (c) the Owner, at his, her or its expense, will ensure that, at all times during the carrying out of the Rehabilitation Work, the Heritage Building is secure from vandalism and occupation by squatters;
- (d) at all times after and while this agreement is registered on title to the Lands, the Owner, at his, her or its expense, will keep the Heritage Building insured to its full replacement value against all perils, including, without limitation, damage or destruction by earthquake;
- (e) on completion of the Rehabilitation Work as required by this agreement, the Owner, at his, her or its expense, will cause a Heritage Consultant to submit to the Director of Planning, a signed statement stating explicitly that the Rehabilitation Work has been completed in accordance with the Conservation Plan;
- (f) nobody will in any way use or occupy the New Building or any part of it at any time after this agreement is registered on title to the Lands, unless and until:
 - (i) the City has issued all required occupancy permits therefor;
 - (ii) the Rehabilitation Work has been completed in accordance herewith;
 - (iii) the Owner, as required above herein, has submitted or caused to be submitted to the Director of Planning a signed written statement prepared by a Heritage Consultant stating explicitly that the Rehabilitation Work has been completed in accordance with the Conservation Plan; and
 - (iv) the City has given the Owner a written notice or confirmation by which the City explicitly accepts or confirms its acceptance that the

Rehabilitation Work has been completed in accordance with this agreement;

- (g) nobody will apply for or take any other action to compel the City, and, notwithstanding that the New Building may be ready for occupancy, the City will be under no obligation to issue any occupancy permit for the New Building or any part of it at any time after this agreement is registered on title to the Lands, until:
 - (i) the Rehabilitation Work has been completed in accordance herewith;
 - (ii) the Owner, as required above herein, has submitted or caused to be submitted to the Director of Planning a signed written statement prepared by a Heritage Consultant stating explicitly that the Rehabilitation Work has been completed in accordance with the Conservation Plan; and
 - (iii) the City has given the Owner a written notice or confirmation by which the City explicitly accepts or confirms its acceptance that the Rehabilitation Work has been completed in accordance herewith;
- (h) after completion of the Rehabilitation Work in accordance herewith, the Owner, at his, her or its expense, will do all things reasonably necessary to conserve the Heritage Building as rehabilitated and, in any event, keep it in good condition in all respects at all times;
- (i) except for maintenance and repair work, the Owner will not and will not suffer or permit anyone else to do anything at anytime to renovate, alter, modify or reconfigure or that will result in any alteration, modification or reconfiguration of the Heritage Building in any way except as may be permitted or required by this agreement, the Conservation Plan and/or any development and/or heritage alteration permits issued by the City;
- (j) the Owner will not at any time and will not suffer or permit anyone else to at anytime do anything that will obscure, deface or remove in any way any heritage related commemorative plaque the City, at its expense, may attach to the Heritage Building pursuant to the statutory right of way granted to it herein;
- (k) if at any time for any reason the Heritage Building is damaged in any way or destroyed, the Owner, at his, her or its expense, and to the City's satisfaction, will repair it or replace it with a replica building, except that if the Owner *bona fide* believes that to do so would be uneconomical, in which case, and if for that reason the Owner wishes to demolish it as damaged or wishes not to replicate it, as the case may be, the Owner, at his, her or its expense, and in consultation with and to the satisfaction of the City, will prepare an economic analysis therefor, but taking into consideration only land related economic factors, such as, for example, but without limitation, the estimated cost to repair or replicate the Heritage Building, as the case may be, the anticipated market value of the repaired or replicated building, the incentives given by the City for this agreement and the Heritage Designation, the estimated value of the Lands under the zoning otherwise applicable thereto, after which the City

and the Owner, together, on the basis of that analysis, will determine whether in the circumstances it would be uneconomical to repair or replicate the Heritage Building, failing which the matter in all respects will be determined by arbitration in accordance with the provisions of the *Commercial Arbitration Act* RSBC 1996 c. 55, and if the Owner and the City agree or if in arbitration it is determined that it would be uneconomical for the Owner to be required to repair or replicate the Heritage Building, then, by explicit written notification, the City will consent to the Owner's wish to not repair or replicate the Heritage Building and will discharge this agreement from title to the Lands and the Owner may request of the City's Mayor and Council that the Heritage Designation be cancelled; and

- (l) the Owner acknowledges and agrees that, notwithstanding that this agreement and the Heritage Designation will result in restrictions with respect to the future use and development and therefore may affect the value of the Lands, the Owner has received full and fair compensation for this agreement and the Heritage Designation and the Owner hereby waives and renounces any and all claims for any further or other compensation by reason of this agreement and/or the Heritage Designation and acknowledges and agrees that the requirements of Section 595(1) of the *Vancouver Charter* SBC 1953 c.55 have been fully satisfied, and the Owner hereby releases the City and its officials, officers, employees and agents from any liability for any loss, injury, damage or expense of any kind the Owner may suffer, incur or experience and the Owner will indemnify the City for any loss, injury, damage or expense the City may incur, suffer or experience and for any complaint, demand, claim, action, suit or judgment for any loss, injury, damage or expense anyone else may suffer, incur or experience arising out of or in any way connected this agreement and/or the Heritage Designation, and the release and promise of indemnification contained in this paragraph will survive discharge and termination of this agreement; and
- (m) the City may revoke at anytime any occupancy permit(s) issued for the New Building prior to completion of the Rehabilitation Work, unless such occupancy permit(s) was obtained in accordance with this agreement, and in such circumstances the Owner, on reasonable notice from the City, will ensure that anyone occupying any part of any such building vacates it immediately on such revocation of occupancy permit(s), and if anyone continues to occupy any portion of any part of the New Building in contravention of such revocation, this agreement and any applicable City bylaws, the City, at the Owner's expense, may pursue all remedies available to it, including, without limitation, injunctive relief, to ensure that the New Building is vacated and unoccupied in accordance with this agreement.

2.2 Notwithstanding the occupancy restrictions set out above in respect of the New Building, the City, in its discretion, may issue occupancy permits therefor and on that basis it may be occupied prior to the time that the Rehabilitation Work is completed in accordance herewith, provided:

- (a) the Owner duly applies to the City for any and all occupancy permits and pays all fees required therefor;

- (b) this agreement has been fully registered in the Land Title Office to the City's satisfaction;
- (c) the City has issued a building permit and/or heritage alteration permit in respect of the Rehabilitation Work;
- (d) all legal requirements for occupancy permits for the New Building have been fulfilled;
- (e) the Owner has delivered to the City, in all respects to the City's satisfaction, a letter of credit in the amount equal to one hundred and twenty percent (120%) of the then estimated cost to complete the Rehabilitation Work, with such estimate to be made in writing by the Consultant and explicitly accepted in writing by the City;
- (f) the Owner, at the time of application for any such occupancy permits, is not, in the City's opinion, in breach of any of its obligations under this agreement or any other agreement between the City and the Owner with respect to the Heritage Building and/or the Lands; and
- (g) the City, in its opinion, is satisfied that the Rehabilitation Work is being carried out diligently.

2.3 All letters of credit required under this Article will be issued by a Schedule I Canadian chartered bank or HSBC Bank Canada and will be unconditional, irrevocable and self-renewing and otherwise in a form and content which is acceptable to the City and will be provided for a period of one (1) year with a provision for an automatic renewal or extension without amendment from year to year until the Owner has, to the City's full satisfaction, completed all of its obligations under this agreement.

2.4 The City may call upon the letter or letters of credit provided to it pursuant to the preceding paragraphs herein and apply the proceeds therefrom for any purpose and in any manner it may choose in connection with the Rehabilitation Work, if:

- (a) the bank issuing the letter of credit refuses to extend or renew the expiry date of the letter of credit;
- (b) the Owner becomes insolvent or commits any act of bankruptcy or becomes bankrupt or takes the benefit of any act or legislation that may be enforced for bankrupt or insolvent debtors;
- (c) the Owner, in the City's opinion, has not been diligently carrying out the Rehabilitation Work; or
- (d) the City in any way undertakes all or any part of the Rehabilitation Work pursuant to this agreement.

2.5 If at anytime, in default under this agreement, the Owner, in the City's opinion, fails to carry out the Rehabilitation Work as required hereby and fails to rectify any such default within 30 days, or within such other longer time as the City may explicitly permit, after notice from the City to so rectify such default, the City, on the Owner's behalf and at the Owner's expense, may, but will be under not be obligated to, rectify the Owner's default.

**ARTICLE 3
STATUTORY RIGHT OF WAY**

3.1 Pursuant to Section 218 of the *Land Title Act*, the Owner hereby grants to the City, effective at all times from and after the date upon which the City issues the Development Permit, a statutory right of way to enter, be and move about on the Lands:

- (a) to install, maintain, repair and replace on the exterior of the Heritage Building, at the City's expense, and in consultation with the Owner as to location, one commemorative plaque regarding the Heritage Building; and
- (b) in the event the Owner, in the City's opinion, is in default of any of its obligations under this agreement, to carry out any such obligations of the Owner hereunder as the City may choose.

3.2 The statutory right of way granted in the preceding paragraph is necessary for the operation and maintenance of the City's undertaking.

3.3 Notwithstanding any other provision of this agreement, nothing herein obligates the City to exercise any of the rights granted to it by way of the statutory right of way contained herein to rehabilitate, conserve or replace the Heritage Building.

**ARTICLE 4
DEBTS OWED TO CITY**

4.1 If the City, pursuant to this agreement, enters upon the Lands or any of them to perform any of the Owner's obligations hereunder to carry out the Rehabilitation Work or to conserve, repair or replace the Heritage Building:

- (a) there will be no express or implied warranties as to the quality of any work the City may so carry out or the suitability of the materials for the purposes for which they are put; and
- (b) the Owner will pay to the City, forthwith on demand, to the extent the City has not taken payment for such costs from any letters of credit provided to the City hereunder, as reimbursement for expenses incurred, the full amount of all costs the City incurs to carry out work to rehabilitate, conserve, repair or replace the Heritage Building, plus 20% of such costs as fair compensation for the City's overhead, and any such amounts the Owner does not pay or fails to pay to the City forthwith on demand will bear interest, until paid in full, at the prime lending rate of the City's Bank of Record, plus 2%, calculated monthly and not in advance.

**ARTICLE 5
EQUITABLE CHARGE**

5.1 The Owner hereby grants to the City an equitable charge over the Lands, which charge will run with, charge and bind the Lands, for the payment of all sums (including all interest thereon) which may at any time be payable by the Owner to the City under the terms of this agreement or otherwise at law.

5.2 The equitable charge the Owner has granted to the City herein may be enforced by the appointment of a receiver for the sale of the Lands.

ARTICLE 6 BY-LAW VARIATIONS

6.1 Section 10.7.1(a) of the *Zoning and Development Bylaw* is hereby varied in respect of the Lands so that the Director of Planning may allow steps in any side yard thereon.

6.2 Section 10.7.1(b) of the *Zoning and Development Bylaw* is hereby varied in respect of the Lands so that eaves, gutters, sills, chimneys and other similar features attached to the Heritage Building and/or the New Building may project into a yard as the Director of Planning may explicitly permit.

6.3 The RT-5 District Schedule to the *Zoning and Development By-Law* is hereby varied in respect of the Heritage Parcel as follows:

- (a) Section 4.3.1 is hereby varied to permit the Heritage Building to consist of 3 storeys;
- (b) Section 4.4.1 is hereby varied to permit a front yard with a minimum depth of 13.9 feet;
- (c) Section 4.5.1 is hereby varied to permit a side yard at the west side of the Heritage Parcel with a minimum depth of 2.6 feet; and
- (d) Section 4.7.1 is hereby varied to permit a maximum total building floor area for all floors combined of 3,766 sq. ft. (approximately 0.92 FSR).

ARTICLE 7 NOTICES

7.1 Any notice, request or communication required or permitted to be given hereunder will be in writing and will be deemed to have been duly given if delivered to the party or mailed in Canada by prepaid registered post addressed to the party as follows:

- (a) if to the Owner, to its address as shown in the Land Title Office records; and
- (b) if to the City:
City of Vancouver
453 West 12th Avenue
Vancouver, British Columbia
V5Y 1V4

Attention: City Clerk and Director of Legal Services;

or to such other address in Canada as any party may specify in writing to the other parties, provided that if and when the owner of the Lands or any part thereof should change, then to the address as set out in the State of Title Certificate for the Lands or such part thereof, and such notice will be deemed to have been received, if delivered, on the date of delivery, and if

mailed as aforesaid within Canada then on the third business day following its mailing, provided that if mailed, should there be between the time of the mailing and the actual receipt of the notice, a mail strike, slowdown or other labour dispute which might affect delivery of such notice, then such notice will only be effective if and when actually delivered.

ARTICLE 8 GENERAL

8.1 Joint and Several Liability. If the Owner is more than one party, such parties shall be jointly and severally liable to the City for the performance and observance of the Owner's obligations in this agreement.

8.2 Priority of Registration. The Owner, at his, her or its expense, after execution of this agreement, shall do or cause to be done all things and acts necessary to ensure that this agreement is registered against title to the Lands with priority over all other encumbrances on title to the Lands as the City may require.

8.3 Perfection of Intention. The parties hereto will do such things and execute such further and other documents and instruments and do such further and other acts as may be reasonably necessary to implement and carry out the provisions and intent of this agreement and to ensure timely and effective registration in the Land Title Office.

8.4 Waiver. No failure on the part of the City to exercise and no delay in exercising any right under this agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City herein will be deemed to be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity.

8.5 Time of Essence. Time will be of the essence in respect of this agreement.

8.6 Enurement. This agreement shall enure to the benefit of and be binding upon the Owner and its successors and trustees, and this agreement shall charge and run with the Lands and with any parcel, lot or part into which the Lands may be subdivided or consolidated and shall enure to the benefit of and be binding upon the Owner's successors in title and trustees and successors and all parties claiming through such owners.

8.7 City's Other Rights and Obligations. Nothing contained or implied in this agreement will derogate from the obligations of the Owner under any other agreement with the City or prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter* and the rights, powers, duties and obligations of the City under all other laws, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this agreement had not been executed and delivered by the Owner and the City.

8.8 Headings. The division of this agreement into articles, sections and paragraphs and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this agreement.

8.9 Number. Words contained herein importing the singular number only will include the plural and vice versa, words importing the masculine gender will include the feminine and

neuter genders and vice versa and words importing persons will include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa.

8.10 Governing Law. This agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

8.11 Severability. All provisions of this agreement are severable in that if any court or other lawful authority having jurisdiction to decide the matter finds for any reason that one or more of them is void or unenforceable, then such void or unenforceable provisions will be severed from this agreement and all other provisions herein will continue to be binding and enforceable.

8.12 City Approvals. In this agreement, where City "approval", "acceptance", "consent" or similar authorization or agreement is required, unless provided for otherwise in this agreement, such "approval", "acceptance", "consent" or similar City agreement or authority must be provided in writing, by the City departments, employees, officers or designates, as the case may be, that are authorized to provide such "approval", "acceptance", "consent" or similar authorization or agreement. Any purported "approval", "acceptance" "consent" or similar authorization or agreement provided by a City department, employee, officer or designate, as the case may be, that is not authorized to provide the same, shall be of no force or effect.

IN WITNESS WHEREOF the parties have executed this Agreement on Form C which is a part hereof.

END OF DOCUMENT



EXPLANATION

Heritage Designation By-law
Re: 305 West 13th Avenue

At a public hearing on January 30, 2012, Council approved recommendations to designate the structure and exterior envelope of the improvements and exterior building materials of The Munro Residence at 305 West 13th Avenue as protected heritage property. Enactment of the attached By-law will achieve the designation.

Director of Legal Services
February 14, 2012

305 West 13th Avenue
The Munro Residence

BY-LAW NO. _____

**A By-law to designate certain real property
as protected heritage property**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. Council considers that the real property described as:

Structure and exterior
envelope of the
improvements and
exterior building
materials of the
heritage building

305 West 13th Avenue
Vancouver, B.C.

PID: 014-565-625
Lot 9
Block I
District Lot 526
Plan 1530

has heritage value or heritage character, and that its designation as protected heritage property is necessary or desirable for its conservation.

2. Council designates the real property described in section 1 of this By-law, as protected heritage property under Section 593 of the *Vancouver Charter*.

3. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this _____ day of _____, 2012

Mayor

City Clerk



EXPLANATION

Authorization to enter into a
Heritage Revitalization Agreement
Regarding 305 West 13th Avenue

After a public hearing on January 30, 2012, Council resolved to enter into a By-law to authorize an agreement regarding The Munro Residence at 305 West 13th Avenue, pursuant to Section 592 of the *Vancouver Charter*. Enactment of the attached By-law will achieve this.

Director of Legal Services
February 14, 2012

305 West 13th Avenue
The Munro Residence

BY-LAW NO. _____

**A By-law to authorize Council entering into a
Heritage Revitalization Agreement
with the Owner of Heritage Property**

PREAMBLE

Council has authority under the *Vancouver Charter*, to enter into a Heritage Revitalization Agreement with the owner of heritage property, including terms and conditions to which Council and the owner may agree.

Certain property bearing the civic address of 305 West 13th Avenue, and the following legal description:

Parcel Identifier: 014-565-625
Lot 9
Block I
District Lot 526
Plan 1530

contains a heritage building.

Council is of the opinion that the building has sufficient heritage value to justify its conservation, and Council and the owner of the property have agreed to facilitate such conservation, by agreeing to the terms and conditions set out in the attached Heritage Revitalization Agreement.

NOW THEREFORE THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. Council authorizes the City to enter into a Heritage Revitalization Agreement with the owner, in substantially the form and substance of the Heritage Revitalization Agreement attached to this By-law, and also authorizes the Director of Legal Services to execute the agreement on behalf of the City, and to deliver it to the owner on such terms and conditions as the Director of Legal Services deems fit.

LAND TITLE ACT

FORM C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office Use) Page 1 of 18 pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

Signature of Agent

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*

(PID)

(LEGAL DESCRIPTION)

014-565-625

Lot 9 Block I District Lot 526 Plan 1530

3. NATURE OF INTEREST:*

DESCRIPTION

DOCUMENT REFERENCE
(page and paragraph)

PERSON ENTITLED TO INTEREST

SEE SCHEDULE

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) Filed Standard Charge Terms

D.F. No.

(b) Express Charge Terms

Annexed as Part 2

(c) Release

There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharge as a charge on the land described in Item 2.

5. TRANSFEROR(S)/CHARGEHOLDER(S):*

YUANYUAN DONG

BANK OF MONTREAL, as to priority

6. TRANSFEREE(S):* (including postal address(es) and postal code(s))*

CITY OF VANCOUVER, 453 West 12th Avenue, Vancouver, B.C., V5Y 1V4

7. ADDITIONAL OR MODIFIED TERMS:*

N/A

8. EXECUTION(S):** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)	Execution Date			Party(ies) Signature(s)
	Y	M	D	
_____ (Solicitor)	11			_____ YUANYUAN DONG

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

**LAND TITLE ACT
FORM D
EXECUTIONS CONTINUED**

8. EXECUTION(S):** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)	Execution Date			Party(ies) Signature(s)
	Y	M	D	
<hr/> (Solicitor) (as to all signatures)	11			BANK OF MONTREAL, by its authorized signatory(ies): <hr/> Print Name: <hr/> Print Name:

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

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**LAND TITLE ACT
FORM D
EXECUTIONS CONTINUED**

8. EXECUTION(S):** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)	Execution Date			Party(ies) Signature(s)
	Y	M	D	
	11			CITY OF VANCOUVER by its authorized signatory:

Bruce T. Quayle
Solicitor
453 West 12th Avenue
Vancouver, BC, V5Y 1V4
Tel: 604-871-6545

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

**LAND TITLE ACT
FORM E
SCHEDULE**

Enter the Required Information in the Same Order as the Information Must Appear on the Freehold Transfer Form, Mortgage Form or General Document Form.

3. NATURE OF INTEREST:*

DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
Section 219 Covenant	Article 2, pages 8-12	Transferee
Priority Agreement granting above Section 219 Covenant priority over Mortgage CA1544330 and Assignment of Rents CA1544331	Page 18	Transferee
Section 219 Covenant	Article 3, pages 12 - 13	Transferee
Priority Agreement granting above Section 219 Covenant priority over Mortgage CA1544330 and Assignment of Rents CA1544331	Page 18	Transferee
Statutory Right of Way	Article 4, page 13	Transferee
Priority Agreement granting above Statutory Right of Way priority over Mortgage CA1544330 and Assignment of Rents CA1544331	Page 18	Transferee
Equitable Charge	Article 6, page 14	Transferee
Priority Agreement granting above Equitable Charge priority over Mortgage CA1544330 and Assignment of Rents CA1544331	Page 18	Transferee

TERMS OF INSTRUMENT - PART 2
Heritage Revitalization Agreement

WHEREAS:

- A. The Owner (as defined below herein) is the registered owner of the lands at 305 West 13th Avenue in City of Vancouver (the “Lands”), which have the legal description shown in the Form C - Part 1 part of this document.
- B. There is a Two-Family Dwelling building situated on the Lands, known as “The Munro House”, which is considered to be of heritage value (the “Heritage Building”).
- C. The Owner proposes to develop the Lands by:
- (i) subdividing the Lands into two new parcels, one of which will contain the Heritage Building;
 - (ii) rehabilitating the Heritage Building and maintaining it as a Two-Family Dwelling; and
 - (iii) constructing on the other new parcel created by the proposed subdivision of the Lands a new Two-Family Dwelling,
- and, under development permit applications No.DE414784 and No.DE415139 , the Owner has applied to the City for a development permit for that purpose (the “DP Application”).
- D. The Owner proposes that, in exchange for a number of City by-law variations needed to permit the proposed project as contemplated under the DP Application, the Owner will enter into a heritage revitalization agreement in respect of the Heritage Building and accept the adding of the Heritage Building to the City’s Heritage Register, as a category “B” building, and the designation of the Heritage Building as protected heritage property under the provisions of the *Vancouver Charter* SBC 1953 c.55.

THEREFORE, pursuant to Section 592 of the *Vancouver Charter* SBC 1953 c.55, the parties agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Definitions. In this agreement, unless explicitly used differently elsewhere herein, the terms defined in this section have the meanings given to them here:

- (a) “City” means the municipality of the City of Vancouver continued under the *Vancouver Charter* and “City of Vancouver” means its geographic location and area;
- (b) “City’s Bank of Record” means the City’s primary bank or other financial institution for its banking activities;

- (c) **“Conservation Plan”** means a written plan and guidelines prepared by and/or under the supervision of a Heritage Consultant and explicitly accepted by the City for the rehabilitation of the Heritage Building as provided for hereunder;
- (d) **“Director of Planning”** means the chief administrator from time to time of the City’s Planning Department and his or her successors in function and their respective nominees;
- (e) **“Development”** means the proposed development project as described above in the introductory paragraphs hereto to subdivide the Lands and restore and rehabilitate the Heritage Building and construct the New Building on the Lands pursuant to the DP Application;
- (f) **“Development Permit”** means any and all development permits issued by the City under the DP Application and in respect of the Development, as such permit(s) may be modified or amended from time to time, including, without limitation, all final reports, plans, drawings and specifications relating thereto;
- (g) **“DP Application”** has the meaning given above in the introductory paragraphs hereto;
- (h) **“Heritage Building”** has the meaning given above in the introductory paragraphs hereto;
- (i) **“Heritage Consultant”** means an independent, heritage building rehabilitation and conservation expert, knowledgeable and experienced in and duly qualified for planning and supervising rehabilitation and conservation work for heritage buildings;
- (j) **“Heritage Designation”** means the City’s designation of the Heritage Building as a protected heritage property pursuant to section 593 of the *Vancouver Charter*;
- (k) **“Heritage Parcel”** means the parcel of lands to be created by the Subdivision, upon which the Heritage Building will be situated;
- (l) **“Lands”** has the meaning given above in the introductory paragraphs hereto and includes any other parcels of land into which the Lands may at any time in any way be consolidated or subdivided;
- (m) **“Land Title Act”** means the *Land Title Act*, R.S.B.C. 1996, c.250;
- (n) **“New Building”** means the new Two-Family Dwelling proposed for construction on the Lands under the DP Application;
- (o) **“Non-Heritage Parcel”** means the parcel of land to be created by the Subdivision, upon which the New Building will be situated;
- (p) **“Owner”** means the registered owner or owners of the Lands;
- (q) **“rehabilitate”** and **“rehabilitation”** mean the planning and carrying out of restoration, rehabilitation, construction and conservation work to restore,

upgrade, improve and conserve the structure, support and heritage characteristics and features of a heritage building or real property heritage feature so as to revitalize it and extend its life and use as such;

- (r) **“Rehabilitation Work”** has the meaning given below herein;
- (s) **“Subdivision”** means a subdivision of the Lands into two new parcels, one for the Heritage Building and one for the New Building, as contemplated under the DP Application and described above in the introductory paragraphs hereto;
- (t) **“Subdivision By-law”** means the City’s *Subdivision By-Law No. 5208* and any amendments thereto and replacements thereof;
- (u) **“Two-Family Dwelling”** has the meaning given in the *Zoning and Development By-law*;
- (v) **“Vancouver Charter”** means the *Vancouver Charter, S.B.C. 1953, c.55*, as amended from time to time, and any and all replacements thereof or any statute enacted in substitution thereof and all regulations applicable thereto and any amendments, replacements and substitutions thereof;
- (w) **“Zoning & Development By-law”** means the City’s *Zoning and Development By-law No. 3575* and any amendments thereto and replacements thereof.

ARTICLE 2 SECTION 219 COVENANT

2.1 Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees, as a covenant and agreement running with, charging and binding the Lands, that, to the satisfaction of the Director of Planning:

- (a) the Owner, at his, her or its expense, within 24 months after the date the Development Permit issued, plus any additional time for which the time limit of the Development Permit may be extended under the provisions of the *Zoning & Development By-law*, will rehabilitate or cause the rehabilitation of the Heritage Building and will do so in accordance with this agreement, the Development Permit and the Conservation Plan (the **“Rehabilitation Work”**);
- (b) the Owner, at his, her or its expense, will ensure that a Heritage Consultant supervises the Rehabilitation Work;
- (c) the Owner, at his, her or its expense, will ensure that, at all times during the carrying out of the Rehabilitation Work, the Heritage Building is secure from vandalism and occupation by squatters;
- (d) at all times after and while this agreement is registered on title to the Lands, the Owner, at his, her or its expense, will keep the Heritage Building insured to its full replacement value against all perils, including, without limitation, damage or destruction by earthquake;
- (e) on completion of the Rehabilitation Work as required by this agreement, the Owner, at his, her or its expense, will cause a Heritage Consultant to submit to

the Director of Planning, a signed statement stating explicitly that the Rehabilitation Work has been completed in accordance with the Conservation Plan;

- (f) nobody will in any way use or occupy the New Building or any part thereof at any time after this agreement is registered on title to the Lands, unless and until:
 - (i) the Subdivision has been duly effected;
 - (ii) the City has issued all required occupancy permits therefor;
 - (iii) the Rehabilitation Work has been completed in accordance herewith;
 - (iv) the Owner, as required above herein, has submitted or caused to be submitted to the Director of Planning a signed written statement prepared by a Heritage Consultant stating explicitly that the Rehabilitation Work has been completed in accordance with the Conservation Plan; and
 - (v) the City has given the Owner a written notice or confirmation by which the City explicitly accepts or confirms that it accepts that the Rehabilitation Work has been completed in accordance with this agreement;
- (g) nobody will apply for or take any other action to compel the City, and, notwithstanding that the New Building may be ready for occupancy, the City will be under no obligation to issue any occupancy permit for the New Building or any part thereof at any time after this agreement is registered on title to the Lands, until:
 - (i) the Subdivision has been duly effected;
 - (ii) the Rehabilitation Work has been completed in accordance herewith;
 - (iii) the Owner, as required above herein, has submitted or caused to be submitted to the Director of Planning a signed written statement prepared by a Heritage Consultant stating explicitly that the Rehabilitation Work has been completed in accordance with the Conservation Plan; and
 - (iv) the City has given the Owner a written notice or confirmation by which the City explicitly accepts or confirms that it accepts that the Rehabilitation Work has been completed in accordance herewith;
- (h) after completion of the Rehabilitation Work in accordance herewith, the Owner, at his, her or its expense, will do all things reasonably necessary to conserve the Heritage Building as rehabilitated and, in any event, keep it in good condition in all respects at all times;

- (i) except for maintenance and repair work, the Owner will not and will not suffer or permit anyone else to do anything at anytime to renovate, alter, modify or reconfigure or that will result in any alteration, modification or reconfiguration of the Heritage Building in any way except as may be permitted or required by this agreement, the Conservation Plan and/or any development and/or heritage alteration permits issued by the City;
- (j) the Owner will not at any time and will not suffer or permit anyone else to at anytime do anything that will obscure, deface or remove in any way any heritage related commemorative plaque the City, at its expense, may attach to the Heritage Building pursuant to the statutory right of way granted to it herein;
- (k) if at any time for any reason the Heritage Building is damaged in any way or destroyed, the Owner, at his, her or its expense, and to the City's satisfaction, will repair it or replace it with a replica building, except that if the Owner *bona fide* believes that to do so would be uneconomical, in which case, and if for that reason the Owner wishes to demolish it as damaged or wishes not to replicate it, as the case may be, the Owner, at his, her or its expense, and in consultation with and to the satisfaction of the City, will prepare an economic analysis therefor, but taking into consideration only land related economic factors, such as, for example, but without limitation, the estimated cost to repair or replicate the Heritage Building, as the case may be, the anticipated market value of the repaired or replicated building, the incentives given by the City for this agreement and the Heritage Designation, the estimated value of the Lands under the zoning otherwise applicable thereto, after which the City and the Owner, together, on the basis of that analysis, will determine whether in the circumstances it would be uneconomical to repair or replicate the Heritage Building, failing which the matter in all respects will be determined by arbitration in accordance with the provisions of the *Commercial Arbitration Act* RSBC 1996 c. 55, and if the Owner and the City agree or if in arbitration it is determined that it would be uneconomical for the Owner to be required to repair or replicate the Heritage Building, then, by explicit written notification, the City will consent to the Owner's wish to not repair or replicate the Heritage Building and will discharge this agreement from title to the Lands and the Owner may request of the City's Mayor and Council that the Heritage Designation be cancelled; and
- (l) the Owner acknowledges and agrees that, notwithstanding that this agreement and the Heritage Designation will result in restrictions with respect to the future use and development and therefore may affect the value of the Lands, the Owner has received full and fair compensation for this agreement and the Heritage Designation and the Owner hereby waives and renounces any and all claims for any further or other compensation by reason of this agreement and/or the Heritage Designation and acknowledges and agrees that the requirements of Section 595(1) of the *Vancouver Charter* SBC 1953 c.55 have been fully satisfied, and the Owner hereby releases the City and its officials, officers, employees and agents from any liability for any loss, injury, damage or expense of any kind the Owner may suffer, incur or experience and the Owner will indemnify the City for any loss, injury, damage or expense the City may incur, suffer or experience and for any complaint, demand, claim, action, suit or judgment for any loss, injury, damage or expense anyone else may

suffer, incur or experience arising out of or in any way connected this agreement and/or the Heritage Designation, and the release and promise of indemnification contained in this paragraph will survive discharge and termination of this agreement; and

- (m) the City may revoke at anytime any occupancy permit(s) issued for the New Building prior to completion of the Rehabilitation Work, unless such occupancy permit(s) was obtained in accordance with this agreement, and in such circumstances the Owner, on reasonable notice from the City, will ensure that anyone occupying any part of any such building vacates it immediately on such revocation of occupancy permit(s), and if anyone continues to occupy any portion of any part of the New Building in contravention of such revocation, this agreement and any applicable City bylaws, the City, at the Owner's expense, may pursue all remedies available to it, including, without limitation, injunctive relief, to ensure that the New Building is vacated and unoccupied in accordance with this agreement.

2.2 Notwithstanding the occupancy restrictions set out above in respect of the New Building, the City, in its discretion, may issue occupancy permits therefor and on that basis it may be occupied prior to the completion of the Rehabilitation Work in accordance herewith, provided:

- (a) the Owner duly applies to the City for any and all occupancy permits and pays all fees required therefor;
- (b) this agreement has been fully registered in the Land Title Office to the City's satisfaction;
- (c) the City has issued a building permit and/or heritage alteration permit in respect of the Rehabilitation Work;
- (d) all legal requirements for occupancy permits for the New Building have been fulfilled;
- (e) the Owner has delivered to the City, in all respects to the City's satisfaction, a letter of credit in the amount equal to one hundred and twenty percent (120%) of the then estimated cost to complete the Rehabilitation Work, with such estimate to be made in writing by the Consultant and explicitly accepted in writing by the City;
- (f) the Owner, at the time of application for any such occupancy permits, is not, in the City's opinion, in breach of any of its obligations under this agreement or any other agreement between the City and the Owner with respect to the Heritage Building and/or the Lands; and
- (g) the City, in its opinion, is satisfied that the Rehabilitation Work is being carried out diligently.

2.3 All letters of credit required under this Article will be issued by a Schedule I Canadian chartered bank or HSBC Bank Canada and will be unconditional, irrevocable and self-renewing and otherwise in a form and content which is acceptable to the City and will be provided for a period of one (1) year with a provision for an automatic renewal or extension without

amendment from year to year until the Owner has, to the City's full satisfaction, completed all of its obligations under this agreement.

2.4 The City may call upon the letter or letters of credit provided to it pursuant to the preceding paragraphs herein and apply the proceeds therefrom for any purpose and in any manner it may choose in connection with the Rehabilitation Work, if:

- (a) the bank issuing the letter of credit refuses to extend or renew the expiry date of the letter of credit;
- (b) the Owner becomes insolvent or commits any act of bankruptcy or becomes bankrupt or takes the benefit of any act or legislation that may be enforced for bankrupt or insolvent debtors;
- (c) the Owner, in the City's opinion, has not been diligently carrying out the Rehabilitation Work; or
- (d) the City in any way undertakes all or any part of the Rehabilitation Work pursuant to this agreement.

2.5 If at anytime, in default under this agreement, the Owner, in the City's opinion, fails to carry out the Rehabilitation Work as required hereby and fails to rectify any such default within 30 days, or within such other longer time as the City may explicitly permit, after notice from the City to so rectify such default, the City, on the Owner's behalf and at the Owner's expense, may, but will be under not be obligated to, rectify the Owner's default.

**ARTICLE 3
SECTION 219 COVENANT
NO SEPARATE SALE**

3.1 Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees, as a covenant and agreement running with, charging and binding the Lands, that no portion of the Lands, including, without limitation, the Heritage Parcel and the Non-Heritage Parcel, will at any time be sold separately from any other portion of the Lands and all of the Lands, including, without limitation, the Heritage Parcel and the Non-Heritage Parcel together, will at all times be owned by the same person or persons.

3.2 The City, at the Owner's expense, within a reasonable time of the Owner's request, after the Rehabilitation Work is completed in accordance herewith and a final occupancy permit for full occupancy of the Heritage Building has been issued, will discharge from title to the Lands the Section 219 covenant contained in paragraph 3.1 hereof.

**ARTICLE 4
STATUTORY RIGHT OF WAY**

4.1 Pursuant to Section 218 of the *Land Title Act*, the Owner hereby grants to the City, effective at all times from and after the date upon which the City issues the Development Permit, a statutory right of way to enter, be and move about on the Lands:

- (a) to install, maintain, repair and replace on the exterior of the Heritage Building, at the City's expense, and in consultation with the Owner as to location, one commemorative plaque regarding the Heritage Building; and

- (b) in the event the Owner, in the City's opinion, is in default of any of its obligations under this agreement, to carry out any such obligations of the Owner hereunder as the City may choose.

4.2 The statutory right of way granted in the preceding paragraph is necessary for the operation and maintenance of the City's undertaking.

4.3 Notwithstanding any other provision of this agreement, nothing herein obligates the City to exercise any of the rights granted to it by way of the statutory right of way contained herein to rehabilitate, conserve or replace the Heritage Building.

ARTICLE 5 DEBTS OWED TO CITY

5.1 If the City, pursuant to this agreement, enters upon the Lands or any of them to perform any of the Owner's obligations hereunder to carry out the Rehabilitation Work or to conserve, repair or replace the Heritage Building:

- (a) there will be no express or implied warranties as to the quality of any work the City may so carry out or the suitability of the materials for the purposes for which they are put; and
- (b) the Owner will pay to the City, forthwith on demand, to the extent the City has not taken payment for such costs from any letters of credit provided to the City hereunder, as reimbursement for expenses incurred, the full amount of all costs the City incurs to carry out work to rehabilitate, conserve, repair or replace the Heritage Building, plus 20% of such costs as fair compensation for the City's overhead, and any such amounts the Owner does not pay or fails to pay to the City forthwith on demand will bear interest, until paid in full, at the prime lending rate of the City's Bank of Record, plus 2%, calculated monthly and not in advance.

ARTICLE 6 EQUITABLE CHARGE

6.1 The Owner hereby grants to the City an equitable charge over the Lands, which charge will run with, charge and bind the Lands, for the payment of all sums (including all interest thereon) which may at any time be payable by the Owner to the City under the terms of this agreement or otherwise at law.

6.2 The equitable charge the Owner has granted to the City herein may be enforced by the appointment of a receiver for the sale of the Lands.

ARTICLE 7 BY-LAW VARIATIONS

General

7.1 Section 10.7.1(a) of the *Zoning and Development Bylaw* is hereby varied in respect of the Lands so that the Director of Planning may allow steps in any side yard thereon.

7.2 Section 10.7.1(b) of the *Zoning and Development Bylaw* is hereby varied in respect of the Lands so that the Director of Planning may allow eaves, gutters, sills, chimneys and other similar projections to project more than 540 mm, measured horizontally, into any required or permitted yard.

The Heritage Parcel

7.3 The RT-6 District Schedule to the *Zoning and Development By-Law* is hereby varied in respect of the Heritage Parcel, for the Development, as follows:

- (a) Section 4.3.1 is hereby varied to permit the Heritage Building to consist of 2 storeys and a partial 3rd storey;
- (b) Section 4.6.1 is hereby varied to permit a rear yard with a minimum depth of 4 feet; and
- (c) Section 4.7.1 is hereby varied to permit a maximum total building floor area for all floors combined of 3,999 sq. ft. (approximately 0.87 FSR).

The Non-Heritage Parcel

7.4 The *Subdivision By-law* is hereby varied in respect of the Non-Heritage Parcel, to permit therefor, on the Subdivision, a minimum parcel area of 2,250 sq. ft.

7.5 The RT-6 District Schedule to the *Zoning and Development By-Law* is hereby varied in respect of the Non-Heritage Parcel, for the Development, as follows:

- (a) Section 4.3.1 is hereby varied to permit the New Building to consist of 2 storeys and a partial 3rd storey;
- (b) Section 4.5.1 is hereby varied to permit a side yard, at the north side of the New Building, with a minimum depth of 3 feet;
- (c) Section 4.6.1 is hereby varied to permit a rear yard with a minimum depth of 5 feet;
- (d) Section 4.7.1 is hereby varied to permit a total building floor area for all floors combined of 2,469 sq. ft. (approximately 1.10 FSR);
- (e) Section 4.8.1 shall not apply; and
- (f) Section 4.17 shall not apply.

ARTICLE 8 RELEASE FROM NON-HERITAGE PARCEL

8.1 The City, at the Owner's expense, within a reasonable time of the Owner's request, will release this agreement from title to the Non-Heritage Parcel in the following circumstances:

- (i) the Rehabilitation Work has been completed in accordance herewith;

- (ii) the Owner, as required above herein, has submitted or caused to be submitted to the Director of Planning a signed written statement prepared by a Heritage Consultant stating explicitly that the Rehabilitation Work has been completed in accordance with the Conservation Plan; and
- (iii) the City has given the Owner a written notice or confirmation by which the City explicitly accepts or confirms that it accepts that the Rehabilitation Work has been completed;
- (iv) the Owner is not in any way in breach of this agreement; and
- (v) the Owner does not owe any money to the City pursuant to this agreement.

8.2 If under this Article 8 this agreement is released from title to the Non-Heritage Parcel, any and all future development of the Non-Heritage Parcel will be subject to applicable City by-laws and the Non-Heritage Parcel may not be re-developed in accordance with this agreement.

ARTICLE 9 NOTICES

9.1 Any notice, request or communication required or permitted to be given hereunder will be in writing and will be deemed to have been duly given if delivered to the party or mailed in Canada by prepaid registered post addressed to the party as follows:

- (a) if to the Owner, to its address as shown in the Land Title Office records; and
- (b) if to the City:
City of Vancouver
453 West 12th Avenue
Vancouver, British Columbia
V5Y IV4

Attention: City Clerk and Director of Legal Services;

or to such other address in Canada as any party may specify in writing to the other parties, provided that if and when the owner of the Lands or any part thereof should change, then to the address as set out in the State of Title Certificate for the Lands or such part thereof, and such notice will be deemed to have been received, if delivered, on the date of delivery, and if mailed as aforesaid within Canada then on the third business day following its mailing, provided that if mailed, should there be between the time of the mailing and the actual receipt of the notice, a mail strike, slowdown or other labour dispute which might affect delivery of such notice, then such notice will only be effective if and when actually delivered.

**ARTICLE 10
GENERAL**

10.1 Joint and Several Liability. If the Owner is more than one party, such parties shall be jointly and severally liable to the City for the performance and observance of the Owner's obligations in this agreement.

10.2 Priority of Registration. The Owner, at his, her or its expense, after execution of this agreement, shall do or cause to be done all things and acts necessary to ensure that this agreement is registered against title to the Lands with priority over all other encumbrances on title to the Lands as the City may require.

10.3 Perfection of Intention. The parties hereto will do such things and execute such further and other documents and instruments and do such further and other acts as may be reasonably necessary to implement and carry out the provisions and intent of this agreement and to ensure timely and effective registration in the Land Title Office.

10.4 Waiver. No failure on the part of the City to exercise and no delay in exercising any right under this agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City herein will be deemed to be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity.

10.5 Time of Essence. Time will be of the essence in respect of this agreement.

10.6 Enurement. This agreement shall enure to the benefit of and be binding upon the Owner and its successors and trustees, and this agreement shall charge and run with the Lands and with any parcel, lot or part into which the Lands may be subdivided or consolidated and shall enure to the benefit of and be binding upon the Owner's successors in title and trustees and successors and all parties claiming through such owners.

10.7 City's Other Rights and Obligations. Nothing contained or implied in this agreement will derogate from the obligations of the Owner under any other agreement with the City or prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter* and the rights, powers, duties and obligations of the City under all other laws, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this agreement had not been executed and delivered by the Owner and the City.

10.8 Headings. The division of this agreement into articles, sections and paragraphs and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this agreement.

10.9 Number. Words contained herein importing the singular number only will include the plural and vice versa, words importing the masculine gender will include the feminine and neuter genders and vice versa and words importing persons will include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa.

10.10 Governing Law. This agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

10.11 Severability. All provisions of this agreement are severable in that if any court or other lawful authority having jurisdiction to decide the matter finds for any reason that one or more of them is void or unenforceable, then such void or unenforceable provisions will be severed from this agreement and all other provisions herein will continue to be binding and enforceable.

10.12 City Approvals. In this agreement, where City "approval", "acceptance", "consent" or similar authorization or agreement is required, unless provided for otherwise in this agreement, such "approval", "acceptance", "consent" or similar City agreement or authority must be provided in writing, by the City departments, employees, officers or designates, as the case may be, that are authorized to provide such "approval", "acceptance", "consent" or similar authorization or agreement. Any purported "approval", "acceptance" "consent" or similar authorization or agreement provided by a City department, employee, officer or designate, as the case may be, that is not authorized to provide the same, shall be of no force or effect.

IN WITNESS WHEREOF the parties have executed this Agreement on Form C which is a part hereof.

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" mean the Mortgage registered under number CA1544330 and Assignment of Rents under number CA1544331;
- (b) "Existing Chargeholder" means Bank of Montreal;
- (c) "New Charges" mean the Section 219 Covenants, the Statutory Right of Way and the Equitable Charge contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the meaning ascribed to them in the attached Terms of Instrument - Part 2.

For \$10.00 and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder:

- (i) consent to the Owners granting the New Charges to the City; and
- (ii) agrees with the City that the New Charges charge the Lands in priority to the Existing Charges in the same manner and to the same effect as if the Owner has granted the New Charges, and it had been registered against title to the Lands, prior to the grant or registration of the Existing Charges or the advance of any money under the Existing Charges.

To witness this consent and priority instrument, the Existing Chargeholder has caused its duly authorized signatories to sign the attached General Instrument - Part 1.

END OF DOCUMENT



EXPLANATION

Noise Control By-law amending By-law No. 6555
Re: Schedule G

A housekeeping amendment is necessary to correct the reference to two By-law numbers in Schedule G, for two CD-1 zones which have been added to the event zone, and which are listed in Schedule G for ease of reference.

Director of Legal Services
February 14, 2012

BY-LAW NO. _____

**A By-law to amend Noise Control By-law No. 6555
regarding Schedule G**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. This By-law amends the indicated provisions of the Noise Control By-law.
2. In Schedule G, Council strikes out "10409" and "10411" and substitutes "10403" and "10404" respectively.
3. A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.
4. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this _____ day of _____, 2012

Mayor

City Clerk



EXPLANATION

A By-law to amend the Zoning and Development By-law
Re: 104 - 150 East 1st Avenue

After the public hearing on May 17, 2011, Council resolved to amend the Zoning and Development By-law to create a CD-1 By-law for 104 - 150 East 1st Avenue. The Director of Planning has advised that all prior to conditions have been met, and enactment of the attached By-law will implement Council's resolution.

Director of Legal Services
February 14, 2012

BY-LAW NO. _____

**A By-law to amend
Zoning and Development By-law No. 3575
to rezone an area to CD-1**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

Zoning District Plan Amendment

1. This By-law amends the Zoning District Plan attached as Schedule D to By-law No. 3575, and amends or substitutes the boundaries and districts shown on it, according to the amendments, substitutions, explanatory legends, notations, and references shown on the plan marginally numbered Z-633 (a) attached as Schedule A to this By-law, and incorporates Schedule A into Schedule D to By-law No. 3575.

Definitions

2. In this By-law:

“Entry Alcoves” mean covered exterior spaces enclosed with vertical walls on three sides and adjacent to an entryway.

Uses

3.1 The description of the area shown within the heavy black outline on Schedule A is CD-1 (522).

3.2 Subject to Council approval of the form of development, to all conditions, guidelines and policies adopted by Council, and to the conditions set out in this By-law or in a development permit, the only uses permitted within CD-1 (522) and the only uses for which the Director of Planning or Development Permit Board will issue development permits are:

- (a) Dwelling Uses, limited to Multiple Dwelling, Seniors Supportive or Assisted Housing, and dwelling uses in conjunction with any use listed in this section 3.2;
- (b) Institutional Uses, limited to Child Day Care Facility, Social Service Centre, and Special Needs Residential Facility;
- (c) Parking Uses;
- (d) Accessory Uses customarily ancillary to the uses listed in this section 3.2; and
- (e) Interim Uses not listed in this section 3.2, and accessory uses customarily ancillary to them, if:

- (i) the Director of Planning or Development Permit Board, considers that the interim use will be compatible with and not adversely affect adjacent development, that either exists or that this By-law allows,
- (ii) the Director of Planning or Development Permit Board, is satisfied that the interim use is easily removable, and is of low intensity or low in capital investment,
- (iii) the Director of Planning or Development Permit Board is satisfied that there is no risk to the public from contaminated soils either on or adjacent to CD-1 (522), and
- (iv) any development permit for an interim use has a time limit of three years.

Conditions of use

4.1 Dwelling units are in an “intermediate zone” as defined in the Noise Control By-law, and, as a result, are subject to the noise levels permitted in industrial and downtown districts.

4.2 The design and lay-out of at least 25% of the dwelling units must:

- (a) be suitable for family housing;
- (b) include two or more bedrooms; and
- (c) comply with Council’s “High Density Housing for Families with Children Guidelines”.

4.3 All uses except dwelling uses must have direct access to grade.

Density

5.1 The total floor area for all uses, combined, must not exceed 11 792 m².

5.2 Computation of floor space ratio must include:

- (a) all floors having a minimum ceiling height of 1.2 m, including earthen floor, both above and below ground, measured to the extreme outer limits of the building;
- (b) stairways, fire escapes, elevator shafts, and other features which the Director of Planning considers similar, measured by their gross cross-sectional areas, and included in the measurements for each floor at which they are located; and

- (c) in the case of dwelling uses and live-work use, if the distance from a floor to the floor above, or in the absence of a floor above, to the top of the roof rafters or deck exceeds 4.3 m, an additional amount equal to the area of the floor area below the excess height, except for additional amounts that represent undeveloped floor areas beneath roof elements, which the Director of Planning considers to be for decorative purposes, and to which there is no means of access other than a hatch, residential lobbies, and mechanical penthouses.

5.3 Computation of floor space ratio must exclude:

- (a) open residential balconies or sundecks, entry alcoves and any other appurtenances which, in the opinion of the Director of Planning, are similar to the foregoing, except that the total area of all exclusions must not exceed 8% of the residential floor area being provided;
- (b) patios and roof gardens, if the Director of Planning first approves the design of sunroofs and walls;
- (c) where floors are used for off-street parking and loading, the taking on or discharging of passengers, bicycle storage, heating and mechanical equipment, or uses which in the opinion of the Director of Planning are similar to the foregoing, those floors or portions thereof so used, which are at or below base surface, except that the maximum exclusion for a parking space must not exceed 7.3 m in length;
- (d) undeveloped floor area located above the highest storey or half-storey with a ceiling height of less than 1.2 m, and to which there is no permanent means of access other than a hatch;
- (e) all residential storage space above or below base surface, except that if the residential storage space above base surface exceeds 3.7 m² for a dwelling unit, there is to be no exclusion for any of the residential storage space above base surface for that unit;
- (f) amenity areas, including day care facilities, recreation facilities, and meeting rooms, except that the exclusion must not exceed 1 000 m²;
- (g) where a Building Envelope Professional, as defined in the Building By-law, has recommended exterior walls greater than 152 mm in thickness, the area of the walls exceeding 152 mm, but to a maximum exclusion of 152 mm thickness, except that this clause is not to apply to walls in existence before March 14, 2000; and
- (h) with respect to exterior:
 - (i) wood frame construction walls greater than 152 mm thick that accommodate RSI 3.85 (R-22) insulation, or

- (ii) walls other than wood frame construction greater than 152 mm thick that meet the standard RSI 2.67 (R-15),

the area of such walls that exceeds 152 mm to a maximum exclusion of 51 mm of thickness for wood frame construction walls, and 127 mm of thickness for other walls, except that this clause is not to apply to walls in existence before January 20, 2009. A registered professional must verify that any wall referred to in subsection (ii) of this section meets the standards set out therein.

5.4 Computation of floor space ratio may exclude, at the discretion of the Director of Planning or Development Permit Board:

- (a) enclosed residential balconies, if the Director of Planning or Development Permit Board first considers all applicable policies and guidelines adopted by Council, and approves the design of any balcony enclosure, except that:
 - (i) the total area of all open and enclosed balcony or sundeck exclusions must not exceed 8% of the residential floor area being provided, and
 - (ii) enclosure of the excluded balcony floor area must not exceed 50%;
- (b) windows recessed into the building face to a depth of no more than 160 mm, except that the Director of Planning or Development Permit Board may allow a greater depth in cases where it improves building character;
- (c) unenclosed outdoor areas at grade level underneath building overhangs, if:
 - (i) the Director of Planning or Development Permit Board first considers all applicable policies and guidelines adopted by Council and approves the design of any overhangs, and
 - (ii) the area of all overhang exclusions does not exceed 1% of the residential floor area being provided;
- (d) features generally on the westerly facades of buildings to reduce solar gain, which may be in the form of french balconies and horizontal extensions; and
- (e) tool sheds, trellises and other garden structures, which support the use of intensive green roofs and urban agriculture, and, despite section 5.4(b), those portions of stairways and elevator enclosures which are at the roof level providing access to the garden areas.

5.5 The use of floor space excluded under section 5.3 or 5.4 must not include any purpose other than that which justified the exclusion.

Building height

6.1 The building height, measured above base surface, and to the top of the roof slab above the uppermost habitable floor, excluding parapet wall must not exceed 38.1 m.

6.2 Section 10.11 of the Zoning and Development By-law is to apply except that, despite section 10.11 and section 6.1 of this By-law, the Director of Planning or Development Permit Board, as the case may be, may permit a greater height than otherwise permitted for structures which support the use of intensive green roofs or urban agriculture, such as elevator and stair enclosures, amenity areas, tool sheds, trellises, and other garden structures.

Horizontal angle of daylight

7.1 Each habitable room must have at least one window on an exterior wall of a building.

7.2 The location of each such exterior window must allow a plane or planes extending from the window and formed by an angle of 50 degrees, or two angles with a sum of 70 degrees, to encounter no obstruction over a distance of 24.0 m.

7.3 Measurement of the plane or planes referred to in section 7.2 must be horizontally from the centre of the bottom of each window.

7.4 If:

- (a) the Director of Planning or Development Permit Board, first considers all the applicable policies and guidelines adopted by Council; and
- (b) the minimum distance of unobstructed view is not less than 3.7 m;

the Director of Planning or Development Permit Board may relax the horizontal angle of daylight requirement.

7.5 An obstruction referred to in section 7.2 means:

- (a) any part of the same building including permitted projections; or
- (b) the largest building permitted under the zoning on any site adjoining CD-1 (522).

7.6 A habitable room referred to in section 7.1 does not include:

- (a) a bathroom; or
- (b) a kitchen whose floor area is the lesser of:
 - (i) 10% or less of the total floor area of the dwelling unit, or
 - (ii) 9.3 m².

Parking, loading, and bicycle spaces

8. Any development or use of the site requires the provision and maintenance of off-street parking spaces, loading spaces, and bicycle spaces, in accordance with the Parking By-law.

Acoustics

9. All development permit applications require evidence in the form of a report and recommendations prepared by a person trained in acoustics and current techniques of noise measurement, demonstrating that the noise levels in those portions of dwelling units listed below, do not exceed the noise level set opposite such portions. For the purposes of this section, the noise level is the A-weighted 24-hour equivalent (Leq) sound level and is defined simply as noise level in decibels.

Portions of dwelling units	Noise levels (Decibels)
Bedrooms	35
Living, dining, recreation rooms	40
Kitchen, bathrooms, hallways	45

Severability

10. A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.

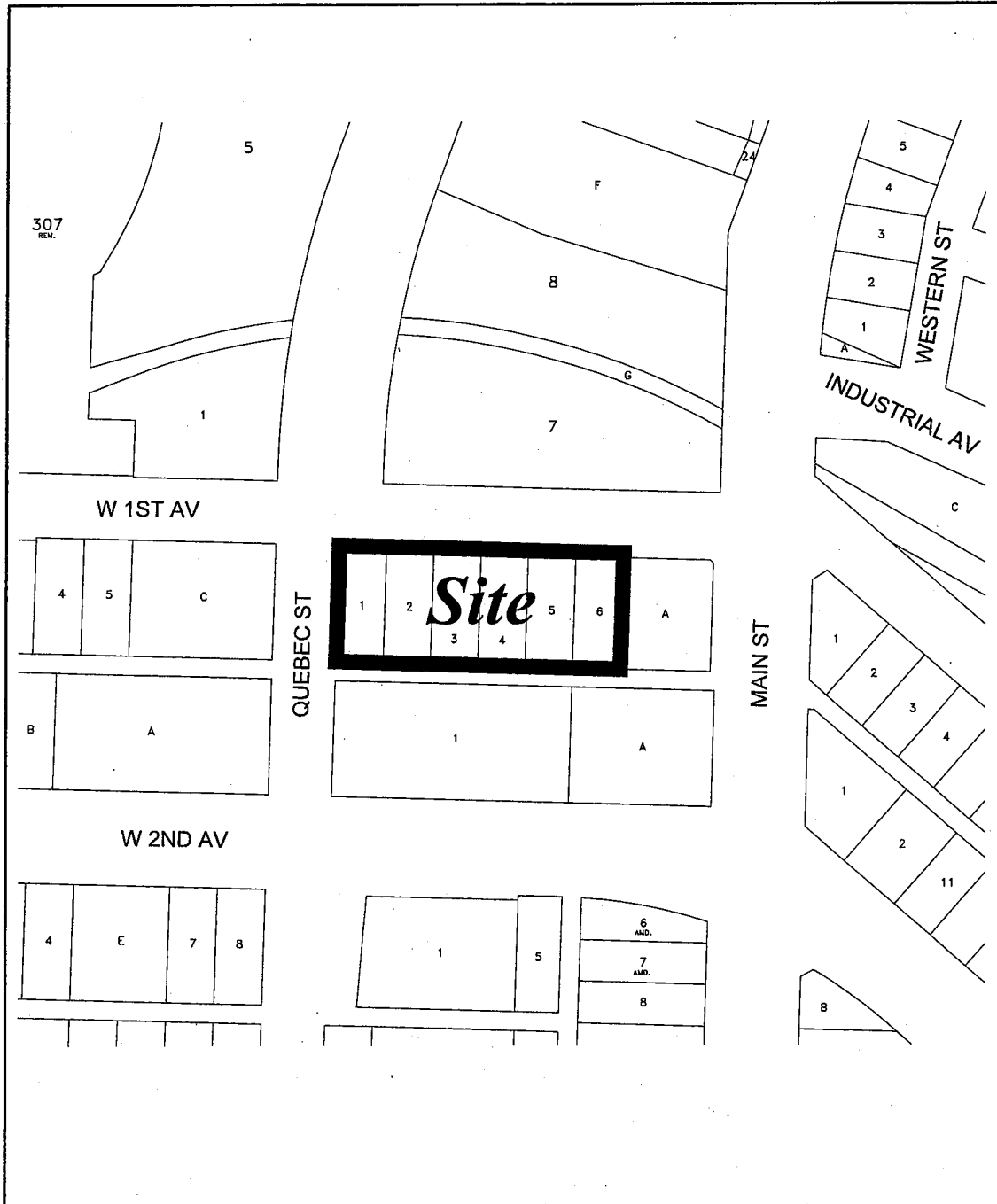
Force and effect

11. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this _____ day of _____, 2012

Mayor

City Clerk



The properties outlined in black (**█**) are rezoned:
 From **M-2** to **CD-1**

Z-633 (a)

RZ - 104-150 E 1st Avenue

map: 1 of 1

scale: NTS



City of Vancouver

date: 2011-04-19