

## SCHEDULE R – LEGAL AGREEMENTS

### 1. Car Share Parking Space SRW

#### Statutory Right of Way (Car Share Parking Space) and Section 219 Covenant

#### TERMS OF INSTRUMENT - PART 2

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#### WHEREAS:

- A. Capitalized terms not otherwise or elsewhere defined in this Agreement will have the respective meanings ascribed to them in section 1.1;
- B. The Transferor (the “**Owner**”) is [insert name];
- C. The Transferee (the “**City**”) is the Corporation of the City of Victoria;
- D. 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:  
INSERT LEGAL DESCRIPTION(the “**Lands**”);
- E. The City wishes to be able to access, for itself and all members of the public, a car share parking space developed and maintained in perpetuity over the Lands;
- F. The Owner has agreed to grant a statutory right of way on the terms hereinafter set forth;
- G. It is necessary for the operation and maintenance of the City's undertaking of public access to a car share parking space for the enjoyment of the general public that a right of way be established in accordance with this document;
- H. Section 219 of the *Land Title Act* provides that a covenant, whether of negative or positive nature may be granted in favour of the City and may include one or more of the following provisions:
  - i. in respect of the use of land or the use of a building on or to be erected on land;
  - ii. that land is to be built on in accordance with the covenant;
  - iii. that land is not to be used, built on or subdivided;
  - iv. that land or specified amenities be protected, preserved, conserved, maintained, enhanced, restored or kept in their natural or existing state.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the premises and the mutual covenants and agreements contained in this agreement (the “**Agreement**”), 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:

## 1.0 DEFINITIONS

1.1 The terms defined in this Section 1.1 will have the following meanings for all purposes in this Agreement, except where specifically otherwise provided herein:

- (a) “**Parking Space**” means [insert number of parking spaces] parking space[s] situate on the Lands within the SRW Area, as shown outlined in bold black ink on the plan attached hereto as Schedule “B” reserved for the exclusive use of a Shared Vehicle;
- (b) “**Permitted Users**” means the members in good standing of the Shared Vehicle Organization whether or not said members reside on the Lands;
- (c) “**Shared Vehicle**” means a four-wheeled automobile, van or pick-up truck that is managed by a Shared Vehicle Organization;
- (d) “**Shared Vehicle Organization**” means a legal entity whose principal business objective is to provide its members, for a fee, with a car-sharing service by which such members have self-serve access to a fleet of shared vehicles which they may reserve for use on an hourly or other basis, but does not include rental vehicle organizations;
- (e) “**SRW Area**” means that portion of the Lands, shown in heavy outline on the Right of Way Plan prepared by [redacted] and filed in the Victoria Land Title Office under Plan No. [redacted] a reduced copy of which is attached hereto as Schedule “A”.

## 2.0 STATUTORY RIGHT OF WAY

2.1 Pursuant to section 218 of the *Land Title Act*, the Owner hereby grants, conveys, confirms and transfers, in perpetuity, to the City, its officers, employees, contractors, licensees and invitees, including the Permitted Users, the full, free and uninterrupted right, licence, liberty, privilege, permission and right of way to enter, use, go, return, pass over and across the SRW Area, for the purposes described in section 2.2.

2.2 At any time, the City and its officers, employees, and contractors, and in respect of (a) and (b) below the City’s licensees and invitees including the Permitted Users, may enter the SRW Area:

- (a) to park and access a Shared Vehicle in the Parking Space designated for Shared Vehicles;
- (b) for access and egress as pedestrians and in a Shared Vehicle between the Parking Space and the adjacent City streets and lanes; and

- (c) to confirm compliance by the Owner with the terms and conditions of this Agreement,

all in accordance with this Agreement.

2.3 The rights granted in sections 2.1 and 2.2 over the SRW Area are subject to such reasonable rules and regulations as may from time to time be prescribed by the Owner, including those for the safety and security of the SRW Area, the Permitted Users, and other users of the Lands, provided that notwithstanding the right of the Owner to make reasonable rules and regulations from time to time, such rules and regulations will:

- (a) not permit the Owner or any other person to charge or permit to be charged, directly or indirectly, any fee whatsoever for the access to or use by the Permitted Users of the SRW Area, other than a charge included in strata fees payable by all strata lot owners in a strata corporation, if applicable, for maintaining the SRW Area; and
- (b) not in any way whatsoever limit the obligation of the Owner to make the Parking Space and all access to and egress from the Parking Space available to the Permitted Users at all times (7 days per week/24 hours per day) provided that the Owner may locate the Parking Space behind a security gate or other mechanism restricting access only if the Permitted Users are provided with a convenient means of access to the Parking Space at all times (7 days per week/24 hours per day).

### **3.0 SECTION 219 COVENANTS**

3.1 Under section 219 of the *Land Title Act* there may be registered as annexed to any land a condition or covenant in favour of the City that the land, or any specified portion of it, is not to be built upon or is to be or is not to be used in a particular manner.

3.2 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 Agreement.

3.3 The Owner covenants:

- (a) except as expressly permitted under this Agreement, not to do anything or to permit any act or thing which in the opinion of the City in any way interferes with or damages or prevents access to or use of the SRW Area or is likely to cause harm to the SRW Area;
- (b) from time to time and at all times at the reasonable request and at the cost of the City 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 City of its rights under this Agreement; and
- (c) to permit the City to peaceably hold and enjoy the rights hereby granted.

#### **4.0 SUBDIVISION**

- 4.1 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, subject to section 4.2.
- 4.2 If the Lands, or any portion thereof, are subdivided by a strata plan, this Agreement will charge title to the strata lots and the common property comprising such strata plan and:
- (a) no part of the SRW Area will form part of or be located within any strata lot or part of any strata lot and all of the SRW Area will be contained within the common property established by the strata plan;
  - (b) the section 219 covenant and statutory right of way granted herein will be noted on the common property sheet;
  - (c) the strata corporation or the strata corporations so created will perform and observe the Owner's covenants in this Agreement, solely at the expense of the strata lot owners;
  - (d) the liability of each strata lot owner for the performance and observance of the Owner's covenants herein will be in proportion to the unit entitlement of his, her or its strata lot as established by the strata plan; and
  - (e) any strata corporation so created will manage and maintain the SRW Area and the strata corporation may adopt and enforce reasonable rules and regulations concerning the safe use, maintenance and repair of the SRW Area, provided that such rules and regulations must not interfere with or prevent the reasonable use of the SRW Area by the Permitted Users.

#### **5.0 GENERAL**

- 5.1 The Owner and the City agree that though the Parking Space must be available for permanent use by a Shared Vehicle, it may be used for visitor parking, loading, or other temporary parking purposes until such time as the Shared Vehicle Organization is ready to assume permanent use of the Parking Space to house a Shared Vehicle.
- 5.2 Nothing in section 2.1 or 2.2 implies that the City has any obligation to the Owner or anyone else to exercise any of their respective rights under section 2.1 or 2.2.
- 5.3 No default, act, or failure to act by the City or its officers, employees, contractors, licensees or invitees under this Agreement will result or be deemed to result in the interruption, suspension or termination of this Agreement, and the Owner will refrain from seeking any judgment, order, declaration or injunction to that effect.
- 5.4 The Owner shall indemnify and save harmless the City 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.
- 5.5 The Owner hereby releases and forever discharges the City 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.
- 5.6 No part of the title in fee simple to the Lands of the Owner shall pass to or be vested in the City under or by virtue of this Agreement, and the Owner may fully use and enjoy all of the Lands of the Owner subject only to the rights and restrictions in this Agreement.
- 5.7 If the Owner defaults in observance or performance of its obligations hereunder, the City, after 10 days prior written notice to the Owner specifying the default and at any time in case of emergency, may (but is not obligated to) rectify the default, and the Owner shall pay to the City, on demand, its reasonable costs in connection with so rectifying.
- 5.8 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.
- 5.9 At the Owner's expense, the Owner shall 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 that have been specifically approved in writing by the City or have been granted in favour of the City.
- 5.10 The Owner acknowledges that (a) these Covenants are enforceable against the Owner and his successors in title, but (b) the Owner is not personally liable for breach of these Covenants where such liability arises by reason of an act or omission occurring after the Owner named herein or any future owner ceases to have a further interest in the Lands.
- 5.11 If at the date hereof the Owner is not the sole registered owner of the Lands of the Owner, this Agreement shall nevertheless bind the Owner 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.
- 5.12 If the Owner consists of more than one person, each such person will be jointly and severally liable to perform the Owner's obligations under this Agreement.
- 5.13 This Agreement is the entire agreement between the parties hereto regarding its subject.

- 5.14 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.
- 5.15 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.
- 5.16 Whenever this Agreement creates a power or obligation of the City to make a decision or to exercise any contractual right or remedy, the City may do so in accordance with the provisions of this Agreement and no public law duty, whether arising from the principals of fairness or the rules of natural justice, shall have any application.
- 5.17 Nothing contained or implied in this Agreement 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 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 Owner and the City.
- 5.18 The Owner agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
- 5.19 The division of this Agreement into articles and sections and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this Agreement.
- 5.20 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.
- 5.21 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.
- 5.22 This Agreement will be governed and construed according to the laws of the Province of British Columbia.
- 5.23 Time is of the essence of this Agreement.
- 5.24 This Agreement may be executed in counterparts and delivered by emailed PDF file, each of which will have the same effect as if all parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement.

## 6.0 PRIORITY AGREEMENT

- 6.1 [REDACTED], as the registered holder of charges by way of [REDACTED] and [REDACTED] against the Lands, which said charges are registered in the Land Title Office at Victoria, British Columbia, under numbers \* and \*, respectively (the “**Existing Charges**”), for and in consideration of the sum of One Dollar (\$1.00) (the receipt whereof is hereby acknowledged), agrees with the Owner and the City that the within statutory right of way and section 219 covenant shall be an encumbrance upon the Lands in priority to the Existing Charges in the same manner and to the same effect as if they had been dated and registered prior to the Existing Charges.

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

**SCHEDULE "A"**  
**SRW Area**

*[insert plan]*

**SCHEDULE "B"**  
**Location of Parking Space**

*[insert sketch plan]*

END OF DOCUMENT