

**LAND TITLE ACT  
FORM C (Section 233) CHARGE**

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

PAGE OF PAGES

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)

Deduct LTSA Fees? Yes

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

STC? YES

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

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):

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

7. ADDITIONAL OR MODIFIED TERMS:

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**

Transferor(s) Signature(s)

Y	M	D

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.

**LAND TITLE ACT  
FORM D**

**EXECUTIONS CONTINUED**

PAGE \_\_\_\_\_ of \_\_\_\_\_ PAGES

Officer Signature(s)

**Execution Date**

Transferor / Borrower / Party Signature(s)

Y	M	D

**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.

**LAND TITLE ACT  
FORM E**

**SCHEDULE**

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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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## TERMS OF INSTRUMENT - PART 2

### SHARED VEHICLE AGREEMENT 1501 – 1503 Haultain Street

#### WHEREAS:

- A. Capitalized terms not otherwise or elsewhere defined in this Agreement will have the respective meanings ascribed to them in Article 1;
- B. It is understood and agreed that this Agreement will be read as follows:
  - (a) the transferor, CINNABAR BROWN HOLDINGS LTD., as more particularly defined in Section 1.1, is called the “**Owner**”; and
  - (b) the transferee, THE CORPORATION OF THE CITY OF VICTORIA, is called the “**City**” or the “**City of Victoria**” when referring to the corporate entity and “**Victoria**” when referring to geographical location;
- C. The Owner is the registered and beneficial owner of the Lands;
- D. The Owner made an application for a development permit with variances which the City has conditionally approved subject to, among other things, fulfilment of the condition that prior to issuance of that permit, the Owner, at no cost to the City, make arrangements to the satisfaction of the City for the:
  - (a) purchase of one Shared Vehicle;
  - (b) dedication of one Shared Vehicle Parking Space on the Lands;
  - (c) provision of five memberships in a Shared Vehicle Organization (one for each residential unit);
  - (d) provision of Shared Vehicle usage credits in the amount of \$100 for each of the five memberships in a Shared Vehicle Organization; and
  - (e) provision of a \$400 credit for each of the five residential units towards the purchase of a bicycle;
- E. To satisfy the foregoing conditions the Owner and the City have entered into this Agreement; and
- F. The Statutory Right of Way is necessary for the operation and maintenance of the City’s undertaking.

#### CONSIDERATION

NOW THEREFORE this agreement witnesses that for Ten Dollars and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the parties), the parties, for themselves and their successors and assigns, hereby covenant and agree as follows:

## ARTICLE 1 DEFINITIONS

### 1.1 Definitions and Interpretation

The terms defined in this Section 1.1 will have the following meanings for all purposes in this Agreement, except where specifically otherwise provided herein:

- (a) **“Building”** means any new building, improvements or structures which include dwelling units and which are constructed on the Lands following issuance of and pursuant to the Development Permit;
- (b) **“Building Permit”** means a building permit issued with respect to the Lands subsequent to the Development Permit;
- (c) **“City”** and **“City of Victoria”** are defined in Recital B(b);
- (d) **“City Personnel”** means the City’s elected officials, officers, employees, contractors, subcontractors, agents, licensees, invitees and permittees;
- (e) **“City Solicitor”** means the person employed by the City as the City Solicitor and includes any other City lawyer acting under the authority of the City Solicitor;
- (f) **“Development”** means any development to be constructed on the Lands, or any portion thereof, pursuant to the Development Permit or Building Permit;
- (g) **“Development Permit”** means the development permit issued with respect to the Lands as a result of the Owner’s development permit with variances application no. 00066;
- (h) **“Director of Planning”** means the chief administrator from time to time of the Sustainable Planning and Community Development Department of the City and his successors in function and their respective nominees;
- (i) **“Event of Force Majeure”** means acts of God or public enemy, wars (declared or undeclared), revolution, riots, insurrections, civil commotions, fires, floods, slides, epidemics, quarantine restrictions, strikes or lockouts, including illegal work stoppages or slowdowns, or stop work orders issued by a court or public authority, including the City (provided that such orders were not issued as a result of an act or omission of the Owner, or anyone employed or retained by the Owner), freight embargos or power failures, provided that any such event or circumstance reasonably constitutes a material disabling event or circumstance which is beyond the reasonable control of a party, does not arise from the neglect or default of a party, and which results in a material delay, interruption or failure by a party in carrying out its duties, covenants or obligations under this Agreement, but which does not mean or include any delay caused by the Owner's lack of funds or financial condition (and for greater certainty, a strike or lockout, including illegal work stoppages or slowdowns, will be considered beyond the reasonable control of a party and not to arise from the neglect or default of that party, it being understood that the terms of settlement of any

labour disturbance, dispute, strike or lockout will be wholly in the discretion of that party).

- (j) “**Land Title Act**” means the Land Title Act, R.S.B.C. 1996, c.250;
- (k) “**Lands**” means that certain parcel of land situate in Victoria, British Columbia, more particularly known and described in Item 2 of the Form C forming part of this Agreement, and includes any parcel into which some or all of such land is consolidated or further subdivided;
- (l) “**Losses**” means any and all damages, losses, fines, penalties, costs (including legal costs on a solicitor and own client basis), actions, causes of action, claims, demands, liabilities, indirect or consequential damages (including loss of profit and loss of use and damages arising out of delays) and expenses of every nature or kind whatsoever;
- (m) “**LTO**” means the land title office in Victoria, British Columbia;
- (n) “**Occupancy Permit**” means the first occupancy permit issued for the Building in respect of the redevelopment of the Lands and the Building contemplated by the Development Permit;
- (o) “**Owner**” means Cinnabar Brown Holdings Ltd. (Incorporation No. BC0545769) and all of its assigns, successors and successors in title to the Lands or any part thereof and, if the Lands are subdivided by way of a Strata Plan then “Owner” includes, without limitation, any Strata Corporation(s) thereby created;
- (p) “**Parking Space Construction Standards**” means the specifications and requirements of the Director of Planning in accordance with the City bylaws, policies and guidelines to which the Shared Vehicle Parking Space must be constructed, as may be amended from time to time;
- (q) “**Permit**” means any Development Permit, Building Permit, Occupancy Permit or other permit applied for from the City in respect of the Building or the Lands;
- (r) “**Permitted Users**” means the members in good standing of the Shared Vehicle Organization whether or not said members reside in the Building;
- (s) “**Section 219 Covenants**” means the covenants contained in this Agreement made pursuant to Section 219 of the *Land Title Act*;
- (t) “**Shared Vehicle**” means one four-wheeled automobile, van or pick-up truck to be provided to the Development in accordance with this Agreement and the Shared Vehicle Service Agreement;
- (u) “**Shared Vehicle Organization**” means a legal entity whose principal business objective is to provide its members, for a fee, with a car-sharing service by which such members have self-serve access to a fleet of Shared Vehicles which they may reserve for use on an hourly or other basis, and which the City has approved and which has entered into the Shared Vehicle Service Agreement with the Owner, but does not include rental vehicle organizations;

- (v) **“Shared Vehicle Parking Space”** means one parking space situate on the Lands as shown with a bold black arrow on the sketch plan attached hereto as Schedule “A” reserved for the exclusive use of the Shared Vehicle to be provided pursuant to this Agreement; and/or such other parking space as the Owner may request and the Director of Planning may first agree to in writing;
- (w) **“Shared Vehicle Service Agreement”** means a legally binding agreement, satisfactory to the Director of Planning, entered into by the Owner and the Shared Vehicle Organization for the provision of the Shared Vehicle, pursuant to the terms of this Agreement and/or containing such other terms and conditions as the Owner may request and the Director of Planning may first agree to in writing;
- (x) **“Statutory Right of Way”** means the statutory right of way made pursuant to Section 218 of the *Land Title Act* and granted by the Owner to the City pursuant to Article 3;
- (y) **“Strata Corporation”** means a strata corporation created by the filing of a Strata Plan;
- (z) **“Strata Plan”** means a strata plan filed in respect of the Lands or any subdivided portion thereof pursuant to the *Strata Property Act*;
- (aa) **“Strata Property Act”** means the Strata Property Act, S.B.C. 1998, c. 43; and
- (bb) **“Victoria”** is defined in Recital B(b).

## 1.2 Interpretation

- (a) In this Agreement, the words “include” and “including” are to be construed as meaning “including, without limitation”; and
- (b) The Schedules attached to this Agreement, if any, constitute an integral part of this Agreement.

## 1.3 Headings

The division of this Agreement into Articles and Sections and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this Agreement. The terms “this Agreement”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article or other portion hereof and include any agreement or instrument supplemental or ancillary hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

#### **1.4 Number**

Words 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.

#### **1.5 Governing Law and Legislation**

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 in British Columbia. Any reference to a statute is to the statute and its regulations in force on the date the Form C General Instrument - Part 1 attached hereto is fully executed and to subsequent amendments to or replacements of the statute or regulations.

### **ARTICLE 2 PRECONDITIONS TO OCCUPANCY**

#### **2.1 Section 219 Covenant**

The Owner covenants with the City pursuant to Section 219 of the *Land Title Act*, in respect of the use of the Lands and the Building, that notwithstanding that the Owner may be otherwise entitled, the Owner will not, and will not suffer or permit any other person to:

- (a) apply for an Occupancy Permit for all or part of the residential part of the Building;
- (b) take any action to compel issuance of an Occupancy Permit for all or part of the residential part of the Building; or
- (c) occupy all or part of the residential part of the Building,  
and agrees that:
- (d) no part of the residential part of the Building will be occupied, and the City will have no obligation to issue an Occupancy Permit for the same, even if the Owner has completed construction of the residential part of the Building,

except if the City, under Section 2.2, has executed and delivered to the Owner a registrable discharge of this Section 219 Covenant from title to the Lands in the LTO.

#### **2.2 Discharge**

The City agrees to execute a discharge of the Section 219 Covenant granted pursuant to Section 2.1 from title to the Lands in the LTO upon the Director of Planning being fully satisfied that the Owner has constructed, finished and designated the Shared Vehicle Parking Space on the Lands in accordance with the Development Permit, this Agreement and the Parking Space Construction Standards, and the Owner has fulfilled its obligations pursuant to Sections 2.3 and 2.4;



Provided however that:

- (a) the City will have no obligation to execute such discharge until a written request therefor from the Owner has been received by the City, which request will include the form of discharge in registrable form satisfactory to the City Solicitor;
- (b) the cost of preparation of such discharge and the cost of registration of same in the LTO will be paid by the Owner; and
- (c) the City will have a reasonable time within which to execute such discharge and return the same to the Owner for registration.

### **2.3 Shared Vehicle Service Agreement and Supply of Shared Vehicle**

The Owner, at its expense, will enter into a legally binding Shared Vehicle Service Agreement with the Shared Vehicle Organization, approved by the Director of Planning, by which the Owner shall arrange for the provision of the Shared Vehicle to the Development. The Shared Vehicle Service Agreement shall be on arrangements, terms and conditions to be agreed upon by the parties, but at a minimum, the Agreement must provide:

- (a) for the ongoing maintenance, repair and operation of the Shared Vehicle in a prudent manner and, if the Shared Vehicle is damaged beyond repair, the prompt replacement of the Shared Vehicle with a vehicle which is at least equivalent in value and function to the Shared Vehicle;
- (b) for the making of the Shared Vehicle available for use by the Permitted Users not later than the date of issuance of an Occupancy Permit for any part of the residential part of the Building, and, for as long as is reasonably and lawfully possible thereafter, keep it in use exclusively for the Permitted Users;
- (c) that, at all times, except when in use by the Permitted Users or when being repaired or serviced, the Shared Vehicle will be parked and kept in the Shared Vehicle Parking Space;
- (d) for the funding by the Owner of five memberships in the Shared Vehicle Organization;
- (e) for the funding by the Owner of a usage credit in the amount of \$100 for each of the five memberships referred to immediately above;
- (f) for the assignment of the Shared Vehicle Service Agreement by the Owner (or its successors) to any Strata Corporation or to any successor in title to the Lands concurrent with the assignment of this Agreement, but not prior to all financial obligations of the Owner pursuant to the Shared Vehicle Service Agreement being fulfilled by the Owner to the satisfaction of the Director of Planning;
- (g) terms of access to the Shared Vehicle Parking Space by the Permitted Users, which must include the ability of the Permitted Users to access the Shared Vehicle Parking Space 24 hours a day/ 7 days a week and address any requirements for access, including FOBs, passcodes or keys; and

- (h) that the Shared Vehicle Service Agreement may not be amended or terminated without the prior written consent of the Director of Planning.

#### **2.4 Satisfaction of Shared Vehicle Purchase Requirements**

Prior to issuance of an Occupancy Permit for any part of the residential part of the Building, the Owner will provide the Shared Vehicle in accordance with this Agreement and shall submit to the Director of Planning:

- (a) a receipt or other form of confirmation issued by the Shared Vehicle Organization confirming satisfaction of any financial obligations of the Owner included in the Shared Vehicle Service Agreement;
- (b) a copy of the vehicle registration for the Shared Vehicle evidencing that the Shared Vehicle is registered in the name of the Shared Vehicle Organization, along with proof of insurance; and
- (c) if applicable, a copy of an assignment of the Shared Vehicle Service Agreement from the Owner to the Strata Corporation duly executed by the Owner, the Strata Corporation and the Shared Vehicle Organization,

all of which must be in form and substance satisfactory to the Director of Planning.

#### **2.5 If Occupancy Permit Issued Inadvertently**

The Owner covenants and agrees that an Occupancy Permit for any part of the residential part of the Building issued inadvertently or otherwise prior to release or discharge of the Section 219 Covenant granted pursuant to Section 2.1 may be revoked by the City or City Personnel, as applicable, at any time and further agrees that if the Owner occupies any part of the residential part of the Building in contravention of this Agreement, the City may pursue all remedies, including, without limitation, injunctive relief.

### **ARTICLE 3 STATUTORY RIGHT OF WAY**

#### **3.1 Right of Way Grant**

Pursuant to Section 218 of the *Land Title Act*, the Owner grants to the City and the City Personnel and the City's invitees and licencees, including the Permitted Users (for so long as and on such conditions as the Director of Planning may allow), absolutely and in perpetuity an easement by way of statutory right of way on and over the Lands, for the purposes described in Section 3.2 and on the terms and conditions contained in this Agreement. This right will be full, free and uninterrupted.

#### **3.2 Right of Way Purposes**

At any time the City and City Personnel and the City's invitees and licencees, including the Permitted Users (for so long as and on such conditions as the City may allow) may enter the Lands:

- (a) to park and access the Shared Vehicle in the Shared Vehicle Parking Space designated for the Shared Vehicle; and
- (b) for access and egress as pedestrians and in the Shared Vehicle between the Shared Vehicle Parking Space and the adjacent City streets and lanes,

all in accordance with this Agreement.

### **3.3 Exercise of Right of Way**

The rights granted in Section 3.1 will be exercised only with respect to the Shared Vehicle Parking Space and the vehicular and pedestrian entrances thereto and exits therefrom and the Statutory Right of Way on and over the Lands is:

- (a) restricted to those portions of the Lands designed for such purposes pursuant to this Agreement;
- (b) subject to such reasonable rules and regulations as may from time to time be prescribed by the Owner, including those for the safety and security of the Shared Vehicle Parking Space, the Permitted Users, and other users of the Building and the Lands, provided that notwithstanding the right of the Owner to make reasonable rules and regulations from time to time, such rules and regulations will:
  - (i) not permit the Owner or any other person to charge or permit to be charged, directly or indirectly, any fee whatsoever for the access to or use by the Permitted Users of the Shared Vehicle Parking Space, other than a charge included in strata fees payable by all strata lot owners in a Strata Corporation, if applicable, for maintaining the Shared Vehicle Parking Space; and
  - (ii) not in any way whatsoever limit the obligation of the Owner to make the Shared Vehicle Parking Space and all access to and egress from the Shared Vehicle Parking Space available to the Permitted Users at all times (7 days per week/24 hours per day) provided that the Owner may locate the Shared Vehicle Parking Space behind a security gate or other mechanism restricting access only if the Permitted Users are provided with a convenient means of access to the Shared Vehicle Parking Space at all times (7 days per week/24 hours per day); and
- (c) subject to the right of the Owner and their respective agents to bar entry to or eject from the Lands any member of the public who:
  - (i) acts in a disorderly manner, appears intoxicated by alcohol or drugs or commits or appears to commit an illegal act; or
  - (ii) presents an apparent threat to the safety of others or to the security of the Building or any improvements on the Lands.

### **3.4 No City Obligation**

Nothing in Section 3.2 implies that the City or the Director of Planning has any obligation to the Owner or anyone else to exercise any of their respective rights under Section 3.2.

### **3.5 City Assignment**

The City may assign all or any of its rights with respect to the Statutory Right of Way, or any undivided interest in them, or grant a licence in respect of all or any of its rights, to any government body, person, firm, or corporation who has the capacity to accept a grant of statutory right of way under Section 218 of the *Land Title Act*.

### **3.6 Right of Way Continuance**

No default by the City or City Personnel under this Agreement and no act or failure to act by the City or City Personnel in connection with the Statutory Right of Way will result or be deemed to result in the interruption, suspension or termination of the right of way, and the Owner will refrain from seeking any judgment, order, declaration or injunction to that effect.

## **ARTICLE 4 BICYCLE PURCHASE SUBSIDY**

### **4.1 Bicycle Purchase Subsidy**

The Owner further covenants and agrees with the City that it will:

- (a) offer to the residents of each of the five residential units in the Building a \$400 credit towards the purchase of a bicycle (that is, one such credit per unit, not one per resident if a unit has more than one resident), such credit to be applied by means of a cash payment by the Owner upon presentation by the resident of a receipt confirming purchase of a bicycle after that individual took up residency in the completed Building;
- (b) provide the Director of Planning with proof of compliance promptly after each such credit is paid out; and
- (c) provide the Director of Planning with such other information concerning its compliance with this Section 4.1 as and when requested by the Director of Planning.

## **ARTICLE 5 PARKING SPACE**

### **5.1 Section 219 Covenant**

The Owner covenants with the City pursuant to Section 219 of the *Land Title Act*, in respect of the use of the Lands and the Building constructed thereon, that the Owner will, at its sole cost and expense:

- (a) prior to issuance of an Occupancy Permit for any part of the residential part of the Building, construct the Shared Vehicle Parking Space on the Lands in accordance with the Parking Space Construction Standards, and will thereafter inspect, maintain and repair the Shared Vehicle Parking Space and all access routes thereto and egress routes therefrom in a tidy and safe condition and repair and keep the Shared Vehicle Parking Space and the access and egress routes to and from the Shared Vehicle Parking Space well lit, all to the full satisfaction of the Director of Planning in accordance with all applicable City building permits, bylaws, policies and guidelines;
- (b) prior to issuance of an Occupancy Permit for any part of the residential part of the Building, place and thereafter maintain, signage for the Shared Vehicle Parking Space in accordance with the Parking Space Construction Standards;
- (c) ensure that the Shared Vehicle Parking Space complies at all times with the City standards as required by all applicable City bylaws and is otherwise acceptable to the Director of Planning;
- (d) take all commercially reasonable steps to ensure that the Shared Vehicle Parking Space is not used by anyone other than Permitted Users, the City or such person as the City may from time to time designate as being entitled to use it, and always for the purpose of parking the Shared Vehicle;
- (e) maintain, or cause to be maintained, insurance on the Shared Vehicle Parking Space and all access routes thereto and egress routes therefrom at all times, such insurance to be satisfactory to the Director of Planning and, without limiting the generality of the foregoing, such insurance to include:
  - (i) Commercial Generality Liability Insurance for a limit of not less than Five Million Dollars (\$5,000,000) per occurrence;
  - (ii) naming as additional insureds the City and City Personnel;
  - (iii) a waiver of subrogation against the City and City Personnel; and
  - (iv) a clause that such insurance cannot be cancelled, or endorsed to reduce the limit of liability, without thirty days prior written notice to the City; and
- (f) prior to issuance of an Occupancy Permit for any part of the residential part of the Building, provide the Director of Planning with proof of the insurance required by Section 6.1(e).

## **5.2 Termination of Shared Vehicle Service Agreement**

If Shared Vehicle Service Agreement is terminated, such termination will not affect the Statutory Right of Way or the Section 219 Covenants contained herein, unless the City expressly otherwise agrees in writing.

## **ARTICLE 6 SUBDIVISION**

### **6.1 Subdivision Generally**

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, subject to Section 7.2:

- (a) 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) the burdens, obligations, agreements, Section 219 Covenants and Statutory Right of Way contained in this Agreement will continue to charge each of the new parcels, lots or other subdivided parcels and areas so created.

### **6.2 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) no part of the Shared Vehicle Parking Space or the drive aisles, ramps or pedestrian means of access and egress thereto will form part of or be located within any strata lot or part of any strata lot and all of the such spaces will be contained within the common property established by the strata plan;
- (b) the Section 219 Covenant(s) and Statutory Right of Way granted herein will be registered against each individual strata lot and noted on the common property sheet;
- (c) the strata corporation or the strata corporations so created will perform and observe the Owner's covenants in this Agreement, solely at the expense of the strata lot owners;
- (d) 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; and
- (e) the strata corporation(s) so created will manage and maintain the Shared Vehicle Parking Space and the strata corporation(s) may adopt and enforce reasonable rules and regulations concerning the safe use, maintenance and repair of the Shared Vehicle Parking Space, provided that such rules and regulations must not interfere with or prevent the reasonable use of the Shared Vehicle Parking Space by the Permitted Users.

## **ARTICLE 7 INDEMNITY AND RELEASE**

### **7.1 Indemnity**

The Owner hereby covenants and agrees with the City to indemnify and save harmless and reimburse the City and all City Personnel from and against all Losses which may arise or accrue to the Owner or any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel, may pay, incur, sustain or be put to by reason of or which would not or could not have been sustained "but for" any of the following:

- (a) the City or City Personnel exercising any of its rights under this Agreement or respecting any loss of the parking or vehicle usage and/or access rights contemplated by this Agreement or based on any decision made by the City or City Personnel pursuant to this Agreement including, without limitation, the City or City Personnel withholding the issuance of any Permit; or
- (b) otherwise as a result of this Agreement and the requirements set out herein,

whether or not such Losses are the result of or relate in any way to any negligent acts or omissions on the part of the City or City Personnel. This indemnity will survive the discharge or any termination of this Agreement.

### **7.2 Release**

The Owner, for itself and its successors and assigns, hereby releases and forever discharges the City and City Personnel from any and all Losses suffered or incurred by the Owner in connection with this Agreement. This release will survive the discharge or any termination of this Agreement.

## **ARTICLE 8 OWNER DEFAULT**

### **8.1 Owner's Default**

If the Owner defaults in observing or performing any obligation under this Agreement the Owner will rectify such default within fifteen days after receipt of notice from the Director of Planning, except that if the Owner, by reason of the nature of the default, cannot in the opinion of the Director of Planning rectify it within fifteen days, the Owner will have a further reasonable period to rectify so long as the Owner proceeds promptly and diligently. If the Owner fails to rectify such default within the permitted time period or if the Director of Planning, in case of emergency, does not consider that it has time to deliver such notice, the City may rectify the default on the Owner's behalf. If any default by the Owner results in the need for the Owner to take positive action to rectify such default, the Owner will take such positive action as the Director of Planning considers necessary, and, if the Owner fails to do so, the City may apply to court for a mandatory injunction requiring the Owner to take such action. This Section 5.1 will survive termination or release of this Agreement.

## 8.2 Costs

The Owner will pay to the City on demand the aggregate of the City's costs of rectifying any default of the Owner under this Agreement, and any other money the Owner may owe to the City from time to time pursuant to this Agreement, plus a sum equal to eighteen percent of those costs on account of the City's overhead. This Section 5.2 will survive termination or release of this Agreement.

## ARTICLE 9 NOTICES

### 9.1 Notices

Any notice, approval or request required or permitted to be given under this Agreement will be in writing and may be given by delivering such notice, approval or request to a representative of the party for whom it is intended, either by personal delivery, or by mailing such notice, approval or request by prepaid registered mail from any post office in British Columbia and:

- (a) in the case of the Owner, addressed to it at:

**Cinnabar Brown Holdings Ltd.**

4052 Ebony Place  
Victoria, British Columbia  
V8N 3Y9

Attention: President

- (b) and in the case of the City, addressed to it at:

**City of Victoria**

1 Centennial Square  
Victoria, British Columbia  
V8W 1P6

Attention: City Clerk

or at such other address as the parties may from time to time advise by notice in writing. Any such notice, approval or request will be deemed to have been received on the date of delivery of such notice, approval or request, or on the third business day next following the date of such mailing if mailed as aforesaid, provided that if mailed should there be, between mailing and the actual receipt of such notice, approval or request, a mail strike, slowdown or other labour dispute which might affect the delivery of such notice, approval or request, such notice, approval or request will only be effective if actually delivered.



## **ARTICLE 10 MISCELLANEOUS**

### **10.1 Severability**

All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable, the balance of the obligations and covenants will remain and be binding.

### **10.2 Joint and Several**

If the Owner consists of more than one person, each such person will be jointly and severally liable to perform the Owner's obligations under this Agreement.

### **10.3 Registration**

The Owner agrees to cause the registrable interests in land expressly agreed to be granted pursuant to this Agreement to be registered as first registered charges against the Lands, save only for any reservations, liens, charges or encumbrances:

- (a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;
- (b) registered against any of the titles to the Lands in favour of the City; and
- (c) which the City Solicitor has determined, in his sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.

### **10.4 City's Other Rights Unaffected**

Nothing contained or implied herein will derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations of the City under all public and private statutes, bylaws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the roads and the Lands as if this Agreement had not been executed and delivered by the Owner and the City.

### **10.5 Further Assurances**

The parties to this Agreement will do such things and execute such documents and in such form as may reasonably be necessary in order to perfect the intention of this Agreement.

### **10.6 Force Majeure**

If an Event of Force Majeure occurs or is likely to occur, the Owner will promptly notify the Director of Planning of the particulars of the relevant event or circumstance and, if reasonably possible, supply supporting evidence. The Owner will use its best efforts to remove, curtail or contain the cause of the delay, interruption or failure (provided that the terms of

settlement of any labour disturbance, dispute, strike or lockout will be wholly in the discretion of the Owner) and to resume, with the least possible delay, its compliance with duties, covenants and obligations under this Agreement. Neither the City nor the Owner will be liable to the other for any delay, interruption or failure in the performance of its duties, covenants, or obligations under this Agreement if caused by an Event of Force Majeure, and the date limited for the performance of such duties, covenants or obligations under this Agreement will be postponed for a period equal to the delay occasioned by such an Event of Force Majeure.

#### **10.7 Assignment by City**

The City, upon prior written notice to the Owner, may assign all or any part of this Agreement to any governmental agency or to any corporation or entity charged with the responsibility for providing such public facilities and services as are contemplated by this Agreement; and the City may designate licensees and permittees for any and all purposes of this Agreement. The Owner may not assign this Agreement unless the assignee first enters into an assignment and assumption agreement in form and contents satisfactory to the Director of Planning.

#### **10.8 No Waiver**

The Owner acknowledges and agrees that no failure on the part of the City or City Personnel 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 or City Personnel of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies provided for in this Agreement will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City in this Agreement 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.

#### **10.9 Time of Essence**

Time will be of the essence of this Agreement.

#### **10.10 City's Costs**

In any action to enforce this Agreement in which any Court determines that the position of the City will prevail, the City will be entitled to court costs on a solicitor/client basis.

#### **10.11 Owner's Costs**

Unless otherwise provided, the Owner will be responsible for all costs and expenses incurred to comply with its obligations under this Agreement.

#### **10.12 Owner's Representations and Warranties**

The Owner represents and warrants to and covenants and agrees with the City that:

- (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement and to bind all legal and beneficial interests in the title to the Lands with the interests in land created hereby;
- (b) upon execution and delivery of this Agreement and registration thereof, the interests in land created hereby will encumber all legal and beneficial interests in the title to the Lands;
- (c) this Agreement will be fully and completely binding upon the Owner in accordance with its terms and the Owner will perform all of its obligations under this Agreement in accordance with its terms; and
- (d) the foregoing representations, warranties, covenants and agreement will have force and effect notwithstanding any knowledge on the part of the City whether actual or constructive concerning the status of the Owner with regard to the Lands or any other matter whatsoever.

### **10.13 Enurement**

This Agreement will enure to the benefit of and bind each of the City and its successors and assigns and the Owner and the Owner's successors and assigns.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the General Instrument - Part 1, which is a part hereof.

# PROJECT INFORMATION

**AVERAGE GRADE CALCULATIONS**  
 POINTS A & B:  $(16.78 + 16.89) \div 2 \times 25m = 420.87$   
 POINTS B & C:  $(16.89 + 17.21) \div 2 \times 10m = 170.5$   
 POINTS C & D:  $(17.21 + 16.79) \div 2 \times 23m = 391$   
 POINTS D & A:  $(16.79 + 16.78) \div 2 \times 10m = 167.85$   
 = 1,150.22

1,150.22 + 69m = 16.91m AVERAGE GRADE

**LEGAL ADDRESS:** LOT 24 BLOCK 15 PLAN VIP835  
 SECTION 48 LAND DISTRICT 57

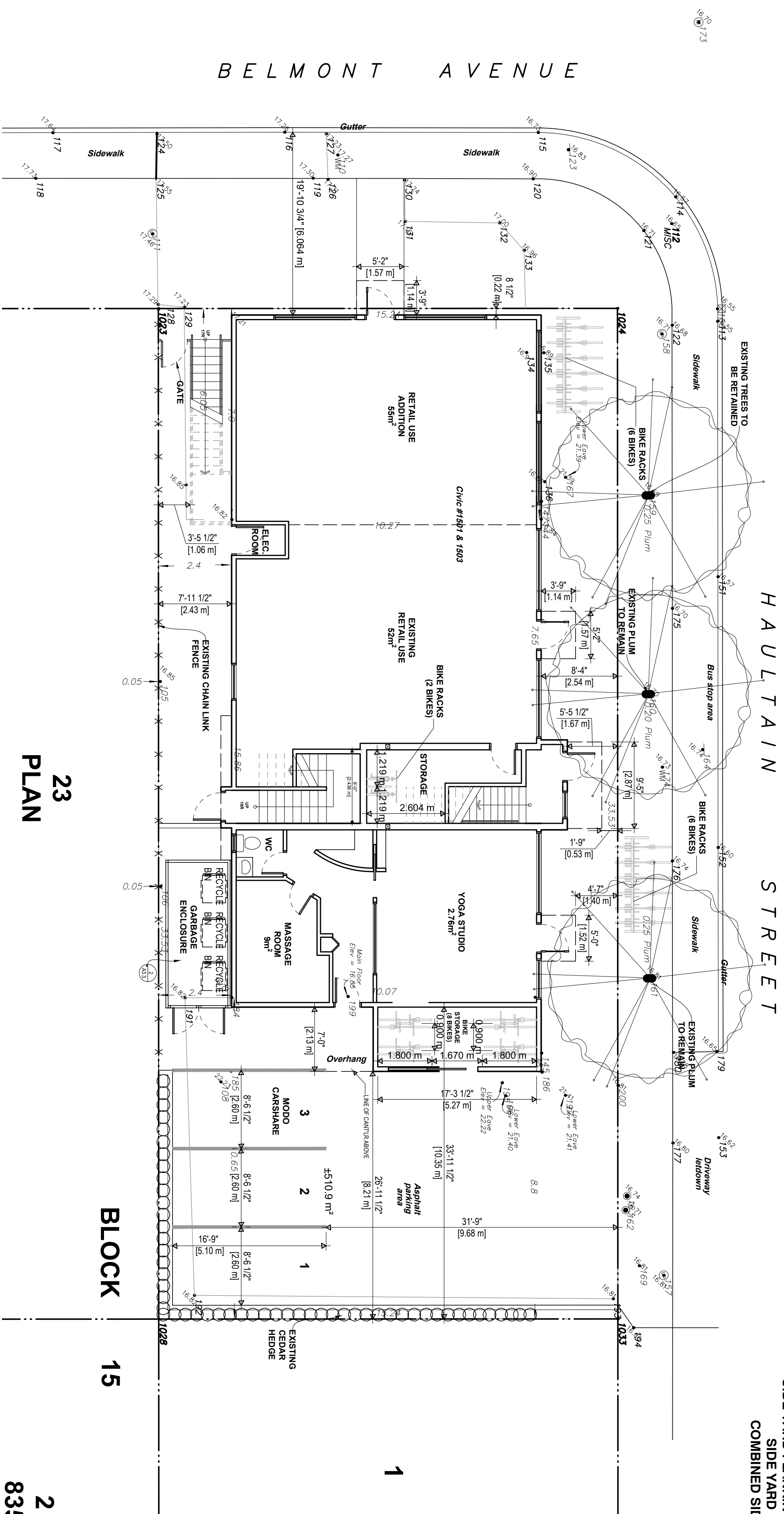
**CIVIC ADDRESS:** 1501 -1503 Haultain St.  
 VICTORIA, B.C.

## ZONING DATA

**ZONING:** C - 1: Limited Commercial District  
**SITE AREA:** 511 m<sup>2</sup> (5,500 sq.ft.)  
**GROUND FLOOR AREA (EXISTING):** 156 m<sup>2</sup> (1,684 s.f.)  
**GROUND FLOOR AREA (PROPOSED):** 240 m<sup>2</sup> (2,581 s.f.)  
**SECOND FLOOR AREA (EXISTING):** 179 m<sup>2</sup> (1,928 s.f.)  
**SECOND FLOOR AREA (PROPOSED):** 234 m<sup>2</sup> (2,523 s.f.)  
**THIRD FLOOR AREA (PROPOSED):** 240 m<sup>2</sup> (2,584 s.f.)  
**SPACE FLOOR RATIO:** 1.39  
**TOTAL FLOOR AREA:** 707 m<sup>2</sup> (7,618 s.f.)  
**COMMERCIAL FLOOR AREA:** 198 m<sup>2</sup> (2,134 s.f.)  
**SITE COVERAGE %:** 49.3%  
**OPEN SITE SPACE %:** 7.7%  
**HEIGHT OF BUILDING:** 9.67 m (32'-9")  
**NUMBER OF STOREYS:** 3  
**NUMBER OF PARKING STALLS:** 3  
**BICYCLE PARKING:** 22

## BUILDING SETBACKS

**FRONT YARD:** 6m  
**REAR YARD:** 2.4m  
**SIDE YARD FLANKING STREET:** 2.4m  
**SIDE YARD INTERIOR:** 3m  
**COMBINED SIDE YARDS:** 5.4m

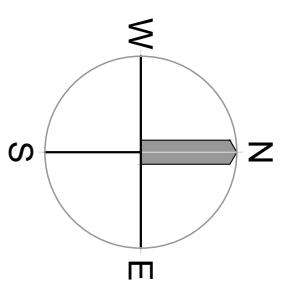


1 SITE / LANDSCAPE PLAN  
 A1.1 SCALE: 1:100

## RESIDENTIAL USE DETAILS

**TOTAL NUMBER OF UNITS:** 5  
**UNIT TYPE:** 2 BEDROOM AND 3 BEDROOM  
**GROUND ORIENTED UNITS:** NONE (824 s.f.)  
**MINIMUM UNIT FLOOR AREA:** 77 m<sup>2</sup>  
**TOTAL RESIDENTIAL FLOOR AREA:** 418 m<sup>2</sup> (4,504 s.f.)

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Issue / Revisions:	No.	Issued / Revisions	Date
1. FOR DEVELOPMENT PERMIT	1		12 DEC. 17
2. RE SUBMISSION FOR DP	2		22 FEB. 18
3. RE SUBMISSION FOR DP	3		22 MAR. 18
4. FOR DESIGN PANEL MEETING	4		29 APRIL. 18
5. RE SUBMISSION FOR DP	5		17 MAY. 18
6. REVISIONS TO DP	6		09 JULY. 18
7. REVISIONS TO DP	7		13 DEC. 18

alain lowe architect inc.

#118 - 21 Erie Street  
 Victoria, British Columbia  
 1 250.360.2888



**PROJECT TITLE:**  
 ADDITION TO RESIDENTIAL  
 AND COMMERCIAL  
 BUILDING  
 1501 / 1503 HAULTAIN STREET  
 VICTORIA, B.C.

**DRAWING TITLE:**  
 PROPOSED  
 SITE / LANDSCAPE PLAN

<b>PROJECT NO.:</b>	17-515
<b>DATE:</b>	13 DEC 2018
<b>CHECKED BY:</b>	LOVE
<b>DRAWN BY:</b>	AA
<b>SCALE:</b>	AS NOTED
<b>STATUS:</b>	AA

A1.1