

LAND TITLE ACT
FORM C (Section 233) CHARGE

May-06-2015 15:59:10.005

CA4382458 CA4382461

GENERAL INSTRUMENT - PART 1 Province of British Columbia

PAGE 1 OF 15 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.

David Bruce
Adams TS26LP

Digitally signed by David Bruce Adams
TS26LP
DN: c=CA, cn=David Bruce Adams
TS26LP, o=Lawyer, ou=Verify ID at
www.jutoart.com/LKUP.cfm?
id=TS26LP
Date: 2015.05.06 16:53:52 -0700

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

Patterson Adams LLP.

Barristers and Solicitors

402 - 707 Fort Street

Victoria

BC V8W 3G3

Document Fees: \$312.40

Phone: 250.360.2991

File: 24811.005/DBA/ps

Deduct LTSA Fees? Yes ☒

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

SEE SCHEDULE

STC? YES ☐

3. NATURE OF INTEREST

SEE SCHEDULE

CHARGE NO. ADDITIONAL INFORMATION

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

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

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

5. TRANSFEROR(S):

SEE SCHEDULE

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

SEE SCHEDULE

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)

HARUO CURTIS YOSHIDA

Notary Public

212 - 938 Howe Street
Vancouver, BC V6Z 1N9
T. 604 569 0512

as to all signatures

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.

Execution Date		
Y	M	D
15	02	24

Transferor(s) Signature(s)

0771279 B.C. LTD.
by its authorized signatory:

Print Name: BRANDON OYE

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

PAGE 1 OF 15 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.

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

Patterson Adams LLP
 Barristers and Solicitors
 402 - 707 Fort Street
 Victoria

BC V8W 3G3

Phone: 250.360.2991
 File: 24811.005/DBA/ps

Deduct LTSA Fees? Yes ☒

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

SEE SCHEDULESTC? 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):

SEE SCHEDULE

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

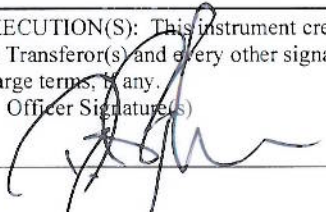
SEE SCHEDULE

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)


 Haruo Curtis Yoshida
 Notary Public
 T. 604 569 0512 F. 604 569 0516
 212 - 938 Howe St. Vancouver
 BC Canada V6Z 1N9

Execution Date

Y	M	D
15	02	24

Transferor(s) Signature(s)

0771279 B.C. LTD.
 by its authorized signatory:


 Print Name: Brandon Oye

OFFICER CERTIFICATION:

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**LAND TITLE ACT
FORM D**

EXECUTIONS CONTINUED

PAGE 2 of 15 pages

Officer Signature(s)

Haruo Curtis Yoshida
Notary Public
T. 604 569 0512 F. 604 569 0516
212 - 938 Howe St. Vancouver
BC Canada V6Z 1N9

Execution Date

Y M D

15 02 24

Transferor / Borrower / Party Signature(s)

Transferee:
0771279 B.C. LTD.
by its authorized signatory:

Print Name: *Brandon Oye*

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

Print Name:

Print Name:

As to priority:
CANADIAN PACIFIC RAILWAY
COMPANY
by its authorized signatory(ies):

Print Name:

Print Name:

as to all signatures

as to all signatures

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 15 pages

Officer Signature(s)

Execution Date

Y M D

Transferor / Borrower / Party Signature(s)

Transferee:
0771279 B.C. LTD.
by its authorized signatory:

Print Name:



ROBERT G. WOODLAND
A Commissioner for taking Affidavits
for British Columbia
#1 Centennial Square
Victoria, BC V8W 1P6

15 05 01

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

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

Print Name:



Print Name: ROBERT G. WOODLAND
Corporate Administrator
City of Victoria
#1 Centennial Square
Victoria BC V8W 1P6



as to all signatures



H. BART ALDRICH
NOTARY PUBLIC
201 - 1120 Westwood Street
Coquitlam, BC V3B 7K8
Ph: 604-464-3136 Fax: 604-464-4010

15 03 24

As to priority:
CANADIAN PACIFIC RAILWAY
COMPANY
by its authorized signatory(ies):

Print Name: LEN HAYES
MANAGER, REAL ESTATE

Print Name:

as to all signatures

OFFICER CERTIFICATION:

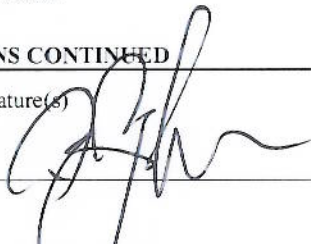
Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution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

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

PAGE 3 of 15 pages

Officer Signature(s)



Haruo Curtis Yoshida
Notary Public
T. 604 569 0512 F. 604 569 0516
212 - 938 Howe St. Vancouver
BC Canada V6Z 1N9

Execution Date

Y M D

15 02 24

Transferor / Borrower / Party Signature(s)

As to priority:
1475893 ALBERTA INC.
by its authorized signatory(ies):


 Print Name: Brandon Oye

Print Name:


as to all signatures



Haruo Curtis Yoshida
Notary Public
T. 604 569 0512 F. 604 569 0516
212 - 938 Howe St. Vancouver
BC Canada V6Z 1N9

15 02 24

As to priority:
1444467 ALBERTA INC.
by its authorized signatory(ies):


 Print Name: Brandon Oye

Print Name:

as to all signatures



As to priority:
ROMSPEN INVESTMENT
CORPORATION
by its authorized signatory(ies):

Print Name:

Print Name:

as to all signatures

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 3 of 15 pages

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

Y M D

As to priority:
1475893 ALBERTA INC.
by its authorized signatory(ies):

Print Name:

Print Name:

as to all signatures

As to priority:
1444467 ALBERTA INC.
by its authorized signatory(ies):

Print Name:


Print Name:

as to all signatures


JOEL MICKELSON
Barrister & Solicitor
162 Cumberland St., #300
Toronto, ON M5R 3N5
Direct Line: 416 928-4870

15 03 06

As to priority:
ROMSPEN INVESTMENT
CORPORATION
by its authorized signatory(ies):


Print Name: BLAKE CASSIDY
DIRECTOR

Print Name:

as to all signatures

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

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]
**029-397-090 LOT 2 SECTION 31 AND DISTRICT LOT 119 AND PART OF THE
UNNUMBERED PART ESQUIMALT DISTRICT AND PART OF THE BED OF THE
VICTORIA HARBOUR VICTORIA DISTRICT PLAN EPP33936**
STC? YES ☐

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]
**029-397-065 LOT 1 SECTION 31 AND DISTRICT LOT 119 ESQUIMALT DISTRICT PLAN
EPP33936**
STC? YES ☐

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

STC? YES ☐

**LAND TITLE ACT
FORM E**

SCHEDULE

PAGE 5 OF 15 PAGES

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Easement		over Lot 2 Section 31 and District Lot 119 and part of the Unnumbered Part Esquimalt District and Part of the Bed of the Victoria Harbour Victoria District Plan EPP33936 PID: 029-397-090 in favour of Registered Owner of Lot 1 Section 31 and District Lot 119 Esquimalt District Plan EPP33936 PID: 029-397-065 Entire instrument except Articles 5 and 7
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Granting the easement herein priority over FB217682, FB217683, FB217686, FB217687, FB217688, FB217689, FB217690, FB217691, CA3297113 (modified by CA3589434) and CA3297114 Pages 13-14, Article 7
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		over Lot 1 Section 31 and District Lot 119 Esquimalt District Plan EPP33936 PID 029-397-065 and Lot 2 Section 31 and District Lot 119 and part of the Unnumbered Part Esquimalt District and Part of the Bed of the Victoria Harbour Victoria District Plan EPP33936 PID 029-397-090 in favour of the City of Victoria Pages 10-13, Article 5
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Granting the covenant herein priority over FB217682, FB217683, FB217686, FB217687, FB217688, FB217689, FB217690, FB217691, CA3297113 (modified by CA3589434) and CA3297114 Pages 13-14, Article 7
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION

**LAND TITLE ACT
FORM E**

SCHEDULE

PAGE 6 OF 15 PAGES

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

5. TRANSFEROR(S):

Registered Owner:

0771279 B.C. LTD. (INC. NO. BC0771279)
(AS TO EASEMENT AND COVENANT)

Chargeholders, all as to priority only:

CANADIAN PACIFIC RAILWAY COMPANY

1475893 ALBERTA INC.

1444467 ALBERTA INC. (INC. NO. A0084812)

ROMSPEN INVESTMENT CORPORATION (INC. NO. A0067154)

6. TRANSFEREE(S):

As to easement:

0771279 B.C. LTD. (INC. NO. BC0771279)

80 Saghalie Road

Victoria, BC V9A 0A1

and

as to covenant:

THE CORPORATION OF THE CITY OF VICTORIA

1 Centennial Square

Victoria, BC V8W 1P6

PART 2 - TERMS OF INSTRUMENT

THIS AGREEMENT dated for reference the ____ day of February 2015

AMONG:

0771279 B.C. LTD.
80 Saghalie Road
Victoria, BC V9A 0A1

(the "**Grantor**")

AND:

0771279 B.C. LTD.
80 Saghalie Road
Victoria, BC V9A 0A1

(the "**Grantee**")

AND:

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

(the "**City**")

WHEREAS:

- A. The Grantor is the registered owner of that certain parcel or tract of land situate, lying and being in the Province of British Columbia, and more particularly known and described as:

PID: 029-397-065
LOT 1 SECTION 31 AND DISTRICT LOT 119 ESQUIMALT DISTRICT
PLAN EPP33936

(the "**Dominant Lands**")

- B. The Grantee is the registered owner of that certain parcel or tract of land situate, lying and being in the Province of British Columbia and more particularly known and described as:

PID: 029-397-090

LOT 2 SECTION 31 AND DISTRICT LOT 119 AND PART OF THE
UNNUMBERED PART ESQUIMALT DISTRICT AND PART OF THE BED
OF THE VICTORIA HARBOUR VICTORIA DISTRICT PLAN EPP33936

(the "**Servient Lands**");

- C. The City, Focus United Limited Partnership ("**Focus**" as beneficial owner and assignee) and 0771279 B.C. Ltd. entered into a Master Development Agreement dated for reference the 26th day of July 2008 (the "**MDA**"), which MDA provided for the development of the Dominant Lands and the Servient Lands (collectively, the "**Development Lands**");
- D. The Grantor and the Grantee (collectively, the "**Developer**") is proceeding with the Roundhouse Commercial Heritage Phase ("**Phase 1**") as defined in the MDA;
- E. As part of Phase 1, the Developer wishes to construct temporary surface parking upon the Servient Lands to serve Phase 1 until an underground parkade is constructed as part of the Residential Hotel Phase ("**Phase 2**") as envisaged in the *Roundhouse Design Guidelines* dated July 2008, as amended, which guidelines are referenced in Development Permit Area 13 of the City's Official Community Plan Bylaw, 2012 (the "**Guidelines**");
- F. The MDA requires the Developer to provide a number of amenities, including a shared-use corridor defined in the MDA as the Lime Bay Mews;
- G. As part of Phase 1, the Developer proposes to partially construct the Lime Bay Mews to provided 2-way vehicular access to the temporary surface parking referred to in Recital E, with the final design of the Lime Bay Mews to be reconstructed consistent with the Guidelines;
- H. The Grantor has agreed to grant to the Grantee an easement over the Servient Lands for the benefit of the Dominant Lands, on the terms and subject to the conditions contained herein, to allow the Grantee and its licencees, permittees, invitees, agents, servants, guests, successors and assigns, to use, maintain and operate, on the terms set out herein, not less than 101 temporary vehicular parking spaces to be installed upon the Servient Lands;
- I. The City wishes to ensure that such off street vehicular parking for the Dominant Lands is available on the Servient Lands as set out herein;
- J. Pursuant to subsection 18(5) of the *Property Law Act* (British Columbia), a registered owner in fee simple may grant to itself an easement over the land that it owns for the benefit of other land that it owns in fee simple;

- K. Section 219 of the *Land Title Act* provides, *inter alia*, that a covenant, whether of a negative or positive nature, in respect of the use of land in favour of a City, may be registered as a charge against the title to that land.

NOW THEREFORE in consideration of \$1.00 now paid by each of the parties to each of the other parties (the receipt and sufficiency of which are acknowledged), each of the parties covenants and agrees with each other as follows:

1.0 Grant of Easement

- 1.1 The Grantor, for itself, its successors and assigns, hereby grants and conveys in perpetuity, to and in favour of and for the benefit of the Grantee and its licencees, permittees, invitees, agents, servants, guests, successors and assigns, the non-exclusive, full, free and uninterrupted right, licence, liberty, easement, privilege and permission at all times to enter upon, pass and re-pass on, across, and over the Servient Lands (the "**Easement Area**") with or without vehicles, machinery or equipment for the following purposes:

- a) gaining access to and egress from the Dominant Lands and adjacent roadways to and over the Easement Area;
- b) the parking of motor vehicles on not less than 101 parking spaces (the "**Parking Spaces**") to be installed in accordance herewith; and
- c) inspection, maintenance, repair and replacement of such Parking Spaces, access drives and related facilities and improvements installed by the Grantor in connection herewith for the foregoing purposes and for all activities necessary or incidental thereto,

(the Parking Spaces, access drives and related facilities referred to in Section 1.1 are herein referred to as the "**Parking Works**").

- 1.2 Each of the Grantor and Grantee covenants with the other:

- (a) that they will share equally with such other owner the cost and responsibility for and will, as far as reasonably necessary, carry out or cause to be carried out the maintenance, repair, cleaning, renewal replacement and/or otherwise servicing of the Parking Works located on or under the Easement Area in a proper and workmanlike manner; and
- (b) to repair any damage to the Easement Area occasioned by its use of the within easement or that for whom such owner is responsible.

- 1.3 The Grantor covenants with the Grantee and the City that the Grantor will not do or knowingly permit to be done any act or thing which will interfere with or

obstruct the proper use and enjoyment by the Grantee of access over the Easement Area and the rights set out above.

2.0 Use of Parking Works

- 2.1 The Grantor and the Grantee agree that, notwithstanding the granting of the within easement over the entirety of the Servient Lands, it is understood that the Parking Stalls shall be located on that part of the Servient Lands shown on the sketch plan attached to this Agreement as Schedule A and the Grantee's actual use of the Easement Area is to be restricted, insofar as reasonably possible, to use and enjoyment of the Parking Works installed from time to time within the Easement Area by the Grantor in accordance herewith.

3.0 Installation of Parking Works

- 3.1 When the Grantee is required under the bylaws of the City of Victoria to make parking available within the Easement Area as a result of the Grantee's development of the Dominant Lands, the Grantee will provide written notice thereof to the Grantor. The Grantor will promptly following receipt of such notice, at the Grantor's expense, install the Parking Stalls in accordance with Schedule A, along with roadway access and drive aisles in a location within the Easement Area acceptable to the City and for the purposes of Section 1.1. The Parking Stalls, roadway access and drive aisles shall be installed in conformity with the standards and specifications prescribed in the City's Zoning Regulation Bylaw and any other bylaw of the City applicable to the Parking Works.

4.0 Temporary Suspension of Easement Rights

- 4.1 The Grantor reserves the right at any time, at its sole option and expense to reasonably and temporarily restrict the use and enjoyment of the Parking Works to enable the Grantor to construct and maintain water, sewer, drainage and any other utility services and any necessary mains, drains, conduits, lines, ducts, poles, guys, wires, cable and pipes and appliances of every kind for the purpose of conveying, draining and protection gas, water, sanitary sewers, storm sewage, liquid waste, electric energy, communications services, gas or any other service or thing that may be transmitted in any of them, in, under, upon or through the Easement Area.

5.0 COVENANT IN FAVOUR OF THE CITY UNDER SECTION 219 OF THE LAND TITLE ACT, R.S.B.C. 1996, c. 250

- 5.1 The Grantor for itself and its successors and assigns covenants and agrees under s. 219 of the *Land Title Act*, R.S.B.C. 1996, c. 250 (being the intention of the parties that this covenant will be annexed to the charged lands) that the Servient Lands shall only be used in compliance with Section 1 of this Agreement and without limiting the foregoing, that the Grantor will not use any portion of the

Easement Area or allow the Servient Lands to be used for any purpose which would detract from or interfere with the function of the Easement Area and the Parking Works for the purposes herein provided, including access and parking.

- 5.2 The Grantor shall not be entitled to build on, use or occupy any portion of the Servient Lands if the within easement is amended, modified or discharged without the prior written consent of the City, which consent the City may withhold in its sole discretion.
- 5.3 The Grantee for itself and its successors and assigns covenants and agrees under s. 219 of the *Land Title Act*, R.S.B.C. 1996, c. 250 (being the intention of the parties that this covenant will be annexed to the charged lands) that the Grantee shall not be entitled to build on, use or occupy any portion of the Dominant Lands if the within easement is amended, modified or discharged without the prior written consent of the City, which consent the City may withhold in its sole discretion.
- 5.4 The Grantee covenants and agrees that it shall not use or occupy any building within Development Area 3, Development Area 4 or Development Area 5, and shall not be entitled to an occupancy permit for any building within Development Area 3, Development Area 4 or Development Area 5, until the Lime Bay Mews has been reconstructed and designed in accordance with the Guidelines to the satisfaction of the Director of Sustainable Planning and Community Development.
- 5.5 The Grantee further covenants and agrees that any surface Parking Stall constructed upon the Development Lands intended to become permanent surface parking shall be reconstructed in accordance with the Guidelines to the satisfaction of the Director of Sustainable Planning and Community Development.
- 5.6 Nothing contained in this Agreement will be interpreted so as to restrict or prevent the Grantor from using the Easement Area or the Servient Lands in any manner which does not interfere with the security or efficient functioning of or unobstructed access to the Parking Works.
- 5.7 The covenants set forth in this Agreement will charge the Dominant Lands and Servient Lands under s. 219 of the *Land Title Act* and will be covenants, the burden of which will run with the lands. It is further expressly agreed that this Agreement may only be modified or discharged by agreement of the City under s. 219(9) of the *Land Title Act*.
- 5.8 Notwithstanding anything contained in this Agreement, the Grantor will not be liable under any of the covenants and agreements contained herein where such liability arises by reason of an act or omission occurring after the Grantor ceases to have any further interest in the Servient Lands.

- 5.9 Any opinion, decision, act or expression of satisfaction provided for in this Agreement is to be taken or made by the City's Director of Engineering or his or her delegate authorized as such in writing.
- 5.10 The Grantor and Grantee jointly and severally release, and must indemnify and save harmless, the City, its elected and appointed officials and employees, from and against all liability, actions, causes of action, claims, damages, expenses, costs, debts, demands or losses suffered or incurred by the City, the Grantor, the Grantee, or anyone else, arising from the granting or existence of this Agreement, from the performance by the Grantor or Grantee of this Agreement, or any default of the Grantor or Grantee under or in respect of this Agreement.
- 5.11 The parties agree that this Agreement creates only contractual obligations and obligations arising out of the nature of this document as a covenant under seal. The parties agree that no tort obligations or liabilities of any kind exist between the parties in connection with the performance of, or any default under or in respect of, this Agreement. The intent of this section is to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract and under the law pertaining to covenants under seal.
- 5.12 This Agreement burdens and charges all of the Development Lands and any parcel into which it is subdivided by any means and any parcel into which the Development Land is consolidated.
- 5.13 The rights given to the City by this Agreement are permissive only and nothing in this Agreement imposes any legal duty of any kind on the City to anyone, or obliges the City to enforce this Agreement, to perform any act or to incur any expense in respect of this Agreement.
- 5.14 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 Grantor and the Grantee agree that the City is under no public law duty of fairness or natural justice in that regard and agree 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.
- 5.15 This Agreement does not
- (a) affect or limit the discretion, rights or powers of the City under any enactment (as defined in the *Interpretation Act*, R.S.B.C. 1996, c. 238, on the reference date of this Agreement) or at common law, including in relation to the use or subdivision of the Development Lands,
 - (b) affect or limit any enactment relating to the use or subdivision of the Development Lands, or

- (c) relieve the Grantor or Grantee from complying with any enactment, including in relation to the use or subdivision of the Development Lands.

6.0 General

- 6.1 The Grantor and Grantee agree to do everything reasonably necessary, at the Grantee's expense, to ensure that this Agreement is registered against title to the Development Lands with priority over all financial charges, liens and encumbrances registered, or the registration of which is pending, at the time of application for registration of this Agreement.
- 6.2 An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach in respect of which the waiver is asserted. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.
- 6.3 If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
- 6.4 This Agreement is the entire agreement between the parties regarding its subject.
- 6.5 This Agreement binds the parties to it and their respective successors, heirs, executors and administrators.
- 6.6 The Grantor and Grantee must do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.
- 6.7 By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

7.0 Priority Agreements

- 7.1 Canadian Pacific Railway Company (the "Chargeholder"), the registered holder of charges by way of a Mortgage and Assignment of Rents registered against the Development Lands, which said charges are registered in the Land Title Office at Victoria, British Columbia, under numbers FB217682 and FB217683, respectively, for and in consideration of the sum of Ten Dollars (\$10.00) paid by the Grantee and the City to the said Chargeholder (the receipt whereof is hereby acknowledged), agrees with the Grantee and the City, their successors and assigns, that the within easement and covenant shall be encumbrances upon the Development Lands in priority to the said charges in the same manner and to the same effect as if they had been dated and registered prior to the said charges.

- 7.2 1475893 Alberta Inc. (the "Second Chargeholder"), the registered holder of charges by way of Mortgages and Assignment of Rents registered against the Development Lands, which said charges are registered in the Land Title Office at Victoria, British Columbia, under numbers FB217686, FB217690 and FB217687, FB217691, respectively, for and in consideration of the sum of Ten Dollars (\$10.00) paid by the Grantee and the City to the said Second Chargeholder (the receipt whereof is hereby acknowledged), agrees with the Grantee and the City, their successors and assigns, that the within easement and covenant shall be encumbrances upon the Development Lands in priority to the said charges in the same manner and to the same effect as if they had been dated and registered prior to the said charges.
- 7.3 1444467 Alberta Inc. (the "Third Chargeholder"), the registered holder of charges by way of a Mortgage and Assignment of Rents registered against the Development Lands, which said charges are registered in the Land Title Office at Victoria, British Columbia, under numbers FB217688 and FB217689, respectively, for and in consideration of the sum of Ten Dollars (\$10.00) paid by the Grantee and the City to the said Third Chargeholder (the receipt whereof is hereby acknowledged), agrees with the Grantee and the City, their successors and assigns, that the within easement and covenant shall be encumbrances upon the Development Lands in priority to the said charges in the same manner and to the same effect as if they had been dated and registered prior to the said charges.
- 7.4 Romspen Investment Corporation (the "Fourth Chargeholder"), the registered holder of charges by way of a Mortgage and Assignment of Rents registered against the Development Lands, which said charges are registered in the Land Title Office at Victoria, British Columbia, under numbers CA3297113 (modified by CA3589434) and CA3297114, respectively, for and in consideration of the sum of Ten Dollars (\$10.00) paid by the Grantee and the City to the said Fourth Chargeholder (the receipt whereof is hereby acknowledged), agrees with the Grantee and the City, their successors and assigns, that the within easement and covenant shall be encumbrances upon the Development Lands in priority to the said charges in the same manner and to the same effect as if they had been dated and registered prior to the said charges.

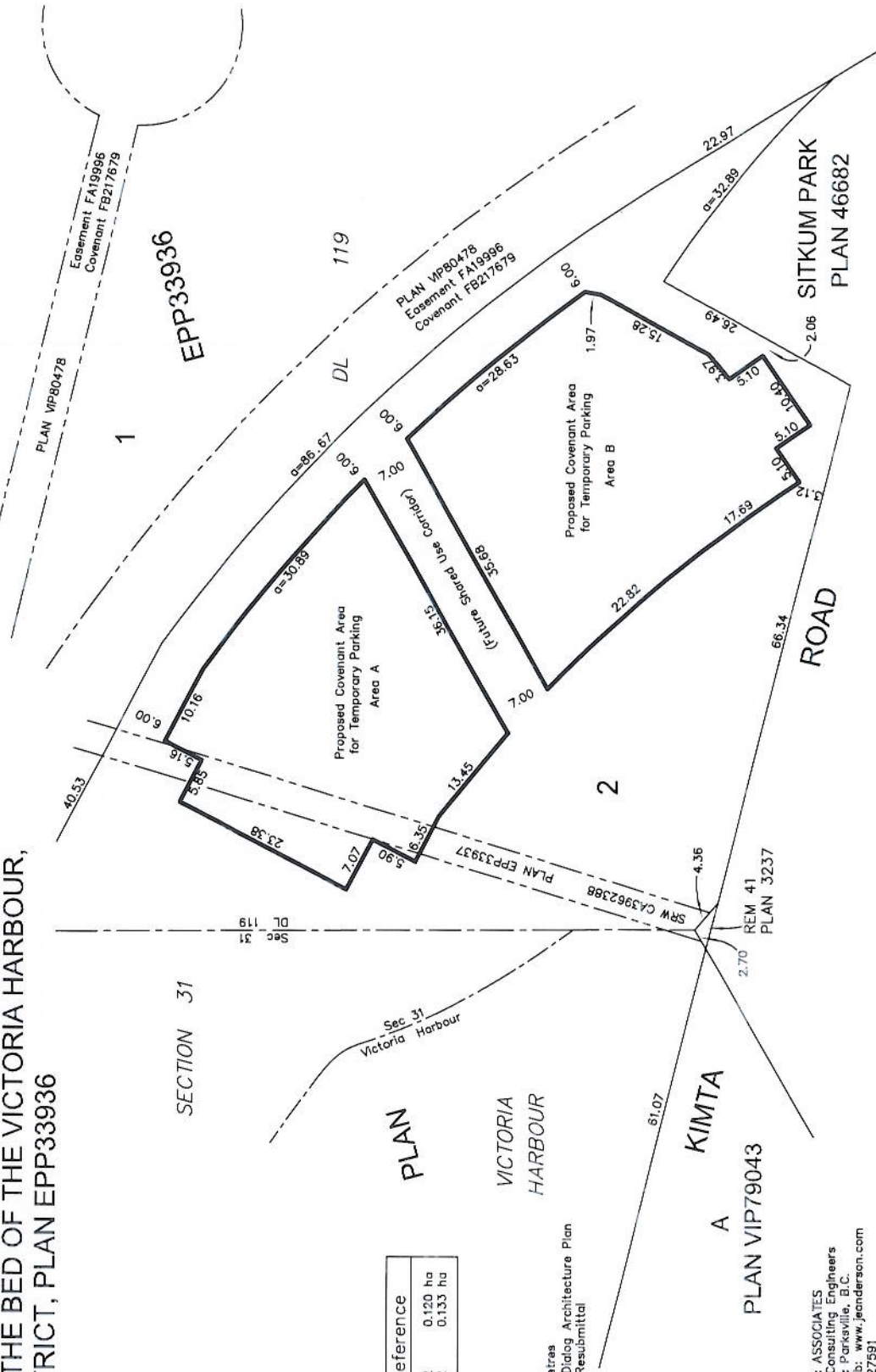
IN WITNESS WHEREOF the parties acknowledge that this Agreement has been duly executed and delivered by the parties executing Part 1 of Form C and D attached to and forming part of this Agreement.

PID: 029-397-090



Book of Reference		
Area A	Lot 2	0.120 ha
Area B	Lot 2	0.133 ha

All distances shown are in metres
Covenant areas derived from Dialog Architecture Plan
Sheet A102.1 Issued for DP Resubmittal



J.E. ANDERSON & ASSOCIATES
B.C. Land Surveyors – Consulting Engineers
Victoria, Nanaimo & Parksville, B.C.
Phone 250-727-2214 Web: www.jeanderson.com
File : 27591
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