



## **Council Report**

### **For the meeting of September 11, 2014**

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**To:** Council **Date:** August 28, 2014  
**From:** Mike Wilson, Senior Planner - Urban Design  
**Subject:** **Rezoning Application #00381 and Development Permit Application #000351 for 1002-1008 and 1012 Pandora Avenue - Update on Council Conditions**

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#### **Executive Summary**

The purpose of this report is to present Council with new information regarding a Rezoning Application and Development Permit Application for the property located at 1002-1008 and 1012 Pandora Avenue which will be the subject of a Public Hearing on September 11, 2014. Upon forwarding this application to a Public Hearing, Council endorsed several conditions which included the preparation of several legal agreements. This report provides Council with an update on the terms of these agreements.

#### **Statutory Rights-of-Way**

The applicant has agreed to provide Statutory Right-of-Ways on Mason Street and Vancouver Street and to register them against the property's title.

#### **Truck Delivery Restrictions**

The applicant has agreed to the terms of a legal agreement in favour of the City that ensures the following:

- that between the hours of 11:00 pm and 7:00 am daily, no delivery trucks exceeding 10,000 pounds will be permitted to deliver to the development through the loading dock
- that the owner will install appropriate signage at the development to indicate these restrictions
- that the owner will include notices in the leases of all commercial occupants of the development.

With regard to limiting the weight of trucks utilizing the easterly portion of Mason Street, it has been determined that vehicle weight restrictions may be enforced by the City. If these applications are approved, staff will consult with residents and business owners on Mason Street to ensure that they are not inadvertently disadvantaged by vehicle restrictions and to confirm the size of other legitimate road users such as garbage trucks/recycling vehicles.

#### **Green Building Features**

The applicant has agreed to construct the building to a LEED Silver equivalent standard; however, the building will not be a LEED Certified building. Instead, the applicant will have a

LEED consultant present a report to staff at the Building Permit stage and a report after completion of the building to confirm that the development is consistent with a LEED Silver standard. The applicant has agreed to the terms of a legal agreement to ensure this is completed.

### Recommendations

That Council accept this report for information.

Respectfully submitted,



Mike Wilson  
Senior Planner - Urban Design  
Development Services Division



Deb Day, Director  
Sustainable Planning and  
Community Development Department

Report accepted and recommended by the City Manager: \_\_\_\_\_



Jason Johnson

Date: September 5, 2014

MW:aw

S:\TEMPEST\_ATTACHMENTS\PROSPERO\PL\REZ\REZ00381\COUNCIL UPDATE AUG 2014.DOC

### Attachments

- Section 219 Covenant – Truck Delivery
- Section 219 Covenant – Green Building
- Section 219 Covenant – Statutory Right-of-Way.

Aug-26-2014 14:43:52.004

CA3923867

## LAND TITLE ACT

## FORM C (Section 233) CHARGE

## GENERAL INSTRUMENT - PART 1 Province of British Columbia

PAGE 1 OF 7 PAGES

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

Dirk Camille  
Alfred De Vuyst  
K4GMEZ

Digitally signed by Dirk Camille Alfred De Vuyst K4GMEZ  
DN: c=CA, cn=Dirk Camille Alfred De Vuyst K4GMEZ, o=Lawyer, ou=Verify ID at www.juricert.com/LKUP.cfm? id=K4GMEZ  
Date: 2014.08.26 13:24:00 -08'00'

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

Dirk C.A. De Vuyst & Associates Law Corp.

Barristers and Solicitors

Telephone: 604-294-9263

1101 - 838 West Hastings Street

Vancouver

BC V6C 0A6

Document Fees: \$73.50

Deduct LTSA Fees? Yes ☒

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

### SEE SCHEDULE

STC? YES ☐

3. NATURE OF INTEREST

**Covenant**

CHARGE NO.

ADDITIONAL INFORMATION

Section 219 Covenant. Entire document

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):

**BISHOP OF VICTORIA**

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

**THE CORPORATION OF THE CITY OF VICTORIA**

1 CENTENNIAL SQUARE

VICTORIA

BRITISH COLUMBIA

V8W 1P6

CANADA

7. ADDITIONAL OR MODIFIED TERMS:

N/A

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

Officer Signature(s)

Paul M. Bundon

Barrister & Solicitor

4th Floor, 1007 Fort Street

Victoria, B.C. V8V 3K5

Execution Date

Y	M	D
14	08	22

Transferor(s) Signature(s)

**BISHOP OF VICTORIA**  
by its authorized signatory  
Leah Mackenzie

#### OFFICER CERTIFICATION:

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



**LAND TITLE ACT  
FORM E****SCHEDULE**PAGE 3 OF 7 PAGES

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**2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:**

[PID]

[LEGAL DESCRIPTION]

**003-241-025****LOT 1, SUBURBAN LOT 15, VICTORIA CITY, PLAN 22437**

STC?

YES ☐

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**2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:**

[PID]

[LEGAL DESCRIPTION]

**003-240-487****LOT 2, SUBURBAN LOT 15, VICTORIA CITY, PLAN 22437, EXCEPT PARCEL A  
(DD C70855)**

STC?

YES ☐

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**2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:**

[PID]

[LEGAL DESCRIPTION]

STC?

YES ☐

**TERMS OF INSTRUMENT- PART 2**

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**BETWEEN:**

**BISHOP OF VICTORIA**  
4044 Nelthorpe Street  
Victoria, BC V8X 2A1

(the "Owner")

**AND:**

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

(the "City")

**WHEREAS:**

- A. The Owner is the registered owner in fee-simple of those lands and premises located within the City of Victoria, in the Province of British Columbia, more particularly described as:
- PID 003-240-487  
Lot 2, Suburban Lot 15, Victoria City, Plan 22437, Except Parcel A (DD C70855); and
- 003-241-025  
Lot 1, Suburban Lot 15, Victoria City, Plan 22437
- (collectively the "Lands");
- B. The Owner has applied to the City for an amendment to the City's Zoning Regulation Bylaw No. 80-159 in relation to the Lands, and for a Development Permit mixed-use building that ranges in height from four to six stories with 4,507 m<sup>2</sup> of ground commercial space and 13,995 m<sup>2</sup> of residential floor area with approximately 210 Dwelling Units thereupon (herein called the "Development").
- C. Section 219 of the *Land Title Act* provides that a covenant, whether of negative or positive nature,
- in respect of the use of land or the use of a building on or to be erected on land;
  - that land is to be built on in accordance with the covenant;
  - that land is not to be used, built on or subdivided;
  - that land or specified amenities be protected, preserved, conserved, maintained, enhanced, restored or kept in their natural or existing state;

may be granted in favour of the City and may be registered as a charge against the title to that land.

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

1. The Owner covenants and agrees with the City as follows:
  - (a) that between the hours of 11:00 PM and 7:00 AM daily, no delivery trucks exceeding TEN THOUSAND (10,000) lbs. Gross Vehicle Weight will be permitted to enter or exit the Development from Mason Street;
  - (b) the Owner will post signs detailing the restrictions of section 1(a), at the Owner's expense, at two locations on the Development which are approved in writing by the City's Director of Sustainability Planning and Community Development; and
  - (c) the Owner will include in the leases of all commercial occupants of the Development having a need to use the loading dock accessed off Mason Street an acknowledgment of the restrictions contained in section 1(a).
2. The Owner and the City agree that enforcement of this Agreement shall be entirely within the discretion of the City and that the execution and registration of this covenant against title to the Lands shall not be interpreted as creating any duty on the part of the City to the Owner or to any other person to enforce any provision or prevent or restrain the breach of any provision of this Agreement.
3. The Owner shall indemnify and save harmless the City and each of its elected and appointed officials, officers, employees, agents and contractors, from any and all claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees whatsoever which anyone has or may have, whether as owner, occupier or user of the Lands, or by a person who has an interest in or comes onto the Lands, or otherwise, which the City incurs as a result of any loss or damage or injury, including economic loss, arising out of or connected with:
  - (a) the breach of any covenant in this Agreement;
  - (b) the use of the Lands contemplated under this Agreement; and
  - (c) restrictions or requirements under this Agreement.
4. The Owner hereby releases and forever discharges the City and each of its elected and appointed officials, officers, employees, agents and contractors, of and from any claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees whatsoever which the Owner can or may have against the City for any loss or damage or injury, including economic loss, that the Owner may sustain or suffer arising out of or connected with:
  - (a) the breach of any covenant in this Agreement;

- (b) the use of the Lands contemplated under this Agreement; and
  - (c) restrictions or requirements under this Agreement.
5. At the Owner's expense, the Owner must do everything necessary to secure priority of registration and interest for this Agreement and the Section 219 Covenant it creates over all registered and pending charges and encumbrances of a financial nature against the Lands.
  6. Nothing contained or implied herein will derogate from the obligations of the Owner under any other agreement with the City or prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions under any enactment and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.
  7. Where the City is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the City is under no public law duty of fairness or natural justice in that regard and agrees that the City may do any of those things in the same manner as if it were a private party and not a public body.
  8. Time is of the essence of this Agreement.
  9. The Owner covenants and agrees for itself, its heirs, executors, successors and assigns, that it will at all times perform and observe the requirements and restrictions set out in this Agreement and they shall be binding upon the Owner as personal covenants only during the period of its respective ownership of any interest in the Lands. This Agreement shall enure to the benefit of the City and shall be binding upon the parties hereto and their respective heirs, executors, successors and assigns.
  10. This Agreement is the entire agreement between the parties hereto regarding its subject.
  11. It is mutually understood, acknowledged and agreed by the parties hereto that the City has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Owner other than those contained in this Agreement.
  12. The waiver by a party of any breach of this Agreement or failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar, and no waiver shall be effective unless it is in writing signed by both parties.
  13. Wherever the singular, masculine and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.
  14. No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.

15. The restrictions and covenants herein contained shall be covenants running with the Lands, and shall continue to bind all of the Lands when subdivided, and shall be registered in the Victoria Land Title Office pursuant to section 219 of the *Land Title Act* as covenants in favour of the City as a first charge against the Lands.
16. The Owner agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
17. By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.
18. If any part of this Agreement is found to be illegal or unenforceable, that part will be considered separate and severable and the remaining parts will not be affected thereby and will be enforceable to the fullest extent permitted by law.
19. 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.
20. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

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

## VICTORIA LAND TITLE OFFICE

APPLICATION TO DEPOSIT PLAN Aug-26-2014 14:43:52.001  
AT LAND TITLE OFFICE  
PROVINCE OF BRITISH COLUMBIA

CA3923865

PAGE 1 OF 1 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 168.732, and a true copy, or a copy of that true copy, is in your possession.

Dirk Camille  
Alfred De Vuyst  
K4GMEZ

Digitally signed by Dirk Camille Alfred De Vuyst K4GMEZ  
DN: c=CA, cn=Dirk Camille Alfred De Vuyst K4GMEZ, o=Lawyer, ou=Verify ID at www.juricert.com/LKUP.cfm?  
id=K4GMEZ  
Date: 2014.08.26 13:23:40 -08'00'

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

Dirk C.A. De Vuyst (Joanne Carr)

Dirk C.A. De Vuyst & Associates Law Corp

Tel: 604-292-9263

1101 - 838 West Hastings Street

Vancouver

BC V6C 0A6

Document Fees: \$63.15

Deduct LTSA Fees? Yes ☒

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

003-240-487

LOT 2, SUBURBAN LOT 15, VICTORIA CITY, PLAN 22437, EXCEPT PARCEL A  
(DD C70855)

3. APPLICATION FOR DEPOSIT OF:

PLAN TYPE

PLAN NUMBER

CONTROL NUMBER

NUMBER OF NEW  
LOTS CREATED

Statutory Right of Way

EPP26708

140-493-9264

4. OWNER(S): (updated owner(s) name(s), occupation(s), postal address and postal code)

BISHOP OF VICTORIA

4044 NELTHORPE STREET

VICTORIA

V8X 2A1

BRITISH COLUMBIA

CANADA

Incorporation No  
N/A

5. ADDITIONAL INFORMATION:

## VICTORIA LAND TITLE OFFICE

LAND TITLE ACT  
FORM C (Section 233) CHARGE

Aug-26-2014 14:43:52.003

CA3923866

GENERAL INSTRUMENT - PART 1 Province of British Columbia

PAGE 1 OF 8 PAGES

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Dirk Camille  
Alfred De Vuyst  
K4GMEZ

Digitally signed by Dirk Camille Alfred De Vuyst K4GMEZ  
DN: c=CA, cn=Dirk Camille Alfred De Vuyst K4GMEZ, o=Lawyer, ou=Verify ID at www.juricert.com/LKUP.cfm? id=K4GMEZ  
Date: 2014.08.26 13:24:17 -08'00'

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

Dirk C.A. De Vuyst & Associates Law Corp.

Barristers and Solicitors

1101 - 838 West Hastings Street

Vancouver

BC V6C 0A6

Telephone: 604-294-9263

Document Fees: \$73.50

Deduct LTSA Fees? Yes ☒

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

003-240-487

LOT 2, SUBURBAN LOT 15, VICTORIA CITY, PLAN 22437, EXCEPT PARCEL A (DD C70855)

STC? YES ☐

3. NATURE OF INTEREST

Statutory Right of Way

CHARGE NO.

ADDITIONAL INFORMATION

Entire document

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):

BISHOP OF VICTORIA

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

THE CORPORATION OF THE CITY OF VICTORIA

1 CENTENNIAL SQUARE

VICTORIA

BRITISH COLUMBIA

V8W 1P6

CANADA

7. ADDITIONAL OR MODIFIED TERMS:

N/A

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

Officer Signature(s)

Paul Bundon

Barrister & Solicitor

4th Floor, 1007 Fort Street

Victoria, B.C. V8V 3K5

Execution Date

Y	M	D
14	08	22

Transferor(s) Signature(s)

BISHOP OF VICTORIA  
by its authorized signatory  
Leah Mackenzie

## 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 8 pages

Officer Signature(s)

Kate S.Blokmanis

Commissioner for Taking Affidavits in BC

#1 Centennial Square  
Victoria, BC V8W 1P6

**Execution Date**

Y	M	D
14	08	25

Transferor / Borrower / Party Signature(s)

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

MAYOR DEAN FORTIN

**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.

**Statutory Right of Way - Highway**

**TERMS OF INSTRUMENT - PART 2**

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**WHEREAS:**

- A. The Transferor is the registered owner in fee simple of the following land in the Province of British Columbia:

Parcel Identifier: 003-240-487

Lot 2, Suburban Lot 15, Victoria City, Plan 22437, Except Parcel A (DD C70855)

(the "Lands")

- B. The Transferee is the Corporation of the City of Victoria;
- C. This Right of Way is necessary for the operation and maintenance of the Transferee's undertaking as described in Recital D;
- D. The Transferee wishes to be able to construct, operate and maintain a public highway and other works including but not limited to a system of roadways, sidewalks and utility services in perpetuity over a portion of the Lands; and
- E. To facilitate the construction and use by the Transferee and the public of a public highway, and to facilitate the installation and use of works that may be placed by the Transferee on, under or over the highway including pavements, sidewalks, boulevards, curbs, gutters, drains, sewers, utility poles, wires, fences, overhead and underground cables, traffic signals, transit shelters, and landscaping including but not limited to trees, shrubs, flowers and grass, and irrigation works required for the maintenance of that landscaping, and any other works, facilities or appurtenants necessary for the use of the Right of Way as a public highway (collectively the "Works"), the Transferor has agreed to grant the Right of Way in this Agreement.

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

**1.0 THE TRANSFEROR:**

- 1.1 Pursuant to Section 218 of the Land Title Act, hereby grants, conveys, confirms

and transfers, in perpetuity, to the Transferee, its officers, employees, contractors, licensees and invitees, including without limitation the general public, the full, free and uninterrupted right, license, liberty, privilege, permission and right of way to use as a public highway, including but not limited to the right to enter onto, use, go, return, pass over and across for highway purposes, that portion of the Lands, shown in heavy outline on the Right of Way Plan prepared by J.E. Anderson & Associates, BCLS and filed in the Victoria Land Title Office under Plan No. EPP26708 a reduced copy of which is attached hereto as Schedule "A" (the "Right of Way");

1.2 Covenants and agrees to and with the Transferee that in connection with the grant under Section 1.1 of this Agreement, the Transferee and its officers, employees, contractors, licensees and invitees shall have the full, free and uninterrupted right, licence, liberty, privilege, permission and right of way to lay down, install, construct, entrench, operate, maintain, inspect, alter, repair, remove, replace, bury, cleanse, string, and otherwise establish one or more system of Works upon the Right of Way;

1.3 Covenants and agrees to and with the Transferee that the Transferee shall:

- (a) for itself and its agents, workers, contractors and all other licensees of the Transferee;
- (b) together with machinery, vehicles, equipment, and materials;
- (c) upon, over, under and across the Right of Way;
- (d) as may be necessary, useful, or convenient for the purposes in Section 1.1 and Section 1.2; and
- (e) in connection with the operations of the Transferee in relation to the Works;

be entitled at all times to enter, use, pass and repass, labour, construct, erect, install, dig, carry away soil or other surface or subsurface materials, and clear of all trees, growth, buildings or obstructions now or hereafter in existence upon, over, under and across the Right of Way;

1.4 Grants, conveys, confirms and transfers unto the Transferee for itself, and its employees, agents, workers, contractors and all other licensees of the Transferee together with machinery, vehicles, equipment and materials, the right at all times to enter upon and to pass and repass over such of the Lands of the Transferor as may reasonably be required for the purpose of ingress to and egress from the Right of Way;

1.5 Transfers, assigns and conveys to the Transferee all right, title and interest in

and to any Works that the Transferee, or the Transferor have prior to this Agreement established or constructed or maintained or operated within the Right of Way or in relation to any similar Works previously constructed by any party whatsoever within the Right of Way.

**2.0 THE TRANSFEROR COVENANTS:**

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

**3.0 THE TRANSFEE COVENANTS:**

- 3.1 As far as reasonably possible, to carry out all work in a proper and workmanlike manner so as to do as little injury to the Lands as possible; and
- 3.2 To make good at its own expense damage or disturbance which may be caused to the Lands in the exercise by the Transferee of its rights under this Agreement except as permitted under this Agreement.

**4.0 THE PARTIES COVENANT TO AND AGREE WITH EACH OTHER, as follows:**

- 4.1 The Transferor shall not diminish or increase the soil cover over any pipe installed in the Right of Way without the Transferee's prior written consent;
- 4.2 No right herein granted to or reserved by the Transferee shall require the

Transferee to clear, repair or maintain the Works or the Right of Way unless the Transferee is expressly required herein to perform such cleaning, repairing or maintenance;

- 4.3 If the Transferor defaults in observance or performance of its obligations hereunder, the Transferee, after 10 days prior written notice to the Transferor specifying the default and at any time in case of emergency, may (but is not obligated to) rectify the default, and the Transferor shall pay to the Transferee, on demand, its reasonable costs in connection with so rectifying;
- 4.4 The Transferor shall, after execution hereof by it at the expense of the Transferor, do or cause to be done all acts necessary to grant priority to this Agreement over all financial charges and encumbrances which are registered, or pending registration, against the Title to the Lands in the Land Title Office save and except those as have been specifically approved in writing by the Transferee or have been granted in favour of the Transferee;
- 4.5 Waiver of any default by either party shall not be deemed to be a waiver of any subsequent default by that party;
- 4.6 Whenever this Agreement creates a power or obligation of the Transferee to make a decision or to exercise any contractual right or remedy, the Transferee may do so in accordance with the provisions of this Agreement and no public law duty, whether arising from the principles of fairness or the rules of natural justice, shall have any application;
- 4.7 Notwithstanding anything herein contained, the Transferee reserves all rights and powers of expropriation otherwise enjoyed by the Transferee;
- 4.8 Without limiting Section 4.7, nothing contained or implied in this Agreement will derogate from the obligations of the Transferor under any other agreement with the Transferee or prejudice or affect the Transferee's rights, powers, duties or obligations in the exercise of its functions under all public and private statutes, by-laws, orders and regulations, which may be as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by Transferor and the Transferee;
- 4.9 In spite of any rule of law or equity to the contrary, the Works brought on to, set, constructed, laid, erected in, upon or under the Right of Way by the Transferee shall at all times remain the property of the Transferee, even if the Works are annexed or affixed to the freehold, and the Works shall at any time and from time to time be removable in whole or in part by the Transferee;
- 4.10 No part of the title in fee simple to the Lands of the Transferor shall pass to or be vested in the Transferee under or by virtue of this Agreement, and the Transferor may fully use and enjoy all of the Lands of the Transferor subject only to the

rights and restrictions in this Agreement;

- 4.11 If any section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of the Agreement;
- 4.12 This Agreement shall attach to and run with the Lands and each and every part to which the Lands may be divided or subdivided whether by subdivision plan, strata plan or otherwise howsoever;
- 4.13 The Transferor acknowledges that (a) these Covenants are enforceable against the Transferor and his successors in title, but (b) the Transferor is not personally liable for breach of these Covenants where such liability arises by reason of an act or omission occurring after the Transferor named herein or any future owner ceases to have a further interest in the Lands;
- 4.14 If at the date hereof the Transferor is not the sole registered owner of the Lands of the Transferor, this Agreement shall nevertheless bind the Transferor to the full extent of his interest therein, and if he acquires a greater or the entire interest in fee simple, this Agreement shall likewise extend to such after-acquired interests;
- 4.15 Where the expression "Transferor" includes more than one person, all covenants made by the Transferor shall be construed as being several as well as joint with respect to all persons constituting the Transferor;
- 4.16 This Agreement shall continue to benefit and be binding upon the Transferor and Transferee, and their respective heirs, administrators, executors, successors and permitted assigns, as the case may be;
- 4.17 Gender specific terms include both genders and corporations, and the singular and plural forms are interchangeable, according to the context; and
- 4.18 This Agreement will be governed and construed according to the laws of the Province of British Columbia.
- 4.19 Nothing contained or implied in this Agreement shall prejudice or affect the rights and powers of the Transferee in the exercise of its functions under any public or private statutes, bylaws, order and regulations, all of which may be fully and effectively exercised in relation to the Land as if this Agreement had not been executed and delivered by the parties.

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



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

Aug-26-2014 14:43:52.005

CA3923868

PAGE 1 OF 9 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.

Dirk Camille  
Alfred De Vuyst  
K4GMEZ

Digitally signed by Dirk Camille Alfred De Vuyst K4GMEZ  
DN: c=CA, cn=Dirk Camille Alfred De Vuyst K4GMEZ, o=Lawyer, ou=Verify ID at www.juricert.com/LKUP.cfm? id=K4GMEZ  
Date: 2014.08.26 13:24:32 -08'00'

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

Dirk C.A. De Vuyst &amp; Associates Law Corp.

Barristers and Solicitors

Telephone: 604-294-9263

1101 - 838 West Hastings Street

Vancouver

BC V6C 0A6

Document Fees: \$73.50

Deduct LTSA Fees? Yes ☒

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

**SEE SCHEDULE**STC? YES ☐

3. NATURE OF INTEREST

**Covenant**

CHARGE NO.

ADDITIONAL INFORMATION

Section 219 Covenant. Entire document

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):

**BISHOP OF VICTORIA**

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

**THE CORPORATION OF THE CITY OF VICTORIA**

1 CENTENNIAL SQUARE

VICTORIA

BRITISH COLUMBIA

V8W 1P6

CANADA

7. ADDITIONAL OR MODIFIED TERMS:

N/A

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

Officer Signature(s)

Paul Bundon

Barrister &amp; Solicitor

4th Floor, 1007 Fort Street  
Victoria, B.C. V8V 3S

Execution Date		
Y	M	D
14	08	22

Transferor(s) Signature(s)

BISHOP OF VICTORIA  
by its authorized signatory

## OFFICER CERTIFICATION:

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



**LAND TITLE ACT  
FORM E****SCHEDULE**PAGE 3 OF 9 PAGES

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

**003-241-025 LOT 1, SUBURBAN LOT 15, VICTORIA CITY, PLAN 22437**

STC? YES ☐

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

**003-240-487 LOT 2, SUBURBAN LOT 15, VICTORIA CITY, PLAN 22437, EXCEPT PARCEL A  
(DD C70855)**

STC? YES ☐

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

STC? YES ☐

**TERMS OF INSTRUMENT- PART 2**

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**BETWEEN:**

**BISHOP OF VICTORIA**  
4044 Nelthorpe Street  
Victoria, B.C. V8X 2A1

(the "Owner")

**AND:**

**THE CORPORATION OF THE CITY OF VICTORIA**  
1 Centennial Square  
Victoria, B.C. V8W 1P6

(the "City")

**WHEREAS:**

- A. The Owner is the registered owner in fee-simple of those lands and premises located within the City of Victoria, in the Province of British Columbia, more particularly described as:
- PID 003-240-487  
Lot 2, Suburban Lot 15, Victoria City, Plan 22437, Except Parcel A (DD C70855); and
- 003-241-025  
Lot 1, Suburban Lot 15, Victoria City, Plan 22437
- (collectively the "Lands");
- B. The Owner has applied to the City for an amendment to the City's Zoning Regulation Bylaw No. 80-159 in relation to the Lands, and for a Development Permit .
- C. Section 219 of the *Land Title Act* provides that a covenant, whether of negative or positive nature,
- in respect of the use of land or the use of a building on or to be erected on land;
  - that land is to be built on in accordance with the covenant;
  - that land is not to be used, built on or subdivided;
  - that land or specified amenities be protected, preserved, conserved, maintained, enhanced, restored or kept in their natural or existing state;
- may be granted in favour of the City and may be registered as a charge against the title to that land.

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

1. In this Agreement the following words have the following meanings:
  - (a) "Development" means the development of a mixed-use building that ranges in height from four to six stories with 4,507 m<sup>2</sup> of ground commercial space and 13,995 m<sup>2</sup> of residential floor area with approximately 210 Dwelling Units, as permitted under the terms of the Zoning Amendment Bylaw, and any other building constructed on the Lands after the date of this agreement;
  - (b) "floor space ratio" has the same meaning as under the City of Victoria Zoning Regulation Bylaw No. 80-159, as amended or replaced from time to time;
  - (c) "LEED Canada NC 2009 – Silver Equivalency" has the meaning described in Schedule "A" attached hereto;
  - (d) "LEED® Canada NC 2009" means the building design and construction rating system published by LEED® Canada under the title "LEED® Canada For New Construction and Major Renovations 2009";
  - (e) "LEED Professional" means a person who is accredited as a LEED Accredited Professional with the Canada Green Building Council or the United States Green Building Council.
2. The Owner covenants and agrees with the City that it shall not use or permit the use of the Lands or any building on the Lands for any purpose, construct any building on the Lands or subdivide the Lands except in strict accordance with this Agreement.
3. The Owner covenants and agrees that the Development shall be designed and constructed to the LEED® Canada NC 2009 - Silver Equivalency.
4. In order to demonstrate compliance with section 3 of this Agreement, the Owner covenants and agrees that:
  - (a) it shall not commence any construction or development activities upon the Lands until it has submitted to the City, for the City's review and approval, such architectural design drawings, building specifications, and other professional reports and information that the City may reasonably require, including a report certified by a LEED Professional, all demonstrating to the City's satisfaction that the design, specifications and other features of the Development are generally in accordance with the standards for LEED® Canada NC 2009- Silver Equivalency;
  - (b) It shall construct the Development strictly in accordance with the design and specifications approved by the City under section 4(a) of this Agreement and generally in accordance with the standards for LEED® Canada NC 2009 - Silver Equivalency;

- (c) it shall not use or occupy the Development, or permit its use or occupancy, for any purpose until it has submitted to the City for its review and approval a report as specified in Schedule "A" under the heading "2. Sign off" from the design consultants, including a certified LEED Professional, confirming that the Development has been constructed in accordance with the design and specifications approved by the City under section 4(a) of this Agreement, and further certifying that the Development has been constructed generally in accordance with LEED® Canada NC 2009 - Silver Equivalency.
- 5. For certainty the Owner shall not be required to register the Development as a project with the Canada Green Building Council and shall not be required to obtain certification from the Canada Green Building Council that the Development has attained the LEED® Canada NC 2009- Silver project rating, it being the intention of the parties that the Development shall be designed and constructed such that the design consultants for the Development can verify, based on their professional opinions, that the development was built generally in accordance with the standards for LEED® Canada NC 2009 – Silver Equivalency.
- 6. The Owner shall indemnify and save harmless the City and each of its elected and appointed officials, officers, employees, agents and contractors, from any and all claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees whatsoever which anyone has or may have, whether as owner, occupier or user of the Lands, or by a person who has an interest in or comes onto the Lands, or otherwise, which the City incurs as a result of any loss or damage or injury, including economic loss, arising out of or connected with:
  - (a) the breach of any covenant in this Agreement;
  - (b) the use of the Lands contemplated under this Agreement; and
  - (c) restrictions or requirements under this Agreement.
- 7. The Owner hereby releases and forever discharges the City and each of its elected and appointed officials, officers, employees, agents and contractors, of and from any claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees whatsoever which the Owner can or may have against the City for any loss or damage or injury, including economic loss, that the Owner may sustain or suffer arising out of or connected with:
  - (a) the breach of any covenant in this Agreement;
  - (b) the use of the Lands contemplated under this Agreement; and
  - (c) restrictions or requirements under this Agreement.
- 8. At the Owner's expense, the Owner must do everything necessary to secure priority of registration and interest for this Agreement and the Section 219 Covenant it creates over all registered and pending charges and encumbrances of a financial nature against the Lands.

9. Nothing contained or implied herein will derogate from the obligations of the Owner under any other agreement with the City or prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions under any enactment and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.
10. Where the City is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the City is under no public law duty of fairness or natural justice in that regard and agrees that the City may do any of those things in the same manner as if it were a private party and not a public body.
11. Time is of the essence of this Agreement.
12. The Owner covenants and agrees for itself, its heirs, executors, successors and assigns, that it will at all times perform and observe the requirements and restrictions set out in this Agreement and they shall be binding upon the Owner as personal covenants only during the period of its respective ownership of any interest in the Lands. This Agreement shall enure to the benefit of the City and shall be binding upon the parties hereto and their respective heirs, executors, successors and assigns.
13. This Agreement is the entire agreement between the parties hereto regarding its subject.
14. It is mutually understood, acknowledged and agreed by the parties hereto that the City has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Owner other than those contained in this Agreement.
15. The waiver by a party of any breach of this Agreement or failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar, and no waiver shall be effective unless it is in writing signed by both parties.
16. Wherever the singular, masculine and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.
17. No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.
18. The restrictions and covenants herein contained shall be covenants running with the Lands, and shall continue to bind all of the Lands when subdivided, and shall be registered in the Victoria Land Title Office pursuant to section 219 of the *Land Title Act* as covenants in favour of the City as a first charge against the Lands.
19. The Owner agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.

20. By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.
21. If any part of this Agreement is found to be illegal or unenforceable, that part will be considered separate and severable and the remaining parts will not be affected thereby and will be enforceable to the fullest extent permitted by law.
22. 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
23. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

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

**SCHEDULE "A"**

**LEED CANADA NC 2009 – SILVER EQUIVALENCY**

**1. Design:**

- Create "Design Stage" LEED Package for Building Permit for the City that would include:

- Cover letter from LEED Consultant summarizing performance of project
- LEED scorecard
- Letters signed for each responsible party listing the prerequisites and credits they're responsible for, declaring in their professional opinion their design will comply with the LEED credits
- Excerpt from "Sustainability" section of specs showing requirements
- Results of energy model

**2. Sign-off:**

- Create "Construction Stage" LEED Package for occupancy to include:

- Cover letter from LEED Consultant summarizing performance of project
- LEED scorecard
- Letters signed for each responsible party listing the prerequisites and credits they're responsible for, declaring in their professional opinion the building has been designed and constructed in accordance with the targeted LEED credits.