

VICTORIA LAND TITLE OFFICE

LAND TITLE ACT
FORM C (Section 233) CHARGE

Nov-15-2019 14:10:19.002

CA7872359 CA7872361

GENERAL INSTRUMENT - PART 1 Province of British Columbia

PAGE 1 OF 19 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

Jesse Mullin Digitally signed by
Jesse Mullin J7Z2EC
J7Z2EC Date: 2019.11.15
14:01:06 -08'00'

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

MULLIN DEMEO WIRK
BARRISTERS AND SOLICITORS
1626 GARNET ROAD
VICTORIA **BC V8P 3C8**
Document Fees: \$222.48

FILE: 86284/0958593BCLTD/JM
TELEPHONE: 250 477 3327

Deduct LTSA Fees? Yes ☒

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

003-832-163 LOT 15, SUBURBAN LOT 9, VICTORIA CITY, EXCEPT THAT PART IN PARCEL A (DD 2096671)

STC? YES ☐

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

SEE SCHEDULE

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

(a) ☐ Filed Standard Charge Terms D.F. No.(b) ☒ Express Charge Terms Annexed as Part 2

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

5. TRANSFEROR(S):

0958593 BC LTD.

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

THE CORPORATION OF THE CITY OF VICTORIA

#1 CENTENNIAL SQUARE

VICTORIA

BRITISH COLUMBIA

V8W 1P6

CANADA

7. ADDITIONAL OR MODIFIED TERMS:

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)

Sunny Sidhu

Barrister & Solicitor

Acheson Sweeney Foley Sahota
300 - 376 Harbour Road
Victoria, BC V9A 3S1

Execution Date

Y	M	D
19	11	04

Transferor(s) Signature(s)

0958593 BC LTD. by its authorized
signatory(ies):

Rajinder Sahota

OFFICER CERTIFICATION:

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

LAND TITLE ACT
FORM C (Section 233) CHARGE
GENERAL INSTRUMENT - PART 1 Province of British Columbia

PAGE 1 OF 19 PAGES

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MULLIN DEMEO WIRK
BARRISTERS AND SOLICITORS
1626 GARNET ROAD
VICTORIA

BC V8P 3C8

FILE: 86284/0958593BCLTD/JM
 TELEPHONE: 250 477 3327

Deduct LTSA Fees? Yes ☒

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THE CORPORATION OF THE CITY OF VICTORIA

#1 CENTENNIAL SQUARE

VICTORIA

BRITISH COLUMBIA

V8W 1P6

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Officer Signature(s)

SONNY SIDHU
BARRISTER AND SOLICITOR
CHESON SWEENEY FOLEY SAHOTA
300 - 376 HARBOUR ROAD
VICTORIA, BC V8A 3B1

Execution Date

Y	M	D
2019	11	04

Transferor(s) Signature(s)

0958593 BC LTD. by its authorized signatory(ies):

RATINDER SAHOTA

OFFICER CERTIFICATION:

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

**LAND TITLE ACT
FORM D**

EXECUTIONS CONTINUED

PAGE 2 of 19 PAGES

Officer Signature(s)



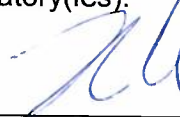
CHRISTINE HAVELKA
A Commissioner for taking Affidavits
for British Columbia
#1 Centennial Square
Victoria, BC V8W 1P6

Execution Date

Y	M	D
15	11	13
19	11	1

Transferor / Borrower / Party Signature(s)

THE CORPORATION OF THE CITY
OF VICTORIA by its authorized
signatory(ies):



Name:

MAYOR LISA HELPS
#1 Centennial Square
Victoria BC V8W 1P6

Name:



CITY OF VICTORIA
Approved for content by originating dept. LT
APPROVED for legality by solicitor SHT

OFFICER CERTIFICATION:

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

LAND TITLE ACT
FORM E

SCHEDULE

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Section 2.1 of Terms on page 7, 8 and 9

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Statutory Right of Way		ARTICLE 3 of Terms on pages 10, 11 and 12

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Section 2.2 of Terms on page 9

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION

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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION

TERMS OF INSTRUMENT - PART 2
TRANSPORTATION DEMAND MANAGEMENT AGREEMENT
953 Balmoral Road, 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, 0958593 B.C. LTD. (Incorporation number BC0958593), as more particularly defined in Section 1.1, is called the "**Owner**"; and
 - (b) the transferee, THE CORPORATION OF THE CITY OF VICTORIA, is called the "**City**" or the "**City of Victoria**" when referring to the corporate entity and "**Victoria**" when referring to geographical location;
- C. The Owner is the registered and beneficial owner of the lands and premises located in the City of Victoria, Province of British Columbia, with civic address of 953 Balmoral Road, and legally known and described as:
- PID: 003-832-163
Legal Description: Lot 15, Suburban Lot 9, Victoria City, Except That Part in Parcel A (DD209667I)
- (including any lands into which the same may be consolidated or subdivided, the "**Lands**");
- D. The Owner made an application to rezone and develop the Lands which the City's elected council has preliminarily considered, and determined that a public hearing date may be set after, among other things, after one or more legal agreements have been executed to secure:
- (a) the purchase of one car share vehicle;
 - (b) the provision of one parking space for the car share vehicle on the Lands;
 - (c) access for members of the car share company to that parking space;
 - (d) provision of one car share membership for each residential unit in the Building;
 - (e) provision of one bicycle for each residential unit in the Building; and
 - (f) provision of one monthly transit pass for each residential unit in the Building over a period of three years (being a total of 396 monthly passes),
- all to the satisfaction of City staff;

- E. To satisfy the foregoing terms the Owner and the City have entered into this Agreement; and
- F. The Statutory Right of Way is necessary for the operation and maintenance of the City's undertaking.

CONSIDERATION

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

ARTICLE 1 DEFINITIONS

1.1 Definitions

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:

"BC Transit EcoPASS" means a transit pass issued by BC Transit for new developments in the Capital Regional District as a transportation demand management program that provides annual bus passes to residents of new residential, commercial and mixed-use developments that are valid for use throughout the Victoria Regional Transit System, and includes any similar program that may replace this program within three years after the first occupancy permit is issued for the Building;

"Building" means any new building, improvements or structures which include dwelling units constructed on the Lands as contemplated by the Building Permit, Development Permit and the Rezoning Bylaw;

"Building Permit" means any building permit that may be issued with respect to the Lands after enactment of the Rezoning Bylaw and issuance of the Development Permit, if the Rezoning Bylaw is enacted and the Development Permit is issued;

"City Personnel" means the City's elected officials, officers, employees, contractors, subcontractors, agents, licensees, invitees and permittees;

"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;

"Development Permit" means any development permit that may later be issued with respect to the Lands as a result of the Owner's development permit with variances application no. 000506;

"Director of Planning" 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;

"Event of Force Majeure" means acts of God or public enemy, wars (declared or undeclared), revolution, riots, insurrections, civil commotions, fires, floods, slides, epidemics, quarantine restrictions, strikes or lockouts, including illegal work stoppages or slowdowns, or stop work orders issued by a court or public authority, including the City (provided that such orders were not issued as a result of an act or omission of the Owner, or anyone employed or retained by the Owner), freight embargos or power failures, provided that any such event or circumstance reasonably constitutes a material disabling event or circumstance which is beyond the reasonable control of a party, does not arise from the neglect or default of a party, and which results in a material delay, interruption or failure by a party in carrying out its duties, covenants or obligations under this Agreement, but which does not mean or include any delay caused by the Owner's lack of funds or financial condition (and for greater certainty, a strike or lockout, including illegal work stoppages or slowdowns, will be considered beyond the reasonable control of a party and not to arise from the neglect or default of that party, it being understood that the terms of settlement of any labour disturbance, dispute, strike or lockout will be wholly in the discretion of that party).

"Land Title Act" means the Land Title Act, R.S.B.C. 1996, c.250;

"Lands" has the meaning ascribed to that term in Recital C;

"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;

"Occupancy Permit" means if any occupancy permit issued for a Building, the first such occupancy permit;

"Owner" means 0958593 B.C. Ltd. (Incorporation No. BC0958593) and all of its assigns, successors and successors in title to the Lands or any part thereof and, if the Lands are subdivided by way of a Strata Plan then **"Owner"** includes, without limitation, any Strata Corporation(s) thereby created;

"Parking Space Construction Standards" means the specifications and requirements of the Director of Planning in accordance with the City bylaws, policies and guidelines to which the Shared Vehicle Parking Space must be constructed, as may be amended from time to time;

"Permit" means any Development Permit, Building Permit, Occupancy Permit or other permit applied for from the City in respect of the Building or the Lands;

"Permitted Users" means the members in good standing of the Shared Vehicle Organization whether or not said members reside in the Building;

"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. 00598);

"Section 219 Covenants" means the covenants contained in this Agreement made pursuant to Section 219 of the *Land Title Act*;

"Shared Vehicle" means one four-wheeled automobile, van or pick-up truck to be provided to the Building in accordance with this Agreement and the Shared Vehicle Service Agreement;

"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;

"Shared Vehicle Parking Space" means one parking space situate on the Lands as shown outlined in bold black ink on the plan attached hereto as Schedule "A" reserved for the exclusive use of the Shared Vehicle to be provided pursuant to this Agreement, or such other parking space as the Owner may request and the Director of Planning may first agree to in writing;

"Shared Vehicle Service Agreement" means a legally binding agreement, satisfactory to the Director of Planning, entered into by the Owner and the Shared Vehicle Organization for the provision of the Shared Vehicle, pursuant to the terms of this Agreement, and containing such other terms and conditions as the Owner may request and the Director of Planning may first agree to in writing;

"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;

"Strata Corporation" means a strata corporation created by the filing of a Strata Plan;

"Strata Plan" means a strata plan filed in respect of the Lands or any subdivided portion thereof pursuant to the *Strata Property Act*; and

"Strata Property Act" means the Strata Property Act, S.B.C. 1998, c. 43.

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 Lands and the Building, that notwithstanding that the Owner may be otherwise entitled, the Owner will not, and will not suffer or permit any other person to:

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

and agrees that:

no part of the Building will be occupied, and the City will have no obligation to issue an Occupancy Permit for the same, even if the Owner has completed construction of the Building, unless and until the Owner has satisfied the following preconditions to the satisfaction of the Director of Planning:

- (d) the Owner has purchased 11 new bicycles, at a cost of not less than \$400 each, exclusive of taxes, and made one available for the exclusive use of the occupant(s) of each of the 11 residential units in the Building;
- (e) the Owner has purchased 11 annual BC Transit EcoPASSES, and made one available for the exclusive use of the occupant(s) of each of the 11 residential units in the Building;
- (f) the Owner has constructed, finished and designated the Shared Vehicle Parking Space on the Lands in accordance with the Development Permit, this Agreement and the Parking Space Construction Standards;
- (g) one Shared Vehicle has been purchased at the Owner's expenses and is registered in the name of the Shared Vehicle Organization;
- (h) the Owner has purchased 11 memberships in the Shared Vehicle Organization, and made once available for the exclusive use of the occupant(s) of each of the 11 residential units in the Building;
- (i) 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 one Shared Vehicle to the Building. The Shared Vehicle Service Agreement shall be on arrangements, terms and conditions to be agreed upon by the parties and the Director of Planning, but at a minimum, the Agreement must provide:
 - (i) for the ongoing maintenance, repair and operation of the Shared Vehicle in a prudent manner and, if the Shared Vehicle is damaged beyond repair, the prompt replacement of the Shared Vehicle with a vehicle which is at least equivalent in value and function to the Shared Vehicle;
 - (ii) for the making of the Shared Vehicle available for use by the Permitted Users not later than the date of issuance of an Occupancy Permit for the Building, 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, the Shared Vehicle will be parked and kept in the Shared Vehicle Parking Space;
 - (iv) for the management (including the transfer to new occupants when tenancies change) of the memberships in the Shared Vehicle Organization purchased by the Owner for the exclusive use of each of the residential units in the Building;

- (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 concurrent with the assignment of this Agreement, but not prior to all financial obligations of the Owner pursuant to the Shared Vehicle Service Agreement being fulfilled by the Owner to the satisfaction of the Director of Planning;
- (vi) terms of access to the Shared Vehicle Parking Space by the Permitted Users, which must include the ability of the Permitted Users to access the Shared Vehicle Parking Space 24 hours a day/ 7 days a week and address any requirements for access, including FOBs, passcodes or keys; and
- (vii) that the Shared Vehicle Service Agreement may not be amended or terminated without the prior written consent of the Director of Planning.

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 Lands and the Building, that notwithstanding that the Owner may be otherwise entitled, the Owner will, throughout the term of this Agreement (other than in respect of paragraph (b) below, which has a fixed term):

- (a) make available for the exclusive use of the resident(s) of each residential unit in the Building one of the bicycles purchased to satisfy the condition set forth in section 2.1(d);
- (b) provide for the use by the resident(s) of each of the 11 residential units in the Building an annual BC Transit EcoPASS for a total of three years, in each case with such three year period commencing from the date of the first occupancy of each such unit;
- (c) inspect, maintain and repair the Shared Vehicle Parking Space and all access routes thereto and egress routes therefrom in a tidy and safe condition and repair and keep the Shared Vehicle Parking Space and the access and egress routes to and from the Shared Vehicle Parking Space well-lit and clearly signed, all to the full satisfaction of the Director of Planning 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 Space is not used by anyone other than Permitted Users, and always for the purpose of parking the Shared Vehicle; and
- (e) abide by the terms and conditions of the Shared Vehicle Service Agreement.

2.3 Security for Purchase of BC Transit EcoPASSes, Memberships in the Shared Vehicle Organization and Bicycles

As security for the Owner's obligation to provide 11 BC Transit EcoPasses for three consecutive years (see section 2.2(b)), 11 memberships in the Shared Vehicle Organization (see section 2.1(h)) and 11 bicycles (see section 2.1(d)), to the occupant(s)

of the 11 residential units in the Building, 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 those 33 annual BC Transit EcoPASSES, 11 memberships in the Shared Vehicle Organization and 11 bicycles;
- (b) is issued by a Schedule I Bank under the Bank Act (Canada) or other reputable financial institution acceptable to the Director of Planning, 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; 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;
- (e) 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;
- (f) identifies the City as beneficiary and the Owner as the applicant, unless alternate arrangements are approved by the Director of Planning;
- (g) references this Agreement;
- (h) requires sixty (60) days prior notice by the issuer to the City in the event of non-renewal or cancellation by the issuer;
- (i) entitles only the issuer to give notice of non-renewal;
- (j) is signed by an authorized signatory of the issuer; and
- (k) is, in all other respects, in form and substance acceptable to the Director of Planning.

As the financial obligations of the Owner secured by this letter of credit are satisfied by the Owner, 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 and the 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 Lands, for the

purposes described in Section 3.2 and on the terms and conditions contained in this Agreement. This right will be full, free and uninterrupted.

3.2 Right of Way Purposes

At any time the City and City Personnel, and in respect of paragraphs (a) and (b) below the City's invitees and licensees, including the Permitted Users, may enter the Lands:

- (a) to park and access the Shared Vehicle in the Shared Vehicle Parking Space designated for the Shared Vehicle;
- (b) for access and egress as pedestrians and in the Shared Vehicle between the Shared Vehicle Parking Space and the adjacent City streets and lanes; and
- (c) 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 rights granted in Section 3.1 will be exercised only with respect to the Shared Vehicle Parking Space and the vehicular and pedestrian entrances thereto and exits therefrom, and the Statutory Right of Way on and over the Lands is:

- (a) restricted to those portions of the Lands and the Building designed for such purposes;
- (b) subject to such reasonable rules and regulations as may from time to time be prescribed by the Owner, including those for the safety and security of the Shared Vehicle Parking Space, the Permitted Users, and other users of the Building and the Lands, provided that notwithstanding the right of the Owner to make reasonable rules and regulations from time to time, such rules and regulations will:
 - (i) not permit the Owner or any other person to charge or permit to be charged, directly or indirectly, any fee whatsoever for the access to or use by the Permitted Users of the Shared Vehicle Parking Space, other than a charge included in strata fees payable by all strata lot owners in a Strata Corporation, if applicable, for maintaining the Shared Vehicle Parking Space; and
 - (ii) not in any way whatsoever limit the obligation of the Owner to make the Shared Vehicle Parking Space and all access to and egress from the Shared Vehicle Parking Space available to the Permitted Users at all times (7 days per week/24 hours per day) provided that the Owner may locate the Shared Vehicle Parking Space behind a security gate or other mechanism restricting access only if the Permitted Users are provided with a convenient means of access to the Shared Vehicle Parking Space at all times (7 days per week/24 hours per day).

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 Lands are subdivided at any time hereafter either under the provisions of the *Land Title Act* or under the *Strata Property Act*, or under other similar legislation enacted from time to time, then upon the deposit of a plan of subdivision, strata plan, or similar plan as the case may be, subject to Section 4.2:

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

4.2 Subdivision by Strata Plan

If the Lands, or any portion thereof, are subdivided by a strata plan, this Agreement will charge title to the strata lots and the common property comprising such strata plan and:

- (a) no part of the Shared Vehicle Parking Space or the drive aisles, ramps or pedestrian means of access and egress thereto will form part of or be located within any strata lot or part of any strata lot and all of the such spaces will be contained within the common property established by the strata plan;
- (b) the Section 219 Covenant(s) and Statutory Right of Way granted herein will be registered against each individual strata lot and noted on the common property sheet;
- (c) the strata corporation or the strata corporations so created will perform and observe the Owner's covenants in this Agreement, solely at the expense of the strata lot owners;

- (d) the liability of each strata lot owner for the performance and observance of the Owner's covenants herein will be in proportion to the unit entitlement of his, her or its strata lot as established by the strata plan; and
- (e) the strata corporation(s) so created will manage and maintain the Shared Vehicle Parking Space and the strata corporation(s) may adopt and enforce reasonable rules and regulations concerning the safe use, maintenance and repair of the Shared Vehicle Parking Space, provided that such rules and regulations must not interfere with or prevent the reasonable use of the Shared Vehicle Parking Space by the Permitted Users.

ARTICLE 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 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.

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

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:

0958593 B.C. Ltd.
4566 Cordova Bay Road
Victoria, BC V8X 3V5
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 Affect 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 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.

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 Building and the Lands 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 Force Majeure

If an Event of Force Majeure occurs or is likely to occur, the Owner will promptly notify the Director of Planning of the particulars of the relevant event or circumstance and, if reasonably possible, supply supporting evidence. The Owner will use its best efforts to remove, curtail or contain the cause of the delay, interruption or failure (provided that the terms of settlement of any labour disturbance, dispute, strike or lockout will be wholly in the discretion of the Owner) and to resume, with the least possible delay, its compliance with duties, covenants and obligations under this Agreement. Neither the City nor the Owner will be liable to the other for any delay, interruption or failure in the performance of its duties, covenants, or obligations under this Agreement if caused by an Event of Force Majeure, and the date limited for the performance of such duties, covenants or obligations under this Agreement will be postponed for a period equal to the delay occasioned by such an Event of Force Majeure.

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 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.

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.

9.14 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,

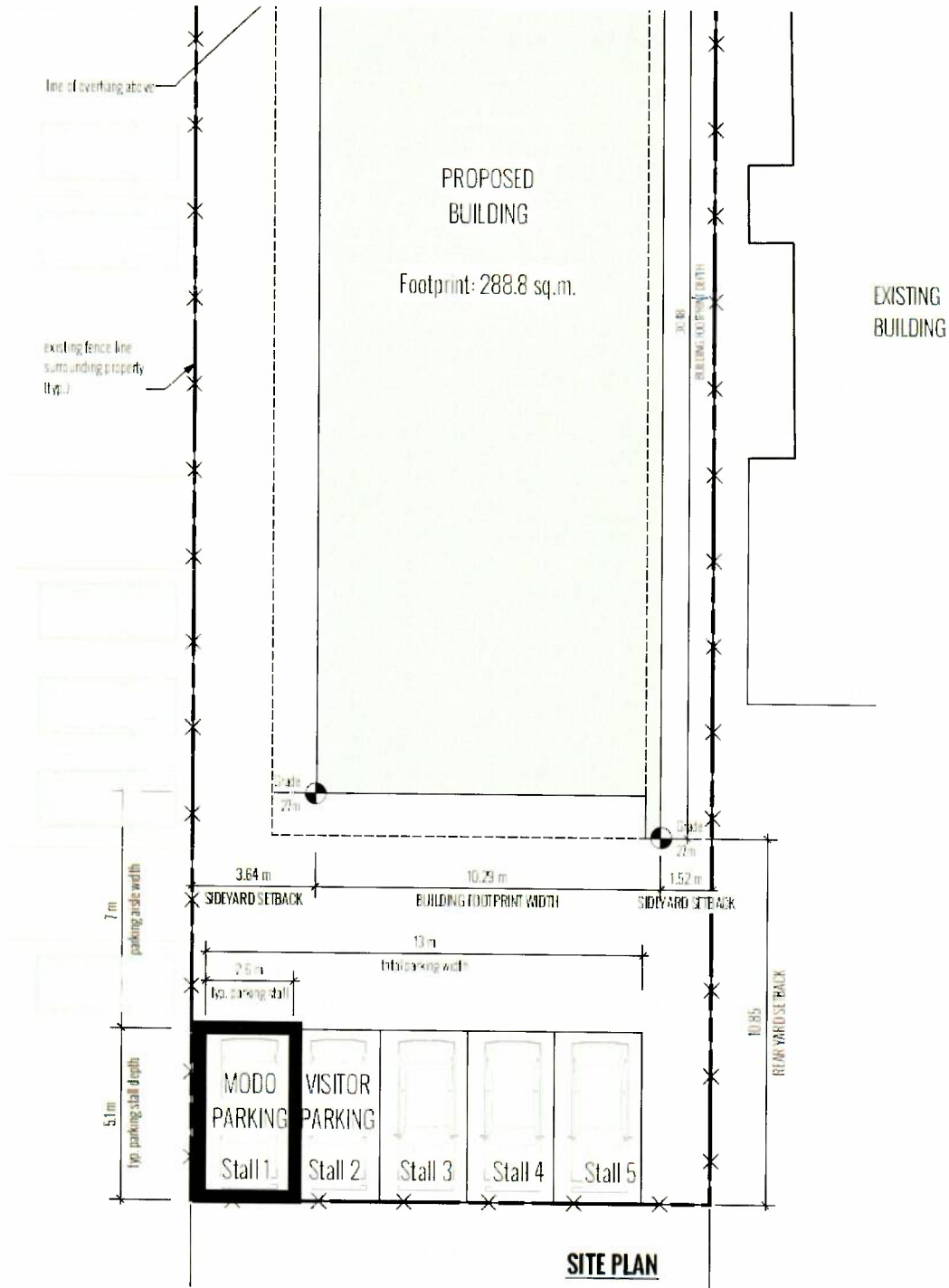
and words importing persons will include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa.

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.

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 Space**



END OF DOCUMENT