

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 6306 Prince Albert Street, and the following legal description:

PID: 014-256-461
LOT 1
BLOCK 3
DISTRICT LOT 662
PLAN 1900

PID: 014-256-509
LOT 2
BLOCK 3
DISTRICT LOT 662
PLAN 1900

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) CHARGE
GENERAL INSTRUMENT - PART 1 Province of British Columbia**

LOCK

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent) **Import Profile**

Heidi Granger, Solicitor
City of Vancouver
453 West 12th Avenue
Vancouver BC V5Y 1V4

LTO Client number: 10647
 Phone number: 604.829.2001
 Matter number: 14-0260

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
 [PID] [LEGAL DESCRIPTION]

SEE SCHEDULE

STC? YES

Pick up STC?

Use 30 Parcel Schedule

Use 3 Parcel Schedule

3. NATURE OF INTEREST CHARGE NO. ADDITIONAL INFORMATION **Use Schedule**

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
 A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S): **Use Schedule**

SEE SCHEDULE

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

CITY OF VANCOUVER
A MUNICIPAL CORPORATION
453 WEST 12TH AVENUE
VANCOUVER

BRITISH COLUMBIA
CANADA

V5Y 1V4

Joint Tenants?

7. ADDITIONAL OR MODIFIED TERMS: **Use Schedule**

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		
Y	M	D
14		

Transferor(s) Signature(s)

KULDIP SINGH DEO

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.

More Signatures

**LAND TITLE ACT
FORM D
EXECUTIONS CONTINUED**

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

Y	M	D
14		

_____ KAMALJIT KAUR SARAN

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.

More Signatures

**LAND TITLE ACT
FORM D
EXECUTIONS CONTINUED**

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

Y	M	D
14		

SARANJIT KAUR BAINS

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.

More Signatures

**LAND TITLE ACT
FORM D**

EXECUTIONS CONTINUED

Officer Signature(s)

Execution Date

Y	M	D
14		

Transferor / Borrower / Party Signature(s)

THE TORONTO-DOMINION BANK
by its authorized signatory(ies):

Name: _____

Name: _____

(as to both signatures)

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.

More Signatures

**LAND TITLE ACT
FORM D
EXECUTIONS CONTINUED**

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

Y	M	D
14		

CITY OF VANCOUVER
by its authorized signatory:

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.

More Signatures

**LAND TITLE ACT
FORM E**

SCHEDULE

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]

014-256-461 LOT 1 BLOCK 3 DISTRICT LOT 662 PLAN 1900 ("NORTH PARCEL")

No PID NMBR

STC? YES

Pick up STC?

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]

014-256-509 LOT 2 BLOCK 3 DISTRICT LOT 662 PLAN 1900 ("SOUTH PARCEL")

No PID NMBR

STC? YES

Pick up STC?

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]

No PID NMBR

STC? YES

Pick up STC?

Additional 30 Parcel Schedule

Additional 3 Parcel Schedule

**LAND TITLE ACT
FORM E****SCHEDULE**

PAGE 7 OF 24 PAGES

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Article 2

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		granting the above Covenant priority over Mortgage CA3235777 Page 24

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Article 4

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		granting the above Covenant priority over Mortgage CA3235777 Page 24

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Statutory Right of Way		Article 5

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		granting the above Statutory Right of Way priority over Mortgage CA3235777 Page 24

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**LAND TITLE ACT
FORM E**

SCHEDULE

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Equitable Charge		Article 7

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		granting the above Equitable Charge priority over Mortgage CA3235777 Page 24

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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**LAND TITLE ACT
FORM E**

SCHEDULE

PAGE 9 OF 24 PAGES

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

KULDIP SINGH DEO (the "North Parcel Owner")
KAMALJIT KAUR SARAN (as to an undivided 1/2 interest) and SARANJIT KAUR BAINS (as to an undivided 1/2 interest) (together, the "South Parcel Owner")
THE TORONTO-DOMINION BANK, as to Priority

More Pages

TERMS OF INSTRUMENT - PART 2
HERITAGE REVITALIZATION AGREEMENT

WHEREAS:

- A. The Owners are the registered owners of those parcels of land at 6306 Prince Albert Street in the City of Vancouver (which have the legal descriptions shown in Form C - Part 1 of this document) defined herein as the Lands.
- B. The Lands are currently comprised of two legal parcels defined herein as the North Parcel and the South Parcel.
- C. There is a building situated on the Lands (as herein defined) known as the “**S.B. Bennett House**”, which is listed on the Vancouver Heritage Register in the “A” evaluation category and is considered to be of heritage value (the “**Heritage Building**”).
- D. The Owners (as herein defined) wish to develop the Lands by:
 - (i) moving the Heritage Building to be substantially or wholly within the South Parcel and rehabilitating and converting the Heritage Building into a One-Family Dwelling with Secondary Suite;
 - (ii) constructing on the South Parcel a new Infill One-Family Dwelling behind the Heritage Building (“**New Building C**”);
 - (iii) constructing on the North Parcel a new One-Family Dwelling with Secondary Suite (“**New Building A**”) and a new Infill One-Family Dwelling (“**New Building B**”) behind it; and
 - (iv) either:
 - (a) consolidating and subdividing the Lands pursuant to the provisions of the *Land Title Act* into two irregular parcels such that the Heritage Building is wholly contained in the South Parcel and the property line between the North and South Parcels “wraps” around the porch of the Heritage Building; or
 - (b) consolidating and subdividing the Lands under the *Strata Property Act* to create up to two bare land strata parcels and not allowing the stratification of either the Heritage Building or the New Buildings; or
 - (c) retaining the existing property line between the South Parcel and the North Parcel and entering into an agreement that permits the existing porch of the Heritage Building to straddle the common property line between the South Parcel and the North Parcel, if viable,

provided that only one of the options listed in this Recital C be undertaken and, under development permit application No. DE417530 for the Heritage Building and New Building

C (the “**South Parcel DP Application**”) and development permit application No. DE417529 for New Building A and New Building B (the “**North Parcel DP Application**”) (together, the “**DP Applications**”), has applied to the City for development permits for that purpose.

- E. The Owners propose that, in exchange for a number of variations to the City of Vancouver *Zoning & Development By-law* and the *Subdivision By-law* needed for the proposed project as contemplated under the DP Applications, the Owners will enter into a heritage revitalization agreement in respect of the Lands and accept 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* and in consideration of the payment ten dollars by the City to the Owners, the mutual obligations and benefits given herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, 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) “**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 and conservation of the Heritage Building as provided for hereunder;
 - (c) “**Development**” means the proposed development project as described above in Recital D, all pursuant to the DP Applications;
 - (d) “**Development Permits**” means any development permit(s) issued by the City pursuant to the DP Applications 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;
 - (e) “**Director of Planning**” means City’s Director of Planning appointed under the provisions of the *Vancouver Charter*;
 - (f) “**Director of Legal Services**” means the City’s Director of Legal Services or his or her delegates;
 - (g) “**DP Applications**” has the meaning given in Recital D above;
 - (h) “**Heritage Building**” has the meaning given in Recital C above;

- (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 under the *Zoning & Development By-law*;
- (l) **“Lands”** means the North Parcel and the South Parcel together 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 A”, “New Building B” and “New Building C”** have the meanings given in Recital D above;
- (o) **“New Buildings”** means New Building A, New Building B and New Building C, together;
- (p) **“North Parcel”** means Lot 1 Block 3 District Lot 662 Plan 1900;
- (q) **“One-Family Dwelling with Secondary Suite”** has the meaning given in the *Zoning and Development By-law*;
- (r) **“Owners”** means the owners of both the North Parcel and the South Parcel and the successors and assigns thereof and, without limitation, if the Lands or either the North Parcel or the South Parcel are subdivided by way of a strata plan under the *Strata Property Act* of British Columbia, then “Owners” includes the strata corporation thereby created;
- (s) **“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;
- (t) **“Rehabilitation Work”** has the meaning given below herein;
- (u) **“South Parcel”** means Lot 2 Block 3 District Lot 662 Plan 1900;
- (v) **“Subdivision By-Law”** means the City’s *Subdivision By-law No. 5208* and any amendments thereto and replacements thereof;
- (w) **“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;

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

ARTICLE 2
SECTION 219 COVENANT
REHABILITATION AND CONSERVATION OF HERITAGE BUILDING

- 2.1 Pursuant to Section 219 of the *Land Title Act*, the Owners covenant and agree, as a covenant and agreement running with, charging and binding the Lands, that:
 - (a) the Owners, at the Owners' expense, and to the satisfaction of the Director of Planning:
 - (i) within 24 months after the date upon which the City's Council enacts the Heritage Designation by-law or such other effective date as may be agreed upon to the satisfaction of the Director of Planning and Director of Legal Services, shall rehabilitate or cause the rehabilitation of the Heritage Building and shall do so in accordance with this agreement, the Heritage Permit and the Conservation Plan (the **“Rehabilitation Work”**);
 - (ii) shall ensure that a Heritage Consultant supervises the Rehabilitation Work;
 - (iii) shall ensure that, at all times during the carrying out of the Rehabilitation Work, the Heritage Building is secure from vandalism and occupation by squatters; and
 - (iv) on completion of the Rehabilitation Work as required by this agreement, shall 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;
 - (b) nobody will in any way use or occupy either the Heritage Building or the New Buildings or any part thereof and nobody will apply for or take any other action to compel the City, and, notwithstanding that either the Heritage Building or New Buildings may be ready for occupancy, the City will be under no obligation to issue any occupancy permit for either the Heritage Building or the New Buildings or any part thereof 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 Owners, as required above herein, have 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 Owners 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;
- (c) the City may revoke at anytime any occupancy permit(s) issued for either the Heritage Building or any New Buildings prior to completion of the Rehabilitation Work, unless such occupancy permit(s) was obtained in accordance with this agreement, and in such circumstances the Owners, 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 either the Heritage Building or any of the New Buildings in contravention of such revocation, this agreement and any applicable City bylaws, the City, at the Owners' expense, may pursue all remedies available to it, including, without limitation, injunctive relief, to ensure that either the Heritage Building or the New Buildings, as the case may be, is vacated and unoccupied in accordance with this agreement;
- (d) after completion of the Rehabilitation Work in accordance herewith, the Owners, at the Owners' 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;
- (e) at all times after and while this agreement is registered on title to the Lands, the Owners, at the Owners' expense, shall keep the New Buildings and the Heritage Building insured to their full replacement value against all perils, including, without limitation, damage or destruction by earthquake;
- (f) except for maintenance and repair work, the Owners 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;
- (g) the Owners shall not at any time and shall 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 pursuant to Article 4 hereof;
- (h) if at any time for any reason the Heritage Building is damaged in any way or destroyed, the Owners, at the Owners' expense, and to the City's satisfaction, shall repair it or replace it with a replica building, except that if the Owners *bona fide* believes that to do so would be uneconomical, in which case and, if for that reason, the Owners wishes to demolish it as damaged or wishes not to replicate it, as the case may be, the Owners, at the Owners' 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 South Parcel under the zoning otherwise applicable thereto, after which the City and the Owners, 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 *Arbitration Act*, RSBC 1996 c. 55 and, if the Owners and the City agree or if in arbitration it is determined that it would be uneconomical for the Owners to be required to repair or replicate the Heritage Building, then, by explicit written notification, the City will consent to the Owners' wish to not repair or replicate the Heritage Building and will discharge this agreement from title to the Lands and the Owners may request of the City's Mayor and Council that the Heritage Designation be cancelled;

- (i) if at anytime, in default under this agreement, the Owners, in the City's opinion, fails to perform its obligations as required hereby to rehabilitate and conserve the Heritage Building 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 Owners' behalf and at the Owners' expense, may, but will be under not be obligated to, rectify the Owners' default; and
- (j) the Owners acknowledge and agree 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 Owners have received full and fair compensation therefor and the Owners hereby waive and renounce 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* have been fully satisfied and the Owners hereby release the City and its officials, officers, employees and agents from any liability for any loss, injury, damage or expense of any kind the Owners may suffer, incur or experience and the Owners 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. The release and promise of indemnification contained in this paragraph will survive discharge and termination of this agreement.

ARTICLE 3 LETTER OF CREDIT

- 3.1 Notwithstanding the occupancy restrictions set out above in respect of the Heritage Building and the New Buildings, the City, in its discretion and subject to the approval of the Directors of Planning and Legal Services, 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 Owners duly apply to the City for any and all occupancy permits required therefor 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 of the New Buildings or the Heritage Building have been fulfilled;
 - (e) the Owners have delivered to the City, in all respects to the City's satisfaction, a letter of credit in the amount equal to 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 Owners, at the time of application for any such occupancy permits, are 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 Owners with respect to the Heritage Building, the New Buildings and/or the Lands; and
 - (g) the City, in its opinion, is satisfied that the Rehabilitation Work is being carried out diligently.
- 3.2 All letters of credit required under this Article will be issued by a Schedule I Canadian chartered bank or other financial institution acceptable to the City's Director of Legal Services 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 year with a provision for an automatic renewal or extension without amendment from year to year.
- 3.3 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 Owners 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 Owners, 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.
- 3.4 Within a reasonable time of the Owners' request after completion of the Rehabilitation Work in accordance with this agreement, the City will, as the case may be, return to its issuer any letter of credit provided to the City hereunder or, if the City has called upon the letter of credit, deliver to the Owners any remaining balance therefrom.

ARTICLE 4

SECTION 219 COVENANT - NO SUBDIVISION OR SEPARATE SALE

- 4.1 Pursuant to Section 219 of the *Land Title Act*, the Owners covenant and agree, as a covenant and agreement running with, charging and binding the Lands, that no portion of the Lands, including, without limitation, the South Parcel and the North Parcel, will at any time be either subdivided into bare land strata lots under the *Strata Property Act* or sold separately from any other portion of the Lands and that all of the Lands, including, without limitation, the South Parcel and the North Parcel, will be owned at all times by the Owners.
- 4.2 Within a reasonable time of the Owners' request after the Rehabilitation Work has been completed in accordance with this agreement, the City, at the Owners' expense, will discharge from title to the Lands the Section 219 covenant contained in this Article 4.

ARTICLE 5

STATUTORY RIGHT OF WAY

- 5.1 Pursuant to Section 218 of the *Land Title Act*, the Owners hereby grant to the City, effective at all times from and after the date upon which the City issues the Development Permits, 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 or at the perimeter of the South Parcel, at the City's expense and, in consultation with the Owners as to location, a commemorative plaque; and
 - (b) in the event the Owners, in the City's opinion, is in default of any of its obligations under this agreement to rehabilitate and conserve the Heritage Building, to carry out any such obligations of the Owners hereunder as the City may choose.
- 5.2 The statutory right of way granted in the preceding paragraph is necessary for the operation and maintenance of the City's undertaking.
- 5.3 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.

**ARTICLE 6
DEBTS OWED TO CITY**

- 6.1 If the City, pursuant to this agreement, enters upon the Lands or any of them to perform any of the Owners' obligations hereunder to carry out the Rehabilitation Work or to conserve, repair or replace or replicate 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 Owners 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 Owners do not pay or fail to pay to the City forthwith on demand will bear interest, until paid in full, at the prime lending rate at the Bank of Montreal's main branch in the City of Vancouver, plus three percent, calculated monthly and not in advance.

**ARTICLE 7
EQUITABLE CHARGE**

- 7.1 The Owners hereby grant 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 Owners to the City under the terms of this agreement or otherwise at law.
- 7.2 The Equitable Charge the Owners have granted to the City herein may be enforced by the appointment of a receiver for the sale of the Lands.

**ARTICLE 8
BY-LAW VARIATIONS**

- 8.1 If the Lands are subdivided at any time hereafter either under the provisions of the *Land Title Act* or under the *Strata Property Act* or under other similar legislation enacted from time to time then upon the deposit of a plan of subdivision, strata plan, or similar plan as the case may be, Sections 9.1 and 9.8 of the *Subdivision By-law* are varied to allow for a minimum parcel width of 4.5 metres (15 feet).
- 8.2 The RS-1 District Schedule to the *Zoning & Development By-law* is hereby varied as follows for the Lands, for purposes of the Development:
- (a) Section 3.2.1.DW is varied so that sections (a) to (c) do not apply;
 - (b) Section 4.1.1 is varied to permit a minimum site width of 4.5 metres (15 feet);

- (c) Section 4.4.1 is varied to permit a front yard with a minimum depth of 1.49 metres (4.9 feet) to be provided;
 - (d) Section 4.5 shall not apply, so that a side yard is not required;
 - (e) Section 4.6.1 shall not apply, so that a rear yard is not required;
 - (f) Section 4.7.1 is varied to provide for a maximum floor area of 261m² (2,810 square feet) for New Building A, a maximum floor area of 131m² (1,410 square feet) for New Building B, a maximum floor area of 223m² (2,400 square feet) for the Heritage Building and a maximum floor area of 134m² (1,445 square feet) for New Building C, which together is approximately a floor space ratio of 1.01 based on the total area of the Lands;
 - (g) Sections 4.7.1(a) to 4.7.1(e) inclusive relating to maximum floor space ratio shall not apply;
 - (h) Section 4.7.3(c) is varied to permit a floor area for off-street parking to be excluded from the calculation of permitted floor space area if the Director of Planning is satisfied with the design, number and size of the off-street parking spaces;
 - (i) Section 4.8.1 is varied to permit site coverage of 386m² (4,150 square feet) for the Heritage Building and the New Buildings;
 - (j) Section 4.8.5 shall not apply, provided that the Director of Planning is satisfied with the amount of permeable landscaping and paving;
 - (k) Section 4.16 shall not apply; and
 - (l) Section 4.17 shall not apply.
- 8.3 Section 10 of the *Zoning & Development By-law* is hereby varied as follows for the Lands, for purposes of the Development:
- (a) Section 10.1 relating to number of principal buildings on a site shall not apply;
 - (b) Section 10.7.1(a) is varied to permit steps in any side yard, subject to approval by the Director of Planning; and
 - (c) Section 10.7.1(b) is varied to permit eaves, gutters, sills, chimneys and other similar projections to project into a required or permitted yard, regardless of their projected depth, provided that the Director of Planning is satisfied that they correspond to drawings approved under the DP Applications.

**ARTICLE 9
SUBDIVISION**

- 9.1 **Subdivision.** If the Lands are subdivided at any time hereafter either under the provisions of the *Land Title Act* or under the *Strata Property Act* or under other similar legislation

enacted from time to time then upon the deposit of a plan of subdivision, strata plan, or similar plan as the case may be:

- (a) subject to Section 9.2 herein, the rights and benefits of this agreement herein granted will be annexed to and run with each of the new parcels, lots, or other subdivided parcels and areas so created; and
- (b) subject to Section 9.3 herein, the burdens, obligations, covenant, statutory right of way and equitable charge contained in this agreement will continue to charge each of the new parcels, lots, or other subdivided parcels and areas so created.

9.2 **Subdivision by Strata Plan.** If the Lands, or any portion thereof, are subdivided by a strata plan, this agreement will charge title to the strata lots and the common property comprising such strata plan and:

- (a) the Section 219 Covenant and obligations therein and the Statutory Right of Way and Equitable Charge granted herein will be registered against each individual strata lot and noted on the common property sheet;
- (b) the strata corporation or the strata corporations created will perform and observe the Owner's covenants in this agreement, solely at the expense of the strata lot owners; and
- (c) the liability of each strata lot owner for the performance and observance of the Owner's covenants herein will be in proportion to the unit entitlement of his, her or its strata lot as established by the strata plan,

provided that, if the Lands are first subdivided by air space plan and then one or more of these parcels are further subdivided by strata plan, the easements and covenants registered concurrently with the air space plan may designate the air space parcel or the remainder, and therefore the strata corporation, responsible to perform and observe the Owner's covenants in this agreement.

9.3 Should the Lands be subdivided pursuant to the *Land Title Act* to create the North Parcel in which only New Buildings are located, then, at the Owners' request after the Rehabilitation Work has been completed in accordance with this agreement, the City, at the Owners' expense, will discharge from title to the newly created parcel containing only New Buildings, the Section 219 Covenant, the Statutory Right of Way and the Equitable Charge contained in this agreement and will request of the Registrar of the Land Title Office that the legal notation referring to the Heritage Designation be removed from title to the North Parcel containing only New Buildings. Following such discharges, all restrictions, obligations and liability on the Owners with respect to the Heritage Building shall only attach to and run with the South Parcel.

**ARTICLE 10
NOTICES**

10.1 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 Owners, to the Owners' address as shown in the Land Title Office records; and
- (b) if to the City:

City of Vancouver
453 West 12th Avenue
Vancouver, BC 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 11
GENERAL**

- 11.1 **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.
- 11.2 **Priority of Registration.** The Owners, at their 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.
- 11.3 **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.
- 11.4 **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.

- 11.5 **Time of Essence.** Time will be of the essence in respect of this agreement.
- 11.6 **Enurement.** This agreement shall enure to the benefit of and be binding upon the Owners and their 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 Owners' successors in title and trustees and successors and all parties claiming through such Owners.
- 11.7 **City's Other Rights and Obligations.** Nothing contained or implied in this agreement will derogate from the obligations of the Owners 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 Owners and the City.
- 11.8 **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.
- 11.9 **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.
- 11.10 **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.
- 11.11 **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.
- 11.12 **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.

#166522v4

Heritage Revitalization Agreement - Bennett House
6306 Prince Albert Street/800 East 47th Avenue

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) **“Existing Charges”** means the Mortgage registered under number CA3235777;
- (b) **“Existing Chargeholder”** means the **THE TORONTO-DOMINION BANK**;
- (c) **“New Charges”** means the Section 219 Covenant, the Statutory Right of Way and the Equitable Charge and 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 ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder:

- (i) consents to the Owner 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 had granted the New Charges, and they 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