

## GENERAL INSTRUMENT - PART 1 Province of British Columbia

Deduct LTSA Fees? Yes

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

STC?      YES

### 3. NATURE OF INTEREST

CHARGE NO.

## ADDITIONAL INFORMATION

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

(a) Filed Standard Charge Terms D.F. No.

(b) Express Charge Terms Annexed as Part 2

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

5. TRANSFEROR(S):

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

7. ADDITIONAL OR MODIFIED TERMS:

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

Officer Signature(s)

**Execution Date**

Transferor(s) Signature(s)

Execution Date		
Y	M	D

OFFICER CERTIFICATION:

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

**EXECUTIONS CONTINUED****Execution Date**

Transferor / Borrower / Party Signature(s)

Y	M	D
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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.

### EXECUTIONS CONTINUED

**Execution Date**

Transferor / Borrower / Party Signature(s)

Y	M	D
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LAND TITLE ACT  
FORM E

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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]
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LAND TITLE ACT  
FORM E

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**TERMS OF INSTRUMENT - PART 2**  
**Statutory Right of Way (Highway) and Section 219 Covenant**

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THIS AGREEMENT is entered into by and

AMONG:

**COOK AND YATES HOLDINGS LTD.**

(Inc. No. BC1133773)  
500 – 509 Richards Street  
Vancouver, BC V6B 2Z7  
(the “**Owner**”)

AND:

**THE CORPORATION OF THE CITY OF VICTORIA**

1 Centennial Square  
Victoria, BC V8W 1P6  
(the “**City**”)

AND:

**CANADIAN IMPERIAL BANK OF COMMERCE**

(the “**Existing Chargeholder**”)

**WHEREAS:**

- A. The Owner is the registered owner of the lands and premises located in the City of Victoria, Province of British Columbia, with the following civic addresses and legal descriptions:

1309 & 1315 Cook Street, Victoria, BC:  
PID: 001-714-244, The South 1/2 of the South 1/2 of Lot 1055, Victoria City

1100, 1102 & 1108 Yates Street, Victoria, BC:  
PID: 001-620-185, Lot 1, District Lots 1064 and 1065, Victoria City, Plan 28733

1120 Yates Street, Victoria, BC:  
PID: 003-531-023, Lot A, Lots 1051, 1052, 1053, 1061, 1062 and 1063, Victoria City, Plan 20267

1109 Johnson Street, Victoria, BC:  
PID: 001-917-731, Lot 1054, Victoria City

1115 Johnson Street, Victoria, BC:  
PID: 009-392-963, The Westerly 50 Feet of Lot 1053, Victoria City  
(collectively, and including any lands into which the same may be consolidated or subdivided, the “**Lands**”)

- B. The Owner has applied, pursuant to its rezoning application no. 00681 and development permit with variances application no. 00104, to redevelop the Lands, which redevelopment will include construction of a thirteen-storey mixed-use building, with commercial uses on the ground level, a day care and residential dwelling units on the second storey and residential uses above at the corner of Yates and Cook Streets; construction of a six-storey multi-unit residential building fronting on Johnson Street (the “**AHOP Building**”); and upgrades to the existing five-storey Victoria Professional Building fronting on Yates Street; together with underground parking and associated facilities and amenities (the “**Development**”);
- C. The City wishes to be able to construct, operate and maintain a public highway and other works including but not limited to a system of roadways, sidewalks and utility services in perpetuity over a portion of the Lands;
- D. To facilitate the construction and use by the City and the public of a public highway, and to facilitate the installation and use of works that may be placed by the City on, under or over the highway including pavements, sidewalks, boulevards, curbs, gutters, drains, sewers, utility poles, wires, fences, overhead and underground cables, traffic signals, transit shelters, and landscaping including but not limited to trees, shrubs, flowers and grass, and irrigation works required for the maintenance of that landscaping, and any other works, facilities or appurtenances necessary for the use of the right of way area as a public highway (collectively the “**Works**”), the Owner has agreed to grant the right of way in this Agreement;
- E. The AHOP Building will include below-grade buildings, services, connections or other equipment located, in part, under the Right of Way Area (as defined in Section 1.1 below) (the “**Encroachments**”), all of which are more particularly described in the plans of the Development submitted by Proscenium Architecture & Interiors Inc. date stamped July 30, 2019 and in the cross sections shown on page A415 of the Proscenium drawings dated 18.11.20 (the “**Architectural Plans**”), and which the City has agreed to permit subject to the terms and conditions of this Agreement;
- F. This right of way is necessary for the operation and maintenance of the City's undertaking as described in Recital D; and.
- G. 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.

**NOW THEREFORE**, in consideration of the sum of One (\$1.00) Dollar of lawful money of Canada, now paid by the City to the Owner (the receipt and sufficiency of which is now acknowledged by the Owner), and in consideration of the covenants and conditions agreed to be observed and performed by the parties and for other valuable consideration:

## **1.0 STATUTORY RIGHT OF WAY**

The Owner, subject to Article 3:

- 1.1 Pursuant to Section 218 of the *Land Title Act*, hereby grants, conveys, confirms and transfers, in perpetuity, to the City, its officers, employees, contractors, licensees and invitees, including without limitation the general public, the full, free and uninterrupted right, licence, liberty, privilege, permission and right of way to use as a public highway, including but not limited to the right to enter onto, use, go, return, pass over and across for highway purposes, that portion of the Lands, shown in heavy outline on the Right of Way Plan filed in the Victoria Land Title Office under Plan No. EPP98190, a reduced copy of which is attached hereto as Schedule "A" (the "**Right of Way Area**"), subject to the terms and conditions set forth below in this Agreement;
- 1.2 Covenants and agrees that in connection with the grant under Section 1.1, subject to the terms and conditions set forth below in this Agreement, the City and its officers, employees, contractors, licensees and invitees shall have the full, free and uninterrupted right, licence, liberty, privilege, permission and right of way to lay down, install, construct, entrench, operate, maintain, inspect, alter, repair, remove, replace, bury, cleanse, string, and otherwise establish one or more system of Works upon the Right of Way Area;
- 1.3 Covenants and agrees with the City that, subject to the terms and conditions set forth below in this Agreement, the City shall:
  - (a) for itself and its agents, workers, contractors and all other licensees of the City;
  - (b) together with machinery, vehicles, equipment, and materials;
  - (c) upon, over, under and across the Right of Way Area;
  - (d) as may be necessary, useful, or convenient for the purposes in Section 1.1 and Section 1.2; and
  - (e) in connection with the operations of the City in relation to the Works,be entitled at all times to enter, use, pass and repass, labour, construct, erect, install, dig, carry away soil or other surface or subsurface materials, and clear of all trees, growth, buildings or obstructions now or hereafter in existence upon, over, under and across the Right of Way Area; and
- 1.4 Transfers, assigns and conveys to the City all right, title and interest in and to any Works that the City, or the Owner have prior to this Agreement established or constructed or maintained or operated within the Right of Way Area or in relation to any similar Works previously constructed by any party whatsoever within the Right of Way Area (but, for greater certainty, not including the Encroachments).



## **2.0 OWNER'S COVENANTS**

The Owner covenants and agrees, subject to Article 3:

- 2.1 Not, and not to permit or allow any other person, to erect, place, install or maintain any building, structure, addition to a building or structure, mobile home, paved driveway or patio, pipe, wire or other conduit on, over or under any portion of the Right of Way Area;
- 2.2 Not to do anything or to permit any act or thing which in the opinion of the City in any way interferes with or damages or prevents access to or use of the Right of Way Area or is likely to cause harm to the Works installed in or upon the Right of Way Area;
- 2.3 From time to time and at all times at the reasonable request and at the cost of the City to do and execute or cause to be made, done or executed any further and other lawful acts, deeds, things, devices, conveyances and assurances in law required to ensure the City of its rights under this Agreement; and
- 2.4 To permit the City to peaceably hold and enjoy the rights hereby granted.

## **3.0 CITY'S COVENANTS**

The City covenants and agrees that:

- 3.1 As far as reasonably possible, the City shall carry out all work in a proper and workmanlike manner so as to do as little injury to the Lands as reasonably possible;
- 3.2 The City shall make good at its own expense damage or disturbance which may be caused to the Lands in the exercise by the City of its rights under this Agreement except as permitted under this Agreement;
- 3.3 Notwithstanding the statutory right of way herein being granted for use as a "highway", the City's intention, during the life of the AHOP Building (but not thereafter, unless otherwise separately approved and agreed in writing by the City), is to use the Right of Way Area for a pedestrian sidewalk and boulevard, as depicted in the Architectural Plans, and related Works; and
- 3.4 The Encroachments may be and remain within the Right of Way Area for the life of the AHOP Building, subject to compliance by the Owner with its covenants and agreements contained herein, but forthwith thereafter the Encroachments must be removed and the Right of Way Area restored to the satisfaction of the City, if then so demanded by the City.

## **4.0 OTHER AGREEMENTS**

The City and Owner covenant and agree that:

- 4.1 Notwithstanding Article 2, the Owner and those claiming authority through the Owner, and their respective agents may bar entry to or eject from the Lands, including the Right of Way Area, any person who:

- (a) acts in a disorderly or offensive manner, or interferes with, threatens or obstructs any other person, appears intoxicated or commits or appears to commit an illegal act;
  - (b) presents an apparent threat to the safety of others or to the security of any landscaping or any improvements on the Right of Way Area or the Lands;
  - (c) takes up abode overnight in the Right of Way Area between the hours of 10:00 p.m. and 7:00 a.m. (or such other hours between dusk and dawn as are stipulated by the Owner), or erects a tent, shelter or other type of structure or accommodation in the Right of Way Area;
  - (d) lights any fires or burns any material in the Right of Way Area; or
  - (e) otherwise creates a nuisance.
- 4.2 Notwithstanding any other term of this Agreement, the Owner may, with the prior written consent of the City and subject to all terms and conditions that may then be imposed by the City, suspend the exercise of the rights of the City and its officers, employees, contractors, licensees and invitees (including members of the general public), during the course of construction of the Works, and for such temporary periods as are necessary from time to time to maintain or repair the improvements on the Lands or the Right of Way Area.
- 4.3 Notwithstanding any other term of this Agreement, the Owner shall have and retain the right to construct, operate, maintain, repair and replace from time to time as required or desired the Encroachments, subject always to the prior written consent of the City and subject to all terms and conditions that may then be imposed by the City.
- 4.4 In exercising any of its rights under this Agreement, the City shall use reasonable efforts to avoid causing any damage to the Encroachments, including without limitation the waterproof membrane and waterproofing system forming part of the Encroachments.

## **5.0 SECTION 219 COVENANTS**

The Owner covenants and agrees with the City pursuant to Section 219 of the *Land Title Act*, in respect of the use of the Lands and the buildings thereon, including the AHOP Building:

- 5.1 That, notwithstanding the uses permitted from time to time by the City's applicable zoning bylaws, the Lands shall not be used except in strict accordance with this covenant;
- 5.2 To trim or, if the City determines it is necessary, cut down any tree or other growth on the Lands which in the opinion of the City, constitutes or may constitute a danger or obstruction to the rights granted to the City herein, the Right of Way Area or the Works or those using same;
- 5.3 To at all times and at the Owner's own expense keep and maintain the sidewalk within the Right of Way Area and the Encroachments in good and sufficient repair and in a neat and clean condition and in a manner which does not pose any risk to persons using the

Right of Way Area or to their property, all to the satisfaction of the City's Director of Engineering and Public Works (the "**Director**") (without any obligation on the part of the Director to determine what is sufficient repair or a safe condition);

- 5.4 That if the Owner fails to comply with Section 5.3, the Director may give notice to the Owner demanding that repairs and maintenance be done within the time specified by the Director, and if the Owner fails to do so to the Director's satisfaction, the Director may, in its sole discretion (without any obligation to do so), cause such repairs and maintenance as it deems necessary, including structural changes, to be made at the Owner's expense. The Owner shall pay the costs of any such repairs and maintenance to the City forthwith on demand, including an eighteen percent (18%) administrative charge. In making or doing any such repairs or maintenance, the City may bring and leave upon the Right of Way Area, the necessary materials, tools and equipment and the City shall not be liable to the Owner for any inconvenience, annoyance, loss of business or other injuries suffered by the Owner by reason of the City effecting the repairs or maintenance or doing any work hereunder;
- 5.5 That the Owner will indemnify and hold harmless, and hereby releases, the City and its elected and appointed officials, officers, employees and agents from all suits, proceedings, losses, damages, expenses, demands, claims, costs (including actual costs of professional advisors and costs associated with remediation of contamination) and harm of any kind, howsoever caused, whether related to death, bodily injury, property loss, property damage or consequential loss or damage, by whomsoever suffered or incurred, arising out of or in any way connected with this Agreement, including:
- (a) the permission to encroach within the Right of Way Area granted by this Agreement;
  - (b) the existence and use of the sidewalk within the Right of Way Area or the Encroachments;
  - (c) any breach or default by the Owner under this Agreement; and
  - (d) the exercise by the City of any of its rights pursuant to this Agreement in accordance with this Agreement.

This indemnity will survive the expiry or earlier termination of this Agreement.

## **6.0 GENERAL**

- 6.1 The Owner shall not diminish or increase the soil cover over any pipe installed in the Right of Way Area without the City's prior written consent.
- 6.2 No right herein granted to or reserved by the City shall require the City to clear, repair or maintain the Works or the Right of Way Area unless the City is expressly required herein to perform such cleaning, repairing or maintenance.
- 6.3 If the Owner defaults in observance or performance of its obligations hereunder, the City, after 10 days prior written notice to the Owner specifying the default and at any time

in case of emergency, may (but is not obligated to) rectify the default, and the Owner shall pay to the City, on demand, its reasonable costs in connection with so rectifying.

- 6.4 The Owner shall, after execution hereof by it at the expense of the Owner, do or cause to be done all acts necessary to grant priority to this Agreement over all financial charges and encumbrances which are registered, or pending registration, against the Title to the Lands in the Land Title Office save and except those as have been specifically approved in writing by the City or have been granted in favour of the City.
- 6.5 Waiver of any default by either party shall not be deemed to be a waiver of any subsequent default by that party.
- 6.6 Whenever this Agreement creates a power or obligation of the City to make a decision or to exercise any contractual right or remedy, the City may do so in accordance with the provisions of this Agreement and no public law duty, whether arising from the principals of fairness or the rules of natural justice, shall have any application.
- 6.7 Notwithstanding anything herein contained, the City reserves all rights and powers of expropriation otherwise enjoyed by the City.
- 6.8 Without limiting Section 6.7, nothing contained or implied in this Agreement will derogate from the obligations of the Owner under any other agreement with the City or prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions 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 Owner and the City.
- 6.9 In spite of any rule of law or equity to the contrary, the Works brought on to, set, constructed, laid, erected in, upon or under the Right of Way Area by the City shall at all times remain the property of the City, even if the Works are annexed or affixed to the freehold, and the Works shall at any time and from time to time be removable in whole or in part by the City.
- 6.10 No part of the title in fee simple to the Lands of the Owner shall pass to or be vested in the City under or by virtue of this Agreement, and the Owner may fully use and enjoy all of the Lands of the Owner subject only to the rights and restrictions in this Agreement.
- 6.11 If any section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of the Agreement.
- 6.12 This Agreement shall attach to and run with the Lands and each and every part to which the Lands may be divided or subdivided whether by subdivision plan, strata plan or otherwise howsoever.
- 6.13 The Owner acknowledges that (a) these Covenants are enforceable against the Owner and his successors in title, but (b) the Owner is not personally liable for breach of these Covenants where such liability arises by reason of an act or omission occurring after the Owner named herein or any future owner ceases to have a further interest in the Lands.

- 6.14 If at the date hereof the Owner is not the sole registered owner of the Lands of the Owner, this Agreement shall nevertheless bind the Owner to the full extent of his interest therein, and if he acquires a greater or the entire interest in fee simple, this Agreement shall likewise extend to such after-acquired interests.
- 6.15 Where the expression "Owner" includes more than one person, all covenants made by the Owner shall be construed as being several as well as joint with respect to all persons constituting the Owner.
- 6.16 This Agreement shall continue to benefit and be binding upon the Owner and City, and their respective heirs, administrators, executors, successors and permitted assigns, as the case may be.
- 6.17 Gender specific terms include both genders and corporations, and the singular and plural forms are interchangeable, according to the context.
- 6.18 This Agreement will be governed and construed according to the laws of the Province of British Columbia.
- 6.19 Nothing contained or implied in this Agreement shall prejudice or affect the rights and powers of the City in the exercise of its functions under any public or private statutes, bylaws, order and regulations, all of which may be fully and effectively exercised in relation to the Land as if this Agreement had not been executed and delivered by the parties.
- 6.20 Any notice, approval or request required or permitted to be given under this Agreement will be in writing and may be given by delivering such notice, approval or request to a representative of the party for whom it is intended, either by personal delivery, or by mailing such notice, approval or request by prepaid registered mail from any post office in British Columbia:

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

Cook and Yates Holdings Ltd.  
500 – 509 Richards Street  
Vancouver, BC V6B 2Z7

Attention: President

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

City of Victoria  
1 Centennial Square  
Victoria, BC V8W 1P6

Attention: City Clerk

or at such other address as the parties may from time to time advise by notice in writing. Any such notice, approval or request will be deemed to have been received on the date of delivery of such notice, approval or request, or on the third business day next

following the date of such mailing if mailed as aforesaid, provided that if mailed should there be, between mailing and the actual receipt of such notice, approval or request, a mail strike, slowdown or other labour dispute which might affect the delivery of such notice, approval or request, such notice, approval or request will only be effective if actually delivered.

- 6.21 The Existing Chargeholder is the holder of mortgages and assignments of rents which are registered in the Land Title Office at Victoria, British Columbia, under numbers CA6242934, CA6242935, CA7943014 and CA7943015, respectively (the “**Existing Charges**”). In consideration of the sum of One (\$1.00) Dollar, the Existing Chargeholder (the receipt whereof is hereby acknowledged), agrees with the Owner and the City, that the within Statutory Right of Way and Section 219 covenant shall be encumbrances upon the Lands in priority to the Existing Charges in the same manner and to the same effect as if it had been dated and registered prior to the Existing Charges.

The parties hereto acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D attached hereto.

Schedule "A"

