

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.

Joanna Renee  
Dawson  
KU7NDN

Digitally signed by Joanna Renee Dawson KU7NDN  
DN: c=CA, cn=Joanna Renee Dawson KU7NDN, o=Lawyer, ou=Verify ID at www.juricert.com/LKUP.cfm? id=KU7NDN  
Date: 2015.06.17 14:10:45 -0700'

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

**BERNARD LLP**

**ATTN: JOANNA DAWSON**

**1500 - 570 GRANVILLE STREET**

**VANCOUVER**

**BC V6C 3P1**

Document Fees: \$156.20

**FILE NO. 052425-0001**

**TEL: 604.661.0615**

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

**023-302-593**

**LOT A SECTION 76 VICTORIA DISTRICT PLAN VIP62527**

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):

**FPL HOLDINGS (1990 FORT) LTD., INC. NO. BC0955559**

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)

Execution Date

Transferor(s) Signature(s)

Joanna R. Dawson

Barrister & Solicitor

Bernard LLP

1500- 570 Granville Street

Vancouver, BC V6C 3P1

Y	M	D
15	06	12

**FPL HOLDINGS (1990 FORT) LTD.**  
by its authorized signatory(ies)

**R.S. (ROB) DOMAN**

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 **8** PAGES

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Section 219 covenant

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Granting section 219 covenant filed herein priority over mortgage no. CA2892424 and assignment of rents no. CA2892425

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

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THIS AGREEMENT dated for reference June \_\_\_, 2015 is

BETWEEN:

FPL Holdings (1990 Fort) Ltd. (Inc. No. BC0955559)  
103 – 1006 Fort Street Victoria BC V8V 3K4

(the "Owner")

AND:

The Corporation of the City of Victoria  
1 Centennial Square  
Victoria, BC V8W 1P6

(the "City")

**W H E R E A S:**

- 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 023-302-593

Lot A Section 76 Victoria District Plan VIP62527

(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 Development Variance Permit to permit the reduction in the number of parking spaces required to be available in respect of the building and certain leased premises located upon the Lands;

- 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, promises and agrees that, notwithstanding the uses permitted from time to time by the City's zoning bylaw, the Lands shall not be used except in strict accordance with this Covenant.
2. The Owner covenants that at all times during which there is a restaurant operated at Unit 104-105, 1990 Fort Street, Victoria, BC,
  - (a) eight parking stalls in the building's parkade attached to the restaurant shall be available from 8:00 a.m. until 6:00 p.m. daily for exclusive use of the restaurant the ("Restaurant Stalls") and
  - (b) the Restaurant Stalls will be clearly marked as being reserved for exclusive use of the restaurant's patrons from the hours of 8:00 a.m. and 6:00 p.m.
3. 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.
4. 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.
5. 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.

6. 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.
7. 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.
8. 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.
9. Time is of the essence of this Agreement.
10. 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.
11. 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.
12. This Agreement is the entire agreement between the parties hereto regarding its subject.
13. 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.
14. 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.
15. 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.
16. 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.

17. 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.
18. The Owner agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
19. By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.
20. 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.
21. 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
22. 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.

## **CONSENT AND PRIORITY AGREEMENT**

In this Consent and Priority Agreement:

- (a) "City" means the Corporation of the City of Victoria;
- (b) "Existing Charges" means the Mortgage and Assignment of Rents registered under numbers CA2892424 and CA2892425;
- (c) "Existing Chargeholder" means Canadian Western Bank;
- (d) "Land" means the land described in Item 2 of the attached General Instrument - Part 1;
- (e) "New Charge" means the Restrictive Covenant registered, or to be registered, in the Victoria Land Title Office on title to and charging the Land in favour of the City and described in Item 3 of the attached General Instrument - Part 1;
- (f) "Owner" means the transferor described in Item 2 of the attached General Instrument - Part 1;
- (g) words capitalized in this Consent and Priority Agreement, not otherwise defined herein, have the meaning ascribed to them in the attached Terms of Instrument – Part 2.

For \$1.00 and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder:

- (i) consents to the Owner granting the New Charge in favour of the City; and
- (ii) agrees with the City that the New Charge charge the Land in priority to the Existing Charges in the same manner and to the same effect as if the Owner had granted the New Charge, and it had been registered against title to the Land, prior to the grant or registration of the Existing Charges or the advance of any money under the Existing Charges.

IN WITNESS WHEREOF, the Existing Chargeholder has caused its duly authorized signatory to execute the attached General Instrument - Part 1.

**END OF DOCUMENT**