

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
-----------------------	------------	------------------------

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)

EXECUTIONS CONTINUED

Execution Date

Y	M	D
---	---	---

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
---	---	---

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	OF	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]

LAND TITLE ACT
FORM E

SCHEDULE		PAGE	OF	PAGES
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
--------------------	------------	------------------------

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
--------------------	------------	------------------------

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
--------------------	------------	------------------------

TERMS OF INSTRUMENT - PART 2

No Building Permit Covenant 1120 Yates Street, Victoria, B.C.

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, and including any lands into which the same may be consolidated or subdivided, the “**Lands**”);
- D. The Owner made an application to rezone and redevelop the Lands (the “**Application**”) by consolidating all of the lots that now comprise the Lands, to then subdivide that new parcel into three new lots, identified for the purposes of this agreement as Lot A, Lot B and Lot C, and to then:
- (a) build, in the first of two phases, the Lot B Building;
 - (b) build, in the second phase, the Lot A Building; and

- (c) upgrade and retain the Victoria Professional Building;
- E. The City's elected council preliminarily considered the Application, and determined that a public hearing date may be set after, among other things, one or more legal agreements have been executed to secure the agreement of the Owner to:
 - (a) provide 104 dwelling units that will be sold under BC Housing's Affordable Home Ownership Program and to ensure that the unit types include 12 studios, 55 one bedroom, 35 two-bedroom and 2 three-bedroom dwelling units, to the satisfaction of the Director;
 - (b) that the City enter into an agreement with BC Housing and the applicant to ensure that 10% of the current fair market value of each unit sold under BC Housing's Affordable Home Ownership Program (secured as a second mortgage and registered on title) is allocated to the City at the time of resale of a dwelling unit and that the amenity contributions are secured in the City's Affordable Housing Reserve Fund to the satisfaction of the Director;
 - (c) provide a daycare with a minimum floor area of 362m² in the building to built on Lot A for a minimum of ten years, to the satisfaction of the Director; and
 - (d) enter into a reciprocal access agreement to allow pedestrians and vehicles to cross Lot C in order to access the underground parkade on Lot A and Lot B; and
- F. To satisfy the foregoing terms the Owner and the City have entered into this Agreement.

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) **"Affordable Home Ownership Program"** means the Affordable Home Ownership Program operated by BC Housing that is intended to help create new home ownership homes that are affordable to middle income households, through partnerships with developers and municipalities, and includes any successor program;
- (b) **"Application"** has the meaning ascribed to that term in Recital D;

- (c) **“BC Housing”** means the British Columbia Housing Management Commission, and includes any successor in function and any successor organization that manages the Affordable Home Ownership Program;
- (d) **“Building Permit”** means any building permit that may be issued by the City with respect to the Lands 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;
- (e) **“City Personnel”** means the City’s elected officials, officers, employees, contractors, subcontractors, agents, licensees, invitees and permittees;
- (f) **“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;
- (g) **“Daycare Covenant”** means a restrictive covenant, in form and content satisfactory to the Director and City Solicitor, charging Lot A and providing that the use of the Daycare Space will be restricted to Daycare Use for a period of not less than 10 years from issuance of an occupancy permit for the Daycare Space;
- (h) **“Daycare Space”** means an area in the Lot A Building with a minimum floor area of 362m², which will be restricted for Daycare Use and subject to the Daycare Covenant, to be constructed in accordance with the plans approved pursuant to the Development Permit and the Building Permit for Lot A;
- (i) **“Daycare Use”** means use as a daycare facility for children;
- (j) **“Development”** means the redevelopment of the Lands contemplated by the Rezoning Bylaw, the Development Permit and the Building Permit;
- (k) **“Development Permit”** means any development permit that may be issued by the City after the execution of this Agreement by all parties, with respect to the Lands as a result of the Owner’s development permit with variances application no. 00104;
- (l) **“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;
- (m) **“Land Title Act”** means the Land Title Act, R.S.B.C. 1996, c.250;
- (n) **“Lands”** has the meaning ascribed to that term in Recital C;
- (o) **“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;
- (p) **“Lot A”** means the subdivided portion of the Lands, the approximate boundaries of which are show on the architectural plan attached as Schedule “A” hereto, and

that will contain the Lot A Building;

- (q) **“Lot A Building”** means a 12 or 13-storey mixed-use commercial and residential building to be built on Lot A, that will also contain the Daycare Space on the second floor, together with underground parking and related services and amenities;
- (r) **“Lot B”** means the subdivided portion of the Lands, the approximate boundaries of which are show on the architectural plan attached as Schedule “A” hereto, and that will contain the Lot B Building;
- (s) **“Lot B Building”** means a six-storey residential building to be built on Lot B that will contain 104 units, which will be comprised of 2 studios, 55 one bedroom, 35 two-bedroom and 2 three-bedroom dwelling units, all of which will be sold and owned pursuant to the Affordable Home Ownership Program, together with underground parking and related services and amenities;
- (t) **“Lot C”** means the subdivided portion of the Lands, the approximate boundaries of which are show on the architectural plan attached as Schedule “A” hereto, and that now contains the Victoria Professional Building;
- (a) **“Middle Income Limit”** shall have the meaning ascribed thereto in the Affordable Home Ownership Program, being, in respect of units with two or two or more bedrooms, households whose gross household income does not exceed the 75th income percentile for families with children, as determined by BC Housing from time to time, and in respect of units with less than two bedrooms, households whose gross household income does not exceed the 75th income percentile for families without children, as determined by BC Housing from time to time;
- (b) **“Occupancy Permit”** means, if any occupancy permit is issued for any part of the Development by the City after this Agreement has been executed by all parties, the first such occupancy permit;
- (c) **“Owner”** means Cook and Yates Holdings Ltd., (Inc. no. BC1133773) and all of its assigns, successors and successors in title to the Lands or any part thereof and, if any part of the Lands is subdivided by way of a Strata Plan, then **“Owner”** includes, without limitation, any Strata Corporation(s) thereby created;
- (d) **“Rezoning Bylaw”** means any rezoning bylaw that may be enacted by the City after the execution of this Agreement by all parties, in response to the rezoning application described in Recital D (being rezoning application no. 00681);
- (e) **“Section 219 Covenants”** means the covenants contained in this Agreement made pursuant to Section 219 of the *Land Title Act*;
- (f) **“Strata Corporation”** means a strata corporation created by the filing of a Strata Plan;
- (g) **“Strata Plan”** means a strata plan filed in respect of the Lands or any subdivided portion thereof pursuant to the *Strata Property Act*;

- (h) “**Strata Property Act**” means the Strata Property Act, S.B.C. 1998, c. 43;
- (i) “**Victoria Professional Building**” means the five-storey commercial building located on Lot C as of the date this Agreement is executed by all parties.

ARTICLE 2 PRE-BUILDING PERMIT CONDITIONS

2.1 Section 219 Covenant – Pre-Building Permit Conditions

The Owner covenants with the City pursuant to Section 219 of the *Land Title Act*, in respect of the use of the Lands 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 a Building Permit for all or part of the Development;
- (b) take any action to compel issuance of a Building Permit for all or part of the Development; or
- (c) commence any construction in respect of which a Building Permit is required to be obtained,

and agrees that the City will have no obligation to issue a Building Permit for all or part of the Development, unless and until the Owner has satisfied the following preconditions in accordance with the Development Permit, this Agreement and to the satisfaction of the Director:

- (d) the Owner, BC Housing and the City have entered into a legally binding agreement which outlines the terms and conditions applicable to the 104 dwelling units in the Lot B Building that will be sold under the Affordable Home Ownership Program, including that those 104 units will be comprised of 12 studios, 55 one-bedroom, 35 two-bedroom and 2 three-bedroom dwelling units, that 10% of the current fair market value of each unit sold under the Affordable Home Ownership Program (secured as a second mortgage and registered on title) is allocated to the City at the time of resale of a dwelling unit and that those contributions are secured in the City's Affordable Housing Reserve Fund. Pursuant to the agreement, qualifying buyers will be required to satisfy the conditions and requirements of the Affordable Home Ownership Program, including without limitation meeting the Middle Income Limit;
- (e) the Owner and the City have entered into the Daycare Covenant; and
- (f) reciprocal access arrangements have been made to allow pedestrians and vehicles to cross Lot C in order to access the underground parkade on Lot A and Lot B;

some or all of which will be contained in agreements first registered by the Owner in the Land Title Office if and as required by the Director.

ARTICLE 3 INDEMNITY AND RELEASE

3.1 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, whether as owner, occupier or user of the Lands, 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 Lands 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.

3.2 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 Lands 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 4 NOTICES

4.1 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, 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.

**ARTICLE 5
MISCELLANEOUS**

5.1 Severability

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

5.2 Joint and Several

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

5.3 Registration

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

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

5.4 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 Lands as if this Agreement had not been executed and delivered by the Owner and the City.

5.5 Further Assurances

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

5.6 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.

5.7 Time of Essence

Time will be of the essence of this Agreement.

5.8 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.

5.9 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.

5.10 Owner's Representations and Warranties

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

- (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement and to bind all legal and beneficial interests in the title to the Lands with the interests in land created hereby;
- (b) upon execution and delivery of this Agreement and registration thereof, the interests in land created hereby will encumber all legal and beneficial interests in

the title to the Lands;

- (c) this Agreement will be fully and completely binding upon the Owner in accordance with its terms and the Owner will perform all of its obligations under this Agreement in accordance with its terms; and
- (d) the foregoing representations, warranties, covenants and agreement will have force and effect notwithstanding any knowledge on the part of the City whether actual or constructive concerning the status of the Owner with regard to the Lands or any other matter whatsoever.

5.11 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.

5.12 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.

5.13 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.

5.14 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.

5.15 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

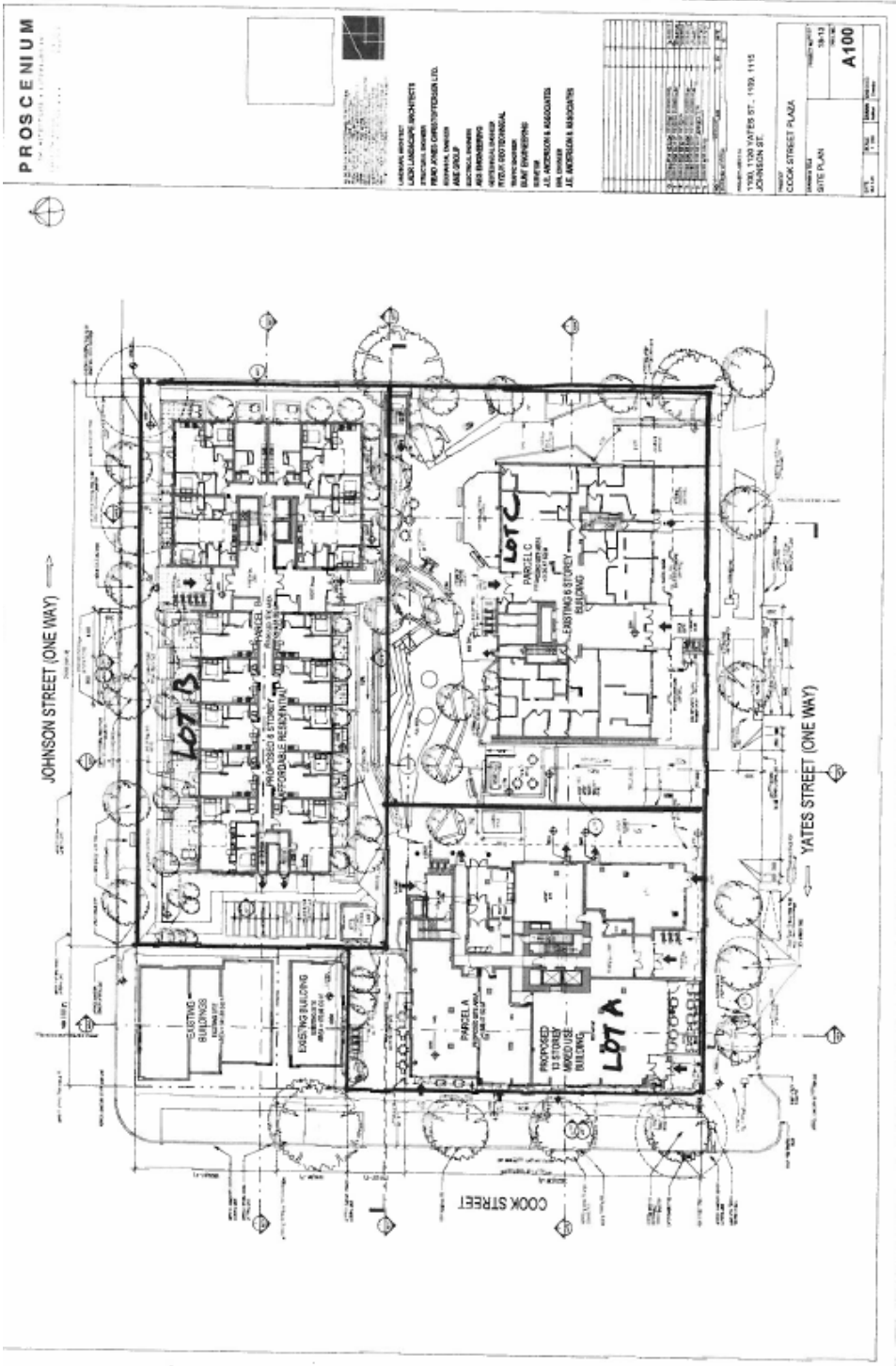
General Instrument - Part 1 attached hereto is fully executed and to subsequent amendments to or replacements of the statute or regulations.

5.16 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 Lands 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 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.

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"
Architectural Plan Showing Anticipated Location of Lot A, Lot B and Lot C



END OF DOCUMENT