

LAND TITLE ACT  
FORM C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office Use)

Page 1 of 12 pages

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

\_\_\_\_\_  
Signature of Agent

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:\*

(PID)

(LEGAL DESCRIPTION)

No PID

The Common Property of The Owners, Strata Plan LMS4050

027-190-536

Parcel F District Lot 541 Group 1 New Westminster District  
Plan BCP32313, Except Part Dedicated Road on Plan BCP38951

3. NATURE OF INTEREST:\*

DESCRIPTION

DOCUMENT REFERENCE  
(page and paragraph)

PERSON ENTITLED TO  
INTEREST

Easement

Entire Instrument, Pages 1-13

Transferee

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

(c) Release

There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharge as a charge on the land described in Item 2.

5. TRANSFEROR(S)/CHARGEHOLDER(S):\*

**THE OWNERS, STRATA PLAN LMS4050**

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

**CITY OF VANCOUVER, 453 West 12<sup>th</sup> Avenue, Vancouver, British Columbia, V5Y 1V4**

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			Party(ies) Signature(s)
	Y	M	D	
<hr/> Solicitor/Notary (as to both signatures)	09			<b>THE OWNERS, STRATA PLAN LMS4050</b> by its authorized signatories:  Name: _____  Name: _____
<hr/> Stephen F. Hayward, Barrister and Solicitor 453 West 12 <sup>th</sup> Avenue Vancouver BC V5Y 1V4 Phone: 873-7714	09			<b>CITY OF VANCOUVER</b> by its authorized signatory:  _____ Frances Connell/Graham Johnsen

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.

\* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

\*\* If space insufficient, continue executions on additional page(s) in Form D.

TERMS OF INSTRUMENT - PART 2  
CONSTRUCTION EASEMENTS AGREEMENT

THIS AGREEMENT dated for reference as of the 10th day of August, 2009,

BETWEEN:

**THE OWNERS, STRATA PLAN LMS4050**  
400 - 1281 West Georgia Street  
Vancouver, BC  
V6E 3J7  
(the "Lot X Owner")

AND:

**CITY OF VANCOUVER**  
453 West 12<sup>th</sup> Avenue  
Vancouver, British Columbia  
V5Y 1V4  
(the "Lot Y Owner")

BACKGROUND:

- A. The Lot X Owner is the registered owner in fee simple of Lot X;
- B. The Lot Y Owner is the registered owner in fee simple of Lot Y;
- C. The Lot Y Owner may construct, or cause to be constructed, the Lot Y Project; and
- D. The Lot X Owner has agreed to grant the Lot Y Owner certain easements, rights and licences over, under and through its lands and buildings in connection with the Lot Y Project for the purposes contained in this Agreement.

NOW THEREFORE in consideration of the premises, mutual grants and covenants contained in this Agreement, Ten Dollars (\$10) now paid by the Lot Y Owner to the Lot X Owner, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the parties), the parties hereto covenant and agree with each other as follows:

**ARTICLE 1**  
**DEFINITIONS AND INTERPRETATIONS**

**1.1 Definitions**

For the purposes of this Agreement, the following words or phrases will have the following meanings:

- (a) "**City**" means the City of Vancouver in its capacity as a municipal government;
- (b) "**Crane**" means any and all construction cranes erected and used for the purpose of assisting in the construction of the Lot Y Project;
- (c) "**Grantee**" has the meaning set out in section 4.1;
- (d) "**Grantor**" has the meaning set out in section 4.1;

- (e) "Lot X" means those lands and premises registered in the name of the Lot X Owner and legally described as:
- City of Vancouver  
Parcel Identifier: No PID  
The Common Property of The Owners, Strata Plan LMS4050;
- (f) "Lot X Building" means the buildings, structures and other improvements located on Lot X as of the date the Lot Y Owner starts to construct the Lot Y Project;
- (g) "Lot Y" means those lands and premises registered in the name of the Lot Y Owner and legally described as:
- City of Vancouver  
Parcel Identifier: 027-190-536  
Parcel F District Lot 541 Group 1 New Westminster District Plan  
BCP32313, Except Part Dedicated Road on Plan BCP38951;
- (h) "Lot Y Project" means the development proposed to be constructed on Lot Y by the Lot Y Owner as of the date of registration of this Agreement in the Land Title Office, including any buildings, structures and other improvements comprising the same;
- (i) "Personnel" means any of the elected officials or directors, if applicable, officers, employees, servants, agents, consultants, contractors and subcontractors of a legal entity; and
- (j) "Termination Date" means the earlier of:
- (i) the date of issuance by the City of the final occupancy certificate with respect to the Lot Y Project; and
- (ii) December 31, 2020;

## 1.2 Severability of Provisions

If any provision or provisions contained in this Agreement are found by any court of competent jurisdiction to be illegal, invalid or otherwise unenforceable or void then such provision or provisions will be deleted from this Agreement and this Agreement will thereafter be construed as though such provision or provisions were never contained in this Agreement.

## 1.3 Amendments, etc.

Except as otherwise expressly provided herein, no supplement or amendment, modification or waiver or termination of this Agreement will be binding unless executed in writing by the parties hereto.

## 1.4 Headings

The headings of the Articles or sections contained in this Agreement are not intended to limit, extend or be considered in the interpretation of the meaning of this Agreement or any particular Article or section of this Agreement and have been inserted for convenience of reference only.

## **1.5 Interpretation**

Wherever the singular number or the masculine or neutral gender is used in this Agreement they will be construed as being the plural or feminine or body corporate and vice versa and wherever the plural is used in this Agreement it will be construed as being the singular, and vice versa, where the context or the parties hereto so require.

## **1.6 Enurement**

This Agreement will enure to the benefit of and be binding upon the parties hereto, their respective successors and assigns and the respective owners of Lot X and Lot Y from time to time.

## **ARTICLE 2 EASEMENTS GRANTED BY THE LOT X OWNER TO THE LOT Y OWNER**

### **2.1 Grant of Easements**

Subject to sections 2.2, 2.3 and 2.4, the Lot X Owner as owner of Lot X does hereby grant, convey and confirm to the Lot Y Owner as the owner of Lot Y for the benefit of the Lot Y Owner and its Personnel, and to be appurtenant to Lot Y and to bind all of Lot X, for the use and enjoyment of the Lot Y Owner and its Personnel, in common with the Lot X Owner and all other persons having a similar right, an irrevocable easement, licence, liberty, privilege, permission and right of way at all times and from time to time to pass and repass on that part of Lot X which is above the highest elevation of any permanent structure, including any antennae or other normal attachment and appurtenances thereto, located on Lot X and no less than the distance above required by the Occupational Health and Safety Regulations made pursuant to the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, as the same may be amended from time to time, with the boom or booms of a Crane to be located on Lot Y to facilitate the construction of the Lot Y Project, provided that no load or materials will be suspended or carried over Lot X, to have and to hold such easements as easements appurtenant to Lot Y, subject only to the provisos, terms and conditions contained in this Agreement.

### **2.2 Restrictions on the Exercise of Rights**

When exercising those easements, licences and all other rights, liberties, privileges and permissions granted to it by the Lot X Owner in this Agreement, the Lot Y Owner will, and will cause its Personnel to, at all times act reasonably and with due consideration for the interests of the Lot X Owner, Lot X, the Lot X Building and its tenants and occupants and will cause as little disturbance to the Lot X Owner, Lot X, the Lot X Building and its tenants and occupants as is reasonably possible.

### **2.3 Termination of Easements and Licenses**

The easements granted in section 2.1 and all other rights, liberties, privileges and permissions granted by the Lot X Owner to the Lot Y Owner and its Personnel in this Agreement relating thereto will terminate upon the applicable Termination Date. Upon the termination of the easements granted in section 2.1 in accordance with this section 2.3, the Lot Y Owner, within a reasonable period of time after written request for the same from the Lot X Owner, will provide the Lot X Owner with a discharge of the easements in registrable form.

## **2.4 Suspension of Rights**

The operation of the easements granted in section 2.1 will be suspended until the issuance by the City of a permit which authorizes excavation on Lot Y related to the Lot Y Project.

### **ARTICLE 3 COVENANTS OF LOT X OWNER AS GRANTOR**

#### **3.1 Lot X Owner's Covenants**

The Lot X Owner covenants and agrees with the Lot Y Owner that the Lot X Owner will not do or permit to be done any act or thing within its control which will interfere with the exercise by the Lot Y Owner of the Lot Y Owner's rights under this Agreement or damage or interfere with any part of the Lot Y Project.

### **ARTICLE 4 COVENANTS OF LOT Y OWNER AS GRANTEE**

#### **4.1 Covenants Regarding the Lot Y Project**

The Lot Y Owner in its capacity as a grantee of easements under section 2.1 (the "Grantee"), covenants and agrees with the Lot X Owner in its capacity as a grantor of easements under section 2.1 (the "Grantor"), that:

- (a) the Grantee will ensure that at the end of each working day, the boom of the Crane is not left in the airspace above the Grantor's Lot, it being acknowledged that the boom of the Crane will be left unsecured and may, due to high winds, enter into the airspace of the Grantor's Lot, provided that the Crane is carrying no load and provided that on the next work day and if safe to do so, the Grantee will cause the boom of the Crane to be moved from the airspace of the Grantor's Lot;
- (b) the Grantee will promptly make good, any damage which it may cause, in the exercise of its rights hereunder, to the Grantor's Lot, the Grantor's Building and the improvements located thereon or thereunder by restoring same to a condition at least as good as it was prior to said damage and if the Grantee does not make good such damage, the Grantor will have the right to restore the Grantor's Lot and improvements at the expense of the Grantee;
- (c) the Grantee's Project will be constructed and carried out in a good and workmanlike manner and in accordance with all applicable laws, bylaws and regulations in force from time to time of every governmental authority having jurisdiction and in a manner so as not to cause damage or unnecessary disturbance to or interference with the Grantor's Lot or its tenants and occupants or to interrupt the supply of any utilities or other services to the Grantor's Lot;
- (d) the Grantee will not insert any underpinning or other works into the structure or the foundations of the Grantor's Building;
- (e) the Grantee will deliver to the Grantor, forthwith after issuance thereof by the City, a copy of the certificate of final inspection or occupancy permit for the Grantee's Project;

- (f) the Grantee shall maintain the Grantor's Lot free and clear of all claims of lien in connection with the Grantee's Project or any other work required to be performed by the Grantee in connection with the Grantee's Project. In the event of filing a lien, the Grantee will promptly, at its own expense, cause the same to be removed and may cause the lien to be removed by paying monies into Court pursuant to the *Builders Lien Act* of British Columbia;
- (g) the Grantee will not use the Grantor's Lot for any purposes other than those specifically set out in this Agreement;
- (h) the Grantee will be responsible for the prompt payment of all fees, permits and construction expenses of the Grantee's Project; and
- (i) the Grantee will limit construction on the Grantee's Project to those times which are in accordance with the bylaws of the City.

#### 4.2 General Covenants

The Lot Y Owner in its capacity as a Grantee, covenants and agrees with the Lot X Owner in its capacity as a Grantor that:

- (a) the Grantee and its Personnel will not, in the exercise of their rights hereunder, without the prior written consent of the Grantor, such consent not to be unreasonably withheld, conditioned or delayed, do anything which might damage, disturb, prejudice or adversely affect the foundations or any other part of the Grantor's Building, or any other improvement presently or hereafter situated on the Grantor's Lot or which will interfere with or interrupt any utilities or similar services supplied to the Grantor's Lot; and
- (b) the easements, licences, liberties, privileges, permissions and rights of way set forth in section 2.1, will be exercisable only until the Termination Date.

#### 4.3 Insurance

The Lot Y Owner in its capacity as a Grantee will, prior to commencing any work on the Lot Y Project, at its sole expense, take out and thereafter maintain in full force and effect until the issuance by the City of the final occupancy permit for the Lot Y Project and removal of the Crane from Lot Y, a comprehensive general liability insurance policy with limits of not less than Five Million Dollars (\$5,000,000) per occurrence, and a deductible of not more than Ten Thousand Dollars (\$10,000), or such other amounts as the Grantor may reasonably request from time to time, protecting the Grantee and its Personnel against all claims for personal injury, death, bodily injury or property damage arising out of the operation and all activities of the Grantee and its Personnel including, but not limited to, the operation of construction cranes.

The policy will:

- (a) be extended to cover crane liability and shoring liability;
- (b) contain a cross liability clause naming the Grantor and its Personnel as additional insureds with respect to all claims for personal injury, death, bodily injury or property damage arising out of the operations of the Grantee and its Personnel as granted under this Agreement;

- (c) contain a provision that coverages afforded under the policy will not be cancelled or materially changed without the insurance company giving at least 60 days' prior written notice by registered mail to the Grantor;
- (d) include blanket contractual liability covering liability arising directly or indirectly out of the operation and all activities of the Grantee and its Personnel in relation to its Project; and
- (e) be primary insurance as respects the Grantor, and any insurance or self-insurance maintained by such Grantor will be in excess of this insurance and will not contribute to it.

Prior to commencing any work at, around or on the Grantor's Lot, the Grantee will provide evidence of all required insurance to be taken out in the form of a detailed certificate of insurance, satisfactory to the Grantor, and the insurance certificate will not contain any disclaimer whatsoever. If required by the Grantor, the Grantee will provide certified copies of the policies signed by the insurer.

In the event that any insurance policy is cancelled or not renewed at any time during the period in which the Grantee is required to maintain such insurance under this Agreement and the Grantee does not immediately replace such policy with an equivalent policy, all rights under this Agreement will be suspended until such insurance is replaced, and the Grantee agrees that the Grantor will have the right to effect its own equivalent insurance coverage and the Grantee will bear the costs of effecting such insurance. Upon receipt of an invoice for such costs, the Grantee will forthwith reimburse the Grantor for such costs.

#### **4.4 Indemnity**

The Lot Y Owner in its capacity as a Grantee covenants and agrees with the Lot X Owner in its capacity as a Grantor that the Grantee will indemnify and save harmless the Grantor and its Personnel from and against any and all costs, expenses and damages suffered or incurred by the Grantor or its Personnel as a result of the use of the Grantor's Lot pursuant to this Agreement by the Grantee or its Personnel, provided that this indemnity will not apply with respect to claims, demands, proceedings, losses, damages or costs whatsoever the Grantor or its Personnel may incur or suffer as a result of the wilful default or negligent acts or omissions of the Grantor or its Personnel.

### **ARTICLE 5 MISCELLANEOUS**

#### **5.1 Run with the Land**

The easements granted in section 2.1 of this Agreement will be construed as running with Lot X and Lot Y, and will be binding upon Lot X and accrue to the benefit of Lot Y.

#### **5.2 Fee Simple**

No part of the fee of the soil of Lot X will pass to or be vested in the Lot Y Owner under or by these presents. No part of the fee of the soil of Lot Y will pass to or be vested in the Lot X Owner under or by these presents.



### **5.3 Covenants Personal**

The covenants of the Lot X Owner and the Lot Y Owner contained in this Agreement will only be personal and binding upon them during their respective ownership of any interest in Lot X and Lot Y respectively, except in respect of covenants and obligations accruing but not yet fully performed or fulfilled during such period of ownership, which covenants and obligations will survive until so performed or fulfilled, and Lot X will nevertheless be and remain at all times charged herewith. If the Lot X Owner at any time before the Termination Date sells or transfers Lot X or any portion thereof (excluding the sale of a strata lot within the strata corporation known as The Owners, Strata Plan LMS4050), the Lot X Owner will, prior to the effective date of such sale or transfer, obtain from the purchaser or transferee a covenant in writing in favour of the Lot Y Owner to assume and perform all of the obligations of the Lot X Owner arising under this Agreement at any time on or after such effective date. If the Lot Y Owner at any time before the Termination Date sells or transfers Lot Y or any portion thereof (other than by way of the deposit of a strata plan in respect of Lot Y and subsequent sale or transfer of a strata lot within the Lot Y Project), the Lot Y Owner will, prior to the effective date of such sale or transfer, obtain from the purchaser or transferee a covenant in writing in favour of the Lot X Owner to assume and perform all of the obligations of the Lot Y Owner arising under this Agreement at any time on or after such effective date.

### **5.4 Right to Use Lot X**

Nothing in this Agreement will prevent the Lot X Owner from using Lot X in a manner which does not interfere with the exercise by the Lot Y Owner of its rights under this Agreement.

### **5.5 Right to Use Lot Y**

Nothing in this Agreement will prevent the Lot Y Owner from using Lot Y in a manner which does not interfere with the exercise by the Lot X Owner of its rights under this Agreement.

### **5.6 Time of Essence**

Time is of the essence in the performance of each obligation under this Agreement.

### **5.7 Further Assurances**

Each party will, at the expense of the party requesting such further agreement or other document, execute and deliver such further agreements and other documents and do such further acts and things as the other party reasonably requests to evidence, carry out or give full force and effect to the intent of this Agreement.

### **5.8 Entire Agreement**

This Agreement constitutes the entire agreement between the parties and supersedes every previous agreement, communication, expectation, negotiation, representation or understanding, whether oral or written, express or implied, statutory or otherwise, between the parties with respect to the subject matter of this Agreement.

### **5.9 No Limitation**

Notwithstanding this Agreement or any provisions contained in this Agreement, it is expressly understood and agreed that nothing contained in this Agreement will release or limit the rights or remedies of either party at law or in equity or otherwise against the other in respect of any matter arising from the construction of any buildings, improvements or works on Lot Y.

## 5.10 Vancouver Charter

Nothing contained or implied in this Agreement will prejudice or affect the City's rights, powers, duties and obligations in the exercise of its functions pursuant to the *Vancouver Charter*, S.B.C. 1953, c. 55, as amended, and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws and regulations, all of which may be as fully and effectively exercised in relation to Lot Y and Lot X as if this Agreement had not been executed and delivered by the parties hereto.

## 5.11 Governing Law

This Agreement shall be interpreted and enforced exclusively in accordance with the laws of the Province of British Columbia, to whose courts of competent jurisdiction the parties agree to attorn.

## 5.12 Notices

Any notice, request or communication required or permitted to be given under this Agreement shall be in writing and shall be given either by personal delivery, or by mailing in British Columbia by prepaid registered mail, addressed as follows:

- (a) in the case of the Lot X Owner:

The Owners, Strata Plan LMS4050  
c/o 400 - 1281 West Georgia Street  
Vancouver, BC  
V6E 3J7  
Attention: Strata Council President

- (b) in the case of the Lot Y Owner:

City of Vancouver  
453 West 12th Avenue  
Vancouver, British Columbia  
V5Y 1V4  
Attention: City Clerk  
with a concurrent copy to the Director of Legal Services;

or to such other address in British Columbia as either party may specify in writing to the other, provided that if and when the owner of any parcel of land should change, then to the address as set out in the State of Title Certificate for that particular parcel of land, or, if strata-titled, the address of the strata corporation in the records of the Land Title Office, and such notice, request or communication will be deemed to have been received on the date of delivery, or on the third business day next following the date of such mailing if mailed as aforesaid, provided that if mailed should there be, between mailing and the actual receipt of such notice, request or communication, a mail strike, slowdown or other labour dispute which might affect the delivery, delivery of such notice, request or communication will only be effective if and when actually delivered.

## 5.13 Performance of Lot Y Owner's Rights and Obligations by Third Party

It is understood and agreed that the Lot Y Owner intends to enter into a long term ground lease in respect of Lot Y, and that its lessee or its lessee's Personnel will then construct the Lot Y Project. It is therefore further agreed that:

- (a) the Lot Y Owner may assign this Agreement and its rights and obligations hereunder, in whole or in part, without the prior written consent of the Lot X Owner, to such lessee and/or its Personnel;
- (b) that the assignee(s) will thereafter enjoy the Lot Y Owner's rights and perform the Lot Y Owner's obligations, as applicable, in the place and stead of the Lot Y Owner during the continuation of such assignment; and

that the Lot Y Owner will itself be released of such obligations during the continuation of such assignment.

IN WITNESS WHEREOF the parties have executed this Agreement by signing the General Instrument - Part I attached hereto.

**END OF DOCUMENT**