

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

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

Deduct LTSA Fees? Yes

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

STC? YES

3. NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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4. TERMS: Part 2 of this instrument consists of (select one only)
(a) Filed Standard Charge Terms D.F. No. (b) Express Charge Terms Annexed as Part 2
A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

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

7. ADDITIONAL OR MODIFIED TERMS:

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

Officer Signature(s)

Execution Date		
Y	M	D

Transferor(s) Signature(s)

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

PAGE
of
PAGES

Execution Date

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

Y	M	D
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LAND TITLE ACT
FORM E

SCHEDULE	PAGE	OF	PAGES
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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

SCHEDULE	PAGE	OF	PAGES
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION	

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

Transportation Demand Management Agreement Johnson Street Building

WHEREAS:

- A. Capitalized terms not otherwise or elsewhere defined in this Agreement will have the respective meanings ascribed to them in Section 1.1;
- B. It is understood and agreed that this Agreement will be read as follows:
- (a) the transferor, Cook and Yates Holdings Ltd., (Inc. no. BC1133773), as more particularly defined in Section 1.1, is called the “**Owner**”; and
 - (b) the transferee, The Corporation of The City of Victoria, is called the “**City**” or the “**City of Victoria**”;
- C. 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, the “**Parent Parcel**”);
- D. The Owner made an application to rezone and develop the Parent Parcel which the City’s elected council has preliminarily considered, and determined that a public hearing date may be set after, among other things, one or more legal agreements have been executed to secure:
- (a) the purchase of two car share vehicles;
 - (b) the provision of two parking spaces for the car share vehicles;
 - (c) provision of car share company membership benefits for one resident of each of

the residential units in the Development;

- (d) provision of an on-site bike share program for residents and ten electric bicycles;
- (e) provision of 48 electric bike charging stations in the long-term bicycle storage rooms; and
- (f) provision of 15 commercial parking spaces assigned to residential visitors after Business Hours and on weekends,

all to the satisfaction of the Director;

- E. The Owner intends to redevelop the Parent Parcel in two phases, the first of which will include construction of a six storey residential building fronting on Johnson Street (the “**Johnson Street Building**”) and the second of which will include construction of a thirteen storey residential building fronting on Yates Street (the “**Yates Street Building**”), and in each of which some of the items described above in Recital D will be provided;
- F. The Owner also intends to consolidate all of the lots now comprising the Parent Parcel and to then subdivide that new parcel into three new lots, such that the Yates Street Building will be located on Lot A, the Johnson Street Building will be located on Lot B and an existing commercial building known as the Victoria Professional Building will be and remain on Lot C;
- G. To satisfy the foregoing terms, the Owner and the City are concurrently entering into this Agreement and a separate agreement in respect of the Yates Street Building (the “**Yates Street Building Agreement**”), which latter agreement will, among other matters, provide for some of the bike share and electric bike charging station requirements, described in Recital D; and
- H. The Statutory Right of Way is necessary for the operation and maintenance of the City’s undertaking.

CONSIDERATION

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

ARTICLE 1 DEFINITIONS

1.1 Definitions

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

- (a) “**Bike Share Program**” means a bicycle sharing program, owned, managed and

operated on such terms and conditions as the Director in his/her sole discretion approves in writing, for the shared use of the Electric Bicycles by the residents of the building in the Development in which the subject Electric Bicycles are located;

- (b) **“Building Permit”** means any building permit that may be issued with respect to any part of the Parent Parcel and the Development after enactment of the Rezoning Bylaw and issuance of the Development Permit, if the Rezoning Bylaw is enacted and the Development Permit is issued;
- (c) **“Business Hours”** means 9:00 a.m. to 5:00 p.m., Monday to Friday, excluding days which are statutory holidays in British Columbia;
- (d) **“City Personnel”** means the City’s elected officials, officers, employees, contractors, subcontractors, agents, licensees, invitees and permittees;
- (e) **“City Solicitor”** means the person employed by the City as the City Solicitor and includes any other City lawyer acting under the authority of the City Solicitor;
- (f) **“Contingency Fund”** means \$2,000 to be provided by the Owner, Cook and Yates Holdings Ltd., (Inc. no. BC1133773), to the Strata Corporation formed upon the subdivision by deposit of strata plan, of the Johnson Street Building and the lands upon which it is constructed;
- (g) **“Development”** means the finished redevelopment of the Parent Parcel contemplated by the Rezoning Bylaw, the Development Permit and the Building Permit;
- (h) **“Development Permit”** means any development permit that may later be issued with respect to any part of the Parent Parcel as a result of the Owner’s development permit with variances application no. 00104;
- (i) **“Director”** means the chief administrator from time to time of the Sustainable Planning and Community Development Department of the City and his/her successors in function and anyone acting under their respective authority;
- (j) **“Electric Bicycles”** means five new electric bicycles, each of which meets the following criteria and standards at time of delivery:
 - (i) it will be compliant with the applicable *Motor Vehicle Act* (British Columbia) Motor Assisted Cycle Regulations; and
 - (ii) it will include a lithium-ion battery with a minimum nominal battery voltage of 36 VDC and minimum capacity of 400 Wh; and
 - (iii) it will comply with such other terms and conditions as the Director in his/her sole discretion approves in writing;
- (k) **“Electric Bike Charging Stations”** means 23 electric bicycle charging stations (each of which, for greater certainty, is comprised of a 110v electric outlet) located in the long-term bicycle storage room(s) in the Johnson Street Building,

to be provided, signed, operated, maintained, repaired and replaced on such terms and conditions as the Director in his/her sole discretion approves in writing;

- (l) **“Johnson Street Building”** has the meaning ascribed to that term in Recital E;
- (m) **“Land Title Act”** means the Land Title Act, R.S.B.C. 1996, c.250;
- (n) **“Losses”** means any and all damages, losses, fines, penalties, costs (including legal costs on a solicitor and own client basis), actions, causes of action, claims, demands, liabilities, indirect or consequential damages (including loss of profit and loss of use and damages arising out of delays) and expenses of every nature or kind whatsoever;
- (o) **“Lot A”** means the subdivided portion of the Parent Parcel that will contain the Yates Street Building;
- (p) **“Lot B”** means the subdivided portion of the Parent Parcel that will contain the Johnson Street Building;
- (q) **“Lot C”** means the subdivided portion of the Parent Parcel that will contain the Victoria Professional Building;
- (r) **“Occupancy Permit”** means, if any occupancy permit is issued for any part of the Development, the first such occupancy permit;
- (s) **“Owner”** means Cook and Yates Holdings Ltd., (Inc. no. BC1133773) and all of its assigns, successors and successors in title to any part of the Parent Parcel or any part thereof and, if any part of the Parent Parcel is subdivided by way of a Strata Plan, then **“Owner”** includes, without limitation, any Strata Corporation(s) thereby created;
- (t) **“Parent Parcel”** has the meaning ascribed to that term in Recital C;
- (u) **“Parking Space Construction Standards”** means the specifications and requirements of the Director in accordance with the City bylaws, policies and guidelines to which the Shared Vehicle Parking Spaces must be constructed, as may be amended from time to time;
- (v) **“Permitted Users”** means the members in good standing of the Shared Vehicle Organization whether or not said members reside on the Parent Parcel;
- (w) **“Rezoning Bylaw”** means any rezoning bylaw that may later be enacted in response to the rezoning application described in Recital D (being rezoning application no. 00681);
- (x) **“Section 219 Covenants”** means the covenants contained in this Agreement made pursuant to Section 219 of the *Land Title Act*;
- (y) **“Shared Vehicle”** means a passenger automobile, van or pick-up truck to be provided in accordance with this Agreement and the Shared Vehicle Service Agreement;

- (z) **“Shared Vehicle Organization”** means a legal entity whose principal business objective is to provide its members, for a fee, with a car-sharing service by which such members have self-serve access to a fleet of Shared Vehicles which they may reserve for use on an hourly or other basis, and which the City has approved and which has entered into the Shared Vehicle Service Agreement with the Owner, but does not include rental vehicle organizations;
- (aa) **“Shared Vehicle Parking Spaces”** means two parking spaces situate within the underground parkade of the Johnson Street Building, as shown outlined in bold black ink on the plan attached hereto as Schedule “A” , or such two other parking spaces as the Owner may request and the Director may first agree to in writing, constructed in accordance with the Parking Space Construction Standards and reserved for the exclusive use of the Shared Vehicles to be provided pursuant to this Agreement;
- (bb) **“Shared Vehicle Service Agreement”** means a legally binding agreement, satisfactory to the Director, entered into by the Owner and the Shared Vehicle Organization for the provision of the Shared Vehicles, pursuant to the terms of this Agreement, and containing such other terms and conditions as the Owner may request and the Director may first agree to in writing;
- (cc) **“Shared Visitor Parking Spaces”** means the 15 parking spaces situate within the underground parkade of the Johnson Street Building, each substantially as shown outlined in bold black ink and marked with the letter “V” on the architectural plan attached hereto as Schedule “B”, or such 15 other parking spaces as the Owner may request and the Director may first agree to in writing, reserved for the use of:
 - (i) visitors to the commercial premises on the Lands during Business Hours; and
 - (ii) visitors to the residential premises on the Lands outside of Business Hours,to be provided, signed, operated, maintained, repaired and replaced on such terms and conditions as the Director in his/her sole discretion approves in writing;
- (dd) **“Statutory Right of Way”** means the statutory right of way made pursuant to Section 218 of the *Land Title Act* and granted by the Owner to the City pursuant to Article 3;
- (ee) **“Strata Corporation”** means a strata corporation created by the filing of a Strata Plan;
- (ff) **“Strata Plan”** means a strata plan filed in respect of the Parent Parcel or any subdivided portion thereof pursuant to the *Strata Property Act*;
- (gg) **“Strata Property Act”** means the Strata Property Act, S.B.C. 1998, c. 43;
- (hh) **“Victoria Professional Building”** means the six-storey commercial building

located at 1120 Yates Street;

- (ii) **“Yates Street Building”** has the meaning ascribed to that term in Recital E; and
- (jj) **“Yates Street Building Agreement”** has the meaning ascribed to that term in Recital G;.

ARTICLE 2 PRE- AND POST-OCCUPANCY CONDITIONS

2.1 Section 219 Covenant – Pre-Occupancy Conditions

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

- (a) apply for an Occupancy Permit for all or part of the Development;
- (b) take any action to compel issuance of an Occupancy Permit for all or part of the Development; or
- (c) occupy all or part of the Development,

and agrees that no part of the Development will be occupied, and the City will have no obligation to issue an Occupancy Permit for the same, even if the Owner has completed construction of the Development, unless and until the Owner has satisfied the following preconditions in accordance with the Development Permit, the Building Permit, this Agreement and to the satisfaction of the Director:

- (d) the Owner has purchased and provided the Electric Bicycles, provided the Contingency Fund and implemented, or caused to be implemented by a Strata Corporation, the Bike Share Program;
- (e) the Owner has provided the Electric Bike Charging Stations;
- (f) the Owner has provided the Shared Visitor Parking Spaces;
- (g) the Owner has provided two Shared Vehicle Parking Spaces;
- (h) two Shared Vehicles have been purchased at the Owner's expense and are registered in the name of the Shared Vehicle Organization;
- (i) the Owner has made all arrangements necessary to enable the occupant(s) of each of the residential units within the Johnson Street Building to enjoy the membership privileges offered by the Shared Vehicle Organization;
- (j) the Owner has entered into and registered in the Land Title Office, where applicable, such additional legal agreements as the Director may require and on such terms and conditions satisfactory to the City Solicitor, in respect of the foregoing conditions; and

- (k) the Owner, at its expense, has entered into a legally binding Shared Vehicle Service Agreement with the Shared Vehicle Organization by which the Owner shall arrange for the provision of two Shared Vehicles to the Development. The Shared Vehicle Service Agreement shall be on arrangements, terms and conditions to be agreed upon by the parties and the Director, but at a minimum, the Agreement must provide:
- (i) for the ongoing maintenance, repair and operation of two Shared Vehicles in a prudent manner and, if either Shared Vehicle is damaged beyond repair, the prompt replacement of the Shared Vehicle with a vehicle which is at least equivalent in value and function to that Shared Vehicle;
 - (ii) for the making of two Shared Vehicles available for use by the Permitted Users not later than the date of issuance of an Occupancy Permit for the Development, and for keeping it in use thereafter exclusively for the Permitted Users;
 - (iii) that, at all times, except when in use by the Permitted Users or when being repaired or serviced, two Shared Vehicles will be parked and kept in the Shared Vehicle Parking Spaces;
 - (iv) for the management of the memberships in the Shared Vehicle Organization purchased by the Owner and the usage rights of all residents in the Development relating thereto (including the cancellation of rights for residents who move out of the Development and granting of rights for new residents who move into the Development when occupancies change);
 - (v) for the assignment of the Shared Vehicle Service Agreement by the Owner (or its successors) to any Strata Corporation or to any successor in title to the lands on which the Johnson Street Building are located concurrent with the assignment of this Agreement, but not prior to all financial obligations of the Owner pursuant to the Shared Vehicle Service Agreement being fulfilled by the Owner to the satisfaction of the Director (other than ordinary course operating financial obligations of the Owner that may be incurred over the term of the Shared Vehicle Service Agreement after assignment to the Strata Corporation);
 - (vi) terms of access to the Shared Vehicle Parking Spaces by the Permitted Users, which must include the ability of the Permitted Users to access the Shared Vehicle Parking Spaces 24 hours a day/ 7 days a week and address any requirements for access, including FOBs, passcodes or keys; and
 - (vii) that the Shared Vehicle Service Agreement may not be amended or terminated without the prior written consent of the Director, provided that the Director will not unreasonably withhold its consent if the Owner is in good faith entering into a new Shared Vehicle Service Agreement that satisfies the requirements of this Agreement.

2.2 Section 219 Covenant – Post Occupancy Conditions

The Owner further covenants with the City pursuant to Section 219 of the *Land Title Act*, in respect of the use of the Parent Parcel and any building thereon, that notwithstanding that the Owner may be otherwise entitled, the Owner will, throughout the term of this Agreement:

- (a) continue to provide the Electric Bicycles and implement the Bike Share Program;
- (b) continue to provide the Electric Bike Charging Stations;
- (c) inspect, maintain and repair, and keep well-lit, clearly signed and in a tidy and safe condition, the Shared Visitor Parking Spaces and the Shared Vehicle Parking Spaces and all access routes thereto and egress routes therefrom, all to the full satisfaction of the Director in accordance with this Agreement and all applicable City building permits, bylaws, policies and guidelines;
- (d) take all commercially reasonable steps to ensure that the Shared Vehicle Parking Spaces are not used by anyone other than Permitted Users, and always for the purpose of parking two Shared Vehicles, and that Shared Visitor Parking Spaces are used only in accordance with the terms and conditions of this Agreement; and
- (e) abide by the terms and conditions of the Shared Vehicle Service Agreement.

2.3 Security for Memberships in the Shared Vehicle Organization and Bicycles

As security for the Owner's obligation to provide the Electric Bicycles and the Contingency Fund (see Section 2.1(d)), two Shared Vehicles (see Section 2.1(h)) and one membership in the Shared Vehicle Organization for each residential unit in the Development (see Recital D(c)), the number of which units will be deemed to be 217 at the time of issuance of this Letter of Credit, the Owner will deliver to the City a letter of credit prior to the issuance of the Building Permit, which:

- (a) is an amount equal to not less than the cost of the Shared Vehicles and memberships in the Shared Vehicle Organization plus \$14,500 (comprised of \$12,500 as the value attributed to the Electric Bicycles for the purposes of this letter of credit, and the \$2,000 Contingency Fund);
- (b) is issued by a Schedule I Bank under the *Bank Act* (Canada) or other reputable financial institution acceptable to the Director, and bears an identifying number;
- (c) is clean, irrevocable, unconditional and without limitations;
- (d) is payable at site at an identified branch of the issuer located in Victoria;
- (e) states the issue date and expiry date, if any, is for an initial term of not less than one year from the issue date and is thereafter automatically renewing;
- (f) states that the issuer will not enquire as to whether or not the City has a right to make demand on the Letter of Credit, that the City may make partial as well as full drawings, and that the issuer will duly honour drafts drawn in conformity with

the Letter of Credit if presented to the issuer on or before the expiry date, if any, of the Letter of Credit;

- (g) identifies the City as beneficiary and the Owner as the applicant, unless alternate arrangements are approved by the Director;
- (h) references this Agreement;
- (i) requires sixty (60) days prior notice by the issuer to the City in the event of non-renewal or cancellation by the issuer;
- (j) entitles only the issuer to give notice of non-renewal;
- (k) is signed by an authorized signatory of the issuer; and
- (l) is, in all other respects, in form and substance acceptable to the Director.

As the financial obligations of the Owner secured by this letter of credit are satisfied by the Owner, and if the number of residential units in the Development is ultimately less than 217, the Owner may apply to the City to reduce the amount of the letter of credit by amounts equivalent to the value of the obligations satisfied to that time.

ARTICLE 3 STATUTORY RIGHT OF WAY

3.1 Right of Way Grant

Pursuant to Section 218 of the *Land Title Act*, the Owner grants to the City, City Personnel and the City's invitees and licencees, including the Permitted Users, absolutely and in perpetuity an easement by way of statutory right of way on and over the Parent Parcel, for the purposes described in Section 3.2 and on the terms and conditions contained in this Agreement. This right will be full, free and uninterrupted.

3.2 Right of Way Purposes

At any time the City, City Personnel, the City's invitees and licensees (which invitees and licensees in respect of paragraphs (a) and (b) below, means the Permitted Users, and in respect of paragraph (c) and (d) below, means visitors to the Johnson Street Building or the Victoria Professional Building), may be in and upon the Parent Parcel:

- (a) to park and access the Shared Vehicles in the Shared Vehicle Parking Spaces designated for the Shared Vehicles;
- (b) for access and egress as pedestrians and in the Shared Vehicles between the Shared Vehicle Parking Spaces and the adjacent City street;
- (c) to park vehicles in the Shared Visitor Parking Spaces;
- (d) for access and egress as pedestrians and in the vehicles between the Shared Visitors Parking Spaces and the adjacent City street; and

- (e) to confirm compliance by the Owner with the terms and conditions of this Agreement,

all in accordance with this Agreement.

3.3 Exercise of Right of Way

The parties agree that it is their intention that the rights granted in Sections 3.1 and 3.2 will be exercised only with respect to the Shared Visitor Parking Spaces and the Shared Vehicle Parking Spaces and the vehicular and pedestrian access and egress routes thereto and therefrom, and therefore that usage and exercise of the Statutory Right of Way on and over the Parent Parcel:

- (a) is intended to be restricted in practice to those portions of the Parent Parcel and the Development designed for such purposes;
- (b) in respect of the Shared Visitor Parking Stalls, may be subject to a requirement for users to pay applicable parking fees in force from time to time for use of such Shared Visitor Parking Stalls during Business Hours, and subject to commercially reasonable enforcement activities in respect of such pay parking arrangements;
- (c) may be subject to such reasonable rules and regulations as may from time to time be prescribed by the Owner, including those for the safety and security of the Shared Visitor Parking Spaces (and permitted users of the Shared Visitor Parking Spaces) and the Shared Vehicle Parking Spaces (and Permitted Users), provided that notwithstanding the right of the Owner to make reasonable rules and regulations from time to time, such rules and regulations will:
 - (i) not permit the Owner or any other person to charge or permit to be charged, directly or indirectly, any fee whatsoever for the access to or use by the Permitted Users of the Shared Vehicle Parking Spaces, other than, if applicable, a charge included in strata fees payable by all strata lot owners in a Strata Corporation for maintaining the Shared Vehicle Parking Spaces; and
 - (ii) not in any way whatsoever limit the obligation of the Owner to make (A) the Shared Vehicle Parking Spaces and all access and egress routes to/from the Shared Vehicle Parking Spaces available to the Permitted Users; and (B) the Shared Visitor Parking Spaces and all access and egress routes to/from the Shared Visitor Parking Spaces available to permitted users of the Shared Visitor Parking Spaces, at all times (7 days per week/24 hours per day) provided that the Owner may locate the Shared Visitor Parking Spaces and the Shared Vehicle Parking Spaces behind a security gate or other mechanism restricting access only if (C) the Permitted Users are provided with a convenient means of access to the Shared Vehicle Parking Spaces; and (D) the permitted users of the Shared Visitor Parking Spaces are provided with a convenient means of access to Shared Visitor Parking Spaces, at all times (7 days per week/24 hours per day).

3.4 No City Obligation

Nothing in Section 3.1 or 3.2 implies that the City has any obligation to the Owner or anyone else to exercise any of their respective rights under Section 3.1 or 3.2.

3.5 Right of Way Continuance

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

ARTICLE 4 SUBDIVISION

4.1 Subdivision Generally

If the Parent Parcel, or any portion thereof, is subdivided at any time hereafter either under the provisions of the *Land Title Act* or under the *Strata Property Act*, or under other similar legislation enacted from time to time, then upon the deposit of a plan of subdivision, strata plan, or similar plan as the case may be, subject to Sections 4.2 and 4.3:

- (a) the rights and benefits of this Agreement herein granted will be annexed to and run with each of the new parcels, lots or other subdivided parcels and areas so created; and
- (b) the burdens, obligations, agreements, Section 219 Covenants and Statutory Right of Way contained in this Agreement will continue to charge each of the new parcels, lots or other subdivided parcels and areas so created.

4.2 Subdivision to Create Lots A, B and C

If the Parent Parcel is subdivided at any time hereafter under the provisions of the *Land Title Act* or under other similar legislation enacted from time to time, so as to create separate legal lots containing the Yates Street Building ("Lot A" for the purposes of this section 4.2), the Johnson Street Building ("Lot B" for the purposes of this section 4.2) and the Victoria Professional Building ("Lot C" for the purposes of this section 4.2), then upon the deposit of a plan of subdivision or similar plan, as the case may be, all references to the term "Parent Parcel" in sections 2.1, 2.2, 3.1, 3.2, 3.3, 4.3, 5.1, 5.2, 8.4, 8.5, 8.7, 8.12 and 8.17 of this Agreement will be deemed to be references to "Lot B" only instead, and the City will, subject as hereinafter provided, execute discharges of the Section 219 Covenants and the Statutory Rights of Way contained in this Agreement from all subdivided portions of the Parent Parcel that do not contain any part of the Johnson Street Building, provided that:

- (a) the City first confirms to its satisfaction that any such discharge will not compromise or diminish the rights and obligations intended to be created by this Agreement;
- (b) the City will have no obligation to execute such discharges until a written request

therefor from the Owner has been received by the City, which request will include the form of discharge in registrable form;

- (c) the cost of preparation of such discharges and the cost of registration of the same in the applicable Land Title Office will be paid by the Owner; and
- (d) the City will have a reasonable time within which to execute such discharges and return same to the Owner for registration.

4.3 Subdivision by Strata Plan

If the Parent Parcel, or any portion thereof, is subdivided by a strata plan:

- (a) no part of the Shared Visitor Parking Spaces or the Shared Vehicle Parking Spaces or the drive aisles, ramps or pedestrian means of access and egress thereto will form part of or be located within any strata lot or limited common property, and all of the such spaces will be contained within the common property established by the strata plan;
- (b) the Section 219 Covenants granted herein will be registered against each individual strata lot and noted on the common property sheet of the Strata Corporation;
- (c) the Statutory Right of Way granted herein will be noted on the common property sheet of the Strata Corporation;
- (d) the Owner will cause the Strata Corporation or the Strata Corporations so created to assume the Owner's covenants in this Agreement and that Strata Corporation or those Strata Corporations will perform and observe the Owner's covenants in this Agreement (other than obligations to be performed prior to Occupancy Permit issuance, which shall remain the responsibility of the original Owner named herein), solely at the expense of the strata lot owners; as members of the applicable Strata Corporation;
- (e) the liability of each strata lot owner for the performance and observance of the Owner's covenants herein will be in proportion to the unit entitlement of his, her or its strata lot as established by the strata plan; and
- (f) the strata corporation(s) so created will manage and maintain the Shared Visitor Parking Spaces and the Shared Vehicle Parking Spaces and the strata corporation(s) may adopt and enforce reasonable rules and regulations concerning the safe use, maintenance and repair of the Shared Visitor Parking Spaces and the Shared Vehicle Parking Spaces, provided that such rules and regulations must not interfere with or prevent the reasonable use of the Shared Vehicle Parking Spaces by the Permitted Users or the Shared Visitor Parking Spaces by the permitted users thereof, and subject always to Section 3.3(b).

ARTICLE 5 INDEMNITY AND RELEASE

5.1 Indemnity

The Owner, for itself and its successors and assigns, hereby covenants and agrees to indemnify and save harmless the City and all City Personnel from any and all Losses which may arise or accrue to anyone (including a Permitted User), whether as owner, occupier or user of the Parent Parcel, against the City or any City Personnel or which the City or any City Personnel, may pay, incur, sustain or be put to by reason of or which would not or could not have been sustained “but for” this Agreement, including:

- (a) the breach of any covenant in this Agreement;
- (b) the use of the Parent Parcel contemplated under this Agreement; and
- (c) restrictions or requirements under this Agreement.

This indemnity forms part of the Section 219 Covenants contained herein and will survive the discharge or any termination of this Agreement.

5.2 Release

The Owner, for itself and its successors and assigns, hereby releases and forever discharges the City and all City Personnel of and from all Losses which the Owner can or may have against the City for any Losses that the Owner may pay, incur, sustain or be put to by reason of or which would not or could not have been sustained “but for” this Agreement, including:

- (a) the breach of any covenant in this Agreement;
- (b) the use of the Parent Parcel contemplated under this Agreement; and
- (c) restrictions or requirements under this Agreement.

This release will survive the discharge or any termination of this Agreement.

ARTICLE 6 OWNER DEFAULT

6.1 Owner’s Default

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

to do so, the City may apply to court for a mandatory injunction requiring the Owner to take such action. This Section 6.1 will survive termination or release of this Agreement.

ARTICLE 7 NOTICES

7.1 Notices

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

- (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, British Columbia
V8W 1P6
Attention: City Clerk

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

ARTICLE 8 MISCELLANEOUS

8.1 Effect of Termination of Shared Vehicle Service Agreement

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

8.2 Severability

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

8.3 Joint and Several

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

8.4 Registration

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

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

8.5 City's Other Rights Unaffected/No Derogation

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

8.6 Further Assurances

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

8.7 Liability for Covenants

The Owner acknowledges:

- (a) that the covenants of the Owner in this Agreement are enforceable against the Owner and its successors in title, but

- (b) that the Owner is not personally liable for any breach of these covenants where such liability arises by reason of an act or omission occurring after such Owner ceases to have a further interest in the Parent Parcel.

8.8 No Waiver

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

8.9 Time of Essence

Time will be of the essence of this Agreement.

8.10 City's Costs

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

8.11 Owner's Costs

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

8.12 Owner's Representations and Warranties

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

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

8.13 Enurement

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

8.14 Interpretation

In this Agreement:

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

8.14 Headings

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

8.15 Number

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

8.16 Governing Law and Legislation

This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia. Any reference to a statute is to the statute and its regulations in force on the date the Form C General Instrument - Part 1 attached hereto is fully executed and to subsequent amendments to or replacements of the statute or regulations.

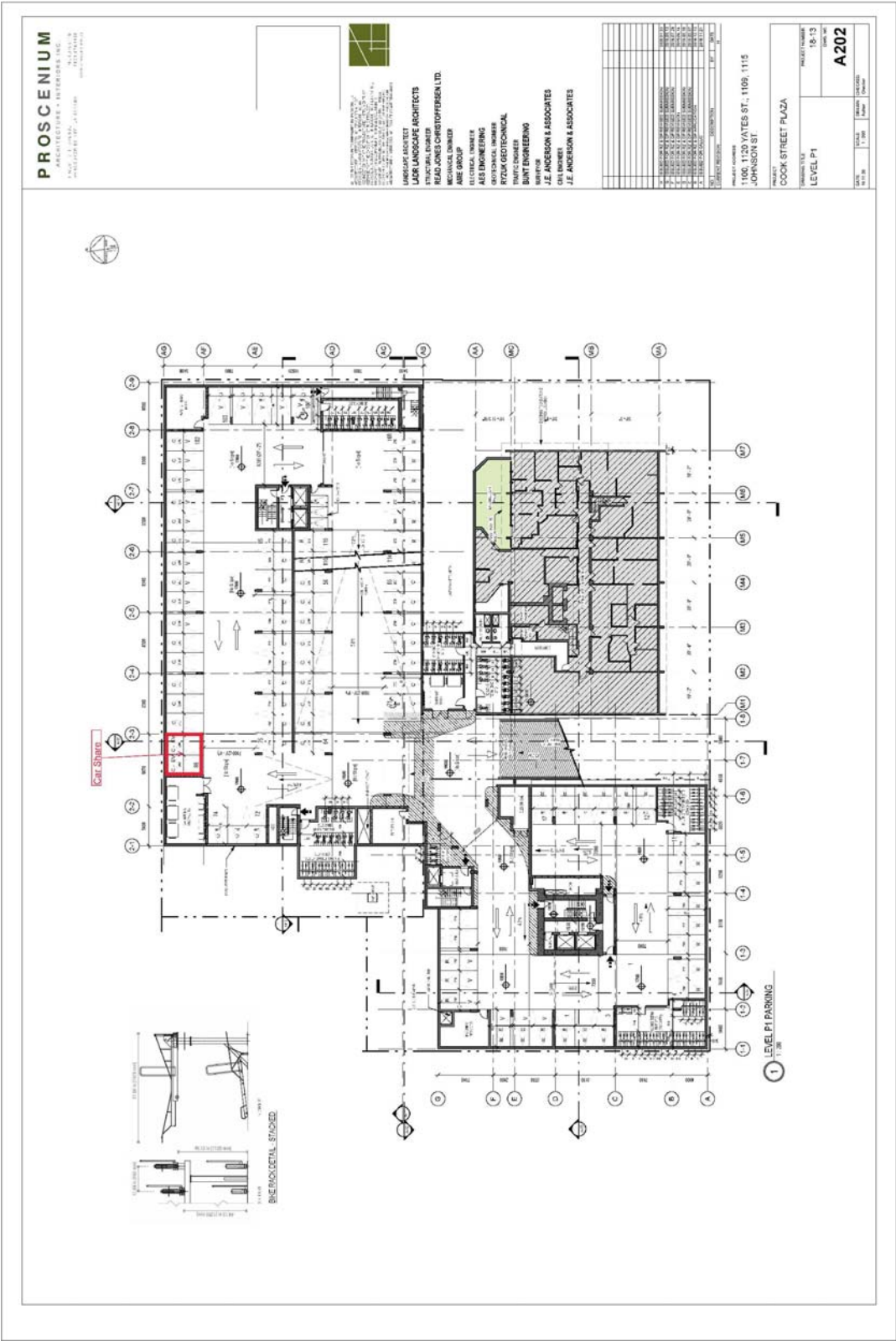
8.17 Priority

The Canadian Imperial Bank of Commerce (the "**Existing Chargeholder**") is the holder of mortgages and assignments of rents which are registered against title to the Parent Parcel 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 Covenants shall be encumbrances upon the Parent Parcel 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the General Instrument - Part 1, to which these Terms of Instrument are attached and form a part of.

SCHEDULE "A"
Location of Shared Vehicle Parking Spaces



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