

**PHASED DEVELOPMENT AGREEMENT BYLAW**

**A BYLAW OF THE CITY OF VICTORIA**

**WHEREAS** Council may, by bylaw, authorize the City to enter into a phased development agreement under section 516 of the *Local Government Act*; and

**WHEREAS** Council has given notice of its intention to enter into a phased development agreement with 1133863 B.C. Ltd. and Nadar Holdings Ltd., and held a public hearing in respect of this bylaw in accordance with the *Local Government Act*;

**NOW THEREFORE** the Council of the Corporation of the City of Victoria, in open meeting assembled, enacts as follows:

1. This Bylaw may be cited for all purposes as “Phased Development Agreement Bylaw No. 19-108, 2019”.
2. Council hereby authorizes the Corporation of the City of Victoria to enter into a phased development agreement pursuant to section 516 of the *Local Government Act* with 1133863 B.C. Ltd. and Nadar Holdings Ltd. in the form attached as Schedule A to this Bylaw.
3. The Mayor and Corporate Officer are authorized to execute the phased development agreement in the form attached as Schedule A and the Corporate Officer is authorized to sign and file in the Land Title Office a notice of the signed phased development agreement, as required by section 521 of the *Local Government Act*.

READ A FIRST TIME the                      **10<sup>th</sup>**    day of                      **October**                      2019

READ A SECOND TIME the                      **10<sup>th</sup>**    day of                      **October**                      2019

Public hearing held on the                      day of                      2019

READ A THIRD TIME the                      day of                      2019

ADOPTED on the                      day of                      2019

CITY CLERK

MAYOR

## PHASED DEVELOPMENT AGREEMENT

(Local Government Act, R.S.B.C. 201, c.1, s.516)

THIS AGREEMENT dated for reference \_\_\_\_\_ (the "Effective Date"), is made

AMONG:

**1133863 B.C. LTD. (Inc. No. BC1133863)**

3375 Tennyson Avenue, Victoria, British Columbia V8Z 3P7

(**"113863"**)

AND:

**NADAR HOLDINGS LTD. (Inc. No. BC0556685)**

7th Floor 1175 Douglas Street, Victoria, British Columbia V8W 2E1

(**"Nadar"**, and together with 113863, the **"Developers"**)

AND:

**THE CORPORATION OF THE CITY OF VICTORIA**

1 Centennial Square, Victoria, British Columbia V8W 1P6

(the **"City"**)

### BACKGROUND:

A. 113863 is the registered owner of the lands legally described as:

- (i) PID 003-189-881, the easterly 40 feet 9 inches of Lot 960, Victoria City;
- (ii) PID 003-190-030, the westerly (19'3") of Lot 960, Victoria City;
- (iii) PID 003-190-099, Lot 961, Victoria City, except the westerly (40') thereof;
- (iv) PID 003-190-145, the westerly (40') of Lot 961, Victoria City,

(together, the **"113863 Parcels"**).

B. Nadar is the registered owner of the lands legally described:

- (i) PID 005-201-250, Lot 959, Victoria City;
- (ii) PID 005-201-276, the east 1/2 of Lot 970, Victoria City;
- (iii) PID 009-387-684, Lot 985, Victoria City;
- (iv) PID 005-201-306, Lot 969, Victoria City, except that part in Plan 18802; and
- (v) PID 003-786-561, Lot A (DD B68208) of Lots 956, 957, 966, 967, 968 and 969,

Victoria City, Plan 18802,

(together, the "**Nadar Parcels**", and together with the 113863 Parcels, the "**Land**").

- C. The Developers have applied to the City for an amendment to Zoning Regulation Bylaw 80-159 (the "**Zoning Bylaw**"), as it applies to the Land, by way of Zoning Regulation Bylaw 80-159, Amendment Bylaw (No. 1184) (the "**Amendment Bylaw**" and, together with the Zoning Bylaw, the "**Amended Zoning Bylaw**").
- D. Pursuant to Part 14, Division 12 of the *Act*, the City may enter into a phased development agreement with an owner of lands to specify provisions of a zoning bylaw that will continue to apply to the owner's lands if those provisions are amended or repealed during the term of the agreement, which agreement may also include terms and conditions respecting, among other things, the provision of amenities, the phasing and timing of development and the registration of covenants under section 219 of the *Land Title Act*.
- E. The Developers and the City now wish to enter into a phased development agreement on the terms and conditions of this Agreement.
- F. The City has adopted a bylaw authorizing the City to enter into this Agreement with the Developers.

#### **TERMS OF AGREEMENT:**

In consideration of the mutual promises expressed in this Agreement, and for One (\$1.00) Dollar and other good and valuable consideration paid by the City to the Developers and by the Developers to the City, the City and the Developers agree, pursuant to section 516 of the *Act*:

##### **1. Interpretation -**

In this Agreement:

- (a) "**Act**" means the *Local Government Act*, R.S.B.C. 2015, c.1.
- (b) "**Affordable Rental Housing Agreement/Covenant**" means the housing agreement under section 483 of the *Act* and covenant under section 219 of the *Land Title Act* for the provision of one hundred thirty (130) low income and moderate-income-single-family housing units within Development Area 1, in the form attached as Part 1 of Schedule E to the Development Covenant (MDA).
- (c) "**Amendment Bylaw**" has the meaning set out in Recital B.
- (d) "**Amended Zoning Bylaw**" has the meaning set out in Recital B.
- (e) "**Development**" means the development of the Lands as permitted by the Specified Zoning Provisions.

- (f) **“Development Areas”** means Development Areas 1, 2, 3 and 4.
- (g) **“Development Area 1”** means Development Area DA-1 described in the Amended Zoning Bylaw, approximately as shown on the Development Area Map.
- (h) **“Development Area 2”** means Development Area DA-2 described in the Amended Zoning Bylaw, approximately as shown on the Development Area Map.
- (i) **“Development Area 3”** means Development Area DA-3 described in the Amended Zoning Bylaw, approximately as shown on the Development Area Map.
- (j) **“Development Area 4”** means Development Area DA-4 described in the Amended Zoning Bylaw, approximately as shown on the Development Area Map.
- (k) **“Development Area Map”** means the map in Appendix A to the Amended Zoning Bylaw, reproduced in this agreement as Schedule A.
- (l) **“Development Covenant (MDA)”** means the covenant under section 219 of the *Land Title Act* in the form attached as Schedule B.
- (m) **“Land”** has the meaning set out in Recital A.
- (n) **“Public Plaza”** means the public plaza along Yates Street more particularly described in the Development Covenant (MDA).
- (o) **“Rental Availability Housing Agreement/Covenant”** means the housing agreement under section 483 of the *Act* and covenant under section 219 of the *Land Title Act* to ensure there are no prohibitions on the rental of any residential dwellings constructed within Development Area 1, in the form attached as Part 1 of Schedule E to the Development Covenant (MDA).
- (p) **“Public Use Setback Areas”** means the front yard setback at ground level, more particularly described in the Development Covenant (MDA).
- (q) **“Specified Bylaw Provisions”** means all those provisions of the Amended Zoning Bylaw applicable to the Land (including the provisions of the Amendment Bylaw), all as of the date of this Agreement.
- (r) **“Term”** has the meaning set out in section 2.
- (s) Reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise.
- (t) Article and section headings have been inserted for ease of reference only and are not to be used in interpreting this agreement.
- (u) The term “enactment” has the meaning given under the *Interpretation Act* (British Columbia) on the reference date of this Agreement.



- (v) Reference to any enactment includes any regulations, orders, or directives made under the authority of that enactment.
  - (w) Reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted, or replaced from time to time, unless otherwise expressly provided.
  - (x) Reference to a numbered paragraph, or to a particular lettered schedule, is, unless otherwise expressly provided, a reference to the correspondingly numbered paragraph or lettered schedule of this Agreement.
  - (y) All Schedules to this Agreement form an integral part of this Agreement.
  - (z) Time is of the essence.
  - (aa) where the word “including” is followed by a list, the contents of the list are not intended to limit or otherwise affect the generality of the expression preceding the word “including”.
2. **Term** – The term of this Agreement is ten (10) years from the date the Amendment Bylaw is finally adopted by the City (the “**Term**”).
3. **Phasing** –
- (a) The land that is being developed pursuant to this Agreement is the Land, and each of the Development Areas is a phase of the Development.
  - (b) Development Area 1 must be the first Development Area to commence construction, and thereafter the Developers may develop each of remaining Development Areas in any sequence in accordance with the requirements of the Development Covenant (MDA).
  - (c) Subject to compliance with the Development Covenant (MDA), the Developers may concurrently proceed with the development of more than one Development Area.
4. **Amenities & Development Covenant** – Prior to or concurrently with the execution of this Agreement:
- (a) the Developers will grant to the City the Affordable Rental Housing Agreement/Covenant and the Rental Availability Housing Agreement/Covenant;
  - (b) the Developers will grant to the City the Development Covenant (MDA) to secure the provision of the following:
    - (i) the Public Use Setback Area in Development Area 2,
    - (ii) the Public Use Setback Area in Development Area 3,
    - (iii) the Public Use Setback Area in Development Area 4, and

- (iv) the Public Plaza prior to or concurrently with the last Development Area to be developed; and
  - (c) the Developers will cause the Affordable Rental Housing Agreement/Covenant, the Rental Availability Housing Agreement/Covenant and the Development Covenant (MDA) to each be registered against title to the Land in the land title office with priority over all liens, charges and encumbrances except those in favour of the City or those approved in writing by the City.
- 5. **Zoning Amendments & Certain Development Permit Provisions –**
  - (a) Subject to section 516(6) of the Act, if during the Term the Specified Bylaw Provisions are amended or repealed (including, for clarity, amendment or repeal of any provision of the Amended Zoning Bylaw not expressly amended by the Amendment Bylaw if the amendment or repeal alters the effect of the Amended Zoning Bylaw in relation to the Development), those changes do not apply to the Development, unless the Developers agree in writing that one or more changes should apply.
  - (b) In accordance with section 516(7) of the Act (but subject to section 516(8) of the Act), provisions in any development permit issued for any part of the Land that vary the siting, size or dimensions of: (i) buildings and other structures, or (ii) uses permitted on the Lands, from the siting, size and dimension provisions of the Specified Bylaw Provisions, will not apply to the Development unless the Developers agree in writing that such provisions will apply.
- 6. **Notice of Phased Development Agreement** – The Developers acknowledge and agree that pursuant to sections 521 of the Act, the City is required to file a notice with the registrar of titles indicating that the Land is subject to this Agreement and that in accordance with sections 503 and 521 of the Act, upon such filing, this Agreement is binding on all persons who acquire an interest in the Land.
- 7. **Developers Acknowledgement re: Development Covenant (MDA)** – The Developers acknowledge and agree that the granting to the City and registration in the land title office of the Affordable Rental Housing Agreement/Covenant, the Rental Availability Housing Agreement/Covenant and the Development Covenant (MDA) are required both pursuant to the terms of this Agreement and by the City as a condition of adoption of the Amendment Bylaw and that the validity and enforceability of the Affordable Rental Housing Agreement/Covenant, the Rental Availability Housing Agreement/Covenant and the Development Covenant (MDA) shall not be affected by the expiry of the Term or earlier termination of this Agreement or in the event that a court sets aside all or any part of this Agreement for any reason whatsoever.
- 8. **No Effect on Powers** – Except as set out in this Agreement or in section 516 of the Act, nothing in this Agreement shall:
  - (a) affect or limit the discretion, rights or powers of the City or the City's Approving

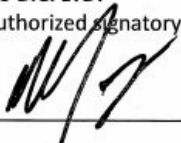
Officer under any enactment or at common law, including in relation to the use, development or subdivision of the Land;

- (b) affect or limit any enactment relating to the use, development or subdivision of the Land; or
  - (c) relieve the Developers from complying with any enactment, including in relation to the use, development or subdivision of the Land.
9. **Waiver** – No waiver by the City of any requirement or breach of this Agreement shall be effective unless it is an express waiver in writing that specifically references the requirement or breach and no such waiver shall operate as a waiver of any other requirement or breach or any continuing breach of this Agreement.
  10. **Remedies** - No reference to or exercise of any specific right or remedy by the City shall prejudice or preclude the City from exercising any other right or remedy, whether allowed at law or in equity or expressly provided for in this Agreement, and no such right or remedy is exclusive or dependent upon any other such remedy and the City may from time to time exercise any one or more of such remedies independently or in combination.
  11. **Modification** – This Agreement may not be modified except in accordance with section 519 of the Act and pursuant to an agreement in writing, signed by the Developers and the City. The Developers and the City further agree that, unless expressly listed section 519(3) of the Act, any such amendment to this Agreement or any attached Schedule will be a minor amendment which can be authorized by resolution of the City's council rather than by way of a bylaw.
  12. **Termination** - The City and the Developers may terminate this Agreement at any time by written agreement.
  13. **Further Assurances** – The Developers shall do and cause to be done all things, including by executing further documents, as may be necessary to give effect to the intent of this Agreement.
  14. **Developers' Expense** – The Developers shall perform its obligations under this Agreement at its own expense and without compensation from the City.
  15. **Schedules** – The following Schedules are attached to and form an integral part of this Agreement:
    - Schedule A – Plan of Development Areas
    - Schedule B – Development Covenant (MDA)
  16. **Governing Law** – This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, which shall be deemed to be the proper law hereof.

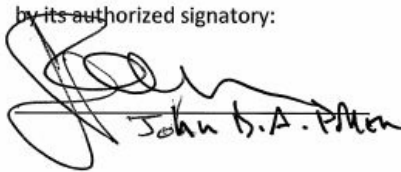
17. **Enurement** – This Agreement hereof shall enure to the benefit of the parties and their respective successors and assigns.
18. **Assignment** – The Developers may, on written notice to the City, assign this Agreement to that class of persons being any subsequent registered or beneficial owner of part or all of the Land.
19. **Entire Agreement** – This Agreement, the Schedules to this Agreement, and every agreement or instrument required to be executed or delivered by the Developers pursuant to this Agreement together are the entire agreement between the parties regarding its subject.
20. **Execution in Counterparts & Electronic Delivery** - This Agreement may be executed in any number of counterparts and delivered by e-mail, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, provided that any party delivering this Agreement by e-mail shall also deliver to the other party an originally executed copy of this Agreement.

**AS EVIDENCE OF THEIR AGREEMENT**, the City and the Developers have signed this Agreement on the Effective Date.

**1133863 B.C. LTD.**  
by its authorized signatory:

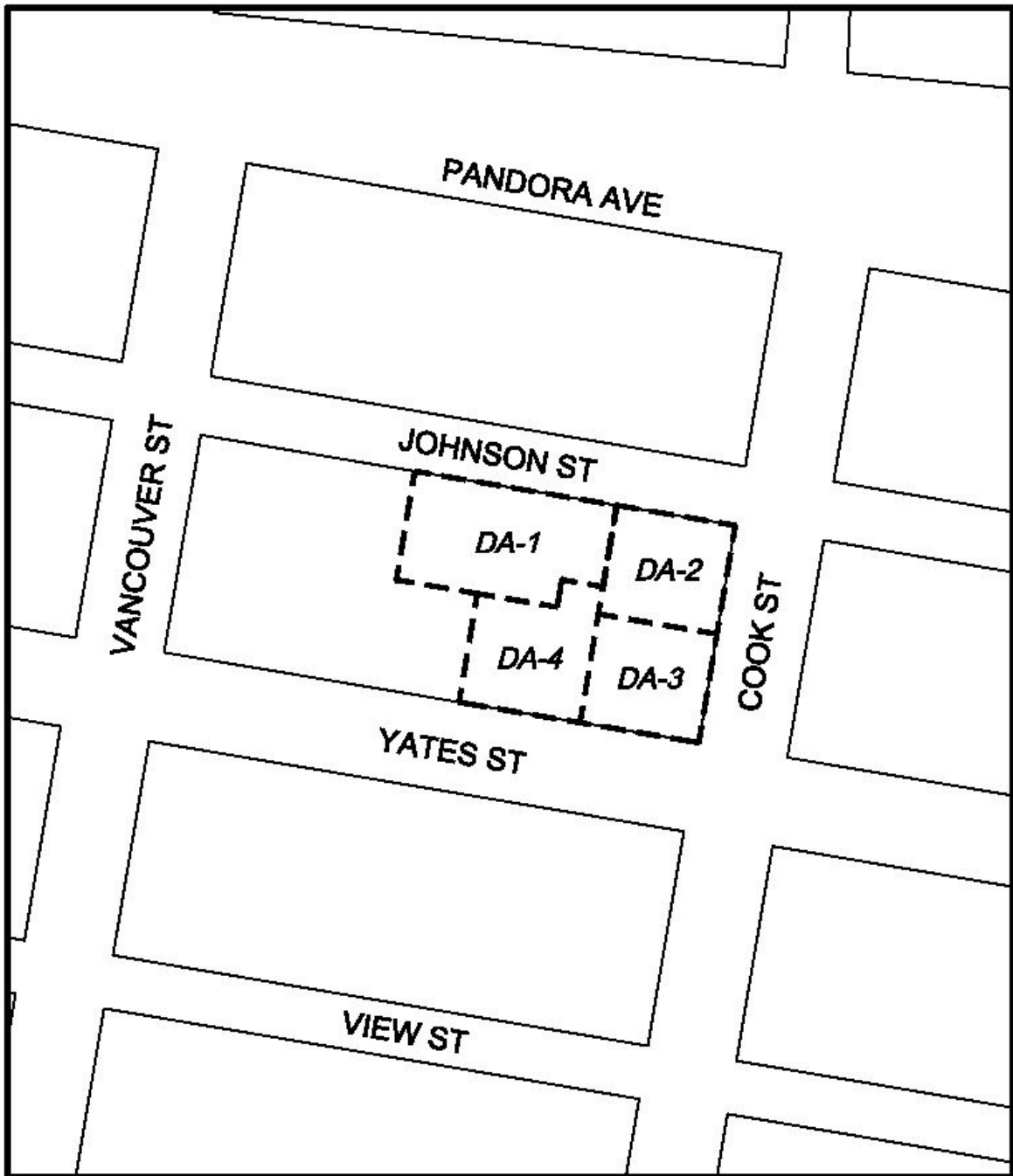
  
 \_\_\_\_\_  
**THE CORPORATION OF THE CITY OF VICTORIA**  
by its authorized signatories:  
 \_\_\_\_\_  
 \_\_\_\_\_

**NADAR HOLDINGS LTD.**  
by its authorized signatory:

  
 \_\_\_\_\_

Schedule A

**Plan of Development Areas**



**Appendix A**  
Development Areas  
CA-90 Zone, Mid Cook District



Schedule B  
**Development Covenant (MDA)**

**LAND TITLE ACT****FORM C (Section 233) CHARGE****GENERAL INSTRUMENT - PART I Province of British Columbia**PAGE **1** OF 80 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.

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

**COX, TAYLOR, Barristers & Solicitors**

Burns House, Third Floor

Telephone: (250) 388-4457

26 Bastion Square

Victoria

BC V8W 1H9

Deduct LTSA Fees? Yes ☒

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

**SEE SCHEDULE**

STC? YES ☐

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

**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):

**SEE SCHEDULE**

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

**THE CORPORATION OF THE CITY OF VICTORIA**

1 CENTENNIAL SQUARE

VICTORIA

BRITISH COLUMBIA

V8W 1P6

CANADA

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

Y	M	D
19	10	03

Transferor(s) Signature(s)

1133863 B.C. LTD.

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.



**LAND TITLE ACT  
FORM D**

**EXECUTIONS CONTINUED**

PAGE 2 of 80 PAGES

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

\_\_\_\_\_

Y	M	D
19	10	
19	10	
19	10	

NADAR HOLDINGS LTD.  
by its authorized signatory:

\_\_\_\_\_

\_\_\_\_\_

ROYAL BANK OF CANADA  
by its authorized signatories:

\_\_\_\_\_

\_\_\_\_\_

THE CORPORATION OF  
THE CITY OF VICTORIA  
by its authorized signatories:

\_\_\_\_\_

\_\_\_\_\_

**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**

PAGE 3 OF 80 PAGES

**2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND**STC for each PID listed below? YES ☐

[PID]	[LEGAL DESCRIPTION - must fit in a single text line]
003-189-881	EASTERLY 40 FEET 9 INCHES OF LOT 960, VICTORIA CITY
003-190-030	WESTERLY (19'3") OF LOT 960, VICTORIA CITY
003-190-099	LOT 961, VICTORIA CITY, EXCEPT THE WESTERLY (40') THEREOF
003-190-145	WESTERLY (40') OF LOT 961, VICTORIA CITY
003-786-561	LOT A (DD B68208) OF LOTS 956, 957, 966, 967, 968 AND 969, VICTORIA CITY, PLAN 18802
005-201-250	LOT 959, VICTORIA CITY
005-201-276	EAST 1/2 OF LOT 970, VICTORIA CITY
009-387-684	LOT 985, VICTORIA CITY
005-201-306	LOT 969, VICTORIA CITY, EXCEPT THAT PART IN PLAN 18802

LAND TITLE ACT  
FORM E

SCHEDULE

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Priority of the Covenant having a registration number one less than this Priority Agreement over Mortgage CA6474249
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION

**LAND TITLE ACT  
FORM E**

**SCHEDULE**

**PAGE 5 OF 80 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.

**5. TRANSFERORS**

1133863 B.C. LTD. (Inc. No. BC1133863)

NADAR HOLDINGS LTD. (Inc. No. BC0556685)

(as to Covenant)

ROYAL BANK OF CANADA

(As to Priority)

**TERMS OF INSTRUMENT – PART 2**

**SECTION 219 COVENANT  
DEVELOPMENT COVENANT (MASTER DEVELOPMENT AGREEMENT)**

**THIS AGREEMENT** dated for reference the 3<sup>rd</sup> day of October 2019,

**BETWEEN:**

**1133863 B.C. LTD. (Inc. No. BC1133863)**  
3375 Tennyson Avenue, Victoria, British Columbia V8Z 3P7  
  
(**"1133863"**)

**AND:**

**NADAR HOLDINGS LTD. (Inc. No. BC0556685)**  
7th Floor 1175 Douglas Street, Victoria, British Columbia V8W 2E1  
  
(**"Nadar"** and together with 1133863, the **"Owner"**)

**AND:**

**THE CORPORATION OF THE CITY OF VICTORIA**  
1 Centennial Square, Victoria, British Columbia V8W 1P6  
  
(the **"City"**)

**GIVEN THAT:**

A. 113863 is the registered owner of the lands legally described as:

- (i) PID 003-189-881, the easterly 40 feet 9 inches of Lot 960, Victoria City;
- (ii) PID 003-190-030, the westerly (19'3") of Lot 960, Victoria City;
- (iii) PID 003-190-099, Lot 961, Victoria City, except the westerly (40') thereof;
- (iv) PID 003-190-145, the westerly (40') of Lot 961, Victoria City,

(together, the **"113863 Parcels"**).

B. Nadar is the registered owner of the lands legally described:

- (i) PID 005-201-250, Lot 959, Victoria City;
- (ii) PID 005-201-276, the east 1/2 of Lot 970, Victoria City;

- (iii) PID 009-387-684, Lot 985, Victoria City;
- (iv) PID 005-201-306, Lot 969, Victoria City, except that part in Plan 18802; and
- (v) PID 003-786-561, Lot A (DD B68208) of Lots 956, 957, 966, 967, 968 and 969, Victoria City, Plan 18802,

(together, the “**Nadar Parcels**”, and together with the 113863 Parcels, the “**Land**”); and

- C. As a condition of adoption Zoning Regulation Bylaw 80-159, Amendment Bylaw (No. 1184) (the “**Amendment Bylaw**”) pursuant to the Owner’s application for an amendment to the City’s Zoning Regulation Bylaw 80-159 as it applies to the Land, and pursuant to the terms of a Phased Development Agreement (under Division 12 of Part 14 of the *Local Government Act*) respecting the Land executed or to be executed in connection with the aforementioned zoning amendment bylaw (the “**PDA**”), the Owner wishes to grant to the City this covenant under section 219 of the *Land Title Act* (British Columbia).

**THIS AGREEMENT** is evidence that in consideration of the payment of \$10.00 from the City to the Owner and other good and valuable consideration (the receipt and sufficiency of which the Owner acknowledges), the Owner covenants and agrees with the City under section 219 of the *Land Title Act* as follows:

1. **Definitions** –In this Agreement, in addition to those terms defined elsewhere in this Agreement:
  - (a) “**Affordable Housing Agreements**” means the “**Affordable Rental Housing Agreement** (and covenant under section 219 of the *Land Title Act*) in the form attached as Part 1 of Schedule E and the “**Rental Availability Housing Agreement** (and covenant under section 219 of the *Land Title Act*) in the form attached as Part 2 of Schedule E.
  - (b) “**Affordable Housing Units**” means the 130 housing units to be constructed on the Land and secured as affordable housing by the Affordable Housing Agreements.
  - (c) “**Amended Zoning Bylaw**” means the City’s Zoning Regulation Bylaw 80-159, as amended by the Amendment Bylaw.
  - (d) “**Building**” means buildings and other structures, but does not include any buildings constructed on the Lands before the date of this Agreement or any building which, in the opinion of the Director, is installed or to be installed on an interim or temporary basis.
  - (e) “**Development Area**” means any of Development Areas DA-1, DA-2, DA-3 and DA-4 described in the Amended Zoning Bylaw, approximately as shown on the Development Area Map, it being understood that the boundaries of any Development Area may be varied without amending this Agreement, subject to

compliance with the minimum development area set out in the Amended Zoning Bylaw.

- (f) **"Development Permit"** means a development permit under sections 488 to 491 of the *Local Government Act*.
- (g) **"Director"** means the City's Director of Sustainable Planning and Community Development, or his or her designate.
- (h) **"Development Area 1"** means Development Area DA-1 described in the Amended Zoning Bylaw, approximately as shown on the Development Area Map.
- (i) **"Development Area 4"** means Development Area DA-4 described in the Amended Zoning Bylaw, approximately as shown on the Development Area Map.
- (j) **"Development Area Map"** means the map in Appendix A to the Amended Zoning Bylaw, reproduced in this agreement as Schedule A.
- (k) **"Last Development Area"** means Development Area 4, or any other Development Area designated by the Owner according to section 10 of this Agreement.
- (l) **"Plaza Area"** means a public plaza located with a frontage along Yates Street and comprising an area of no less than 250m<sup>2</sup>, the dimensions of which area must be able to accommodate a lesser area with dimensions of 10 metres by 10 metres.
- (m) **"Plaza Covenant/SRW"** means a statutory right of way under section 218 of the *Land Title Act* and a covenant under section 219 of the *Land Title Act*, substantially in the form attached as Schedule C.
- (n) **"Plaza Design"** means the detailed drawings and specifications for the Plaza Area and the Plaza Works prepared under, and approved by the Director in accordance with, this Agreement.
- (o) **"Plaza Works"** means the improvements, works, facilities and equipment to be constructed in the Plaza Area, which improvements, works, facilities and equipment will conform to policies 6.36 to 6.63 of the design guidelines set out the City of Victoria Downtown Core Area Plan (September 2011).
- (p) **"Setback Area"** means that portion of a Development Area, if any, which comprises the 51% of the street frontage length of a Development Area or Areas required to be set back 2.5m pursuant to the Amended Zoning Bylaw.
- (q) **"Setback Area Covenant/SRW"** means a statutory right of way under section 218 of the *Land Title Act* and a covenant under section 219 of the *Land Title Act*, substantially in the form attached as Schedule B.



- (r) **"Setback Area Design"** means the detailed drawings and specifications for a Setback Area and the Setback Area Works for that Setback Area prepared under, and approved by the Director in accordance with, this Agreement.
- (s) **"Setback Area Works"** means the standard hard and softscape finishes to be constructed in the Setback Area.

2. **Development Area 1 & Affordable Housing –**

- (a) No Building shall be constructed on the Lands unless and until:
  - (i) the Owner has entered into the Affordable Housing Agreements, notice of each Affordable Housing Agreement is filed in the land title office as a legal notation against title to each parcel comprising Development Area 1 (in the case of the Affordable Rental Housing Agreement) and the Land (in the case of the Rental Availability Housing Agreement), and each Affordable Housing Agreement is registered as a covenant under section 219 of the *Land Title Act* charges against title to each parcel comprising Development Area 1 (in the case of the Affordable Rental Housing Agreement) and the Land (in the case of the Rental Availability Housing Agreement) each with priority over all financial liens, charges and encumbrances (including any leases, agreements for sale, options to purchase, rights of first refusal and similar charges and encumbrances);
  - (ii) the City has issued a Development Permit authorizing the construction of the Affordable Housing Units in Development Area 1; and
  - (iii) the City issues a building permit permitting construction of the Affordable Housing Units in Development Area 1;
- (b) No Building shall be constructed on Development Area 1 unless the Building includes the Affordable Housing Units.

3. **Setback Area Design –** No Building shall be constructed on any Development Area other than Development Area 1, and the City will not be obligated to issue a Development Permit or a building permit for any Building on any such Development Area, until the Director is satisfied that the Owner has caused a professional engineer to complete detailed drawings and specifications for the Setback Area and the Setback Area Works for that Development Area suitable for a Development Permit application, and obtained written acceptance of the detailed drawings and specifications from the Director, including by the Owner causing the aforementioned professional to make such revisions to the detailed drawings and specifications as may be necessary to obtain the Director's written acceptance.



4. **Setback Area Construction** – Concurrently with the construction of any Building within a Development Area other than Development Area 1, the Owner will construct the Setback Area and the Setback Area Works for that Development Area in accordance with the applicable Setback Area Design.
5. **Setback Area Completion** – No Building from time to time constructed on a Development Area other than Development Area 1 shall be occupied or used for any purpose, and the City will not be required to issue an occupancy permit for such Building, until the Owner has completed the following requirements, and the Director is satisfied that the Owner has completed all such requirements and has confirmed such satisfaction in writing:
  - (a) The Owner has completed the construction of the Setback Area and Setback Area Works for that Development Area in accordance with the applicable Setback Area Design or has otherwise provided the City with security for the construction of the Setback Area and Setback Area Works, in an amount and form satisfactory to the Director, which security the City may use to complete the Setback Area and the Setback Area Works if the Owner does not complete the Setback Area and Setback Area Works to the satisfaction of the Director within the earlier of: (i) 6 months following issuance of the last occupancy permit for the last Building constructed within that Development Area; and (ii) 12 months following issuance of an occupancy permit for the first Building constructed within that Development Area.
  - (b) The Owner has caused a B.C. land surveyor to prepare a reference or explanatory plan (which may be volumetric) delineating the portions of the Development Area upon which the Setback Area is located (which, for certainty, will not include any parking structures below grade or improvements above or outside the Setback Area).
  - (c) The Owner has granted, to the City, the Setback Area Covenant/SRW for the Setback Area and Setback Area Works within that Development Area, completed to the satisfaction of the Director, and the Owner has caused such Setback Area Covenant/SRW to be registered against title to the parcels containing the Development Area in the land title office with priority over all liens, charges and encumbrances (including any leases, agreements for sale, options to purchase, rights of first refusal and similar charges and encumbrances).
6. **Public Plaza Design** – No Building shall be constructed on the Last Development Area, the City will not be obliged to issue a Development Permit or building permit for the Last Development Area, until the Owner has completed the following requirements, and the Director is satisfied that the Owner has completed all such requirements and has confirmed such satisfaction in writing:
  - (a) The Owner has undertaken a community design charette to obtain community input with respect to the design of the Plaza Area and the Plaza Works.

- (b) The Owner has caused a professional engineer to complete detailed drawings and specifications for the Plaza Area and the Plaza Works suitable for a Development Permit application and has obtained written acceptance of the detailed drawings and specifications from the Director, including by the Owner causing the aforementioned professional to make such revisions to the detailed drawings and specifications as may be necessary to obtain the Director's written acceptance and the Director approved plans and specifications are the "Plaza Design".
7. **Pre-Conditions to Construction of Last Development Area** – No Building shall be constructed on the Last Development Area, and the City will not be obligated to issue a building permit for the Last Development Area, until the Owner has completed the following requirements, and the Director is satisfied that the Owner has completed all such requirements and has confirmed such satisfaction in writing:
- (a) An architect, registered and in good standing under the *Architects Act* (British Columbia), retained by the Owner has certified in writing to the City that the concrete has been poured for the building to be constructed in Development Area 1 and that building has been constructed up to and including the ceiling of the fifth storey.
  - (b) The Owner has provided to the City, as security for the construction of any remaining Plaza Works, cash or an irrevocable and unconditional letter of credit or bond in a form acceptable to the Director and issued by a Canadian Chartered Bank or a Credit Union, in an amount equal to 120% of the estimated cost to construct the remaining Plaza Works, which security the City may use to complete the Plaza Works if the Owner does not complete the Plaza Works to the satisfaction of the Director within 6 months following issuance of an occupancy permit for any Building within the Last Development Area. The estimated cost to construct the remaining Plaza Works will be determined in accordance with the City's requirements for landscape security deposits for development applications within Development Permit areas and the Owner will comply with those requirements as necessary to determine such cost estimate.
8. **Public Plaza Construction** – Before or concurrently with the construction of any Building within Last Development Area, the Owner will construct the Plaza Area and the Plaza Works in accordance with the Plaza Design.
9. **Pre-Conditions to Last Development Area Occupancy** - No Building within the Last Development Area shall be occupied or used for any purpose until the Owner has completed the following requirements, and the Director is satisfied that the Owner has completed all such requirements and has confirmed such satisfaction in writing:

- (a) An architect registered and in good standing under the *Architects Act* (British Columbia) retained by the Owner has certified to the City the Affordable Housing Units are complete (within the meaning of the Builders Lien Act.)
  - (b) The Owner has caused a B.C. land surveyor to prepare reference or explanatory plans (which may be volumetric) delineating the portions of the Development Area upon which the Plaza Area is located (which, for certainty, will not include any parking structures below grade or improvements above or outside the Plaza Area).
  - (c) The Owner has granted to the City the Plaza Covenant/SRW, completed to the satisfaction of the Director, and the Owner has caused the Plaza Covenant/SRW to be registered against title to the parcels on which the Plaza Area and Plaza works are constructed in the land title office with priority over all financial liens, charges and encumbrances (including any leases, agreements for sale, options to purchase, rights of first refusal and similar charges and encumbrances).
10. **Changing the Designation of Last Development Area** – The registered owner of the Last Development Area and the registered owner of the Development Area to be designated as the Last Development Area pursuant to this section, may, upon notice to the City, change the designation of the Last Development Area to a different Development Area provided that:
- (a) Development Area 1 may not be designated as the Last Development Area;
  - (b) such change shall only be effective if those registered owners causes a modification to this Agreement changing the Last Development Area designation to be registered in the land title office against title to those parts of the Land that include the then current Last Development Area and the Development Area to be designated as the Last Development Area, with priority over all financial liens, charges and encumbrances (including any leases, agreements for sale, options to purchase, rights of first refusal and similar charges and encumbrances), which modification need simply state that the Last Development Area is changed from Development Area \_\_\_\_ to Development Area \_\_\_\_; and at the time of registration of the modification referred to in paragraph (b) of this section, no Building has been constructed on the Development Area to be designated as the Last Development Area and no construction of any Building within that Development Area commenced.
- If the requirements of this section are satisfied, within ten (10) business days of receipt by the City of the modification referred to in paragraph (b) of this section the City will execute the modification and return same to those owners in registrable form, for registration by and at the expense of those owners.



11. **Density Allocation and Separate Sale Requirement –**

The Land shall not be separately sold or otherwise transferred, until and unless the owner has satisfied the following requirements:

- (a) The Owner has designated in writing to the Director the maximum floor area that may be constructed on each parcel comprised in the Land, provided that (i) the total of the maximum floor areas designated for all parcels is equal to the total maximum floor area permitted for the Land of 49,960 square meters under Amended Zoning Bylaw; (ii) at least 14,000 square metres is designated for Development Area 1; and (iii) such designation must otherwise comply with the provisions of that Bylaw as it applies to the Land.
- (b) If required by the Director, (i) the Owner has granted to the City a covenant under section 219 of the *Land Title Act* in substantially the form attached as Schedule D, limiting the development of each parcel comprising the Land (or that will comprise the Land following deposit of a subdivision plan in respect of the Land that is deposited concurrently with the registration of such covenant) to the floor area designated to each such parcel under paragraph (a) of this section, and (ii) the Owner has caused such covenant to be registered against title to the Land in the land title office with priority over all financial liens, charges and encumbrances (including any leases, agreements for sale, options to purchase, rights of first refusal and similar charges and encumbrances). Within ten (10) business days of receipt by the City of the Section 219 Covenant, it will execute and return same to those owners in registrable form, for registration by and at the expense of those owners.
- (c) The foregoing requirements will not apply to any parcel of land created by an air space parcel subdivision of the Land, the deposit of a building strata plan, except that the floor area of the building or buildings included in any such air space parcel or strata plan will be deemed to have been allocated to such air space parcel or strata lots and will not be available for allocation and designation to any other part of the Land.

12. **Buildable Area Updates –** Prior to commencement of construction of every building to be constructed on the Land, the Owner shall provide to the Director a report detailing the gross buildable area proposed to be built with that Building, the gross buildable area already constructed or under construction on the Land and the gross buildable area remaining to be built on the Land.

13. **Indemnity –** As an integral part of this Agreement, pursuant to section 219(6)(a) of the *Land Title Act*, the Owner hereby indemnifies the City from and against any and all liability, actions, causes of action, claims, suits, proceedings, judgements, damages, expenses, demands and losses at any time suffered or incurred by, or brought against, the City, or

any of its elected or appointed officials, officers, employees or agents, arising from or in connection with the performance of any of the Owner's obligations under this Agreement, any breach of any provision under this Agreement or the enforcement by the City of this Agreement.

14. **Specific Relief** – The Owner agrees that the public interest in ensuring that all of the provisions of this Agreement are complied with strongly favours the award of a prohibitory or mandatory injunction, or an order for specific performance or other specific relief, by the Supreme Court of British Columbia at the instance of the City, in the event of an actual or threatened breach of this Agreement.
15. **No Effect on Powers** – Nothing in this Agreement shall:
  - (a) affect or limit the discretion, rights or powers of the City or the City's Approving Officer under any enactment or at common law, including in relation to the use, development or subdivision of the Land;
  - (b) affect or limit any enactment relating to the use, development or subdivision of the Land; or
  - (c) relieve the Owner from complying with any enactment, including in relation to the use, development or subdivision of the Land.
16. **City Discretion** – Where the City or a representative of the City is required or permitted under this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent:
  - (a) the relevant provision shall not be considered fulfilled unless the approval, opinion, determination, consent or expression of satisfaction is in writing signed by the City or the representative, as the case may be;
  - (b) the approval, opinion, determination, consent or satisfaction is in the sole discretion of the City or the representative, as the case may be; and
  - (c) the City or the representative, as the case may be, is under no public law duty of fairness or natural justice in that regard and the City or the representative may do any of those things in the same manner as if it were a private person and not a public body or employee or officer thereof.
17. **No Obligation to Enforce** – The rights given to the City under this Agreement are permissive only and nothing in this Agreement shall give rise to any legal duty of any kind on the City to anyone or obligate the City to enforce this Agreement or to perform any act or incur any expense.

18. **Agreement Runs with Land** – This Agreement shall burden and run with, and bind the successors in title to, the Land and each and every part into which the Land may be subdivided by any means (including by deposit of a strata plan of any kind under the *Strata Property Act* (British Columbia)).
19. **Waiver** – No waiver by the City of any requirement or breach of this Agreement shall be effective unless it is an express waiver in writing that specifically references the requirement or breach and no such waiver shall operate as a waiver of any other requirement or breach or any continuing breach of this Agreement.
20. **Remedies** - No reference to or exercise of any specific right or remedy by the City shall prejudice or preclude the City from exercising any other right or remedy, whether allowed at law or in equity or expressly provided for in this Agreement, and no such right or remedy is exclusive or dependent upon any other such remedy and the City may from time to time exercise any one or more of such remedies independently or in combination.
21. **Priority** – The Owner shall cause this Agreement to be registered in the applicable land title office against title to the Land with priority over all financial liens, charges and encumbrances (including any leases, agreements for sale, options to purchase, rights of first refusal and similar charges and encumbrances), registered or pending registration at the time of application for registration of this Agreement, including by causing the holder of each such lien, charge or encumbrance to execute an instrument in a form required by the City under which such holder postpones all of the holder's rights to those of the City under this Agreement in the same manner and to the same extent as if such lien, charge or encumbrance had been registered immediately after the registration of this Agreement.
22. **Modification** – This Agreement may not be modified except by an agreement or instrument in writing signed by the Owner or its successor in title and the City or a successor or assignee.
23. **Discharge** –
  - (a) If City council does not adopt the Amendment Bylaw within six months following the date of registration of this Agreement in the land title office, and the Owner delivers a discharge in registrable form of this Agreement from the title to the Lands comprising that part of the Development Area to the City before City council adopts the Amendment Bylaw, the City will execute the discharge in registrable form, and return the executed discharge to the Owner, and the Owner may apply to register it in the land title office.
  - (b) If the Owner completes development of part or all of a Development Area in accordance with this Agreement, such that none of the restrictions in this Agreement continue to apply to the Development Area and the Owner has

complied with section 11 in relation to the Development Area, and delivers to the City a discharge in registrable form of this Covenant from the title to the Lands comprising that part of the Development Area, the City will execute the discharge in registrable form, and return the executed discharge to the Owner, and the Owner may apply to register it in the land title office.

24. **Further Assurances** – The Owner shall do and cause to be done all things, including by executing further documents, as may be necessary to give effect to the intent of this Agreement.
25. **Owner's Expense** – The Owner shall perform its obligations under this Agreement at its own expense and without compensation from the City.
26. **Severance** – If any part of this Agreement is for any reason held to be invalid by a decision of a court with the jurisdiction to do so, the invalid portion is to be considered severed from the rest of this Agreement and the decision that it is invalid shall not affect the validity or enforceability of the remainder of this Agreement.
27. **Schedules** – The following Schedules are attached to and form an integral part of this Agreement:
  - Schedule A – Development Area Map
  - Schedule B – Form of Setback Area Covenant/SRW
  - Schedule C – Form of Plaza Covenant/SRW
  - Schedule D – Form of Density Covenant
  - Schedule E – Affordable Housing Agreements
28. **Interpretation** - In this Agreement:
  - (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
  - (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this agreement;
  - (c) the term "enactment" has the meaning given to it under the *Interpretation Act* (British Columbia) on the reference date of this Agreement;
  - (d) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
  - (e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced from time to time, unless otherwise expressly provided;



- (f) reference to a particular numbered section, or to a particular lettered schedule, is, unless otherwise expressly provided, a reference to the correspondingly numbered section or lettered schedule of this Agreement;
  - (g) all Schedules to this Agreement form an integral part of this Agreement;
  - (h) time is of the essence; and
  - (i) where the word "including" is followed by a list, the contents of the list are not intended to limit or otherwise affect the generality of the expression preceding the word "including".
29. **Governing Law** – This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, which shall be deemed to be the proper law hereof.
30. **Enurement** – This Agreement hereof shall enure to the benefit of the parties and their respective successors and assigns, as the case may be.
31. **Entire Agreement** – This Agreement, the Schedules to this Agreement, and every agreement or instrument required to be executed or delivered by the Owner pursuant to this Agreement together are the entire agreement between the parties regarding its subject.
32. **Execution in Counterparts & Electronic Delivery** - This Agreement may be executed in any number of counterparts and delivered by e-mail, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, provided that any party delivering this Agreement by e-mail shall also deliver to the other party an originally executed copy of this Agreement.
- AS EVIDENCE** of their agreement to be bound by this Agreement, the parties have executed the General Instrument – Part 1 (*Land Title Act* Form C) attached to and forming part of this Agreement.



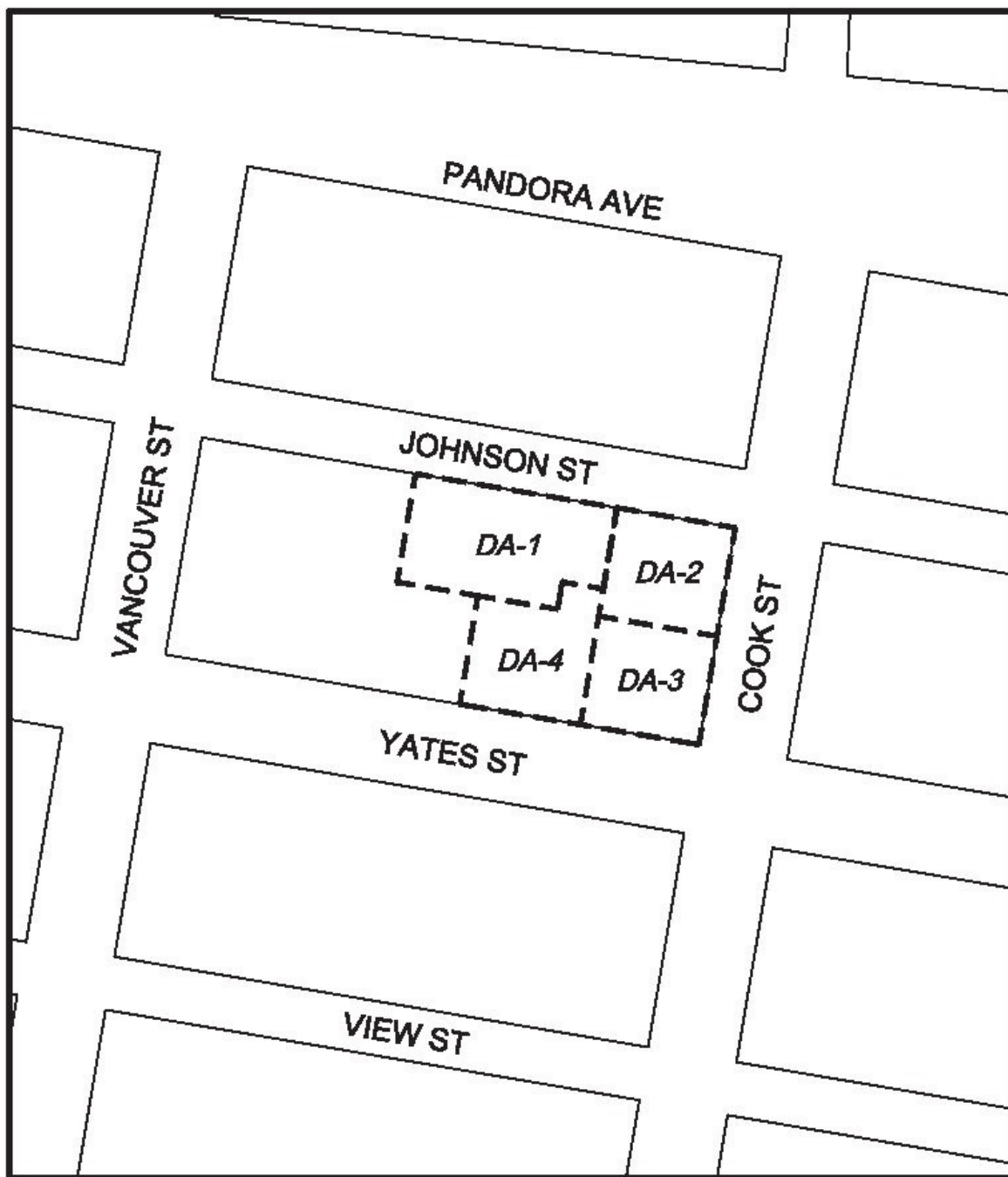
**PRIORITY AGREEMENT**

This Priority Agreement is between the Royal Bank of Canada (the "**Prior Chargeholder**"), being the registered owner and holder of Mortgage CA6474249 (the "**Prior Charge**") and the City of Victoria, being the registered owner and holder of the covenant under section 219 of the *Land Title Act* (British Columbia) to which this Priority Agreement is attached (the "**Subsequent Charge**").

In consideration of the sum of ten dollars (\$10.00) now paid to the Prior Chargeholder and for other good and valuable consideration, the receipt and sufficiency of which the Prior Chargeholder acknowledges, the Prior Chargeholder hereby approves of, joins in and consents to the granting of the Subsequent Charge and hereby postpones all of the Prior Chargeholder's rights under the Prior Charge to the rights of the City under the Subsequent Charge in the same manner and to the same extent as if the Prior Charge had been registered immediately after the Subsequent Charge.

As evidence of its agreement to be bound by this Priority Agreement, the Prior Chargeholder has executed the General Instrument – Part 1 (*Land Title Act* - Form C) attached to and forming part of this Priority Agreement.

Schedule A  
**Development Area Map**



**Appendix A**  
Development Areas  
CA-90 Zone, Mid Cook District



Schedule B  
**Form of Setback Area Covenant/SRW**

**LAND TITLE ACT**  
**FORM C (Section 233) CHARGE**  
**GENERAL INSTRUMENT - PART I Province of British Columbia**

PAGE 1 OF 11 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)

**COX, TAYLOR, Barristers & Solicitors**  
 Burnes House, Third Floor  
 26 Bastion Square  
 Victoria

Telephone: (250) 388-4457

BC V8W 1H9

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

**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):

**SEE SCHEDULE**

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

**THE CORPORATION OF THE CITY OF VICTORIA**

1 CENTENNIAL SQUARE  
 VICTORIA

BRITISH COLUMBIA  
 CANADA

V8W 1P6

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

Y	M	D

Transferor(s) Signature(s)

**[INSERT NAME OF OWNER]**  
 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.



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

PAGE 3 OF 11 PAGES

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Statutory Right of Way

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Covenant

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Priority Agreement

Priority of the Statutory Right of Way having a registration number two less than this Priority Agreement over Mortgage \_\_\_\_\_ and Assignment of Rents \_\_\_\_\_

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Priority Agreement

Priority of the Covenant having a registration number two less than this Priority Agreement over Mortgage \_\_\_\_\_ and Assignment of Rents \_\_\_\_\_

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

**LAND TITLE ACT  
FORM E**

**SCHEDULE**

**PAGE 4 OF 11 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.

**5. TRANSFERORS**

**[INSERT NAME]**

**(as to Covenant)**

**[INSERT NAME]**

**(As to Priority)**



**TERMS OF INSTRUMENT – PART 2**

**SETBACK AREA - SECTION 219 COVENANT & STATUTORY RIGHT OF WAY**

**THIS AGREEMENT** dated for reference the \_\_\_\_\_, is

**BETWEEN:**

**[insert name and address]**

**("the "Owner")**

**AND:**

**THE CORPORATION OF THE CITY OF VICTORIA**

1 Centennial Square, Victoria, British Columbia V8W 1P6

**(the "City")**

**GIVEN THAT:**

- A. The Owner is the registered owner of the lands described in the *Land Title Act* Form C attached to and forming part of this Agreement (the "**Lands**"),
- B. The Owner has constructed on the portion of the Lands shown on Reference Plan No. \_\_\_\_\_, a copy of which is attached as Schedule A, (the "**Setback Area**") a setback area containing the improvements, works and other facilities and equipment shown and described on Schedule B (collectively the "**Works**"),
- C. The Owner wishes to grant to the City: (i) a covenant under section 219 of the *Land Title Act* pursuant to which the Owner shall covenant to be responsible for the construction, repair, maintenance and operation of the Setback Area and the Works, and (ii) a statutory right of way under section 218 of the *Land Title Act* to enable the City to ensure the ongoing preservation of and public use of and access to the Setback Area and the Works, and
- D. The statutory right of way under this Agreement is necessary for the operation and maintenance of the City's undertaking,

**THIS AGREEMENT** is evidence that, and in consideration of \$10.00 paid by the City to the Owner and other good and valuable consideration (the receipt and sufficiency of which the Owner hereby acknowledges), the Owner covenants and agrees with the City as follows:

1. **Owner's Obligations Concerning Setback Area and Works** – Pursuant to section 219 of the *Land Title Act*, the Owner covenants and agrees with City as follows:

- (a) **Operation and Maintenance** – Except as permitted under section 3, the Owner shall at all times:
    - (i) operate, repair, replace, inspect, maintain and clean the Setback Area and the Works, with such replacements, modifications and substitutions approved by the City Engineer from time to time, so that they are at all times in a good, clean and safe condition and state of repair.
    - (ii) remove from the Setback Area any structures, improvements, or other thing (including walls, fences, and vehicles), and otherwise trim or cut down any tree, shrub, plant or other growth that constitutes or may constitute a danger or impairment to, or obstruction of the Setback Area or any of the Works.
  - (b) **Open to Public** - Except as may be required to from time to time to satisfy the Owner's obligations under section 1(a), as may be permitted by the City or otherwise as permitted under section 3 and 4, the Owner shall ensure that the Setback Area is at all times open for public use and, without limiting the generality of the foregoing, the Owner shall not install or maintain any wall, fence or other obstruction which would obstruct, close off the Setback Area or prevent access by the public to the Setback Area.
  - (c) **Indemnity** - As an integral part of this Agreement, pursuant to section 219(6)(a) of the *Land Title Act*, the Owner shall indemnify and save harmless the City and the City's elected and appointed officials, officers, employees, and contractors ("City Personnel") from and against any and all liability, actions, causes of action, claims, suits, proceedings, judgements, damages, expenses, demands and losses at any time suffered or incurred by, or brought against, the City, or City Personnel, in any way arising from or in connection with any of the following:
    - (i) the design, construction, operation, repair, replacement, maintenance and cleaning of the Setback Area or the Works,
    - (ii) any property damage or personal injury or death occurring within the Setback Area, including personal injury to or death of any member of the public, or
    - (iii) any breach of any provision of this Agreement.,

except to the extent caused or contributed to by any negligent act or omission of the City or City Personnel.
2. **Statutory Right of Way** – Pursuant to section 218 of the *Land Title Act*, the Owner hereby grants, conveys and confirms, to the City, in perpetuity, the full, free and uninterrupted right, liberty, easement and statutory right of way for the City and its officers, employees, contractors, licensees (including, without the need for specific invitation or authorization, the public), agents and invitees, to enter, go, be on, pass and repass, with or without vehicles

personal property and equipment, upon, over, under and across the Setback Area to, in common with the Owner, at all times and from time to time, at their will and pleasure, to:

- (a) construct, install, remove, replace, repair, alter, maintain, clean, inspect, operate and use the Works and the Setback Area;
- (b) have unobstructed access to, through, upon and over the Setback Area at any and all times;
- (c) remove from the Setback Area any structures, improvements or other thing (including paving, walls, gates, fences, vehicles and mobile homes) that, in the City's reasonable opinion constitutes or may constitute a danger, impairment or obstruction to those using the Setback Area or to any of the Works or may interfere with the exercise of any of the City's rights under this Agreement;
- (d) trim or cut down any tree, shrub, plant or other growth within the Setback Area that, in the City's reasonable opinion, constitutes or may constitute a danger, impairment or obstruction to those using the Setback Area or to any of the Works or may interfere with the exercise of any of the rights granted under this section; and
- (e) use and permit the use of the Setback Area and the Works as a public access area subject to section 3 and section 4 of this Agreement, with access for members of the public on foot and with hand carts, wheelchairs and similar modes of transportation, as if the Setback Area was dedicated to public use; and
- (f) do all other things within the Setback Area as may be incidental to or reasonably necessary or desirable in connection with the foregoing,

and the City shall at all times be entitled to peaceably hold and enjoy the rights, liberties and statutory right of way hereby granted without hindrance, molestation or interruption by the Owner or any person claiming by, through, under or in trust for the Owner, provided that, the City will only exercise its rights under section 2(a), section 2(c), and section 2(d) if the Owner defaults in observing and performing its obligations under section 1(a) and, following receipt of written demand from the City, fails to rectify the same to the satisfaction of the City within such period of time as the City stipulates in such written demand.

For clarity, the public shall only be entitled to enter and use the Setback Area and the Works pursuant to the rights granted to the City under paragraph (e) of this section.

3. **Restrictions** – Notwithstanding any contrary provision in this Agreement, the Owner and those claiming authority through the Owner may remove any person from the Setback Area and otherwise prevent any person from using, being on, or passing over or across, the Setback Area who, in the Owner's reasonable opinion acts in a manner that would, if the Setback Area were a park, contravene any one of sections 13, 14(1), or 15 of the City's Parks Regulation Bylaw No 07-059, or otherwise acts in a manner that may damage the Lands or

any improvement on the Lands, or poses a threat to the safety of any other person using, being on, or passing over or across the Setback Area.

4. **Sidewalk Cafés** – Notwithstanding sections 1 and 2, the Owner or an occupant of the Land who uses a portion of the Land abutting part of the Setback Area for the operation of a retail store or food vending establishment may from time to time place, construct or keep fixtures and structures within the abutting Setback Area for sales, or for seating and serving customers, as an extension of that retail store or food vending establishment, provided that the Owner or occupant first obtains a development permit from the City if any of the fixtures and structures are to be permanent or semi-permanent. For clarity, the City may exercise its rights under section 2(c) of this Agreement in the event the Owner or an occupant uses any part of the Setback Area in contravention of any of the requirements of this section.
5. **Specific Relief** – The Owner agrees that the public interest in ensuring that all of the provisions of this Agreement are complied with strongly favours the award of a prohibitory or mandatory injunction, or an order for specific performance or other specific relief, by the Supreme Court of British Columbia at the instance of the City, in the event of an actual or threatened breach of this Agreement.
6. **No Effect on Powers** – Nothing in this Agreement shall:
  - (a) affect or limit the discretion, rights or powers of the City or the City's Approving Officer under any enactment or at common law, including in relation to the use, development or subdivision of the Land;
  - (b) affect or limit any enactment relating to the use, development or subdivision of the Land; or
  - (c) relieve the Owner from complying with any enactment, including in relation to the use, development or subdivision of the Land.
7. **City Discretion** – Where the City or a representative of the City is required or permitted under this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent:
  - (a) the relevant provision shall not be considered fulfilled unless the approval, opinion, determination, consent or expression of satisfaction is in writing signed by the City or the representative, as the case may be;
  - (b) the approval, opinion, determination, consent or satisfaction is in the sole discretion of the City or the representative, as the case may be; and
  - (c) the City or the representative, as the case may be, is under no public law duty of fairness or natural justice in that regard and the City or the representative may do any of those things in the same manner as if it were a private person and not a public body or employee or officer thereof.



8. **No Obligation to Enforce** – The rights given to the City under this Agreement are permissive only and nothing in this Agreement shall give rise to any legal duty of any kind on the City to anyone or obligate the City to enforce this Agreement or to perform any act or incur any expense.
9. **Agreement Runs with Land** – This Agreement shall burden and run with, and bind the successors in title to, the Land and each and every part into which the Land may be subdivided by any means (including by deposit of a strata plan of any kind under the *Strata Property Act* (British Columbia)).
10. **Waiver** – No waiver by the City of any requirement or breach of this Agreement shall be effective unless it is an express waiver in writing that specifically references the requirement or breach and no such waiver shall operate as a waiver of any other requirement or breach or any continuing breach of this Agreement.
11. **Remedies** - No reference to or exercise of any specific right or remedy by the City shall prejudice or preclude the City from exercising any other right or remedy, whether allowed at law or in equity or expressly provided for in this Agreement, and no such right or remedy is exclusive or dependent upon any other such remedy and the City may from time to time exercise any one or more of such remedies independently or in combination.
12. **Priority** – The Owner shall cause this Agreement to be registered in the applicable land title office against title to the Land with priority over all financial liens, charges and encumbrances, and any leases and options to purchase, registered or pending registration at the time of application for registration of this Agreement, including by causing the holder of each such lien, charge, encumbrance, lease or option to purchase to execute an instrument in a form required by the City under which such holder postpones all of the holder's rights to those of the City under this Agreement in the same manner and to the same extent as if such lien, charge, encumbrance, lease or option to purchase had been registered immediately after the registration of this Agreement.
13. **Modification** – This Agreement may not be modified except by an agreement or instrument in writing signed by the Owner or its successor in title and the City or a successor or assignee.
14. **Further Assurances** – The Owner shall do and cause to be done all things, including by executing further documents, as may be necessary to give effect to the intent of this Agreement.
15. **Owner's Expense** – The Owner shall perform, observe, and comply with all obligations and requirements under this Agreement at its own expense and without compensation from the City.
16. **Severance** – If any part of this Agreement is for any reason held to be invalid by a decision of a court with the jurisdiction to do so, the invalid portion is to be considered severed from the rest of this Agreement and the decision that it is invalid shall not affect the validity or enforceability of the remainder of this Agreement.

17. **Interpretation - In this Agreement:**

- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this agreement;
- (c) the term "enactment" has the meaning given to it under the *Interpretation Act* (British Columbia) on the reference date of this Agreement;
- (d) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced from time to time, unless otherwise expressly provided;
- (f) reference to a particular numbered section, or to a particular lettered schedule, is, unless otherwise expressly provided, a reference to the correspondingly numbered section or lettered schedule of this Agreement;
- (g) all Schedules to this Agreement form an integral part of this Agreement;
- (h) time is of the essence; and
- (i) where the word "including" is followed by a list, the contents of the list are not intended to limit or otherwise affect the generality of the expression preceding the word "including".

18. **Governing Law** – This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, which shall be deemed to be the proper law hereof.

19. **Enurement** – This Agreement hereof shall enure to the benefit of the parties and their respective successors and assigns, as the case may be.

20. **Entire Agreement** – This Agreement is the entire agreement between the parties regarding its subject.

21. **Execution in Counterparts & Electronic Delivery** - This Agreement may be executed in any number of counterparts and delivered by e-mail, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, provided that any party delivering this Agreement by e-mail shall also deliver to the other party an originally executed copy of this Agreement.

As evidence of their agreement to be bound by this Agreement, the parties have executed the General Instrument – Part 1 (*Land Title Act* Form C) attached to and forming part of this Agreement.

#### PRIORITY AGREEMENT

This Priority Agreement is between \_\_\_\_\_ (the "**Prior Chargeholder**"), being the registered owner and holder of Mortgage No. \_\_\_\_\_ and Assignment of Rents No. \_\_\_\_\_ (the "**Prior Charges**"), and the City of \_\_\_\_\_, being the registered owner and holder of the covenant under section 219 of the *Land Title Act* (British Columbia) to which this Priority Agreement is attached (the "**Subsequent Charge**").

In consideration of the sum of ten dollars (\$10.00) now paid to the Prior Chargeholder and other good and valuable consideration, the receipt and sufficiency of which the Prior Chargeholder acknowledges, the Prior Chargeholder hereby approves of, joins in and consents to the granting of the Subsequent Charge and hereby postpones all of the Prior Chargeholder's rights under the Prior Charges to the rights of the City under the Subsequent Charge in the same manner and to the same extent as if the Prior Charges had been registered immediately after the Subsequent Charge.

As evidence of its agreement to be bound by this Priority Agreement, the Prior Chargeholder has executed the General Instrument – Part 1 (*Land Title Act* - Form C) attached to and forming part of this Priority Agreement.

Schedule C  
**Form of Plaza Covenant/SRW**



**LAND TITLE ACT**  
**FORM C (Section 233) CHARGE**  
**GENERAL INSTRUMENT - PART I Province of British Columbia**

PAGE 1 OF 11 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)

**COX, TAYLOR, Barristers & Solicitors**  
 Burnes House, Third Floor  
 26 Bastion Square  
 Victoria BC V8W 1H9

Telephone: (250) 388-4457

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

**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):

**SEE SCHEDULE**

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

**THE CORPORATION OF THE CITY OF VICTORIA**

1 CENTENNIAL SQUARE  
 VICTORIA

BRITISH COLUMBIA  
 CANADA

V8W 1P6

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

Y	M	D

Transferor(s) Signature(s)

**[INSERT NAME OF OWNER]**  
 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.

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**

PAGE 3 OF 11 PAGES

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Statutory Right of Way

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Covenant

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Priority Agreement

Priority of the Statutory Right of Way having a registration number two less than this Priority Agreement over Mortgage \_\_\_\_\_ and Assignment of Rents \_\_\_\_\_

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Priority Agreement

Priority of the Covenant having a registration number two less than this Priority Agreement over Mortgage \_\_\_\_\_ and Assignment of Rents \_\_\_\_\_

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

**LAND TITLE ACT  
FORM E**

**SCHEDULE**

**PAGE 4 OF 11 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.

**5. TRANSFERORS**

[INSERT NAME]

(as to Covenant)

[INSERT NAME]

(As to Priority)

**TERMS OF INSTRUMENT – PART 2**

**PLAZA - SECTION 219 COVENANT & STATUTORY RIGHT OF WAY**

**THIS AGREEMENT** dated for reference the \_\_\_\_\_, is

**BETWEEN:**

**[insert name and address]**

**("the "Owner")**

**AND:**

**THE CORPORATION OF THE CITY OF VICTORIA**

1 Centennial Square, Victoria, British Columbia V8W 1P6

**(the "City")**

**GIVEN THAT:**

- A. The Owner is the registered owner of the lands described in the *Land Title Act* Form C attached to and forming part of this Agreement (the "**Lands**"),
- B. The Owner has constructed on the portion of the Lands shown on Reference Plan No. \_\_\_\_\_, (the "**Plaza Area**", a copy of which is attached as Schedule A) a plaza comprised of the improvements, works and other facilities and equipment shown and described in Schedule B (collectively the "**Works**"),
- C. The Owner wishes to grant to the City: (i) a covenant under section 219 of the *Land Title Act* pursuant to which the Owner shall covenant to be responsible for the construction, repair, maintenance and operation of the Plaza Area and the Works, and (ii) a statutory right of way under section 218 of the *Land Title Act* to enable the City to ensure ongoing preservation of, and public use of and access to the Plaza Area and the Works, and
- D. The statutory right of way under this Agreement is necessary for the operation and maintenance of the City's undertaking,

**THIS AGREEMENT** is evidence that, and in consideration of \$10.00 paid by the City to the Owner and other good and valuable consideration (the receipt and sufficiency of which the Owner hereby acknowledges), the Owner covenants and agrees with the City as follows:

- 1. **Owner's Obligations Concerning Plaza Area and Works** – Pursuant to section 219 of the *Land Title Act*, the Owner covenants and agrees with City as follows:

- (a) **Operation and Maintenance** – Except as permitted under Section 2, the Owner shall at all times:
- (i) operate, repair, replace, inspect, maintain and clean the Plaza Area and the Works, with such replacements, modifications and substitutions approved by the City Engineer from time to time, so that they are at all times in a good, clean and safe condition and state of repair for their intended use including use by the public.
  - (ii) remove from the Plaza Area any structures, improvements, or other thing (including paving, walls, gates, fences, and vehicles), and otherwise trim or cut down any tree, shrub, plant or other growth that constitutes or may constitute a danger, impairment, or obstruction to those using the Plaza Area or to any of the Works.
- (b) **Open to Public** - Except as may be required to from time to time to satisfy the Owner's obligations under section 1(a) and as otherwise permitted under section 3, the Owner shall ensure that the Plaza Area is at all times open for use by the public and without limiting the generality of the foregoing, the Owner shall not install or maintain any gate, fence or other obstruction which would prevent access by the public to the Plaza Area, except as permitted by the City.
- (c) **Indemnity** - As an integral part of this Agreement, pursuant to section 219(6)(a) of the *Land Title Act*, the Owner shall indemnify and save harmless the City and the City's elected and appointed officials, officers, employees, and contractors ("City Personnel") from and against any and all liability, actions, causes of action, claims, suits, proceedings, judgements, damages, expenses, demands and losses at any time suffered or incurred by, or brought against, the City, or City Personnel, in any way arising from or in connection with any of the following:
- (i) the design, construction, operation, repair, replacement, maintenance and cleaning of the Plaza Area or the Works,
  - (ii) any property damage or personal injury or death occurring within the Plaza Area, including personal injury to or death of any member of the public, or
  - (iii) any breach of any provision of this Agreement,
- except to the extent caused or contributed to by any negligent act or omission by the City or City Personnel.
2. **Statutory Right of Way** – Pursuant to section 218 of the *Land Title Act*, the Owner hereby grants, conveys and confirms, to the City, in perpetuity, the full, free and uninterrupted right, liberty, easement and statutory right of way for the City and its officers, employees, contractors, licensees (including, without the need for specific invitation or authorization, the public), agents and invitees to enter, go, be on, pass and repass, with or without vehicles

personal property and equipment, upon, over, under and across the Plaza Area to, in common with the Owner, at all times and from time to time, at their will and pleasure, to:

- (a) construct, install, remove, replace, repair, alter, maintain, clean, inspect, operate and use the Works and the Plaza Area;
- (b) have unobstructed access to, through, upon and over the Plaza Area at any and all times;
- (c) remove from the Plaza Area any structures, improvements or other thing (including paving, walls, gates, fences, vehicles and mobile homes) that, in the City's reasonable opinion) constitutes or may constitute a danger, impairment or obstruction to those using the Plaza Area or to any of the Works or may interfere with the exercise of any of the City's rights under this Agreement;
- (d) trim or cut down any tree, shrub, plant or other growth within the Plaza Area that, in the City's reasonable opinion, constitutes or may constitute a danger, impairment or obstruction to those using the Plaza Area or to any of the Works or may interfere with the exercise of any of the rights granted under this section;
- (e) use the Plaza Area and the Works as a public access area, with access for members of the public on foot and without vehicles except hand carts, wheelchairs and similar modes of transportation, and to be upon the Plaza Area for rest and relaxation; and
- (f) do all other things within the Plaza Area as may be incidental to or reasonably necessary or desirable in connection with the foregoing,

and the City shall at all times be entitled to peaceably hold and enjoy the rights, liberties and statutory right of way hereby granted without hindrance, molestation or interruption by the Owner or any person claiming by, through, under or in trust for the Owner, provided that, the City will only exercise its rights under section 2(a), section 2(c) and section 2(d) if the Owner defaults in observing and performing its obligations under section 1(a) and, following receipt of written demand from the City, fails to rectify the same to the satisfaction of the City within such period of time as the City stipulates in such written demand.

For clarity, the public shall only be entitled to enter and use the Plaza Area and the Works pursuant to the rights granted to the City under paragraph (e) of this section.

3. **Restrictions** – Notwithstanding the provisions of sections 1 and 2, the Owner and those claiming authority through the Owner may remove any person from the Plaza Area and otherwise prevent any person from using, being on, or passing over or across, the Plaza Area who, in the Owner's reasonable opinion acts in a manner that would, if the Plaza Area were a park, contravene any one of sections 13, 14(1), or 15 of the City's Parks Regulation Bylaw No 07-059 or otherwise acts in a manner that may damage the Lands or any improvement



on the Lands, or poses a threat to the safety of any other person using, being on, or passing over or across the Plaza Area.

4. **Sidewalk Cafés** – Notwithstanding sections 1 and 2, the Owner or an occupant of the Land who uses a portion of the Land abutting part of the Setback Area for the operation of a retail store or food vending establishment may from time to time place, construct or keep fixtures and structures within the abutting Setback Area for sales, or for seating and serving customers, as an extension of that retail store or food vending establishment, provided that:
  - (a) the Owner or occupant first obtains a development permit from the City if any of the fixtures and structures are to be permanent or semi-permanent; and
  - (b) no more than 25% of the Plaza Area may be occupied by fixtures and structures under this section, as determined by the City, and at least 75% of the Plaza Area shall at all times remain free of any such fixtures and structures and not otherwise be obstructed or used in connection with any food vending establishment.

For clarity, the City may exercise its rights under section 2(c) of this Agreement in the event the Owner or an occupant uses any part of the Setback Area in contravention of any of the requirements of this section.

5. **Specific Relief** – The Owner agrees that the Public interest in ensuring that all of the provisions of this Agreement are complied with strongly favours the award of a prohibitory or mandatory injunction, or an order for specific performance or other specific relief, by the Supreme Court of British Columbia at the instance of the City, in the event of an actual or threatened breach of this Agreement.
6. **No Effect on Powers** – Nothing in this Agreement shall:
  - (a) affect or limit the discretion, rights or powers of the City or the City's Approving Officer under any enactment or at common law, including in relation to the use, development or subdivision of the Land;
  - (b) affect or limit any enactment relating to the use, development or subdivision of the Land; or
  - (c) relieve the Owner from complying with any enactment, including in relation to the use, development or subdivision of the Land.
7. **City Discretion** – Where the City or a representative of the City is required or permitted under this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent:
  - (a) the relevant provision shall not be considered fulfilled unless the approval, opinion, determination, consent or expression of satisfaction is in writing signed by the City or the representative, as the case may be;



- (b) the approval, opinion, determination, consent or satisfaction is in the sole discretion of the City or the representative, as the case may be; and
  - (c) the City or the representative, as the case may be, is under no Public law duty of fairness or natural justice in that regard and the City or the representative may do any of those things in the same manner as if it were a private person and not a Public body or employee or officer thereof.
- 8. **No Obligation to Enforce** – The rights given to the City under this Agreement are permissive only and nothing in this Agreement shall give rise to any legal duty of any kind on the City to anyone or obligate the City to enforce this Agreement or to perform any act or incur any expense.
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- 10. **Waiver** – No waiver by the City of any requirement or breach of this Agreement shall be effective unless it is an express waiver in writing that specifically references the requirement or breach and no such waiver shall operate as a waiver of any other requirement or breach or any continuing breach of this Agreement.
- 11. **Remedies** - No reference to or exercise of any specific right or remedy by the City shall prejudice or preclude the City from exercising any other right or remedy, whether allowed at law or in equity or expressly provided for in this Agreement, and no such right or remedy is exclusive or dependent upon any other such remedy and the City may from time to time exercise any one or more of such remedies independently or in combination.
- 12. **Priority** – The Owner shall cause this Agreement to be registered in the applicable land title office against title to the Land with priority over all financial liens, charges and encumbrances, and any leases and options to purchase, registered or pending registration at the time of application for registration of this Agreement, including by causing the holder of each such lien, charge, encumbrance, lease or option to purchase to execute an instrument in a form required by the City under which such holder postpones all of the holder's rights to those of the City under this Agreement in the same manner and to the same extent as if such lien, charge, encumbrance, lease or option to purchase had been registered immediately after the registration of this Agreement.
- 13. **Modification** – This Agreement may not be modified except by an agreement or instrument in writing signed by the Owner or its successor in title and the City or a successor or assignee.
- 14. **Further Assurances** – The Owner shall do and cause to be done all things, including by executing further documents, as may be necessary to give effect to the intent of this Agreement.

15. **Owner's Expense** – The Owner shall perform, observe and comply with all obligations and requirements under this Agreement at its own expense and without compensation from the City.
16. **Severance** – If any part of this Agreement is for any reason held to be invalid by a decision of a court with the jurisdiction to do so, the invalid portion is to be considered severed from the rest of this Agreement and the decision that it is invalid shall not affect the validity or enforceability of the remainder of this Agreement.
17. **Interpretation - In this Agreement:**
  - (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
  - (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this agreement;
  - (c) the term "enactment" has the meaning given to it under the *Interpretation Act* (British Columbia) on the reference date of this Agreement;
  - (d) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
  - (e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced from time to time, unless otherwise expressly provided;
  - (f) reference to a particular numbered section, or to a particular lettered schedule, is, unless otherwise expressly provided, a reference to the correspondingly numbered section or lettered schedule of this Agreement;
  - (g) all Schedules to this Agreement form an integral part of this Agreement;
  - (h) time is of the essence; and
  - (i) where the word "including" is followed by a list, the contents of the list are not intended to limit or otherwise affect the generality of the expression preceding the word "including".
18. **Governing Law** – This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, which shall be deemed to be the proper law hereof.
19. **Enurement** – This Agreement hereof shall enure to the benefit of the parties and their respective successors and assigns, as the case may be.
20. **Entire Agreement** – This Agreement is the entire agreement between the parties regarding its subject.

21. **Execution in Counterparts & Electronic Delivery** - This Agreement may be executed in any number of counterparts and delivered by e-mail, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, provided that any party delivering this Agreement by e-mail shall also deliver to the other party an originally executed copy of this Agreement.

As evidence of their agreement to be bound by this Agreement, the parties have executed the General Instrument – Part 1 (*Land Title Act* Form C) attached to and forming part of this Agreement.

#### PRIORITY AGREEMENT

This Priority Agreement is between \_\_\_\_\_ (the “**Prior Chargeholder**”), being the registered owner and holder of Mortgage No. \_\_\_\_\_ and Assignment of Rents No. \_\_\_\_\_ (the “**Prior Charges**”), and the City of \_\_\_\_\_, being the registered owner and holder of the covenant under section 219 of the *Land Title Act* (British Columbia) to which this Priority Agreement is attached (the “**Subsequent Charge**”).

In consideration of the sum of ten dollars (\$10.00) now paid to the Prior Chargeholder and other good and valuable consideration, the receipt and sufficiency of which the Prior Chargeholder acknowledges, the Prior Chargeholder hereby approves of, joins in and consents to the granting of the Subsequent Charge and hereby postpones all of the Prior Chargeholder’s rights under the Prior Charges to the rights of the City under the Subsequent Charge in the same manner and to the same extent as if the Prior Charges had been registered immediately after the Subsequent Charge.

As evidence of its agreement to be bound by this Priority Agreement, the Prior Chargeholder has executed the General Instrument – Part 1 (*Land Title Act* - Form C) attached to and forming part of this Priority Agreement.

Schedule D  
**Form of Density Covenant**

**LAND TITLE ACT**  
**FORM C (Section 233) CHARGE**  
**GENERAL INSTRUMENT - PART I Province of British Columbia**

PAGE 1 OF 7 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)

**COX, TAYLOR, Barristers & Solicitors**  
 Burnes House, Third Floor  
 26 Bastion Square  
 Victoria

Telephone: (250) 388-4457

BC V8W 1H9

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

**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):

**SEE SCHEDULE**

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

**THE CORPORATION OF THE CITY OF VICTORIA**

1 CENTENNIAL SQUARE  
 VICTORIA

BRITISH COLUMBIA  
 CANADA

V8W 1P6

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

Y	M	D

Transferor(s) Signature(s)

**[INSERT NAME OF OWNER]**  
 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.

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

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Priority of the Covenant having a registration number one less than this Priority Agreement over Mortgage _____ and Assignment of Rents _____
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION

**LAND TITLE ACT  
FORM E**

**SCHEDULE**

**PAGE 4 OF 7 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.

**5. TRANSFERORS**

[INSERT NAME]

(as to Covenant)

[INSERT NAME]

(As to Priority)



TERMS OF INSTRUMENT – PART 2

DENSITY - SECTION 219 COVENANT

THIS AGREEMENT dated for reference the \_\_\_\_\_, is

BETWEEN:

[insert name and address]

(“the “Owner”)

AND:

THE CORPORATION OF THE CITY OF VICTORIA

1 Centennial Square, Victoria, British Columbia V8W 1P6

(the “City”)

GIVEN THAT:

- A. The Owner is the registered owner in fee-simple of those lands and premises located within the City of Victoria, in the Province of British Columbia, more particularly described on Page 1, Item 2 of this Instrument (the “Lands”);
- B. Section 219 of the *Land Title Act* provides that a covenant, whether of negative or positive nature may be granted in favour of the City and may include one or more of the following provisions:
  - (i) in respect of the use of land or the use of a building on or to be erected on land;
  - (ii) that land is to be built on in accordance with the covenant;
  - (iii) that land is not to be used, built on or subdivided;
  - (iv) that land or specified amenities be protected, preserved, conserved, maintained, enhanced, restored or kept in their natural or existing state.

THIS AGREEMENT is evidence that under Section 219 of the *Land Title Act*, and in consideration of the premises and the mutual covenants and agreements contained herein, and the sum of ONE (\$1.00) DOLLAR of lawful money of Canada now paid to the Owner by the City (the receipt and sufficiency of which is hereby acknowledged), and for other good and valuable consideration the parties covenant and agree each with the other as follows:

- 1. The Owner covenants, promises and agrees that, notwithstanding the uses permitted from time to time by the City’s zoning bylaw, the Lands shall not be used except in strict accordance with this Covenant.
- 2. The maximum floor area which may be constructed on the Lands pursuant to Zoning Regulation Bylaw 80-159, Amendment Bylaw (No. 1184 (the CA-90 Zone, Mid Cook

District) is hereby designated as \_\_\_\_\_ or such other area as may be permitted by the City, in writing.

3. The Owner shall indemnify and save harmless the City and each of its elected and appointed officials, officers, employees, agents and contractors, from any and all claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees whatsoever which anyone has or may have, whether as owner, occupier or user of the Lands, or by a person who has an interest in or comes onto the Lands, or otherwise, which the City incurs as a result of any loss or damage or injury, including economic loss, arising out of or connected with:
  - (a) the breach of any covenant in this Agreement;
  - (b) the use of the Lands contemplated under this Agreement; and
  - (c) restrictions or requirements under this Agreement.
4. At the Owner's expense, the Owner must do everything necessary to secure priority of registration and interest for this Agreement and the Section 219 Covenant it creates over registered and pending charges and encumbrances of a financial nature against the Lands.
5. Nothing contained or implied herein 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 under any enactment and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be 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.
6. Time is of the essence of this Agreement.
7. This Agreement shall enure to the benefit of the City and shall be binding upon the parties hereto and their respective heirs, executors, successors and assigns.
8. This Agreement is the entire agreement between the parties hereto regarding its subject.
9. It is mutually understood, acknowledged and agreed by the parties hereto that the City has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Owner other than those contained in this Agreement.
10. The restrictions and covenants herein contained shall be covenants running with the Lands, and shall continue to bind all of the Lands when subdivided, and shall be registered in the Land Title Office pursuant to section 219 of the *Land Title Act* as covenants in favour of the City as a first charge against the Lands.
11. By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

12. If any part of this Agreement is found to be illegal or unenforceable, that part will be considered separate and severable and the remaining parts will not be affected thereby and will be enforceable to the fullest extent permitted by law.
13. 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.
14. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

As evidence of their agreement to be bound by this Agreement, the parties have executed the General Instrument – Part 1 attached to and forming part of this Agreement.

#### **PRIORITY AGREEMENT**

This Priority Agreement is between \_\_\_\_\_ (the "Prior Chargeholder"), being the registered owner and holder of Mortgage No. \_\_\_\_\_ and Assignment of Rents No. \_\_\_\_\_ (the "Prior Charges"), and the City of \_\_\_\_\_, being the registered owner and holder of the covenant under section 219 of the *Land Title Act* (British Columbia) to which this Priority Agreement is attached (the "Subsequent Charge").

In consideration of the sum of ten dollars (\$10.00) now paid to the Prior Chargeholder and other good and valuable consideration, the receipt and sufficiency of which the Prior Chargeholder acknowledges, the Prior Chargeholder hereby approves of, joins in and consents to the granting of the Subsequent Charge and hereby postpones all of the Prior Chargeholder's rights under the Prior Charges to the rights of the City under the Subsequent Charge in the same manner and to the same extent as if the Prior Charges had been registered immediately after the Subsequent Charge.

As evidence of its agreement to be bound by this Priority Agreement, the Prior Chargeholder has executed the General Instrument – Part 1 (*Land Title Act*) attached to and forming part of this Priority Agreement.

Schedule E  
**Affordable Housing Agreements**

**LAND TITLE ACT****FORM C (Section 233) CHARGE****GENERAL INSTRUMENT - PART I Province of British Columbia**PAGE **1** OF **17** 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)

**COX, TAYLOR, Barristers & Solicitors****Burns House, Third Floor**

Telephone: (250) 388-4457

**26 Bastion Square****Victoria****BC V8W 1H9**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

**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):

**SEE SCHEDULE**

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

**THE CORPORATION OF THE CITY OF VICTORIA****1 CENTENNIAL SQUARE****VICTORIA****BRITISH COLUMBIA****V8W 1P6****CANADA**

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

Y	M	D

Transferor(s) Signature(s)

**[INSERT NAME OF OWNER]**  
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.

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

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Priority of the Covenant having a registration number one less than this Priority Agreement over Mortgage _____ and Assignment of Rents _____
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION

**LAND TITLE ACT  
FORM E**

**SCHEDULE**

**PAGE 4 OF 17 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.

**5. TRANSFERORS**

[INSERT NAME]

(as to Covenant)

[INSERT NAME]

(As to Priority)



**TERMS OF INSTRUMENT - PART 2**

**AFFORDABLE RENTAL HOUSING AGREEMENT AND SECTION 219 COVENANT**

**THIS AGREEMENT** dated for reference \_\_\_\_\_, 2019 is

**BETWEEN:**

**[insert name and address]**

**(the "Owner")**

**AND:**

**THE CORPORATION OF THE CITY OF VICTORIA**, 1 Centennial  
Square, Victoria, BC V8W 1P6

**(the "City")**

**WITNESSES THAT WHEREAS:**

- A. The Owner is the registered owner of the lands identified in the *Land Title Act* Form C attached to and forming part of this Agreement (the "**Lands**");
- B. Section 483 of the *Local Government Act* permits the City to enter into housing agreements for the provision of affordable and special needs housing, which may include conditions in respect to the form of tenure of housing units, availability of housing units to classes of persons, administration of housing units and rent which may be charged for housing units;
- C. The Owner and the City wish to enter into this Agreement to provide for affordable rental dwellings on the Lands, which Agreement is to have effect as both a covenant under section 219 of the *Land Title Act* and a housing agreement under section 483 of the *Local Government Act*; and
- D. The City adopted \_\_\_\_\_ Bylaw, 2019, No. \_\_\_\_\_, authorizing the City to enter into this Agreement.

**NOW THEREFORE**, in consideration of \$10.00 and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by both parties), and in consideration of the promises exchanged below, the Owner and the City covenant and agree, pursuant to section 483 of the *Local Government Act* and section 219 of the *Land Title Act*, as follows:

**ARTICLE 1  
DEFINITIONS**

**1.1 Definitions** - In this Agreement, in addition to words defined above or elsewhere in this Agreement, the following terms have the following meanings:

- (a) **"Affordable Housing Unit"** means a Dwelling Unit or Dwelling Units designated as a Deep Subsidy, Low Income or Moderate Income Housing Unit in accordance with this Agreement.
- (b) **"BC Housing"** means the British Columbia Housing Management Commission, or its successor in function.
- (c) **"CPI"** means the All-Items Consumer Price Index for the City of Victoria published from time to time by Statistics Canada, or its successor in function.
- (d) **"Cumulative Gross Annual Household Income"** means the cumulative, gross annual income of each member of a Family that occupies an Affordable Housing Unit that is over 19 years of age.
- (e) **"Deep Subsidy Housing Unit"** means a Dwelling Unit or Dwelling Units designated as a deep subsidy unit for which rent is calculated based on the Income Assistance Allowance.
- (f) **"Deep Subsidy Permitted Rent"** means a monthly rent no greater than the Income Assistance Allowance applicable to the Affordable Housing Unit.
- (g) **"Dwelling Unit"** means a self-contained set of rooms used or intended to be used as a single residence occupied by one Family and containing both cooking and sanitary facilities.
- (h) **"Eligible Tenant"** means a Family that is eligible for housing in a Deep Subsidy, Low Income or Moderate Income Housing Unit, as applicable, pursuant to the terms of the Operating Agreement, provided that if and for so long as there is no Operating Agreement or the Operating Agreement ceases to apply to all of the Affordable Housing Units on the Lands, it means:
  - (i) for a Deep Subsidy Housing Unit: a Family that receives an Income Assistance Allowance;
  - (ii) for a Low Income Housing Unit: a Family having a Cumulative Gross Annual Household Income that does not exceed the Low Income Limit applicable to the Affordable Housing Unit; or

- (iii) for a Moderate Income Housing Unit: a Family having a Cumulative Gross Annual Household Income that does not exceed the Moderate Income Limit applicable to the Affordable Housing Unit.
- (i) **"Family"** means:
  - (i) one individual;
  - (ii) two or more individuals related by blood, marriage or adoption; or
  - (iii) a group of not more than six individuals who are not related by blood, marriage or adoption.
- (j) **"Income Assistance Allowance"** means the monthly allowance provided to Family for shelter under the:
  - (i) *Employment and Assistance Act and Employment and Assistance Regulation, or*
  - (ii) *Employment and Assistance for Persons with Disabilities Act and Employment and Assistance for Persons with Disabilities Act Regulation,*
 or any replacements thereof.
- (k) **"Low Income Housing Unit"** means a Dwelling Unit or Dwelling Units designated for low income housing, in accordance with this Agreement.
- (l) **"Low Income Housing Unit Permitted Rent"** means, with respect to an Affordable Housing Unit, a monthly rent of no greater than 1/12<sup>th</sup> of 30% of the Low Income Limit applicable to the Affordable Housing Unit.
- (m) **"Low Income Limit"** means the Housing Income Limits for the City of Victoria ("HILs") published annually by BCH Housing, provided that:
  - (i) In the event that BC Housing ceases to publish HILs but replaces HILs with a similar income limits or standards, such replacement limit or standards shall replace HILs for the purposes of this Agreement; and
  - (ii) In the event that BC Housing ceases to determine HILs, and the HILs are not replaced by similar income limits or standards published by BC Housing or after such a replacement BC Housing ceases to determine such similar limit or standard, then the Low Income Housing Limit shall be determined by reference to the final HILs or to a similar limit or standard, as the case may be, published by BC Housing and thereafter increased annually by an amount equal to the increase, if any, in the CPI for the period of January 1 to December 31 of the previous calendar year,

and HILs for 2019 are as follows:

- (iii) in respect of a studio or one-bedroom unit: \$42,500.00;
  - (iv) in respect of a two-bedroom unit: \$56,000.00; and
  - (v) in respect of a three-bedroom unit: \$75,500.00.
- (n) **"Moderate Income Housing Unit"** means a Dwelling Unit or Dwelling Units designated for moderate income housing, in accordance with this Agreement.
- (o) **"Moderate Income Limit"** means the applicable amount below:
- (i) in respect of an Affordable Housing Unit with less than two bedrooms, the median income for Families without children, as determined and published by BC Housing from time to time. For 2019, this amount is \$71,810.00; or
  - (ii) in respect to an Affordable Housing Unit with two or more bedrooms, the median income for Families with dependants, as determined and published by BC Housing from time to time. For 2019, this amount is \$107,000.00 for 2019;

provided that:

- (iii) In the event that BC Housing ceases to determine and publish median incomes for Families, then the annual income limits of Eligible Tenants shall be determined by reference to the final median income for Families determined and published by BC Housing and thereafter increased annually by an amount equal to the increase, if any, in the CPI for the period of January 1 to December 31 of the previous calendar year.
- (p) **"Occupancy Standards"** mean the following requirements:
- (i) no more than 2 and no less than 1 person per bedroom;
  - (ii) spouses and couples share a bedroom;
  - (iii) parents do not share a bedroom with their children;
  - (iv) dependants aged 18 or over do not share a bedroom with any other person; and
  - (v) dependants of the opposite sex age 5 or over do not share a bedroom.
- (q) **"Operating Agreement"** means the Community Housing Fund Operating Agreement to be entered into between Pacifica Housing Advisory Association and

BC Housing in respect of the operation and rental of the Affordable Housing Units during the Term.

- (r) **"Public Housing Body"** has the same meaning as under section 49.1 of the RTA.
- (s) **"RTA"** means the *Residential Tenancy Act* (British Columbia).
- (t) **"Tenancy Agreement"** has the same meaning under the RTA.
- (u) **"Tenant"** means a Family that occupies an Affordable Housing Unit.
- (v) **"Term"** means sixty (60) years from the date of issuance by the City of an occupancy permit for all of the Affordable Housing Units to be constructed on the Lands pursuant to this Agreement.

## **ARTICLE 2**

### **CONSTRUCTION, USE AND MANAGEMENT OF AFFORDABLE HOUSING UNITS**

- 2.1 **Construction and Designation** - The Lands shall not be built upon unless (i) the building or buildings to be constructed contain at least 130 Dwelling Units, of which, during the Term:

- (a) 26 will be Deep Subsidy Housing Units;
- (b) 65 will be Low Income Housing Units; and
- (c) 39 will be Moderate Income Housing Units;

For clarity, during the Term all Dwelling Units shall be Affordable Housing Units and shall be designated, used and occupied as either Deep Subsidy Housing Units, Low Income Housing Units or Moderate Income Housing Units.

- 2.2 **Use and Occupancy** – Each Dwelling Unit on the Land may only be used as a permanent residence offered for rent, occupied by a Tenant under a Tenancy Agreement and, during the Term, may only be occupied by one Eligible Tenant and in accordance with the Occupancy Standards. Without limiting the foregoing and for clarity, an Affordable Housing Unit may not be occupied by the Owner or the Owner's family members, other than an Eligible Tenant. For the purposes of this section, "permanent residence" means that the place where the person lives and to which, whenever absent, the person intends to return.
- 2.3 **Occupancy Declaration** – Within 90 days following the issuance of an occupancy permit for the Affordable Housing Units, and thereafter within 30 days after the end of each calendar year during the Term, the Owner will provide to the City a statutory declaration in form and substance satisfactory to the City, acting reasonably, certified by the Owner, firstly, confirming compliance with the terms of this Agreement and, secondly, confirming



the number of Affordable Housing Units designated as Deep Subsidy, Low Income or Moderate Income Housing Units. The Owner authorizes the City to make such inquiries as it considers reasonably necessary in order to confirm that the Owner is complying with this Agreement.

- 2.4 **Subdivision Restriction** – The building containing the Affordable Housing Units shall not be subdivided by any means, including by deposit of a strata plan of any kind under the *Strata Property Act*, unless all of the Affordable Housing Units are included in a single parcel.
- 2.5 **Application** - This Agreement will apply to the Lands notwithstanding the demolition of any building containing Affordable Housing Units, and any subsequent improvements constructed on the Lands will remain subject to the requirements of this Agreement, including section 2.1.

### ARTICLE 3 OCCUPANCY AND MANAGEMENT OF AFFORDABLE HOUSING UNITS

- 3.1 **Occupancy Terms and Conditions** - The occupancy of each Affordable Housing Unit shall comply at all times with all of the following terms and conditions:
  - (a) **Eligible Tenant** - The Affordable Housing Unit shall only be occupied by and rented to an Eligible Tenant, which, for clarity, shall depend on the type of the Affordable Housing Unit (Deep Subsidy, Low Income or Moderate Income Housing Units) and size of the Affordable Housing Unit (studio, 1 bedroom, 2 bedroom or 3 bedroom).
  - (b) **Tenancy Agreement** - The Affordable Housing Unit will be used or occupied only pursuant to a Tenancy Agreement.
  - (c) **Deep Subsidy Housing Unit Rent** - The monthly rent charged for a Deep Subsidy Housing Unit will not exceed the Deep Subsidy Permitted Rent applicable to that Affordable Housing Unit.
  - (d) **Low Income Housing Unit Rent** - The monthly rent charged for a Low Income Housing Unit will not exceed the Low Income Housing Unit Permitted Rent applicable to that Affordable Housing Unit.
  - (e) **Tenancy Agreement Requirements** – Every Tenancy Agreement respecting an Affordable Housing Unit shall comply with the requirements of the Operating Agreement. If, during the Term, there is no Operating Agreement in force in respect of any Affordable Housing Units, or if the Operating Agreement ceases to apply to any Affordable Housing Units, every Tenancy Agreement respecting an Affordable Housing Unit in respect of which there is no applicable Operating Agreement shall comply with the following requirements:
    - (i) a copy of this Agreement shall be attached to the Tenancy Agreement; and

- (ii) the Tenancy Agreement shall include a clause permitting the Owner to terminate the Tenancy Agreement, if the Affordable Housing Unit is not occupied in accordance with the requirements of this Agreement, if the Tenancy Agreement is assigned, or if the Affordable Housing Agreement is subleased in contravention of the requirements of this Agreement.

**3.2 Subleasing and Assignment** – The Owner will not consent to the assignment of a Tenancy Agreement relating to an Affordable Housing Unit or the subletting of an Affordable Housing Unit:

- (a) without the prior written consent of BC Housing, if there is an Operating Agreement in force with respect to the Affordable Housing Unit to be assigned or subleased, or
- (b) if there is no Operating Agreement in force with respect to the Affordable Housing Unit to be assigned or subleased, then unless the assignment or sublease is in favour of an Eligible Tenant and (i) in the case of an assignment, the assignee does not pay any amount to the assignor in consideration of such assignment; or (ii) in the case of a sublease, the subtenant does not pay monthly rent to the Tenant exceeding the rent charged by the Owner applicable to the Affordable Housing Unit to be subleased.

**3.3 Management**

- (a) The Owner will at all times cause a Public Housing Body to administer, manage and operate the Affordable Housing Units in accordance with all of the restrictions and requirements of this Agreement and the Owner's obligations under this Agreement. For clarity, if the Owner is not a Public Housing Body and engages a Public Housing Body pursuant to this Agreement such engagement will not relieve the Owner from any of the Owner's obligations under this Agreement or any of the restrictions or requirements of this Agreement.
- (b) The Owner will maintain the Affordable Housing Units in a good state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Affordable Housing Units.

## **ARTICLE 4 DEFAULT AND REMEDIES**

**4.1 Notice of Default**

If the Owner is in default of this Agreement, the City may give written notice to the Owner requiring that the Owner cures the default within thirty (30) days of receiving such notice, or such longer period as the Owner reasonably requires if the default cannot be cured within 30 days if the Owner is acting diligently. The notice must specify the nature of the



default. The Owner must act diligently to correct the default within the time specified in the notice.

#### **4.2 Specific Relief**

The Owner agrees that, without affecting any other rights or remedies the City may have in respect of any breach of this Agreement that continues beyond the cure period, the City is entitled to obtain an order for specific performance of this agreement and a prohibitory or mandatory injunction in respect of any breach by the Owner of this Agreement that continues beyond the cure period. The Owner agrees that this is reasonable given the public interest in ensuring the provision of Affordable Housing Units to be occupied by Eligible Tenants and restricting occupancy of the Lands in accordance with this Agreement.

#### **4.3 Cumulative Remedies**

No reference to nor exercise of any specific right or remedy under this Agreement or at law or at equity by any party will prejudice, limit, or preclude that party from exercising any other right or remedy. No right or remedy will be exclusive or dependent upon any other right to remedy, but any party, from time to time, may exercise any one or more of such rights or remedies independently, successively, or in combination. The Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise), or other equitable relief may be the only adequate remedy for a default by the Owner under this Agreement.

### **ARTICLE 5 MISCELLANEOUS**

#### **5.1 Paramountcy**

If there is a conflict between a provision in this Housing Agreement and a provision in the Operating Agreement, the Owner and the City agree that the term in the Operating Agreement will prevail during such period as the Operating Agreement remains in force in respect of all of the Affordable Housing Units.

#### **5.2 No Compensation**

The Owner acknowledges and agrees that no compensation is payable, and the Owner is not entitled to and will not claim any compensation from the City, for any decrease in the market value of the Lands or for any obligations on the part of the Owner and its successors in title which at any time may result directly or indirectly from the operation of this Agreement.

### 5.3 **Modification**

This Agreement may only be modified, with the consent of the Owner and by way of a bylaw duly passed by the council of the City and thereafter if it is signed in writing by the City and the Owner.

### 5.4 **Indemnity**

Except to the extent caused by, resulting from, or contributed to by the negligence or willful misconduct of the City, or any one or more of its elected officials, officers, employees and agents, or its and their heirs, executors, administrators, personal representatives, successors and assigns (collectively, the "Indemnified Parties"), the Owner will indemnify and save harmless the Indemnified Parties, from and against all claims, demands, actions, loss, damage, costs and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of:

- (a) the use or occupancy of any Affordable Housing Unit;
- (b) any negligent act or omission of the Owner, or its officers, directors, agents, contractors or other persons for whom at law the Owner is responsible in connection with the observance or performance of the obligations of the Owner under this Agreement;
- (c) any negligent act or omission of the Managing Public Housing Body, or its officers, directors, agents, contractors or other persons for whom at law the Managing Public Housing Body is responsible in connection with the observance or performance of the obligations of the Owner under this Agreement;
- (d) the City refusing to issue a Development Permit, building permit, or refusing to permit occupancy of any building, or any portion thereof, constructed on the lands;
- (e) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Lands or any Affordable Housing Unit or the enforcement of any Tenancy Agreement; and/or
- (f) any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.

### 5.5 **Release**

Except to the extent caused by, resulting from, or contributed to by the negligence or willful misconduct of the City, or any one or more of its elected officials, officers, employees and agents, or its and their heirs, executors, administrators, personal representatives, successors and assigns (collectively, the "Released Persons"), the Owner hereby releases and forever discharges the Released Persons from and against all claims,

demands, damages, actions, or causes of action by reason of, arising out of, or which would or could not occur but for:

- (a) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Lands or any Affordable Housing Unit;
- (b) the City refusing to issue a Development Permit, building permit, or refusing to permit occupancy of any building, or any portion thereof, constructed on the Lands; and/or
- (c) the exercise by the City of any of its rights under this Agreement.

#### 5.6 **Registration & Priority**

The Owner will cause this Agreement to be registered as a covenant and rent charge under section 219 of the *Land Title Act* against title to the Lands in priority to all charges and encumbrances registered or pending registration against title to the Lands save and except those in favour of the City or specifically approved in advance in writing by the City, and will cause a notice of this Agreement under section 483(5) of the *Local Government Act* to be filed in the Land Title Office and shown as a legal notation on title to the Lands.

#### 5.7 **City's Powers Unaffected**

This Agreement does not:

- (a) affect or limit the discretion, rights, duties or powers of the City under any enactment or at common law, including in relation to the use or subdivision of the Lands;
- (b) affect or limit any enactment relating to the use or subdivision of the Lands; or
- (c) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Lands.

#### 5.8 **No Public Law Duty**

Where the City is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the City is under no public law duty of fairness or natural justice in that regard and agrees that the City may do any of those things in the same manner as if it were a private party and not a public body.

**5.9 Enuring Effect**

This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

**5.10 Severability**

If any provision of this Agreement is found to be invalid or unenforceable, such provision or any part thereof will be severed from this Agreement and the resultant remainder of this Agreement will remain in full force and effect.

**5.11 Waiver**

All remedies of the City will be cumulative and may be exercised by the City in any order or concurrently in case of any breach and each remedy may be exercised any number of times with respect to each breach. Waiver of or delay in the City exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.

**5.12 Further Assurance**

Upon request by the City the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the City to give effect to this Agreement.

**5.13 Agreement Runs with the Lands**

This Agreement shall burden and run with the Lands, and bind the successors in title to, and any persons who acquire any interest in, the Lands and any and every parcel into which the Lands may be subdivided by any means, including by deposit of a strata plan of any kind under the *Strata Property Act* provided that:

- (a) in accordance with section 219(8) of the *Land Title Act*, the Owner, a successor in title to the Owner and any person who acquires any interest in the Lands shall not be liable for any breach of this Agreement after the person has ceased to own any interest in the Lands; and
- (b) if the Lands are subdivided under the *Land Title Act*, the burdens and rights described in this Instrument will not run with those parcels derived from the Lands on which the Affordable Housing Units are not or will not be constructed, and at the Owner's request, the City will execute and deliver to the Owner a release of this instrument as against any and all such parcels that do not contain any of the Affordable Housing Units, which release shall be prepared and registered by and at the expense of the Owner.

**5.14 No Joint Venture**

Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the City or give the Owner any authority to bind the City in any way.

**5.15 Applicable Law**

The laws of British Columbia will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia.

**5.16 Interpretation**

In this Agreement:

- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this agreement;
- (c) the term "enactment" has the meaning given to it under the *Interpretation Act* (British Columbia) on the reference date of this Agreement;
- (d) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced from time to time, unless otherwise expressly provided;
- (f) reference to a particular numbered section, or to a particular lettered schedule, is, unless otherwise expressly provided, a reference to the correspondingly numbered section or lettered schedule of this Agreement;
- (g) all Schedules to this Agreement form an integral part of this Agreement;
- (h) time is of the essence; and
- (i) where the word "including" is followed by a list, the contents of the list are not intended to limit or otherwise affect the generality of the expression preceding the word "including".

**5.17 Execution in Counterparts & Electronic Delivery**

This Agreement may be executed in any number of counterparts and delivered by e-mail, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, provided that any party delivering



this Agreement by e-mail shall also deliver to the other party an originally executed copy of this Agreement.

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

#### **PRIORITY AGREEMENT**

This Priority Agreement is between \_\_\_\_\_ (the "**Prior Chargeholder**"), being the registered owner and holder of Mortgage No. \_\_\_\_\_ and Assignment of Rents No. \_\_\_\_\_ (the "**Prior Charges**"), and the City of \_\_\_\_\_, being the registered owner and holder of the covenant under section 219 of the *Land Title Act* (British Columbia) to which this Priority Agreement is attached (the "**Subsequent Charge**").

In consideration of the sum of ten dollars (\$10.00) now paid to the Prior Chargeholder and other good and valuable consideration, the receipt and sufficiency of which the Prior Chargeholder acknowledges, the Prior Chargeholder hereby approves of, joins in and consents to the granting of the Subsequent Charge and hereby postpones all of the Prior Chargeholder's rights under the Prior Charges to the rights of the City under the Subsequent Charge in the same manner and to the same extent as if the Prior Charges had been registered immediately after the Subsequent Charge.

As evidence of its agreement to be bound by this Priority Agreement, the Prior Chargeholder has executed the General Instrument – Part 1 (*Land Title Act* - Form C) attached to and forming part of this Priority Agreement.

**LAND TITLE ACT****FORM C (Section 233) CHARGE****GENERAL INSTRUMENT - PART I Province of British Columbia**PAGE **1** OF 10 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)

**COX, TAYLOR, Barristers & Solicitors****Burns House, Third Floor**

Telephone: (250) 388-4457

**26 Bastion Square****Victoria****BC V8W 1H9**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

**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):

**SEE SCHEDULE**

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

**THE CORPORATION OF THE CITY OF VICTORIA****1 CENTENNIAL SQUARE****VICTORIA****BRITISH COLUMBIA****V8W 1P6****CANADA**

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

Y	M	D

Transferor(s) Signature(s)

**[INSERT NAME OF OWNER]**  
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.



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

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Priority of the Covenant having a registration number one less than this Priority Agreement over Mortgage _____ and Assignment of Rents _____
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION

**LAND TITLE ACT  
FORM E**

**SCHEDULE**

**PAGE 4 OF 10 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.

**5. TRANSFERORS**

[INSERT NAME]

(as to Covenant)

[INSERT NAME]

(As to Priority)

**TERMS OF INSTRUMENT – PART 2**

**HOUSING AGREEMENT & SECTION 219 COVENANT – RENTAL AVAILABILITY**

**THIS AGREEMENT** dated for reference the \_\_\_\_\_, is

**BETWEEN:**

[insert name and address]

("the "Owner")

**AND:**

**THE CORPORATION OF THE CITY OF VICTORIA**

1 Centennial Square, Victoria, British Columbia V8W 1P6

(the "City")

**GIVEN THAT:**

- A. The Owner is the registered owner of the lands identified in the *Land Title Act* Form C attached to and forming part of this Agreement (the "Lands");
- B. Section 483 of the *Local Government Act* permits the City to enter into housing agreements for the provision of affordable and special needs housing, which may include conditions with respect to the form of tenure of housing units, availability of housing units to classes of persons and the administration of housing units;
- C. The Owner and the City wish to enter into this Agreement to ensure that all residential dwellings from time to time constructed on the Lands are available for rent if not occupied by the owner of the dwelling or the owner's family members, which Agreement is to have effect as both a covenant under section 219 of the *Land Title Act* and a housing agreement under section 483 of the *Local Government Act*; and
- D. The City adopted \_\_\_\_\_ Bylaw, 2019, No. \_\_\_\_\_, authorizing the City to enter into this Agreement.

**THIS AGREEMENT** is evidence that in consideration of the payment of \$10.00 from the City to the Owner and other good and valuable consideration (the receipt and sufficiency of which the Owner acknowledges), the Owner covenants and agrees with the City under section 219 of the *Land Title Act* as follows:

- 1. **Tenure of Residential Dwellings** – Every residential dwelling from time to time on the Lands or within any building on the Lands shall be available for occupancy by way of a

tenancy agreement, lease or other rental arrangement of any kind and, without limiting the foregoing:

- (a) no strata corporation shall pass any bylaws or rules preventing, restricting or limiting such occupancy or the ability of a residential dwelling on the Lands to be occupied in such a manner and any strata corporation bylaw or rule that purports to do so will have no force and effect; and
  - (b) no strata corporation shall pass any bylaw, make any rules or approve or impose any levy, fee or charge that would limit the ability of a tenant to use or enjoy any common property or common facilities in a manner that differs from strata lot owners, or would result in a tenant paying a greater amount than strata lot owners with respect to any common property or common facility or the use thereof
- 2. **Owner and Family Members may Occupy** – For clarity, intention of this Agreement is to ensure that residential dwellings on the Lands may be occupied by way of rental, but not to prevent and owner and his or her family members from occupying such a residential dwelling and nothing in this Agreement shall prevent an owner and their family members from occupying a residential dwelling on the Lands.
- 3. **Strata Subdivision Restriction** – The Lands (including any building or part thereof containing any residential dwellings) shall not be subdivided by deposit of a strata plan of any kind under the *Strata Property Act*, unless the strata bylaws are consistent and in accordance with the restrictions under section 1 and do not in any way prevent or restrict a strata lot owner from renting their strata lot and this is confirmed in writing by the City's Director of Sustainable Planning and Community Development, Development Services from time to time, or his or her designate.
- 4. **Municipal Permits** – The Owner agrees that the City may withhold building permits and occupancy permits with respect to any building or other structure from time to time constructed or proposed to be constructed on the Lands, as the City may, in its sole discretion, consider necessary to ensure compliance with this Agreement.
- 5. **Indemnity** – As an integral part of this Agreement, pursuant to section 219(6)(a) of the *Land Title Act*, the Owner hereby indemnifies the City from and against any and all liability, actions, causes of action, claims, suits, proceedings, judgements, damages, expenses, demands and losses at any time suffered or incurred by, or brought against, the City, or any of its elected or appointed officials, officers, employees or agents, arising from or in connection with the granting or existence of this Agreement, the performance of any of the Owner's obligations under this Agreement, any breach of any provision under this Agreement or the enforcement by the City of this Agreement of any provision of this Agreement.
- 6. **Specific Relief** – The Owner agrees that the public interest in ensuring that all of the provisions of this Agreement are complied with strongly favours the award of a prohibitory or mandatory injunction, or an order for specific performance or other

specific relief, by the Supreme Court of British Columbia at the instance of the City, in the event of an actual or threatened breach of this Agreement.

7. **No Effect on Powers** – Nothing in this Agreement shall:
  - (a) affect or limit the discretion, rights or powers of the City or the City's Approving Officer under any enactment or at common law, including in relation to the use, development or subdivision of the Land;
  - (b) affect or limit any enactment relating to the use, development or subdivision of the Lands; or
  - (c) relieve the Owner from complying with any enactment, including in relation to the use, development or subdivision of the Lands.
8. **City Discretion** – Where the City or a representative of the City is required or permitted under this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent:
  - (a) the relevant provision shall not be considered fulfilled unless the approval, opinion, determination, consent or expression of satisfaction is in writing signed by the City or the representative, as the case may be;
  - (b) the approval, opinion, determination, consent or satisfaction is in the sole discretion of the City or the representative, as the case may be; and
  - (c) the City or the representative, as the case may be, is under no public law duty of fairness or natural justice in that regard and the City or the representative may do any of those things in the same manner as if it were a private person and not a public body or employee or officer thereof.
9. **No Obligation to Enforce** – The rights given to the City under this Agreement are permissive only and nothing in this Agreement shall give rise to any legal duty of any kind on the City to anyone or obligate the City to enforce this Agreement or to perform any act or incur any expense.
10. **Agreement Runs with Lands** – This Agreement shall burden and run with, and bind the successors in title to, the Lands and each and every part into which the Lands may be subdivided by any means (including by deposit of a strata plan of any kind under the *Strata Property Act* (British Columbia)).
11. **Waiver** – No waiver by the City of any requirement or breach of this Agreement shall be effective unless it is an express waiver in writing that specifically references the requirement or breach and no such waiver shall operate as a waiver of any other requirement or breach or any continuing breach of this Agreement.
12. **Remedies** - No reference to or exercise of any specific right or remedy by the City shall prejudice or preclude the City from exercising any other right or remedy, whether



allowed at law or in equity or expressly provided for in this Agreement, and no such right or remedy is exclusive or dependent upon any other such remedy and the City may from time to time exercise any one or more of such remedies independently or in combination.

13. **Priority** – The Owner shall cause this Agreement to be registered in the applicable land title office against title to the Lands with priority over all financial liens, charges and encumbrances, and any leases and options to purchase, registered or pending registration at the time of application for registration of this Agreement, including by causing the holder of each such lien, charge, encumbrance, lease or option to purchase to execute an instrument in a form required by the City under which such holder postpones all of the holder's rights to those of the City under this Agreement in the same manner and to the same extent as if such lien, charge, encumbrance, lease or option to purchase had been registered immediately after the registration of this Agreement.
14. **Modification** – This Agreement may not be modified except by an agreement or instrument in writing signed by the Owner or its successor in title and the City or a successor or assignee.
15. **Further Assurances** – The Owner shall do and cause to be done all things, including by executing further documents, as may be necessary to give effect to the intent of this Agreement.
16. **Owner's Expense** – The Owner shall perform and comply with its obligations under this Agreement at its own expense and without compensation from the City.
17. **Severance** – If any part of this Agreement is for any reason held to be invalid by a decision of a court with the jurisdiction to do so, the invalid portion is to be considered severed from the rest of this Agreement and the decision that it is invalid shall not affect the validity or enforceability of the remainder of this Agreement.
18. **Interpretation** - In this Agreement:
  - (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
  - (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this agreement;
  - (c) the term "enactment" has the meaning given to it under the *Interpretation Act* (British Columbia) on the reference date of this Agreement;
  - (d) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;



- (e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced from time to time, unless otherwise expressly provided;
  - (f) reference to a particular numbered section, or to a particular lettered schedule, is, unless otherwise expressly provided, a reference to the correspondingly numbered section or lettered schedule of this Agreement;
  - (g) all Schedules to this Agreement form an integral part of this Agreement;
  - (h) time is of the essence; and
  - (i) where the word "including" is followed by a list, the contents of the list are not intended to limit or otherwise affect the generality of the expression preceding the word "including".
19. **Governing Law** – This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, which shall be deemed to be the proper law hereof.
20. **Enurement** – This Agreement hereof shall enure to the benefit of the parties and their respective successors and assigns, as the case may be.
21. **Entire Agreement** – This Agreement is the entire agreement between the parties regarding its subject.
22. **Execution in Counterparts & Electronic Delivery** - This Agreement may be executed in any number of counterparts and delivered by e-mail, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, provided that any party delivering this Agreement by e-mail shall also deliver to the other party an originally executed copy of this Agreement.

As evidence of their agreement to be bound by this Agreement, the parties have executed the General Instrument – Part 1 (*Land Title Act* Form C) attached to and forming part of this Agreement.

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In consideration of the sum of ten dollars (\$10.00) now paid to the Prior Chargeholder and other good and valuable consideration, the receipt and sufficiency of which the Prior Chargeholder acknowledges, the Prior Chargeholder hereby approves of, joins in and consents to the granting of the Subsequent Charge and hereby postpones all of the Prior Chargeholder's rights under the Prior Charges to the rights of the City under the Subsequent Charge in the same manner and to the same extent as if the Prior Charges had been registered immediately after the Subsequent Charge.

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