

VICTORIA LAND TITLE OFFICE

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

Aug-14-2020 16:05:24.005

CA8364820 CA8364834

1597444116 PAGE 1 OF 85 PAGES

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the Land Title Act, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

Thomas Earl Baillie 8CBI24 Digitally signed by Thomas Earl Baillie 8CBI24 Date: 2020.08.14 15:29:21 -07'00'

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

BAILLIE LAW CORPORATION

Suite 1088

650 West Georgia Street

Vancouver

BC V6B 4N8

Tel: (604) 684-9996

File No: 5124-468

Document Fees: \$1,123.05

Deduct LTSA Fees? Yes [checked]

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

SEE SCHEDULE

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) [checked] 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):

ARAGON ESQUIMALT TC PROPERTIES LTD., INC. BC1068481

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)

THOMAS E. BAILLIE, Q.C.

Barrister & Solicitor

1088 - 650 West Georgia Street

Vancouver, BC V6B 4N8

Execution Date

Table with 3 columns: Y, M, D. Values: 20, 08, 10

Transferor(s) Signature(s)

Aragon Esquimalt TC Properties Ltd. by its authorized signatory:

Lenny Moy

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

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

Rachel Dumas

Commissioner for Taking Affidavits in British Columbia

Corporate Officer
Corporation of the Township of
Esquimalt
1229 Esquimalt Road
Esquimalt, BC V9A 3P1

(as to both signatories)

Y	M	D
20	08	13

Corporation of the Township of
Esquimalt by its authorized signatories:

Barbara Desjardins

Laurie Hurst

Rachel Dumas

Commissioner for Taking Affidavits in British Columbia

Corporate Officer
Corporation of the Township of
Esquimalt
1229 Esquimalt Road
Esquimalt, BC V9A 3P1

20	08	13
----	----	----

This is an instrument required by the
Corporation of the Township of
Esquimalt Approving Officer for
Subdivision Plan EPP95431 creating
the condition or covenant entered into
under S. 219 of the Land Title Act.

Bill Brown, Approving Officer

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]

**029-349-311 LOT 1 SECTION 11 SUBURBAN LOT 40 ESQUIMALT DISTRICT PLAN
EPP32782 EXCEPT PART SHOWN ON PLAN EPP95431**

STC? YES

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

**NO PID NMBR LOT A SECTION 11 SUBURBAN LOT 40 ESQUIMALT DISTRICT PLAN
EPP95431**

STC? YES

[Related Plan Number]

EPP95431

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

**NO PID NMBR LOT B SECTION 11 SUBURBAN LOT 40 ESQUIMALT DISTRICT PLAN
EPP95431**

STC? YES

[Related Plan Number]

EPP95431

**LAND TITLE ACT
FORM E**

SCHEDULE

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

**NO PID NMBR LOT C SECTION 11 SUBURBAN LOT 40 ESQUIMALT DISTRICT PLAN
EPP95431**

STC? YES

[Related Plan Number]

EPP95431

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

STC? YES

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

STC? YES

FORM_E_V25

**LAND TITLE ACT
FORM E****SCHEDULE**

PAGE 5 OF 85 PAGES

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Covenant

S. 219, paragraph 3.1

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Easement

Over No PID Lot A Sec 11 Suburban Lot 40 Esquimalt District Plan EPP95431 Dominant Lands No PID Lot B and No PID Lot C, both of Sec 11 Suburban Lot 40 Esquimalt District Plan EPP95431, and PID 029-349-311 - Lot 1 Sec 11 Suburban Lot 40 Esquimalt District Plan EPP32782, EXCEPT part shown on Plan EPP95431; paragraphs 2.1 and 2.2

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Easement

Over No PID Lot B Sec 11 Suburban Lot 40 Esquimalt District Plan EPP95431 Dominant Lands No PID Lot A and No PID Lot C both of Sec 11 Suburban Lot 40 Esquimalt District Plan EPP95431, and PID 029-349-311 - Lot 1 Sec 11 Suburban Lot 40 Esquimalt District Plan EPP32782 EXCEPT part shown on Plan EPP95431; paragraphs 2.3 and 2.4

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Easement

Over No PID Lot C Sect 11 Suburban Lot 40 Esquimalt District Plan EPP95431 Dominant Lands No PID Lot A and No PID Lot B both of Sec 11 Suburban Lot 40 Esquimalt District Plan EPP95431, and PID 029-349-311 - Lot 1 Sec 11 Suburban Lot 40 Esquimalt District Plan EPP32782 EXCEPT part shown on Plan EPP95431; paragraphs 2.5 and 2.6

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Easement

Over PID 029-349-311 - Lot 1 Sec 11 Suburban Lot 40 Esquimalt District Plan EPP32782 EXCEPT part shown on Plan EPP95431 Dominant Lands No PID Lot A, No PID Lot B, and No PID Lot C, all of Sec 11 Suburban Lot 40 Esquimalt District Plan EPP95431; Paragraphs 2.7 and 2.8

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Easement

Over No PID Lot A Sec 11 Suburban Lot 40 Esquimalt District Plan EPP95431 Dominant Lands No PID Lot B Sec 11 Suburban Lot 40 Esquimalt District Plan EPP95431; Paragraph 2.10

**LAND TITLE ACT
FORM E****SCHEDULE**

PAGE 6 OF 85 PAGES

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Easement		Over No PID Lot B Sec 11 Suburban Lot 40 Esquimalt District Plan EPP95431 Dominant Lands No PID Lot C Suburban Lot 40 Esquimalt District Plan EPP95431; Paragraph 2.11
Easement		Over No PID Lot C Sec 11 Suburban Lot 40 Esquimalt District Plan EPP95431 Dominant Lands No PID Lot B Suburban Lot 40 Esquimalt District Plan EPP95431; Paragraph 2.12
Easement		Over No PID Lot B Sec 11 Suburban Lot 40 Esquimalt District Plan EPP95431 Dominant Lands No PID Lot C Suburban Lot 40 Esquimalt District Plan EPP95431; Paragraph 2.13
Easement		Over No PID Lot C Sec. 11 Suburban Lot 40 Esquimalt District Plan EPP95431 Dominant Lands No PID Lot B Suburban Lot 40 Esquimalt District Plan EPP95431; Paragraph 2.14
Restrictive Covenant		Over PID 029-349-311 - Lot 1 Sec 11 Suburban Lot 40 Esquimalt District Plan EPP32782 EXCEPT part shown on Plan EPP95431 Dominant Lands No PID Lot B Suburban Lot 40 Esquimalt District Plan EPP95431 Over part shown outlined on Plan EPP104128 Paragraph 2.15
Restrictive Covenant		No PID Lot A Sec 11 Suburban Lot 40 Esquimalt District Plan EPP95431 Dominant Lands No PID Lot B Suburban Lot 40 Esquimalt District Plan EPP95431 Over part shown outlined on Plan EPP104128 Paragraph 2.16

FORM_E_V25

**LAND TITLE ACT
FORM E**

SCHEDULE

PAGE 7 OF 85 PAGES

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Equitable Charge

Over No PID Lot A Sec 11 Suburban Lot 40
Esquimalt District Plan EPP95431
Paragraph 7.14

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Equitable Charge

Over No PID Lot B Sec 11 Suburban Lot 40
Esquimalt District Plan EPP95431
Paragraph 7.15

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Equitable Charge

Over No PID Lot C Sec 11 Suburban Lot 40
Esquimalt District Plan EPP95431
Paragraph 7.16

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

**LAND TITLE ACT
FORM E**

SCHEDULE

PAGE 8 OF 85 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.

6. TRANSFEREES:

CORPORATION OF THE TOWNSHIP OF ESQUIMALT, 1229 Esquimalt Road, Esquimalt, British Columbia, V9A 3P1, as to Section 219 Covenant; and

ARAGON ESQUIMALT TC PROPERTIES LTD., Inc. No. BC1068481, of #210 - 1628 West 1st Avenue, Vancouver, British Columbia, V6J 1G1, as to Easements and Equitable Charges.

RECIPROCAL EASEMENTS, SECTION 219 COVENANT, EQUITABLE CHARGES AND COST SHARING AGREEMENT

TABLE OF CONTENTS

1. DEFINITIONS AND INTERPRETATION 2

 1.1 Definitions 2

 1.2 Interpretation 8

 1.3 Schedules. The following Schedules are attached to, and form part of, this Agreement 9

2. GRANT OF EASEMENTS BETWEEN OWNERS 9

 2.1 Easements from A Owner to the B Owner, the C Owner and the Remainder Owner 9

 2.2 Benefit and Burden 11

 2.3 Easements from the B Owner to the A Owner, the C Owner and the Remainder Owner 11

 2.4 Benefit and Burden 12

 2.5 Easements from the C Owner to the A Owner, the B Owner and the Remainder Owner 12

 2.6 Benefit and Burden 14

 2.7 Easements from the Remainder Owner to the A Owner, the B Owner and the C Owner 14

 2.8 Benefit and Burden 15

 2.9 Licence from Lessee to the B Owner over parts of the Leased Lands 15

 2.10 Easement from A Owner to the B Owner for Encroachments 16

 2.11 Easement from B Owner to the C Owner for Encroachments 16

 2.12 Easement from C Owner to the B Owner for Encroachments 16

 2.13 Easement from B Owner to C Owner for Storage Lockers 16

 2.14 Easement from C Owner to B Owner for Garbage Room 17

 2.15 Restrictive Covenant over the Remainder Lands re Spatial Separation 17

 2.16 Restrictive Covenants over the Lot A Lands re Spatial Separation 17

3. SECTION 219 COVENANT 17

 3.1 Section 219 Covenant 17

4. RESERVATIONS AND LIMITATIONS 20

 4.1 Reservations 20

 4.2 Limitation on Access 21

 4.3 Additions to Utility Systems 22

 4.4 Users 24

TOC - 2

5. COVENANTS 24

5.1 Owners' Covenants 24

5.2 Maintenance and Repair - General 26

5.3 Maintenance and Repair Obligations of the Township 27

5.4 Insurance by Owners 27

5.5 Joint Insurance 28

5.6 Joint Insurance for Common Use Areas and Facilities 29

5.7 Delay in Reconstruction 31

5.8 Default 31

5.9 Further Acts 32

5.10 Acknowledgement 32

6. MODIFICATIONS OF EASEMENTS 32

6.1 Replacement Easements 32

6.2 Discharges of Replaced Easements 32

6.3 Priority of Replacement and Additional Easements 33

6.4 Release of Easements 33

7. COST SHARING 33

7.1 Definitions 33

7.2 Costs in Respect of Exclusive Use Areas and Facilities 34

7.3 Allocation of Costs in respect of the Geothermal System 34

7.4 Costs in Respect of Common Use Areas and Facilities 34

7.5 Operation, Inspection, Maintenance and Repair of Common Use Areas and Facilities 34

7.6 Capital Repair and Replacement 35

7.7 Costs arising from the Remainder Lands 35

7.8 Obligations of Township 35

7.9 Allocation of Shared Costs 35

7.10 Amendments to Owner's Share 36

7.11 Renovations by an Owner 36

7.12 Payment of Shared Costs 36

7.13 Deductions from Shared Costs 38

7.14 Equitable Charge over the Lot A Lands 39

7.15 Equitable Charge over the Lot B Lands 39

7.16 Equitable Charge of the Lot C Lands 40

7.17 Enforceability of the Equitable Charges 40

7.18 Postponement of Equitable Charge 40

TOC - 3

7.19 Status Certificate40

7.20 Owner’s Obligation to Rebuild and Repair if not Major Damage41

7.21 Owner’s Obligation to Rebuild and Repair if Major Damage41

8. DISPUTE RESOLUTION41

8.1 Settlement of Disputes41

8.2 No Liability for Consequential Damages42

9. SUBDIVISION43

9.1 Subdivision43

9.2 Subdivision by Strata Plan43

9.3 Subdivision by Strata Plan - Pedestrian Access Routes44

10. GENERAL45

10.1 Severability45

10.2 Covenants Run with the Land45

10.3 Priority45

10.4 Rights of Owner Preserved45

10.5 Waiver45

10.6 Notice45

10.7 Governing Law46

10.8 No Derogation46

10.9 Entire Agreement46

10.10 Further Assurances46

10.11 Enurement46

**RECIPROCAL EASEMENTS, SECTION 219 COVENANT, EQUITABLE CHARGES
AND COST SHARING AGREEMENT**

BETWEEN:

ARAGON ESQUIMALT TC PROPERTIES LTD., #210 – 1628 West 1st Avenue,
Vancouver, B.C. V6J 1G1

(in its capacity as owner of the Lot A Lands (the “**A Owner**”); in its capacity as owner of the Lot B Lands (the “**B Owner**”); in its capacity as owner of the Lot C Lands (the “**C Owner**”); in its capacity as owner of the Remainder Lands (the “**Remainder Owner**”); and in its capacity as Lessee of the Leased Lands (the “**Lessee**”)),

AND:

CORPORATION OF THE TOWNSHIP OF ESQUIMALT, 1229 Esquimalt Road,
Esquimalt, B.C. V9A 3P1

(the “**Township**”)

WHEREAS:

- A. The A Owner is the registered owner of the Lot A Lands;
- B. The B Owner is the registered owner of the Lot B Lands;
- C. The C Owner is the registered owner of the Lot C Lands;
- D. The Remainder Owner is the registered owner of the Remainder Lands;
- E. The Lessee is the Lessee of the Municipal Parking Area defined in the Parking Agreement;
- F. Pursuant to development permits numbered DP000075 and building permits numbered BP013817, BP013818, BP013819, BP013820 and BP013821 (collectively, the “**Permits**”), the Township has permitted the Construction of the Project;
- G. Each Owner wishes to grant certain rights, licences and easements to the Other Owners over its Parcel in order to provide access, utilities and certain other benefits appurtenant to the Other Parcel and to provide for cost sharing in respect of Common Use Areas and Facilities;
- H. Pursuant to Section 18(5) of the *Property Law Act* (British Columbia), a registered owner in fee simple may grant to itself an easement over land that it owns for the benefit of other land that it owns in fee simple;

- I. The Approving Officer has approved the application for the subdivision of Lot I into the Lot A Lands, the Lot B Lands, the Lot C Lands and the Remainder subject to the condition, among others, that the Architect's Opinions and Code Report be complied with and easements and covenants contained in this Agreement be entered into;
- J. 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 the Township, may be registered as a charge against the title to that land;
- K. The Township wishes to become a party to this Agreement to ensure that the rights, licences and easements hereby created continue to enure to the benefit of the Owners from time to time of the Parcels; and
- L. In connection with the rights, licences and easements granted herein, the Owners wish to share in the costs relating to the Operation, Inspection, Construction, Maintenance, Repair and insurance of the Common Use Areas and Facilities in accordance with the terms and conditions of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the matters referred to in the foregoing recitals, the covenants and mutual agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by each of the parties), the parties, for themselves and their successors and assigns, hereby acknowledge, agree, covenant, declare and grant as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following terms have the following meanings unless the context otherwise requires. (For the definitions for capitalized terms relating to cost sharing in this Agreement, see Section 7):

- (a) “**Approving Officer**” means the person appointed as Approving Officer for the Township pursuant to the *Land Title Act*;
- (b) “**Architect's Opinions**” means the opinions of FM D'Ambrosio Architect Inc. dated April 2, 2020, attached as Schedule B;
- (c) “**Business Day**” means any day that is a Monday through Friday, except statutory holidays;
- (d) “**Bylaw**” means the Township's *Development Application Procedures and Fees Bylaw No. 2791, 2012* and all amendments thereto or replacements thereof;
- (e) “**Bylaw Requirements**” means the requirements that must be complied with in order for the Project to comply with the Building Bylaw and other applicable enactments;

- (f) **“Claims”** means all losses and damages, costs (including, without limitation, legal costs), expenses, actions, suits, debts, accounts, claims and demands, including, without limitation, any and all claims of third parties (whether for personal injury, death, property damage or otherwise);
- (g) **“Code Report”** means the report prepared by GHL Consultants Ltd. dated April 2, 2020 in respect of the Esquimalt Town Centre Project, a copy of which is attached as Schedule C;
- (h) **“Common Use Areas and Facilities”** means the Parkade and the Utility Systems, Fire Protection and Life Safety Equipment, Geothermal System, Pedestrian Access Routes, Service Rooms, Electric Car Charging Systems as well as other areas, facilities, systems and equipment which are for the common use and benefit of the Owners and their respective Users;
- (i) **“Construct”** means to build, erect or install a Development and **“Constructed”**, **“Constructing”** and **“Construction”** have corresponding meanings;
- (j) **“Development”** in respect of any Parcel means all buildings, erections improvements and other structures from time to time Constructed within such Parcel and all subsequent alterations, additions and replacements thereof, as the case may be, and **“Developments”** means all of them as the context requires;
- (k) **“Driveway”** means the driveway located on the Lot A Lands which provides ingress to and egress from the Parkade;
- (l) **“Easement Area”** means that part of a Parcel that is subject to an easement granted herein;
- (m) **“Electric Car Charging System”** means infrastructure associated with electric Vehicle charging located in the Parkade or above grade to be owned by “Aragon Holding Ltd”.
- (n) **“Exclusive Use Areas and Facilities”** means those Utility Systems, Fire Protection and Life Safety Equipment, Pedestrian Access Routes, Service Rooms and other areas, facilities, systems and equipment located in or upon a Development that are used by, enjoyed by or for the sole benefit of, only one Owner and its respective Users and, in the case of the Township, the generator and the garbage enclosure area situated on the Leased Lands shall be deemed to be an Exclusive Use Area and Facility for the exclusive use of the Township;
- (o) **“Fire Protection and Life Safety Equipment”** means all fire fighting, life safety systems and fire protection equipment from time to time situated on a Parcel and includes all public announcement, fire alarm and sprinkler systems, and facilities providing water or electricity to any such equipment;
- (p) **“Geothermal System”** means the system used to supply the heating and cooling lines which service all of the Parcels and includes all mechanical infrastructure,

including but not limited to, the geothermal ground loop, two main gas boilers, the main heat pump, the energy meters serving each Parcel, all pipes, valves, flow switches which are integral to the performance of the system and all items located between the geothermal ground loop and the energy meters for each Parcel;

- (q) **“Inspect”** means to inspect, test and examine any portion of a Parcel or any portion of a Development from time to time that is situate within an Easement Area and those adjacent areas, as may reasonably be required, for the purpose of ascertaining or determining whether any defect, damage or condition exists or is imminent which has resulted or may result in the loss of access or egress or support to or use of the Other Developments and “Inspection” and “Inspected” have corresponding meanings;
- (r) **“Land Title Act”** means the *Land Title Act*, R.S.B.C. 1996, c.250 and all amendments thereto or replacements thereof;
- (s) **“Leased Lands”** means the lands shown on Explanatory Plan EPP76482 registered in the Victoria Land Title Office;
- (t) **“Lot A Lands”** means the lands and premises legally described as Lot A Section 11 Suburban Lot 40 Esquimalt District Plan EPP95431;
- (u) **“Lot B Lands”** means the lands and premises legally described as Lot B Section 11 Suburban Lot 40 Esquimalt District Plan EPP95431;
- (v) **“Lot C Lands”** means the lands and premises legally described as Lot C Section 11 Suburban Lot 40 Esquimalt District Plan EPP95431;
- (w) **“Lot 1”** means the lands and premises legally described as PID 029-349-311 Lot 1 Section 11 Suburban Lot 40 Esquimalt District Plan EPP32782;
- (x) **“LTO”** means the Victoria Land Title Office;
- (y) **“Maintain”** means to keep in a good and proper state of repair and in a clean and safe condition as would a prudent owner from time to time and “Maintenance”, “Maintained” and “Maintaining” have corresponding meanings;
- (z) **“Operate”** means to operate and test any Common Use Areas and Facilities and “Operating” and “Operation” have corresponding meanings;
- (aa) **“Other Development”** means any Development on the Parcels that is not located on an Owner’s Parcel and “Other Developments” means two or more of them, as the context requires;
- (bb) **“Other Owner”** means in respect of an Owner, any other Owner under this Agreement and “Other Owners” means two or more of them, as the context requires;

- (cc) **“Other Owner’s Easements”** means the easements and rights granted by an Owner to the an Other Owner pursuant to Sections 2.1, 2.3, 2.5 and 2.7, as the case may be, and **“Other Owners’ Easements** means two or more of them, as the context requires;
- (dd) **“Other Parcel”** means any of the Parcels that is not an Owner’s Parcel and **“Other Parcel”** means two or more of them, as the context requires;
- (ee) **“Owner”** individually means any of the A Owner, the B Owner, the C Owner, and the Remainder Owner and their respective successors in title as the registered owners from time to time of any of the Parcels, and include the registered owner of any Subdivided Lot including, without limitation, a Strata Corporation and its Strata Unit Owners if such Parcel has been subdivided by a Strata Plan, and **“Owners”** means all of them and **“Other Owner”** means any of them as the context requires;
- (ff) **“Owner’s Service Room”** means a Service Room situated within a Parcel that contains Utility Systems which only serves that Parcel;
- (gg) **“Parcel”** means individually the Lot A Lands, the Lot B Lands, the Lot C Lands, the Remainder Lands and the Leased Lands and **“Parcels”** means all of them as the context requires;
- (hh) **“Parkade”** means the underground parkade as described in the Parking Agreement to be constructed in the Parcels which is accessed by the Driveway;
- (ii) **“Parking Agreement”** means the Parking Agreement registered in the LTO under numbers CA6613268 – CA6613270;
- (jj) **“Pedestrian Access Routes”** means those parts of a Parcel (including corridors, stairs and stairwells) which are from time to time designated by the Owner of such Parcel for, or by their nature are intended for, the purpose of:
- (i) Pedestrian access to and from a Parcel to the streets adjacent to the Project;
 - (ii) Pedestrian emergency exit routes from one Parcel through any Other Parcel, including corridors, stairs, stairwells, and if applicable, crossing through the Other Parcels to access one exit from another;
 - (iii) Pedestrian to and from the public areas existing within a Parcel from time to time;
 - (iv) Pedestrian access to and from the streets adjacent to a Parcel; or
 - (v) Pedestrian access to and from and Easement Area located on any Other Parcel.

- (kk) **"Permits"** has the meaning described in paragraph F of the preamble of this Agreement;
- (ll) **"Project"** means all of the Parcels and the Developments Constructed thereon in accordance with the Permits, which shall be comprised of the following:
- (i) Lot A Lands, which will contain part of the Parkade, part of a ground level parking area, 68 Strata Units and common and limited common property;
 - (ii) Lot B Lands, which will contain part of the Parkade, one Strata Unit containing a public library and up to 4 Strata Units containing 1 or more commercial rental unit per Strata Unit and common and limited common property;
 - (iii) Lot C Lands, which will contain part of the Parkade, 34 residential rental units and up to 2 commercial Strata Units containing one or more commercial rental units, and common and limited common property;
 - (iv) the Remainder, which will contain part of the Parkade, a ground level parking area and a plaza for use by the public, and
 - (v) the Parkade;
- (mm) **"Public Open Spaces Operating Agreement"** means the Agreement dated October 16, 2017 between Aragon Esquimalt TC Properties Ltd. and the Township registered in the LTO under numbers CA6613271 – CA6613272;
- (nn) **"Remainder Lands"** means PID029-349-311 Lot 1 Section 11 Suburban Lot 40 Esquimalt District Plan EPP32782 except that part shown on Plan EPP95431;
- (oo) **"Repair"** means to remedy any defect and to repair and replace any damage to any portion of a Development and any portion of an Easement Area (including any Service Rooms or Utility Systems from time to time situate within that Parcel) which has resulted or is likely to result in a loss of access or egress or support uses to or for the Other Development, and "Repairs" and "Repairing" have corresponding meanings;
- (pp) **"Section 219"** means Section 219 of the *Land Title Act*;
- (qq) **"Service Rooms"** means all service, electrical and mechanical rooms and other spaces, including gas meter rooms and storage spaces, that house or contain Utility Systems;
- (rr) **"Shared Costs"** means the costs and expenses to Operate, Inspect, Maintain, Repair and insure the Common Use Areas and Facilities (excluding Repair costs which are allocated between the Owners pursuant to Section 7.2), plus administrative fees up to 15 per cent of such costs and expenses and "Shared Cost" means any of such costs;

- (ss) **"Storage Locker"** means separate lockers built for the storage of personal property of any owner or lessee of a Strata Unit;
- (tt) **"Strata Corporation"** means a strata corporation created by the deposit of a Strata Plan;
- (uu) **"Strata Plan"** means the strata plan subdividing a Parcel into Strata Units and common property in accordance with the provisions of the *Strata Property Act*;
- (vv) **"Strata Property Act"** means the *Strata Property Act*, S.B.C. 1998, c.43 and all amendments thereto or replacements thereof;
- (ww) **"Strata Units"** means the residential strata units created pursuant to a Strata Plan and "Strata Unit" means any one of them;
- (xx) **"Strata Unit Owners"** means, from time to time, the registered owners of Strata Units and "Strata Unit Owner" means any one of them;
- (yy) **"Subdivided Lot"** means any part of a Parcel that is created pursuant to the registration of a Strata Plan or upon the registration of a subdivision plan;
- (zz) **"Subdivision Plan"** means the subdivision plan dated September 3, 2019 prepared by JE Anderson & Associates;
- (aaa) **"Support Structures"** means from time to time the soil and any and all structural elements from time to time within any Parcel which are required to support any structure located on any other Parcel including, without limiting the generality of the foregoing, anchors, foundations, columns, footings, supporting walls, roofs, floors and ceilings, beams, bents, brackets, bracings and grade or tie beams;
- (bbb) **"Township Parties"** means the elected officials, officers, servants, employees and agents, including, without limitation, the Approving Officer and the Senior Building and Plumbing Official of the Township;
- (ccc) **"Users"** means the owners, tenants and occupants including, without limitation, any Strata Unit Owners from time to time of all or any part of a Parcel, for whose benefit and use the easements described in Section 2 are granted and their respective employees, servants, agents, officers, contractors, licensees and invitees, whether their authorization to access is implied or expressed, unless any of such employees, servants, agents, officers, contractors, licensees or invitees are expressly not authorized;
- (ddd) **"Utility Systems"** means, from time to time, to the extent that they are located within any Parcel, any and all machinery, equipment, pipes, lines, conduits, wires, cables, chutes, ducts, vents, stacks, shafts, pumps, transformers, display and control panels, meters, light fixtures, heating, air conditioning and ventilating equipment, generators and other devices and systems (including all ancillary appliances and equipment and, without limitation, emergency generators) which are required for

and in connection with the provision and supply of any and all services and utilities to or for the benefit of a Development, including, without limitation, gas, oil, electricity and other power sources, water, steam, sanitary sewer, storm sewer and drainage systems, the Geothermal System, elevators, air intake, air exhaust, ventilation, Fire Protection and Life Safety Equipment, emergency alarms, security systems, sprinklers, exterior and interior signage, and telephone, telecommunication, radio, television, cablevision, fibre optic, media connection equipment and boxes and associated conduit, computer and other communication signals in any form whatsoever, including the Electric Car Charging System, and "Utility System" means any one of the systems referenced in this definition; and

- (eee) "**Vehicle**" means a self-propelled or human propelled conveyance for transporting passengers by land including motor vehicles, motor cycles and bicycles.

1.2 Interpretation

In this Agreement:

- (a) Party. Any reference to a party herein will be deemed to include the heirs, executors, administrators, successors, assigns, employees, servants, agents and officers of such parties wherever the context so permits or requires;
- (b) Singular Gender. Wherever the singular or masculine is used in this Agreement, the same will be construed as meaning the plural or the feminine or body corporate or politic, and vice versa, as the context so requires;
- (c) Captions and Headings. The captions and headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any of the provisions hereof;
- (d) References. References to the or this "Agreement" and the words "hereof", "herein" and similar words refer to this Agreement as a whole and not to any section or subsection or other subdivision hereof and any reference in this Agreement to a designated section, subsection or other subdivision is a reference to the designated section, subsection or subdivision hereof. In addition, references to "including" and the words "includes", "inclusive of" and similar words will not be interpreted to limit the subject at issue nor act to restrict the generality of the subject at issue; and
- (e) Legislation. Any reference to a statute includes and is a reference to such statute and to the regulations made pursuant thereto, with all amendments made thereto and as in force from time to time, and to any statute and regulations that may be passed which have the effect of supplementing or superseding such statutes and regulations.

1.3. Schedules. The following Schedules are attached to, and form part of, this Agreement:

- (a) Schedule A – Cost Sharing Provisions;
- (b) Schedule B – Architect’s Opinions; and
- (c) Schedule C – Code Report.

2. GRANT OF EASEMENTS BETWEEN OWNERS

2.1 Easements from A Owner to the B Owner, the C Owner and the Remainder Owner

The A Owner as registered owner of the Lot A Lands hereby grants to the B Owner, the C Owner and the Remainder Owner and their Users, in perpetuity, the non-exclusive full, free and uninterrupted right, liberty, rights of way and easements, on, over and within and through the Lot A Lands at all times and from time to time, in common with the A Owner and its Users, and all persons having the express or implied permission of the A Owner, for the following purposes:

- (a) Vehicular Access to Parkade. To enter, go, pass and repass in, through, over and upon the Driveway by Vehicles for the purpose of gaining ingress to and egress from the Parkade;
- (b) Vehicular Access to Parking Stalls on the Lot B Lands. To the Lot B Owner and their Users by Vehicles to enter, go, pass and repass through, over and upon all or any part of the Lot A Lands for the purpose of access to parking stalls situated on the Lot B Lands;
- (c) Vehicular Access to Parking Stalls on the Lot C Lands. To the Lot C Owner and their Users by Vehicles to enter, go, pass and repass through, over and upon all or any part of the Lot A Lands for the purpose of access to parking stalls situated on the Lot C Lands;
- (d) Vehicular Access to Parking Stalls on the Remainder Lands. To the Remainder Owner and their Users by Vehicles to enter, go, pass and repass through, over and upon all or any part of the Lot A Lands for the purpose of access to parking stalls situated on the Remainder Lands.
- (e) Vehicular Access to Parking Stalls on the Lot A Lands. To the Lot B Owner and the Remainder Owner and their Users to enter, go pass and repass through, over and upon and to use those parking stalls situated on the Lot A Lands that are partly situated on both the Lot A Lands and the Lot B Lands and the Lot A Lands and the Remainder Lands respectively.
- (f) Pedestrian Access. To enter, go, pass and repass in, through, over and upon all or any part of the Pedestrian Access Routes Constructed upon the Lot A Lands on foot or wheelchair for the purpose of obtaining ingress to and egress for the purposes set out in the definition of Pedestrian Access Routes;

- (g) Service Rooms. To enter, go pass and repass in, through, over and upon any and all Service Rooms which are situate on the Lot A Lands for the purpose of Operating, Inspecting, Constructing, Maintaining and Repairing and using any Utility Systems or related equipment located within such Service Rooms as may be reasonably required by the B Owner, the C Owner and the Remainder Owner for the reasonable use and enjoyment of the Development Constructed within their Parcel;
- (h) Utility Systems. To enter, go, pass and repass in, through, over and upon those parts of the Lot A Lands as the B Owner, the C Owner and the Remainder Owner may reasonably require on foot and, with respect to those parts designated for the use thereof by Vehicles, with Vehicles, for the purpose of Operating, Inspecting, Constructing, Maintaining, Repairing and using those Utility Systems that service their Parcel;
- (i) Fire Protection and Life Safety Equipment. To enter, go, pass and repass in and upon those parts of the Lot A Lands as the B Owner, the C Owner and the Remainder Owner may reasonably require on foot and, with respect to those parts designated for use thereof by Vehicles, with Vehicles, with or without supplies, equipment and machinery, for the purpose of Operating, Inspecting, Constructing, Maintaining, Repairing, and in the case of an emergency to life or property, using any Fire Protection and Life Safety Equipment which is situate within the Lot A Lands that service their Parcel;
- (j) Bylaw Requirements. To enter, go, pass and repass in and upon those parts of the Lot A Lands as the B Owner, the C Owner and the Remainder Owner may reasonably require for the purposes of Inspecting, Constructing, Maintaining or Repairing to comply with the Bylaw Requirements in respect of any Development on their Parcel;
- (k) Support. To have those parts of the Project that are located within the Lot B Lands, the Lot C Lands and the Remainder Lands supported by the Support Structures of the Lot A Lands and by the Lot A Lands;
- (l) Storage Lockers. To enter, go, pass and repass in and upon those parts of the Lot A Lands as the Lot B Owner, the Lot C Owner and the Remainder Owner may reasonably require on foot, and with respect to those parts designated by use thereof by Vehicle, with Vehicles, for the purpose of access to Storage Lockers located in the Project;
- (m) Generally. To do all acts and things necessary for or incidental to the exercise of the rights granted by this Section 2.1, including allowing access to the Easement Areas as needed by the Owners to comply with inspection and emergency requirements of governmental authorities, with or without equipment.

2.2 Benefit and Burden

The easements granted in Section 2.1 will be appurtenant to and for the benefit of the Lot B Lands, the Lot C Lands and the Remainder Lands and such easements will charge and be a burden on the Lot A Lands.

2.3 Easements from the B Owner to the A Owner, the C Owner and the Remainder Owner

The B Owner as registered Owner of the Lot B Lands hereby grants to the A Owner, the C Owner and the Remainder Owner and their Users, in perpetuity, the non-exclusive full, free and uninterrupted right, liberty, rights of way and easements, on, over within and through the Lot B Lands at all times and from time to time, in common with the B Owner and its Users, and all persons having the express or implied permission of the B Owner, for the following purposes:

- (a) Vehicular Access to Parking Stalls on the Lot A Lands. To the Lot A Owner and their Users by Vehicles to enter, go, pass and repass through, over and upon all or any part of the Lot B Lands for the purpose of access to parking stalls situated on the Lot A Lands;
- (b) Vehicular Access to Parking Stalls on the Lot C Lands. To the Lot C Owner and their Users by Vehicles to enter, go, pass and repass through, over and upon all or any part of the Lot B Lands for the purpose of access to parking stalls situated on the Lot C Lands;
- (c) Vehicular Access to Parking Stalls on the Remainder Lands. To the Remainder Owner and their Users by Vehicles to enter, go, pass and repass through, over and upon all or any part of the Lot B Lands for the purpose of access to parking stalls situated on the Remainder Lands;
- (d) Pedestrian Access. To enter, go, go pass and repass in, through, over and upon all or any part of the Pedestrian Access Routes Constructed upon the Lot B Lands on foot or wheelchair for the purpose of obtaining ingress to and egress for the purposes set out in the definition of Pedestrian Access Routes;
- (e) Service Rooms. To enter, go pass and repass in, through, over and upon any and all Service Rooms which are situate on the Lot B Lands for the purpose of Operating, Inspecting, Constructing, Maintaining and Repairing and using any Utility Systems or related equipment located within such Service Rooms as may be reasonably required by the A Owner, the C Owner and the Remainder Owner for the reasonable use and enjoyment of the Development Constructed within their Parcel;
- (f) Utility Systems. To enter, go, pass and repass in, through, over and upon those parts of the Lot B Lands as the A Owner, the C Owner and the Remainder Owner may reasonably require on foot and, with respect to those parts designated for the use thereof by Vehicles, with Vehicles, for the purpose of Operating, Inspecting, Constructing, Maintaining, Repairing and using those Utility Systems that service their Parcel;

- (g) Fire Protection and Life Safety Equipment. To enter, go, pass and repass in and upon those parts of the Lot B Lands as the A Owner, the C Owner and the Remainder Owner may reasonably require on foot and, with respect to those parts designated for use thereof by Vehicles, with Vehicles, with or without supplies, equipment and machinery, for the purpose of Operating, Inspecting, Constructing, Maintaining, Repairing, and in the case of an emergency to life or property, using any Fire Protection and Life Safety Equipment which is situate within the Remainder Lands that service their Parcel;
- (h) Bylaw Requirements. To enter, go, pass and repass in and upon those parts of the Lot B Lands as the A Owner, the C Owner and the Remainder Owner may reasonably require for the purposes of Inspecting, Constructing, Maintaining or Repairing the Utility Systems to comply with the Bylaw Requirements for any Development on their Parcel;
- (i) Support. To have those parts of the Project that are located within the Lot A Lands, the Lot C Lands and the Remainder Lands supported by the Support Structures of the Lot B Lands and by the Lot B Lands;
- (j) Storage Lockers. To enter, go, pass and repass in and upon those parts of the Lot B Lands as the Lot A Owner, the Lot C Owner and the Remainder Owner may reasonably require on foot, and with respect to those parts designated by use thereof by Vehicle, with Vehicles, for the purpose of access to Storage Lockers located in the Project;
- (k) Generally. To do all acts and things necessary for or incidental to the exercise of the rights granted by this Section 2.3, including allowing access to the Easement Areas as needed by the Owners to comply with inspection and emergency requirements of governmental authorities, with or without equipment.

2.4 Benefit and Burden

The easements granted in Section 2.3 will be appurtenant to and for the benefit of the all of the Lot A Lands, the Lot C Lands and the Remainder Lands and such easements will charge and be a burden on the Lot B Lands.

2.5 Easements from the C Owner to the A Owner, the B Owner and the Remainder Owner

The C Owner as registered owner of the Lot C Lands hereby grants to the A Owner, the B Owner and the Remainder Owner and their Users, in perpetuity, the non-exclusive full, free and uninterrupted right, liberty, rights of way and easements, on, over within and through the Lot C Lands at all times and from time to time, in common with the C Owner and its Users, and all persons having the express or implied permission of the C Owner, for the following purposes:

- (a) Pedestrian Access. To enter, go, go pass and repass in, through, over and upon all or any part of the Pedestrian Access Routes Constructed upon the Lot C Lands on

foot or wheelchair for the purpose of obtaining ingress to and egress for the purposes set out in the definition of Pedestrian Access Routes;

- (b) Service Rooms. To enter, go pass and repass in, through, over and upon any and all Service Rooms which are situate on the Lot C Lands for the purpose of Operating, Inspecting, Constructing, Maintaining and Repairing and using any Utility Systems or related equipment located within such Service Rooms as may be reasonably required by the A Owner, the B Owner and the Remainder Owner for the reasonable use and enjoyment of the Development Constructed within their Parcel;
- (c) Utility Systems. To enter, go, pass and repass in, through, over and upon those parts of the Lot C Lands as the A Owner, the B Owner and the Remainder Owner may reasonably require on foot and, with respect to those parts designated for the use thereof by Vehicles, with Vehicles, for the purpose of Operating, Inspecting, Constructing, Maintaining, Repairing and using those Utility Systems that service their Parcel;
- (d) Fire Protection and Life Safety Equipment. To enter, go, pass and repass in and upon those parts of the Lot C Lands as the A Owner, the B Owner and the Remainder Owner may reasonably require on foot and, with respect to those parts designated for use thereof by Vehicles, with Vehicles, with or without supplies, equipment and machinery, for the purpose of Operating, Inspecting, Constructing, Maintaining, Repairing, and in the case of an emergency to life or property, using any Fire Protection and Life Safety Equipment which is situate within the Remainder Lands that service their Parcel;
- (e) Bylaw Requirements. To enter, go, pass and repass in and upon those parts of the Lot C Lands as the A Owner, the B Owner and the Remainder Owner may reasonably require for the purposes of Inspecting, Constructing, Maintaining or Repairing the Utility Systems to comply with the Bylaw Requirements for any Development on their Parcel;
- (f) Support. To have those parts of the Project that are located within the Lot A Lands, the Lot B Lands and the Remainder Lands supported by the Support Structures of the Lot C Lands and by the Lot C Lands;
- (g) Storage Lockers. To enter, go, pass and repass in and upon those parts of the Lot C Lands as the Lot A Owner, the Lot B Owner and the Remainder Owner may reasonably require on foot, and with respect to those parts designated by use thereof by Vehicle, with Vehicles, for the purpose of access to Storage Lockers located in the Project;
- (h) Generally. To do all acts and things necessary for or incidental to the exercise of the rights granted by this Section 2.5, including allowing access to the Easement Areas as needed by the Owners to comply with inspection and emergency requirements of governmental authorities, with or without equipment.

2.6 Benefit and Burden

The easements granted in Section 2.5 will be appurtenant to and for the benefit of the all of the Lot A Lands, the Lot B Lands and the Remainder Lands and such easements will charge and be a burden on the Lot C Lands.

2.7 Easements from the Remainder Owner to the A Owner, the B Owner and the C Owner

The Remainder Owner as registered owner of the Remainder Lands hereby grants to the A Owner, the B Owner and the C Owner and their Users, in perpetuity, the non-exclusive full, free and uninterrupted right, liberty, rights of way and easements, on, over within and through the Remainder Lands at all times and from time to time, in common with the Remainder Owner and its Users, and all persons having the express or implied permission of the Remainder Owner, for the following purposes:

- (a) Vehicular Access to Parking Stalls on the Lot A Lands. To the Lot A Owner and their Users by Vehicles to enter, go, pass and repass through, over and upon all or any part of the Remainder Lands for the purpose of access to parking stalls situated on the Lot A Lands;
- (b) Vehicular Access to Parking Stalls on the Lot B Lands. To the Lot B Owner and their Users by Vehicles to enter, go, pass and repass through, over and upon all or any part of the Remainder Lands for the purpose of access to parking stalls situated on the Lot B Lands;
- (c) Vehicular Access to Parking Stalls on the Lot C Lands. To the Lot C Owner and their Users by Vehicles to enter, go, pass and repass through, over and upon all or any part of the Remainder Lands for the purpose of access to parking stalls situated on the Lot C Lands;
- (d) Vehicular Access to Parking Stalls on the Remainder Lands. To the Lot B Owner and their Users to enter, go pass and repass through, over and upon and to use those parking stalls situated on the Remainder Lands that are partly situated on both the Lot A Lands and the Remainder Lands respectively.
- (e) Pedestrian Access. To enter, go, go pass and repass in, through, over and upon all or any part of the Pedestrian Access Routes Constructed upon the Remainder Lands on foot or wheelchair for the purpose of obtaining ingress to and egress for the purposes set out in the definition of Pedestrian Access Routes;
- (f) Service Rooms. To enter, go pass and repass in, through, over and upon any and all Service Rooms which are situate on the Remainder Lands for the purpose of Operating, Inspecting, Constructing, Maintaining and Repairing and using any Utility Systems or related equipment located within such Service Rooms as may be reasonably required by the A Owner, the B Owner and the C Owner for the reasonable use and enjoyment of the Development Constructed within their Parcel;

- (g) Utility Systems. To enter, go, pass and repass in, through, over and upon those parts of the Remainder Lands as the A Owner, the B Owner and the C Owner may reasonably require on foot and, with respect to those parts designated for the use thereof by Vehicles, with Vehicles, for the purpose of Operating, Inspecting, Constructing, Maintaining, Repairing and using those Utility Systems that service their Parcel;
- (h) Fire Protection and Life Safety Equipment. To enter, go, pass and repass in and upon those parts of the Remainder Lands as the A Owner, the B Owner and the C Owner may reasonably require on foot and, with respect to those parts designated for use thereof by Vehicles, with Vehicles, with or without supplies, equipment and machinery, for the purpose of Operating, Inspecting, Constructing, Maintaining, Repairing, and in the case of an emergency to life or property, using any Fire Protection and Life Safety Equipment which is situate within the Remainder Lands that service their Parcel;
- (i) Bylaw Requirements. To enter, go, pass and repass in and upon those parts of the Remainder Lands as the A Owner, the B Owner and the C Owner may reasonably require for the purposes of Inspecting, Constructing, Maintaining or Repairing the Utility Systems to comply with the Bylaw Requirements for any Development on their Parcel;
- (j) Support. To have those parts of the Project that are located within the Lot A Lands, the Lot B Lands and the Lot C Lands supported by the Support Structures of the Remainder Lands and by the Remainder Lands;
- (k) Storage Lockers. To enter, go, pass and repass in and upon those parts of the Remainder Lands as the Lot A Owner, the Lot B Owner and the Lot C Owner may reasonably require on foot, and with respect to those parts designated by use thereof by Vehicle, with Vehicles, for the purpose of access to Storage Lockers located in the Project;
- (l) Generally. To do all acts and things necessary for or incidental to the exercise of the rights granted by this Section 2.7, including allowing access to the Easement Areas as needed by the Owners to comply with inspection and emergency requirements of governmental authorities, with or without equipment.

2.8 Benefit and Burden

The easements granted in Section 2.7 will be appurtenant to and for the benefit of the all of the Lot A Lands, the Lot B Lands and the Lot C Lands and such easements will charge and be a burden on the Remainder Lands.

2.9 Licence from Lessee to the B Owner over parts of the Leased Lands

The Lessee hereby grants to the B Owner and its Users for the duration of the Parking Agreement, the exclusive full, free and uninterrupted right, liberty and licence to use the following which are situated on the Leased Lands:

- (a) 13 parking stalls located in that part of the Parkade which is situated on the Leased Lands, and
- (b) Storage room which may contain bicycle racks.
- (c) Any other bicycle storage racks.

2.10 Easement from A Owner to the B Owner for Encroachments

The A Owner as registered owner of the Lot A Lands hereby grants to the B Owner and its Users, in perpetuity, the exclusive full, free and uninterrupted right, liberty, rights of way and easements, on, over and within and through the Lot A Lands at all times and from time to time, for the purpose of roof overhangs and portions of vertical walls of any buildings located on Lot B that encroach on the Lot A Lands. The easement granted in this Section 2.10 will be appurtenant to and for the benefit of the all of the Lot B Lands and such easement will charge and be a burden on the Lot A Lands.

2.11 Easement from B Owner to the C Owner for Encroachments

The B Owner as registered owner of the Lot B Lands hereby grants to the C Owner and its Users, in perpetuity, the exclusive full, free and uninterrupted right, liberty, rights of way and easements, on, over and within and through the Lot B Lands at all times and from time to time, for the purpose of roof overhangs and portions of vertical walls of any buildings located on Lot C that encroach on the Lot B Lands. The easement granted in this Section 2.11 will be appurtenant to and for the benefit of the all of the Lot C Lands and such easement will charge and be a burden on the Lot B Lands.

2.12 Easement from C Owner to the B Owner for Encroachments

The C Owner as registered owner of the Lot C Lands hereby grants to the B Owner and its Users, in perpetuity, the exclusive full, free and uninterrupted right, liberty, rights of way and easements, on, over and within and through the Lot C Lands at all times and from time to time for the purpose of roof overhangs and portions of vertical walls of any buildings located on Lot B that encroach on the Lot C Lands. The easement granted in this Section 2.12 will be appurtenant to and for the benefit of the all of the Lot B Lands and such easement will charge and be a burden on the Lot C Lands.

2.13 Easement from B Owner to C Owner for Storage Lockers

The B Owner as registered owner of the Lot B Lands hereby grants to the C Owner and its Users, in perpetuity, the exclusive full, free and uninterrupted right, liberty, rights of way and easements, on, over and within and through the Lot B Lands at all times and from time to time for the purpose of Storage Lockers located on the Lot B Lands. The easement granted in this Section 2.13 will be appurtenant to and for the benefit of the all of the Lot C Lands and such easement will charge and be a burden on the Lot B Lands.

2.14 Easement from C Owner to B Owner for Garbage Room

The C Owner as registered owner of the Lot C Lands hereby grants to the B Owner and its Users, in perpetuity, the exclusive full, free and uninterrupted right, liberty, rights of way and easements, on, over and within and through the Lot C Lands at all times and from time to time for the purpose of using, Maintaining and Repairing a garbage room and Lockers located on the Lot C Lands. The easement granted in this Section 2.14 will be appurtenant to and for the benefit of the all of the Lot B Lands and such easement will charge and be a burden on the Lot C Lands.

2.15 Restrictive Covenant over the Remainder Lands re Spatial Separation.

The Remainder Owner as registered owner of the Remainder Lands hereby agrees with the Lot B Owner, in perpetuity that no improvement of any nature whatsoever will be constructed on that portion of the Remainder Lands in that portion of the Remainder Lands shown on Explanatory Plan EPP104128.

2.16 Restrictive Covenants over the Lot A Lands re Spatial Separation.

The A Owner as registered owner of the Lot A Lands hereby agrees with the Lot B Owner in perpetuity that no improvement of any nature whatsoever will be Constructed on that portion of the Lot A Lands shown on Explanatory Plan EPP104128.

3. SECTION 219 COVENANT

3.1 Section 219 Covenant

Pursuant to Section 219 of the *Land Title Act*, it being the intention and agreement of each Owner that the provisions of this Section 3.1 will be annexed to and run with and be a charge on all of the Parcels, each Owner covenants and agrees with the Township with respect to its respective Parcel, as follows:

- (a) Use of Parcels. The Parcels will be used by their respective Owners to provide the easements granted herein.
- (b) No Liability of Township. Each Owner hereby releases, indemnifies and saves harmless the Township and the Township Parties from and against all Claims and expenses (other than the Township's expenses in reviewing and finalizing this Agreement) arising out of or in any way related to or that would not or could not be sustained "but for" any of the following:
 - (i) this Agreement, including, but not limited to;
 - (ii) the easements granted hereunder;
 - (iii) the loss or abridgement of the easements granted hereunder; and
 - (iv) the exercise of the easements granted hereunder;

- (v) any release of this Agreement or the loss of any of the rights granted hereunder;
 - (vi) the issuance or withholding of any approval or permit by the Township (including an occupancy permit or approval of the Subdivision Plan) and the requirement to grant the easements as provided herein;
 - (vii) any failure by the Township, as a result, to enforce any Township bylaw applicable to the Project or any Parcel to the fullest extent, or at all;
 - (viii) the non-compliance of any Owner's Parcel with any Township bylaw;
 - (ix) any personal injury, damage or death occurring in or on its respective Parcel; and
 - (x) any breach by the Owners of their obligations contained in this Agreement.
- (c) Remedies. The Owners further agree that monetary damages would not be a sufficient remedy for any breach of this Agreement by any of them and that the Township will be entitled to specific performance or injunctive relief (including legal costs on an indemnity basis) as a remedy for any such breach.
- (d) No Termination. Under no circumstances whatsoever will the easements in Sections 2.1, 2.3, 2.5 or 2.7, as the case may be, charging an Owner's Parcel be suspended, interrupted or terminated by reason of any breach, default, trespass or other wrong, whether by commission or omission, on the part of the Other Owner, or any of its Users, except with the written consent of the Township, the Approving Officer and the Other Owners. The Owners will each refrain from seeking any judgment, order or declaration to that effect without such consent. Nothing contained herein will prevent an Owner (including a Strata Corporation if such Parcel has been subdivided by a Strata Plan) from applying to enjoin or restrain any wrongful action or from seeking damages therefor.
- (e) No Modification. The easements, covenants and rights granted pursuant to the provisions of this Agreement (excluding the provisions contained in Section 7) will not be modified, abandoned, surrendered or discharged without the prior written consent of the Township and the Approving Officer.
- (f) Bylaw Requirements. The Developments will be Constructed, managed, owned and Operated in accordance with the Bylaw Requirements and the Owners will Inspect, Maintain and Repair the Developments in compliance with the terms and conditions of this Agreement.
- (g) Inspection and Testing of Fire Protection and Life Safety Equipment, Utility Systems and Emergency Exit Routes. Each Owner will Operate, Inspect, Maintain and Repair the Fire Protection and Life Safety Equipment, Utility Systems and any emergency exit routes situate within its Parcel and will do so in accordance with the Bylaw Requirements regarding same.

- (h) Township a Party to this Agreement. Except to the extent it acquires an ownership interest in a Strata Unit in the Project, the party defined in this Agreement as the "Township" is a party to this Agreement solely in its regulatory and statutory capacity and otherwise at all times, and not as an Owner for the purposes only of receiving any rights granted to it in this Section 3.1 and, without limiting the generality of the foregoing, neither the Township in its regulatory or statutory capacity nor any of the Township Parties acting in that capacity will be liable for anything done or failed to be done pursuant to or associated with any provision of this Agreement or anything contemplated thereby in its or their regulatory or statutory capacities (except in its capacity as an owner of any Strata Unit in the Project), whether or not such act or omission was accompanied by negligence on the part of the Township or Township Parties.
- (i) Costs. In any proceedings relating to this Agreement, the Township is entitled to its costs on a full indemnity basis.
- (j) Indemnity and Release of Township by Owners. Each of the Owners acknowledges and agrees that the Township and the Township Parties do not represent to the Owners, nor to any other person, that fire and smoke will not move through the common openings interconnecting the Development in each Parcel and, with full knowledge of same, the Owners jointly and severally do hereby release, indemnify and save harmless the Township and the Township Parties from and against all Claims and expenses arising out of or in any way related to or that would not or could not be sustained "but for" any breach of any covenant or agreement on the part of the Owners contained herein or arising out of or in connection with any personal injury, death or loss or damage to the Parcels or any part thereof or occurring thereon, or to any building, improvement, motor or other Vehicle, property, or chattel including contents of any of them, Constructed or placed on the Parcels caused by fire and/or smoke moving between the openings interconnecting the Development in each Parcel, or arising or resulting from the Township's final approval of the Subdivision Plan or any other matter connected with this Agreement, whether or not such Claims and expenses resulted from or related in any way to any negligent acts or omissions on the part of the Township or any of the Township Parties.
- (k) Acknowledgement. Each Owner and the Township hereby acknowledge, agree and declare that the provisions of Section 3 are for the sole purpose of benefiting the Township and, in particular, acknowledge, agree and declare that the provisions of Section 3 are not designed to protect or promote the interests of the Owners, the Users or any future owner, occupier or user of any Parcel, and the Township may at its option execute an amendment to, or a release of, any of the provisions of Section 3 or any part thereof at any time without the liability to anyone for so doing.
- (l) Notwithstanding any provision of this Agreement, nothing contained in this Agreement shall alter or amend the obligations of the Township in favour of the

Owners arising from the Addendum to the Purchase and Sale Agreement dated April 26, 2016 for Esquimalt Mixed Use Development Lands, which Addendum is dated for reference October 16, 2017 (the Addendum"), or the indemnity provisions in favour of Aragon Esquimalt TC Properties Ltd. contained in the Addendum.

4. RESERVATIONS AND LIMITATIONS

4.1. Reservations

Notwithstanding the easements and covenants granted in Sections 2.1, 2.3, 2.5 and 2.7, there is hereby reserved to each Owner in respect of the Other Owner's Easements, subject to the restrictions and limitations hereinafter set forth, the right at all times hereafter, and from time to time, to:

- (a) Temporary Interruptions. Upon giving not less than three Business Days' notice (except in the case of emergency when no notice is required), to temporarily interrupt the access, use and enjoyment by the Other Owner of the applicable Easement Area for the purposes of:
 - (i) Inspecting, Maintaining, Repairing or Constructing Utility Systems in, upon, over, under or through an Easement Area as the Owner may reasonably require or may deem expedient; or
 - (ii) Inspecting, Maintaining, Repairing or Constructing any Development now or hereafter placed in, upon, over or under any portion of a Parcel as the respective Owner of such Parcel may require or may deem expedient; or
 - (iii) using an Easement Area for any other purpose,

in any manner which does not unreasonably interfere with the ability of Users to move in and out of their respective Parcels or access their respective Parcels to exercise the rights of the Other Owner's Easements by the Other Owner, provided that any such interruption must be as short as reasonably possible; the notice indicated above is provided; all reasonable steps are taken by the Owner during the period of the interruption to provide the Other Owner and its Users with adequate alternative pedestrian access, utility services and other easement benefits so interrupted; and all reasonable steps are taken by the Owner to minimize any interruption of the use of the Easement Areas and to provide alternative pedestrian access in the case of any unavoidable interruption thereto, and in the case of temporary interruptions of access to Fire Protection and Life Safety Equipment and Pedestrian Access Routes, the same will be done only in strict compliance with the requirements of the Township's *Fire Protection and Control Bylaw, 2011, No. 2783*, as amended, supplemented or replaced from time to time. Without limiting the generality of the foregoing, should the access to or egress from any emergency exit route be temporarily interrupted for any length of time, the Owner that has interrupted such access or egress must provide an alternative emergency exit route to the Other Owner and its Users.

- (b) Rules and Regulations. To make, amend, enforce and rescind reasonable rules, regulations and security arrangements (including the use of pass cards and other forms of security or identification) governing, restricting or affecting the manner in which the portions of a Parcel which are subject to any of the Other Owner's Easements may be used or enjoyed, including to take all such reasonable actions as may be necessary to enforce or prevent any breach of such rules and regulations by their respective Users, provided that such rules, regulations and security arrangements promote the good and reasonable management of the Project and are solely for the purpose of regulating the enjoyment, safety, cleanliness, management, Inspection, Repair, Maintenance or Operation of the portions of a Parcel that are subject to any of the Other Owner's Easements and that such rules and regulations apply in an equitable manner to all of the Owners as and from the date the Other Owner is notified of such rules, regulations or security arrangements, as the case may be, and in no event interfere with the Other Parcel. Each Owner acknowledges and agrees that it will not make any rules, regulations or security arrangements which restrict hours of use unless such restrictions have been previously agreed upon between the Owners, acting reasonably; and
- (c) Grant Right of Way. Upon giving not less than 30 days' notice to the Other Owner, to grant statutory rights of way or easements in favour of the Township or other governmental entities, public utilities or public authorities over an Easement Area or any portion thereof that does not cause any interference.

4.2 Limitation on Access

Each Owner, in exercising the rights, liberties and easements granted pursuant to Sections 2.1, 2.3, 2.5 and 2.7, as the case may be, will:

- (a) conduct any Inspection, Maintenance, Repair or Construction on the Other Parcel and Development thereon only in accordance with the terms and conditions as provided herein including, without limitation, in accordance with the plans and specifications and schedules, including times, as approved in advance (except in an emergency where no advance approval is required) by the Other Owner, acting reasonably, and in accordance with Bylaw Requirements;
- (b) provide, at such Owner's sole expense (unless included as a component of Shared Costs), appropriate security to maintain the security of the Other Parcel and the Development thereon and, if applicable, the activities conducted thereon, if:
- (i) the exercise of such rights creates a security risk for the Other Parcel or Development thereon and, if applicable, the activities conducted thereon; and
- (ii) so requested by the Other Owner, acting reasonably; and
- (c) only use those portions of the Other Parcel or Development thereon for which it is reasonable for such Owner to have and exercise such rights, liberties and easements as granted herein and to the extent that such rights, liberties and easements granted

herein for the benefit of such Owner are not reasonably required by such Owner for the use and enjoyment of such Owner's Parcel (including in connection with any activity conducted thereon), such Owner will not exercise such rights, liberties and easements and, without limiting the generality of the foregoing, each Owner will only exercise the right to Construct any Service Rooms and Utility Systems or other works contemplated by this Agreement:

- (i) within an Easement Area and, if any Parcel is subdivided by Strata Plan, not within a Strata Unit, and in its Construction, ensure that there is always a means to measure separately the consumption or usage of any particular Utility System by the Owner; and
- (ii) on or through the Other Parcel where, acting reasonably, it is impractical for such Service Rooms and Utility Systems or other related works to be Constructed on or through the Parcel receiving the benefit of, or requiring the Construction of such Service Rooms and Utility Systems or other works as contemplated by this Agreement, as the case may be, it being understood and agreed that in such event and unless otherwise provided herein or from time to time agreed upon between the parties, the Owner of the Parcel receiving the benefit is responsible for the costs and fees for Construction, Maintenance and Repair and is liable for any damage that may arise from such Construction, Maintenance and Repair and will comply with Section 4.3. If both Parcels benefit from such Construction, Maintenance and Repair, then the applicable Owners agree to share the costs in accordance with Section 7.

4.3 Additions to Utility Systems

The following will apply to any addition to, or new installation of any Utility System (other than a Utility System which is solely for the benefit of one Owner and is or will be located within an Owner's Service Room):

- (a) each Owner acknowledges that the Service Rooms (other than an Owner's Service Rooms) are intended for the common benefit of the Owners and an Owner may wish to make additions to or install new Utility Systems in such Service Rooms from time to time, which additions or installations may occupy areas of such Service Rooms not currently occupied by Utility Systems, and each Owner must be respectful of the potential future space requirements of the Other Owner. Accordingly, and notwithstanding any provision of this Agreement to the contrary, an Owner (in this Section 4.3, the "Installing Owner") will not make any addition to or new installation of any Utility System without first obtaining the Other Owner's written approval, which approval, subject to the express provisions of this Agreement, will not be unreasonably withheld, conditioned or delayed;
- (b) the Installing Owner will comply with all reasonable conditions of the Other Owners who may be affected by, and relating to, additions to or new installations

of any Utility System in Service Rooms. In obtaining the Other Owners' written approval, the Installing Owner will provide to the Other Owners:

- (i) details of the proposed work, including working drawings and specifications prepared by qualified architects or engineers approved by the Other Owners acting reasonably and conforming to good design and engineering practice specifying the proposed work and its location within the Service Room;
 - (ii) such indemnifications against liens, costs, damages and expenses in such form and content as the Other Owners acting reasonably may require;
 - (iii) evidence satisfactory to the Other Owners acting reasonably that the Installing Owner has obtained, at its expense, all necessary consents, permits, licenses and inspections from all governmental and regulatory authorities having jurisdiction; and
 - (iv) evidence of such workers compensation coverage and insurance in a form, amount, and with insurers, all as the Other Owners may reasonably require;
- (c) the Other Owners may refuse to approve an addition to or new installation of a Utility System if in the reasonable opinion of the Other Owners the additional Utility System will have an adverse effect on the existing Utility Systems of the Other Owners in such Service Room or would not leave sufficient capacity for the reasonable future needs of the Other Owners or would occupy a disproportionate amount of the Service Room;
- (d) no additions or new installations in respect of a Utility System will be permitted which may weaken or endanger the structure or adversely affect the condition or Operation of the Project or the Developments (including the roofs) or any mechanical, communications or electrical system or facility thereof, or diminish the value thereof;
- (e) the Installing Owner will locate the approved proposed works in relation to a Utility System in accordance with the approved working drawings and specifications;
- (f) all additions to or new installations of a Utility System which have been approved by the Other Owners will be performed:
- (i) at the sole cost of the Installing Owner to the extent the new Utility System is added or installed for the sole benefit of the Installing Owner and its Users;
 - (ii) by competent contractors acceptable to the Other Owners, acting reasonably;
 - (iii) in a good and workmanlike manner; and

- (iv) substantially in accordance with the working drawings and specifications approved by the Other Owners;
- (g) the Other Owners' reasonable out-of-pocket third-party costs incurred in the review of the Installing Owner's drawings and specifications for any addition to or new installations of any Utility System will be payable by the Installing Owner within 30 days of demand therefor, provided the Other Owners have provided sufficient evidence to the Installing Owner that such costs were incurred by the Other Owners; and
- (h) if the Installing Owner wishes to dispute or disagrees with any decision or action of the Other Owners in respect of the matters set out in this Section 4.3, such dispute or disagreement will be resolved in the manner set out in Section 8.

4.4 Users

Each Owner acknowledges and agrees that the easements granted in Sections 2.1, 2.3, 2.5 and 2.7, as the case may be, over its respective Parcel in favour of the Other Owners may be exercised by the Users of such Other Owners, subject always to the limitations and reservations on the exercise of such easements contained herein and, provided however, that notwithstanding any other term or condition thereof, to the extent that any easement includes the right of Repair or Construction, the right of Repair and Construction may not be exercised by a User and may only be exercised by the Other Owners or such persons as are authorized by such Other Owners to effect the Repair or Construction.

5. COVENANTS

5.1 Owners' Covenants

Each Owner hereby covenants and agrees with the Other Owners that it will:

- (a) No Interference with the Other Parcel. Insofar as it is practicable to do so exercise, and cause its Users to exercise, its rights hereunder in such a manner so as not to interfere with the Other Parcel.
- (b) Minimize Nuisance. Use all reasonable efforts in exercising any of its rights arising out Inspection, Construction, Maintenance, Operation or Repair carried out on the Owner's Parcel or on the Other Parcel to minimize the inconvenience to occupants of the Other Parcel and to not cause a nuisance thereby.
- (c) No Interference with the Other Owners' Easements. Subject to Section 4.1, not do and not permit its Users to do any act or thing which, in the reasonable opinion of the Other Owners, would interfere with the Other Owners' Easements and will keep the portions of its Parcel which are the subject of the Other Owners' Easements clean and clear of all debris or other obstructions;
- (d) Repair Other Parcel. Promptly and properly Repair all damage to the Development on the Other Parcel;

- (i) which is caused by any Inspection, Maintenance, Operation, Repair or Construction work done by such Owner or its Users in connection with the Development on its Parcel or within an Easement Area located on the Other Parcel at the conclusion of such work in order to meet good and prudent standards of Repair; or
 - (ii) which results from any act or omission of such Owner or results from any activity or failure to properly Maintain or Repair any Development or an Easement Area located within its Parcel or under its responsibility pursuant to the terms and conditions of this Agreement.
- (e) Discharge Liens. Not create or permit to remain and will remove and discharge or cause to be removed and discharged promptly, at the cost and expense of the Owner, any lien, encumbrance, charge or claim of lien upon the Other Parcel which arises out of the exercise of the Owner's rights hereunder, the fulfilment of the Owner's rights and obligations hereunder by such Owner or any work carried out by the Owner upon the Other Parcel.
- (f) Rules and Regulations. Make, amend, enforce and rescind reasonable rules and regulations governing and promoting the safety, cleanliness and good and proper state of Repair of such Owner's Development and the Easement Areas located within such Owner's Parcel, in accordance with Section 4.1(b).
- (g) Other Owner's Rules and Regulations. Abide by any rules, regulations and security arrangements established by the Other Owners pursuant to Section 4.1(b) from and after the time it has received notice of such rules, regulations and security arrangements in writing.
- (h) Fire Protection and Life Safety Equipment. Maintain, Repair and Operate any Fire Protection and Life Safety Equipment serving its Parcel and the Development Constructed thereon in a good and proper state of Repair and in a clean and safe condition at all times and carry out such testing and Inspection as would a reasonable and prudent owner from time to time.
- (i) Compliance with Applicable Legislation. Comply with the Building Bylaw and all other applicable enactments of governmental authorities applicable to the Project, with respect to any Construction, Operation, Inspection, Maintenance and Repair on its Parcel and the Development Constructed thereon, and with respect to the Owner's use of the Easement Areas on the Other Parcel, and will not carry out any Construction, Operation, Inspection, Maintenance or Repair to its Development or use the Easement Areas on the Other Parcel except in compliance with such laws, regulations or bylaws.
- (j) Indemnity. Indemnify and save harmless the Other Owners in respect of all Claims and expenses for any injury to person or persons, including death, resulting at any time hereafter and any damage to or loss of property suffered by the Other Owners, arising out of or in any way related to:

- (i) the exercise by the indemnifying Owner or its Users of their rights hereunder;
- (ii) any breach by the indemnifying Owner or its Users of any of their covenants and obligations under this Agreement; or
- (iii) any act or omission of the indemnifying Owner or its Users,

except to the extent such Claims and expenses are caused by the act or omission, including negligent acts or omissions or willful misconduct, of the Other Owners or those for whom it is responsible at law.

5.2 Maintenance and Repair - General

- (a) Except for the delegation to the Remainder Owner of the responsibility to Operate, Inspect, Maintain and Repair certain Common Use Areas and Facilities as provided in Section 5.2(b), each Owner will, at its cost, promptly and properly Operate, Inspect, Maintain and Repair its Parcel and the Development Constructed thereon, including, without limitation, the Exclusive Use Areas and Facilities that are used by, enjoyed by, or for the sole benefit of only such Owner and its Users that are located within its Parcel.
- (b) The Remainder Owner will be responsible to Operate, Inspect, Maintain and Repair the Common Use Areas and Facilities as more particularly set out in and delegated to the Remainder Owner in Schedule A as and when required and so as to meet the standard of Maintenance and Repair typical of a similar mixed-use development located in the Township, notwithstanding that the item to be Maintained or Repaired is located within any Other Parcel, but subject to the costs for such Operating, Inspecting, Maintaining and Repairing such Common Use Areas and Facilities being Shared Costs allocated as set forth in Schedule A as at the date of this Agreement or as amended pursuant to Section 7.10. For certainty, in respect of the costs incurred by an Owner for utilities consumed by such Owner in fulfilling its obligations to Operate, Inspect, Maintain and Repair the Common Use Areas and Facilities, such utility costs will also be deemed Shared Costs and the costs will be shared between the Owners in the same manner as the costs incurred for Operating, Inspecting, Maintaining and Repairing such Common Use Areas and Facilities.
- (c) If the Remainder Owner fails to fulfil its obligations under Section 5.2(b), any Owner may:
 - (i) upon providing forty-eight (48) hours prior written notice to the Remainder Owner; or
 - (ii) immediately, in the event of an emergency,

perform the aforementioned obligations of the Remainder Owner, provided that the costs incurred by any Owner are subject also to the costs for such Operating,

Inspecting, Maintaining and Repairing such Common Use Areas and Facilities being Shared Costs allocated as set forth in Schedule A and may be set off against any amounts owing by the any Owner to the Remainder Owner.

- (d) Each Owner agrees to make all reasonable efforts in good faith to co-operate with respect to the Operation, Inspection, Maintenance and Repair of the Easement Areas and Common Use Areas and Facilities and will, insofar as it is practicable to do so, retain the same Maintenance or Repair contractor to carry out any ongoing Maintenance or Repair and, where appropriate, pay the entire cost or share the cost of any such contractor on a reasonable and equitable basis with the Other Owner having regard to the cause of the damage, and if the parties cannot agree on the allocation of costs, such dispute will be referred to mediation and arbitration as provided in Section 8.

5.3 Maintenance and Repair Obligations of the Township

The Township shall Maintain and Repair the generator and garbage enclosure situated on the Leased Lands and shall bear all costs of the said Maintenance and Repair and any costs of the Maintenance and Repair of the Driveway and access to the garbage enclosure in accordance with item 12 of Schedule A.

5.4 Insurance by Owners

Each Owner (for the purposes of this Section 5.4, the “**Insuring Owner**”) hereby covenants and agrees with the Other Owners that the Insuring Owner will carry out and perform the following covenants in respect of the Development on its respective Parcel (for the purpose of this Section 5.4, the “**Insured Property**”), for itself and for the benefit of the Other Owners:

- (a) subject to Sections 5.5 and 5.6, the Insuring Owner will, at its sole cost and expense, and in addition to and not in substitution for any policies of insurance maintained by the Other Owners, take out and keep in full force and effect, or cause to be taken out and kept in full force, policies of:
- (i) insurance against fire and other risks of physical loss or damage, including earthquake and flood (if such earthquake and flood insurance can be obtained on commercially reasonable terms and conditions), sewer backup, leakage from fire protection equipment, and insurance against all other hazards covered by policies normally in use from time to time by prudent owners of properties similar to the Insured Property in an amount equal to the full replacement cost thereof;
 - (ii) commercial general liability insurance, including all risks normally insured by prudent occupants in connection with the use and occupancy of properties similar to the Insured Property, in respect of the use and occupancy of the Insured Property, for Claims for personal injury, death or property damage arising out of any one occurrence in an amount of at least \$5,000,000.00;

- (iii) the amount referred to in Section 5.4(a)(ii) may be increased as agreed between the Insuring Owner and the Other Owners and in the event of a disagreement with respect to the increased amount, the matter will be settled pursuant to Section 8 having reference to commercially reasonable insurance coverage requirements then in effect; and
 - (iv) if equipment or apparatus normally the subject of boiler and pressure vessel insurance is located on the Insured Property, boiler and pressure vessel insurance in such amount as is normally effected having regard to the nature of such equipment or apparatus;
- (b) during the initial Construction of any Development on the Insured Property, the Insuring Owner will obtain and maintain, or cause to be obtained and maintained:
- (i) course of construction insurance in such amount as would normally be carried by a prudent owner of properties being developed in a similar manner as the Insured Property, with the Other Owners and any applicable mortgagees as named insureds to the extent reasonably possible and to the extent the construction contemplates common areas; and
 - (ii) wrap up liability insurance in such amount as would normally be carried by a prudent owner of properties similar to the Insured Property for the period of such Construction plus 24 months, with the Other Owners and any applicable mortgagees as named insureds to the extent reasonably possible and to the extent the Construction contemplates common areas;
- (c) the Insuring Owner will from time to time, whenever reasonably required by the Other Owners, furnish to such Other Owners certificates of insurance, certificates of renewal and other documents appropriate to evidence the insurance from time to time in force as required by this Section 5.4. If the Insuring Owner fails to insure as required under this Section 5.4, the Other Owners, after notice to the Insuring Owner, may, but will not be obliged to, effect such insurance in the name and at the expense of the Insuring Owner, and the Insuring Owner will promptly repay the Other Owners for all costs incurred by the Other Owners in so doing; and
- (d) in any case and for purposes of any of the insurance referred to herein, the insurance will name as insured parties the following:
- (i) the Insuring Owner; and
 - (ii) the Other Owners.

5.5 Joint Insurance

Notwithstanding Section 5.4, the Owners may take out, keep, maintain and participate in a joint insurance policy to cover some or all of the matters described in Section 5.4, if mutually agreed to by the Owners. In such event, the Owners will cooperate with each other to the fullest extent to obtain and maintain such joint insurance policy.

5.6 Joint Insurance for Common Use Areas and Facilities

For the purposes of this Section 5.6, "Common Use Areas and Facilities Insurance" means the insurance described in this Section 5.6.

- (a) The Remainder Owner shall arrange for and cause to be taken out and thereafter maintained, unless and until the Other Owners may otherwise expressly agree in writing, insurance for the benefit of the all of the Parcels which will provide for:
 - (i) All risk insurance in respect of Common Use Areas and Facilities against fire, earthquake, flood and other risk of physical loss or damage covered by a standard all risks policy customarily obtained and maintained by prudent owners of similar properties in the Township in an amount equal to the full replacement cost thereof;
 - (ii) Comprehensive boiler and machinery insurance in respect of the Geothermal System and all pressure vessels, heating, ventilation and air conditioning systems, mechanical devices and electrical apparatus that are part of the Common Use Areas and Facilities; and
 - (iii) Commercial general liability insurance with limits not less than Five Million Dollars (\$5,000,000) per occurrence and annual aggregate, protecting the Owner of each Parcel against third party claims for personal injury, death, property damage or loss of use thereof arising out of use and occupancy of any Common Use Areas and Facilities. The said amount shall be increased to amounts as reasonably determined by the Remainder Owner and in the event of a disagreement between the Remainder Owner and the Other Owners, the matter will be settled pursuant to Section 8 having reference to commercially reasonable insurance coverage requirements then in effect.
- (b) The following shall apply to the Common Use Areas and Facilities Insurance:
 - (i) the all risk insurance and comprehensive boiler and pressure vessel insurance policies shall name all of the Owners as named insured and loss payees for their interest;
 - (ii) the comprehensive general liability insurance shall name all Owners and their respective successors in title as named insureds and shall include a cross-liability and severability of interests clause;
 - (iii) all such insurance policies shall provide for sixty (60) days prior written notice of material change or cancellation (except for cancellation resulting from non-payment of premiums, in which case applicable statutory provisions will apply). Notice shall be given to the Owner of the Remainder at the address provided for notice in this Agreement;

- (iv) all such insurance coverage shall be primary insurance with respect to the Common Use Areas and Facilities. Any insurance or self-insurance maintained by or on behalf of the Owner of a Parcel shall be excess of this insurance and will not contribute with it;
 - (v) each such insurance policy shall contain a limit of deductibility not greater than Five Thousand Dollars (\$5,000) or such other appropriate amount customarily accepted by insurers in the Township for such type of insurance policy;
 - (vi) with the exception of subsection (vii), any deductible payable in respect of any property damage claim made under the Common Areas and Facilities Insurance shall be paid by the Owner of the Parcel whose Development is damaged. If more than one Development is damaged, then the deductible shall be paid by the Owners of the Parcels whose Developments are damaged, and the amount of the deductible shall be divided among such Owners pro-rata, based upon the estimated cost to Repair the damage to each such Owner's Development;
 - (vii) if a claim is made under any of such insurance policies and the cause of the damage or third party claim can be reasonably attributed to the act or omission, whether negligent or otherwise, of any Owner, the deductible payable in respect of such claim shall be payable by the Owner whose act or omission caused the damage or third party claim, or if both Owners' act or omission caused the damage or third party claim, then divided equally among and paid by all of the Owners, and
 - (viii) any Owner shall, from time to time, whenever reasonably required by the Other Owners, furnish to the Other Owners, certificates of insurance, certificates of renewal and other documents appropriate to evidence the insurance from time to time in force as required by this Section 5.6. If the Remainder Owner fails to insure as required under this Section 5.6, the Other Owners, after written notice to the Remainder Owner, may, but will not be obliged to, effect such insurance in the name of the Owners and the Remainder Owner shall promptly repay the Other Owners for all costs incurred by the Other Owners in so doing.
- (c) The Common Use Areas and Facilities Insurance shall contain an apportionment between each Parcel of the quoted premium or premiums for such insurance, which apportionment will be made pursuant to Schedule A.
- (d) Not less than every three (3) years following the date of this Agreement, prior to placing or renewing any Common Use Areas and Facilities Insurance, the Remainder Owner shall, unless the Other Owners and the Remainder Owner first agree in writing to waive this requirement, arrange to obtain from reputable insurance brokers, not less than three (3) competitive quotations for such insurance.

- (e) If the Owners disagree regarding the calculation of their respective Owner's share of the costs of the Common Use Areas and Facilities Insurance, if the Other Owners object to the selection by the Remainder Owner of the insurance appraiser or the insurer(s) or broker(s) through which such insurance policies are placed, the dispute will be resolved in accordance with Article 9 hereof.
- (f) In the event of an insured loss or damage to the property insured, all eligible insurance proceeds must be used to complete, at a minimum, the Repair and replacement of the property insured as required pursuant to Sections 5.5 and 5.6 of this Agreement with due diligence and without undue delay.

In the event that the Remainder Owner is unable to obtain the Common Use Areas and Facilities Insurance, or if the cost of obtaining such insurance is unacceptable to the Remainder Owner, acting reasonably then the Owners will, insofar as it is practicable so to do, take out, keep, maintain and participate in a joint insurance policy with the same insurer to cover the matters described in Section 5.6(a) with the cost of such insurance to be shared in accordance with Section 5.6(c). In such event, the Owners will cooperate with each other to the fullest extent to obtain and maintain such joint insurance policy.

5.7 Delay in Reconstruction

In the event that any Development or part thereof which is situate on a Parcel is damaged or destroyed by reason of fire, tempest, flood, earthquake or an act of God and the Repair or reconstruction thereof is not undertaken forthwith and proceeded with diligently and expeditiously, then the Owner of such damaged and destroyed Development or part thereof, will forthwith take such reasonable action as is necessary to leave the Other Owners' Easement Areas in a condition which is neat and tidy and does not in any way create a nuisance or a safety hazard.

5.8 Default

If any Owner (the "**Defaulting Party**") fails:

- (a) to pay any amount owed to the Other Owners under this Agreement within 15 days after notice of such default has been given to the Defaulting Party by the Other Owners, or
- (b) to remedy any default in the performance of any of its obligations or covenants under this Agreement (other than in respect of non-payment) within ten days after notice of such default has been given to the Defaulting Party by the Other Owners, or, if such default cannot reasonably be remedied within such ten-day period, failure of the Defaulting Party to commence reasonable efforts to remedy or remedy the default entirely within a reasonable time,

then the Other Owners may, at their discretion, perform any of the Defaulting Party's obligations or covenants upon providing seven days' notice to the Defaulting Party (unless the Defaulting Party has referred the matter to mediation and arbitration pursuant to the terms of this Agreement) and the Defaulting Party will, on demand, reimburse the Other Owners on a complete

indemnity basis for all reasonable costs and expenses of doing so. The provisions contained in this Section 5.8 will apply to any breach or event of default under this Agreement.

5.9 Further Acts

The Owners shall execute such further documents and shall do all acts and things that may be reasonably required by any Other Owner to complete the preparation, execution and registration of the covenants referred to in Section 5.1 above.

5.10 Acknowledgement

The Owners acknowledge and agree that the Parking Agreement obligates them to execute and deliver Statutory Rights of Way for the SRW Area and the Utility SRW Area following preparation of reference plans for those two areas and that such Statutory Rights of Way shall form a first charge against any relevant Parcel subject only to the Lease and any non-financial charges.

6. MODIFICATIONS OF EASEMENTS

6.1 Replacement Easements

Subject to Section 3.1(d), each Owner will, if so requested by the Other Owners in writing, duly execute in registrable form and deliver to the Other Owners such modifications to this Agreement in a form and on such terms and conditions as the Owners agree, each acting reasonably. There will be no compensation or valuable consideration payable to the Owner by the Other Owners therefor. It is the intent of the parties hereto that any modifications to this Agreement will:

- (a) be at least equal in utility, security, value and convenience to the Other Owners as the respective easements, covenants, Section 219 Covenant and licences granted hereunder;
- (b) not interfere with the access, use and enjoyment of each Parcel by the respective Owner and Users of such Parcel; and
- (c) include such modifications to the cost sharing arrangements between the Owners set out in Section 7 as are required to fairly distribute costs in accordance with any additional or renovated Developments and the provisions of Section 8 will apply to any such modifications to the cost sharing arrangements.

6.2 Discharges of Replaced Easements

Following execution and delivery by an Owner of any agreement containing modifications, replacement easements, covenants and licences in accordance with Section 6.1, the Other Owners will, to the extent only that the easements, covenants and licences granted hereunder have been replaced, execute in registrable form and deliver to the Owner a surrender and discharge of the easements, covenants and licences so replaced in accordance with this Agreement.

6.3 Priority of Replacement and Additional Easements

Each Owner will take all steps necessary to cause any modification to this Agreement contemplated pursuant to Sections 6.1 and 6.2 to have priority over any charges or encumbrances which permit the exercise of any rights or remedies which might prejudice the rights granted to the Other Owner and the Township, in each case.

6.4 Release of Easements

The Owners agree that:

- (a) upon the preparation from time to time by the Owner of a servient tenement under an easement granted hereunder (the “**Servient Owner**”) of one or more explanatory or reference plans acceptable to the Owner of the dominant tenant under the same easement (the “**Dominant Owner**”) acting reasonably showing the actual location of any area, facility or improvement which is the subject of an easement granted over such servient tenement, or
- (b) if a Servient Owner can prove to the satisfaction of the Dominant Owner that any easement is not required over the Servient Owner’s Parcel and will not be required for any purpose set out in this Agreement,

the Dominant Owner under such easement will forthwith upon request by the Servient Owner, but subject always to Section 3.1(d), execute and deliver to the Servient Owner a modification to this Agreement to partially or wholly discharge, as the case may be, the easement and the covenants granted by such Servient Owner in favour of the Dominant Owner herein in relation thereto, so as to release such easement and covenants from such portions of such servient tenement as are not included within such explanatory or reference plan or plans, and thereupon the parts of such servient tenement as shown in such explanatory or reference plan or plans will be the Easement Areas with respect to such easement and will be the subject of the covenants granted by the Servient Owner in favour of the Dominant Owner.

7. COST SHARING

7.1 Definitions

In this Section 7.1 the following terms have the following definitions unless otherwise specifically provided or the context so requires:

- (a) “**Annual Estimated Budget of Shared Costs**” has the meaning set out in Section 7.5;
- (b) “**Annual Shared Costs Statement**” has the meaning set out in Section 7.12(b);
- (c) “**Fiscal Year Period**” means, on an annual basis, the period between January 1 and December 31 (inclusive), or such other 12-month period agreed upon by the Owners;

- (d) “**Net Shared Costs**” means the Shared Costs less the deductions as provided in Section 7.13.
- (e) “**Owner’s Share**” means, in respect of an Owner, the applicable percentage as set out in Schedule A attached hereto, as the case may be, or, if applicable, as set out in Section 7.10;
- (f) “**Reimbursing Party**” has the meaning set out in Section 7.12;
- (g) “**Shared Costs**” means all costs of any nature whatsoever arising in respect of Common Use Areas and Facilities; and
- (h) “**Taxes**” means the tax levied pursuant to Part IX of the *Excise Tax Act* (Canada) or any tax levied in replacement thereof including without limitation any harmonized sales tax.

7.2 Costs in Respect of Exclusive Use Areas and Facilities

Each Owner and the Township agree to pay and be responsible for all costs arising from the Operation, Maintenance and Repair of Exclusive Use Areas and Facilities that are used by, enjoyed or are for the sole benefit of that Owner and the Township. In particular, but without limiting the generality of the foregoing, the costs and the Maintenance and Repair of any heating and cooling systems which do not form part of the Geothermal System will be the obligation of each Owner whose Parcel is serviced by those systems.

7.3 Allocation of Costs in respect of the Geothermal System

The costs arising from the Operation of the Geothermal System arise from electricity and natural gas and there will be a single invoice for electricity and a single invoice for natural gas for all Parcels. In order to allocate those single invoices between Owners, each Parcel will have energy meters which will monitor how much electricity and natural gas is being used by each Parcel and the costs of such electricity and natural gas for the Geothermal System will be allocated by the Remainder Owner between the Owners according to their proportion of electricity and natural gas consumed for their Parcel as measured by the energy meters.

7.4 Costs in Respect of Common Use Areas and Facilities

Subject to Section 7.3, each Owner and the Township agree to pay and be responsible for its portion of all costs arising from the Operation, Maintenance and Repair of all Common Use Areas and Facilities in accordance with Schedule A attached hereto.

7.5 Operation, Inspection, Maintenance and Repair of Common Use Areas and Facilities

The Remainder Owner will be responsible for the Operation, Inspection, Maintenance and Repair of the Common Use Areas and Facilities and will prepare an Annual Estimated Budget of Shared Costs for the Owners and the Township and deliver same 60 days prior to the commencement of a Fiscal Year and the Owners and the Township will contribute their share of

such costs as set out in Schedule A. In addition, the Remainder Owner may render accounts from time to time for Shared Costs which were not included in the Estimated Budget of Shared Costs as such costs are incurred by the Remainder Owner and the provisions of this Article 7.5 will apply to the recovery of each Owner and the Township's Share of Shared Costs.

7.6 Capital Repair and Replacement

In the event the Remainder Owner is of the reasonable opinion that any Common Use Areas and Facilities require Repair or Maintenance, including their replacement, the Remainder Owner shall carry out such Repair, Maintenance or replacement and shall include all costs including management fees arising therefrom in Annual Estimated Budget of Shared Costs and all Owners and the Township shall pay their share as set out in Schedule A. In particular, without limiting the generality of the foregoing, the costs of Repair, Maintenance and replacement of the Geothermal System, the Parkade and the public plaza shall be governed by this Section 7.6.

7.7 Costs arising from the Remainder Lands

The Owners and the Township agree that all reasonable costs of any nature whatsoever arising in respect of the Remainder Lands shall be paid by the Owners and the Township as set out in Schedule A. These costs will include, but are not limited to, all property taxes, the costs of hiring a property manager and the Repair and Maintenance of all areas outside of Common Use Areas and Facilities.

7.8 Obligations of Township

- (a) The Township acknowledges that it is responsible for all costs arising from the Repair, Maintenance and replacement of the generator and garbage enclosure which form part of its Exclusive Use Area and Facility. These costs include but are not limited to any Repair to the asphalt/paver areas, snow clearing and removal, and general Maintenance of these areas.
- (b) The Owners and the Township agree that notwithstanding any provision of this Agreement, nothing contained in this Agreement shall alter or amend the obligations of the Township arising from the Public Open Spaces Operating Agreement and the Parking Agreement and in particular, the obligation of the Township to pay certain costs and expenses pursuant to those agreements.

7.9 Allocation of Shared Costs

To the extent that there are any Shared Costs which are not set out in Schedule A, the Owners agree that such Shared Costs will be shared between the Owners and Schedule A will be amended to reflect the agreed allocation of such Shared Costs, which are to be determined in a fair and equitable manner to be agreed upon between the Owners, acting reasonably and using reasonable measurable methods of allocation, and to the extent that the Owners are not able to agree on each Owner's Share of such Shared Costs, such dispute will be settled in the manner set out in Section 8.

7.10 Amendments to Owner's Share

Each Owner acknowledges and agrees that, subject to Section 7.9, its Owner's Share of Shared Costs set forth in Schedule A has been settled and agreed to by all Owners and may not be changed or altered, pursuant to the dispute resolution process provided for in Section 8 or any other legal proceedings or otherwise, for any reason whatsoever, save and except:

- (a) by written agreement of all Owners; or
- (b) if there has been a material change in circumstances, such as a material change in the area or design of either of the Project or in the intended Operation of the Project, including the Public Areas, that results in a manifest inequity and significant unfairness in the allocation of Shared Costs set out in Schedule A, in the absence of a written agreement of both of the Owners, such dispute will be settled in the manner set out in Section 8. The Owners acknowledge and agree that "a material change in circumstances" under this provision will not include changes arising from lack of funds or any unilateral decision by an Owner to cease use of any portion of the Common Use Areas and Facilities.

For the purposes of this Section 7.10, the question of whether there is a manifest inequity and significant unfairness in an Owner's Share is a matter that will be determined by mediation and arbitration in the manner set out in Section 8, if the parties cannot agree thereon. Schedule A will be amended to reflect any change or alteration pursuant to this Section 7.10.

7.11 Renovations by an Owner

Subject to the other provisions of this Agreement, an Owner may choose to alter, enlarge, reconstruct, relocate, or otherwise renovate the improvements located within its Parcel (the "Renovations"). If such Renovations are strictly made for the benefit of and are made at the sole discretion of such Owner, the portion of the costs and expenses for such Renovations that affect or involve the Common Use Areas and Facilities will be excluded from Shared Costs and will be borne solely by the Owner that carried out such Renovations, provided that any Renovations that affect or involve the Common Use Areas and Facilities must not interfere with the Other Owner's Easements.

7.12 Payment of Shared Costs

The procedure for an Owner to reimburse the Remainder Owner for such Owner's Share of Shared Costs incurred by the Remainder Owner will be as follows:

- (a) Each Owner will pay to the Remainder Owner, as applicable, its Owner's Share of Shared Costs based on the agreed Annual Estimated Budget of Shared Costs (as provided by the Remainder Owner to such Owner) in monthly instalments in advance.
- (b) As soon as reasonably possible after the end of the Fiscal Year Period (and in any event, within 60 days of the end of the Fiscal Year Period), the Remainder Owner will furnish to the Owners a statement in writing (the "Annual Shared Costs

Statement) certified by an officer of the Remainder showing the particulars of the Net Shared Costs incurred and paid by for such Fiscal Year Period by the Remainder Owner, in reasonable detail, in order that the Owners may determine that the expenditures were reasonably and necessarily incurred. The Annual Shared Costs Statement will also include the amounts paid by way of monthly instalments by the Owners to the Remainder Owner that incurred the Shared Costs. All necessary adjustments will be made between the Owners and any money owing by or to an Owner will be paid or credited within 90 days of the end of the Fiscal Year Period. All adjustments will be based on the reconciliation between the monthly instalments paid and the Net Shared Costs incurred. For any adjusted amounts that are owing and remain unpaid for more than 30 days, interest will be applicable at the Prime Rate plus two percent calculated from the 31st day until paid.

- (c) Notwithstanding Sections 7.12(a) and 7.12(b), if any single invoice for Shared Costs exceeds \$10,000.00 or another amount agreed upon in writing by the Owners (**“Extraordinary Expense”**), the Remainder Owner will be reimbursed by the Other Owner for the Other Owner’s Share of such Extraordinary Expense within 30 days of receipt by such Other Owner of a statement in writing certified by an officer of the Remainder Owner that incurred or will incur expenses showing the particulars of such Extraordinary Expense incurred or to be incurred by that Owner in reasonable detail (the **“Extraordinary Expense Statement”**) and if the cost was anticipated in the Owner’s Annual Estimated Budget of Shared Costs, by reference to such approved Annual Estimated Budget of Shared Costs in the Extraordinary Expense Statement, in order that the Other Owner may determine that the Extraordinary Expense was or will be reasonably and necessarily incurred. Notwithstanding the foregoing, if the Extraordinary Expense was unanticipated, the Owners must agree, acting reasonably, that such Extraordinary Expense is or will be reasonably and necessarily incurred prior to any Owner incurring the unanticipated Extraordinary Expense and prior to issuing an Extraordinary Expense Statement. All payments required to be made hereunder must be made within 30 days following receipt of the Extraordinary Expense Statement and if paid later will be paid with interest at the Prime Rate plus two percent from the 31st day following receipt of the Extraordinary Expense Statement until paid in full. Once the Extraordinary Expense has been incurred, the Owner that incurred such Extraordinary Expense will provide evidence of payment in full to the Other Owner within 30 days of the date the Extraordinary Expense was incurred. For greater certainty, to the extent any Extraordinary Expense was included in a previously approved Annual Estimated Budget of Shared Costs and the Other Owner was already contributing towards such Extraordinary Expense in its payment of its monthly instalments in accordance with Section 7.12(a), an accounting and reconciliation of such pre-payments will be reflected on the Extraordinary Expense Statement and the monthly installment amount will be adjusted accordingly to reflect the full payment of the Extraordinary Expense.
- (d) The Remainder Owner agrees that it will keep accurate accounting records of all Shared Costs incurred, which records will be available for inspection or audit following the Fiscal Year Period by the Owners upon 15 days’ notice at reasonable

times and such records will be kept for seven years, with the inspection and/or audit costs to be at the expense of the Owners, unless the audit evidences that the accounting records are inaccurate by more than five percent to the disadvantage of the Owners, in which case the inspection and audit costs will be at the expense of the Remainder Owner who maintained such inaccurate records.

- (e) If an Owner wishes to dispute an Annual Shared Costs Statement or the cost sharing set out therein, such Owner must notify the Remainder Owner in writing of the dispute within 90 days following receipt of the Annual Shared Costs Statement, and if the dispute is not raised within such 90-day notice period, there will be no further right to dispute the Annual Shared Costs Statement or the cost sharing set out therein, subject to the right to dispute an Annual Shared Costs Statement or the cost sharing set out therein arising from an inspection or audit of accounting records pursuant to Section 7.12(d). If the Owners are unable to agree on an Annual Shared Costs Statement, the matter will be settled in the manner set out in Section 8.
- (f) Prior to incurring an expense which the Remainder Owner has not budgeted for in its Annual Estimated Budget of Shared Costs, and if the Owner intends to include such expense in its accounting of Net Shared Costs for the purpose of the Annual Shared Costs Statement, the Remainder Owner shall advise the Other Owners of the expense in advance of incurring such expense. If any Other Owner disputes its liability for its share of such expense, the matter will be settled in the manner set out in Section 8.

An Owner will be liable to pay for its Owner's Share of Shared Costs in respect of Shared Costs incurred by the Remainder Owner from and after the date this Agreement is registered in the Land Title Office.

7.13 Deductions from Shared Costs

The following will be deducted from Shared Costs:

- (a) all recoveries which reduce costs and expenses to Operate, Maintain, Repair, and insure the Common Use Areas and Facilities, including, without limitation, the following:
 - (i) recoveries under any warranties;
 - (ii) net recoveries from third parties as a result of any act, omission, default or negligence of such third parties;
 - (iii) net amounts received from third parties for the use or occupation of any of the Common Use Areas and Facilities; and
 - (iv) recoveries with respect to all or any part of the Common Use Areas and Facilities under any insurance policies maintained by an Owner;
- (b) all interest charges on overdue accounts or other financing charges;

- (c) any Taxes with respect to costs incurred if a credit may be claimed from Canada Revenue Agency for such Taxes; and
- (d) any other amounts that have the effect of reducing the Shared Costs;

provided that for the purpose of calculating the administration fee referenced in the definition of Shared Costs, the amount of the recoveries referred to in this Section 7.13 will not be deducted.

7.14 Equitable Charge over the Lot A Lands

The A Owner hereby grants to the B Owner, the C Owner and the Remainder Owner an equitable charge over Lot A Lands for the full payment of all the A Owner's Share of Net Shared Costs and interest required to be paid by the A Owner. In the event of a subdivision of the Lot A Lands by the deposit of a Strata Plan in accordance with the *Strata Property Act*, this equitable charge will attach to and charge each Strata Unit created thereby together with the common property of the Strata Plan. This equitable charge will be enforceable by a court appointed receiver for Lot A Lands, and such receiver will have authority to pay the Remainder Owner the sums hereby secured from the funds of the Strata Corporation from time to time and also will have authority to make and enforce payment of special assessments against all Strata Unit Owners to settle the Claims of the Remainder Owner. In any action to enforce this equitable charge, the Remainder Owner will be entitled to court costs on a solicitor and own client basis (in the event of success), which costs will also be a charge on the Lot A Lands and will be apportioned as aforesaid. This equitable charge will enure to the benefit of the Remainder Owner and its successors and assigns and this equitable charge will run with the land and will be binding upon the A Owner and its successors in title, but, with respect to personal liability, will be binding only for so long as and to the extent that the A Owner or its successor in title remains an owner of the Lot A Lands or a part thereof

7.15 Equitable Charge over the Lot B Lands

The B Owner hereby grants to the A Owner, the C Owner and the Remainder Owner an equitable charge over Lot B Lands for the full payment of all the B Owner's Share of Net Shared Costs and interest required to be paid by the B Owner. In the event of a subdivision of the Lot B Lands by the deposit of a Strata Plan in accordance with the *Strata Property Act*, this equitable charge will attach to and charge each Strata Unit created thereby together with the common property of the Strata Plan. This equitable charge will be enforceable by a court appointed receiver for Lot B Lands, and such receiver will have authority to pay the Remainder Owner the sums hereby secured from the funds of the Strata Corporation from time to time and also will have authority to make and enforce payment of special assessments against all Strata Unit Owners to settle the Claims of the Remainder Owner. In any action to enforce this equitable charge, the Remainder Owner will be entitled to court costs on a solicitor and own client basis (in the event of success), which costs will also be a charge on the Lot B Lands and will be apportioned as aforesaid. This equitable charge will enure to the benefit of the Remainder Owner and its successors and assigns and this equitable charge will run with the land and will be binding upon the B Owner and its successors in title, but, with respect to personal liability, will be binding only

for so long as and to the extent that the B Owner or its successor in title remains an owner of the Lot B Lands or a part thereof

7.16 Equitable Charge of the Lot C Lands

The C Owner hereby grants to the A Owner, the B Owner and the Remainder Owner an equitable charge over Lot C Lands for the full payment of all the C Owner's Share of Net Shared Costs and interest required to be paid by the C Owner. In the event of a subdivision of the Lot C Lands by the deposit of a Strata Plan in accordance with the *Strata Property Act*, this equitable charge will attach to and charge each Strata Unit created thereby together with the common property of the Strata Plan. This equitable charge will be enforceable by a court appointed receiver for the Lot C Lands, and such receiver will have authority to pay the Remainder Owner the sums hereby secured from the funds of the Strata Corporation from time to time and also will have authority to make and enforce payment of special assessments against all Strata Unit Owners to settle the Claims of the Remainder Owner. In any action to enforce this equitable charge, the Remainder Owner will be entitled to court costs on a solicitor and own client basis (in the event of success), which costs will also be a charge on the Lot C Lands and will be apportioned as aforesaid. This equitable charge will enure to the benefit of the Remainder Owner and its successors and assigns and this equitable charge will run with the land and will be binding upon the C Owner and its successors in title, but, with respect to personal liability, will be binding only for so long as and to the extent that the C Owner or its successor in title remains an owner of the Lot C Lands or a part thereof

7.17 Enforceability of the Equitable Charges

An Equitable Charge hereunder shall be effective as of the date hereof, provided that it shall not be enforceable as against the Owner granting such Equitable Charge (the "Grantor") or its respective Parcel in relation to the grantee of such Equitable Charge (a "Grantee") unless legal title of either the Grantor's Parcel or the Grantee's Parcel has been transferred such that the Grantor and the Grantee are not the same entity.

7.18 Postponement of Equitable Charge

Each Owner agrees that if required by the any Owner's lender, it will subordinate and postpone its equitable charge in Sections 7.14, 7.15 and 7.16, as the case may be, to such lender's security registered on title to the applicable Parcel, in registrable form. The form of postponement will be agreed to by the lender and the Owner who is subordinating and postponing its equitable charge, both acting reasonably. The cost of preparation and registration of such postponement agreement will be borne by the Owner who is borrowing from the lender.

7.19 Status Certificate

Each Owner will, within 15 days after a written request from the Other Owner and upon payment of a reasonable fee by such requesting Other Owner not to exceed \$200.00 (and after the year 2019, adjusted each year in accordance with the "all-items Consumer Price Index" for British Columbia published by Statistics Canada or successor in function), deliver to any actual or prospective mortgagee or prospective purchaser, as specified by such requesting Other Owner, a certificate upon which the recipient will be entitled to rely specifying:

- (a) the amount of money, if any, owing or accruing due to such Owner by the Other Owner pursuant to the terms of this Agreement;
- (b) any work which has been undertaken by such Owner for which it will be seeking total or partial compensation from the Other Owner; and
- (c) the details of any notice given to the Other Owner pursuant hereto of such Owner's intention to do work

7.20 Owner's Obligation to Rebuild and Repair if not Major Damage

In the event that any Development or any part thereof will at any time be defective or damaged (the "Damaged Development") such that any Other Owner's Easement is diminished in a material way or is likely to be diminished in a material way, but neither the Damaged Development nor the Other Development has suffered Major Damage, then after receipt from the Other Owner of a notice to Inspect, Construct and Repair pursuant to this Section 7.20 (which notice refers to and contains a copy of this Section 7.20), the Owner of the Damaged Development will, at its sole expense and within a reasonable period of time following notice thereof from the Other Owner, Inspect, Construct, Repair and make the Damaged Development fit for the purpose of such Other Owner's Easements, and without limiting the generality of the foregoing, if proceeds of insurance are received by the Owner of the Damaged Development, such Owner will direct such insurance proceeds first towards Repair and, if necessary, replacement of the Damaged Development.

7.21 Owner's Obligation to Rebuild and Repair if Major Damage

In the event that any Development suffers Major Damage, the Owners will act cooperatively to reach a mutually acceptable agreement, acting reasonably, as to whether to rebuild or Repair the Damaged Development and/or to rebuild or Repair the Easement Areas. If the parties are unable to so agree, the dispute will be resolved in accordance with Section 8. Notwithstanding the foregoing, if the Owner of the Damaged Development that has suffered Major Damage does not receive insurance proceeds as a result of the damage or destruction to its Development in an amount sufficient to rebuild or Repair its Damaged Development, then it will have no obligation to rebuild or Repair its Damaged Development.

8. DISPUTE RESOLUTION

8.1 Settlement of Disputes

In the event of any dispute or disagreement between the Owners in respect of any matter that is the subject of this Agreement or the interpretation of any provision of this Agreement, the parties agree that such dispute or disagreement will be settled as follows:

- (a) immediately after a dispute or disagreement arises between the Owners as to their respective rights and obligations under this Agreement, an Owner may give notice of such dispute or disagreement to the Other Owners setting forth particulars of the dispute or disagreement and the value of any amount claimed. The Other Owners will reply to such notice no later than 14 days after it is received or is considered to

have been received, in accordance with Section 10.6, setting out in such reply its answer. If the Other Owners do not reply within such 14-day period, then the Owner may apply to have the single mediator chosen by reference to a Judge of the Supreme Court of British Columbia in accordance with Section 8.1(b);

- (b) the Owners will then refer such dispute or disagreement to non-binding mediation before a single mediator to be chosen jointly by them. Failing agreement as to such mediator, then the single mediator will be chosen by reference to a Judge of the Supreme Court of British Columbia;
- (c) the dispute or disagreement as defined in the notice and reply, if any, will be referred to the mediator on the later of:
 - (i) the date which is 15 days after the Owner giving notice under Section 10(a) receives the reply or is considered to have received it, in accordance with Section 10.6, or the time for giving such reply expires; and
 - (ii) the date the mediator is chosen.

These time limits will be strictly observed, unless abridged or extended by agreement of the Owners; and

- (d) the Owners agree to submit any outstanding dispute or disagreement which has not been resolved by mediation pursuant to this Section 8.1 within 60 days of commencement of the mediation proceeding to final and binding arbitration by a single arbitrator pursuant to the *Arbitration Act* of British Columbia as same may be amended from time to time or any legislation substituted therefor, provided that it is understood and agreed that this Section 8.1 is not intended to nor is it to be construed as preventing the Owners, or either of them, from seeking injunctive relief. If the Owners cannot agree to a single arbitrator, then such arbitrator will be chosen by reference to a Judge of the Supreme Court of British Columbia. The Owners will share equally in the costs of referring the choice of an arbitrator to a Judge of the Supreme Court of British Columbia, and the costs of the arbitration will be determined by the arbitrator. Such arbitration will include a requirement for the production and discovery of documents as required by the British Columbia Supreme Court Rules.

8.2 No Liability for Consequential Damages

Under no circumstances will an Owner be liable to the Other Owner or a third party for indirect or consequential damages by reason of breach of this Agreement.

9. SUBDIVISION

9.1 Subdivision

If any Parcel is subdivided, including by way of Strata Plan in accordance with the *Strata Property Act*, then the rights, covenants, easements and charges granted hereunder will continue to run with and bind each Subdivided Lot including any Strata Unit.

9.2 Subdivision by Strata Plan

In the event of a subdivision of a Parcel by the deposit of a Strata Plan in accordance with the *Strata Property Act*, then:

- (a) the benefit and burden of the easements herein granted and the other covenants and agreements herein will be accepted on behalf of the Strata Unit Owners by the Strata Corporation created thereby and will be administered and enforced by the Strata Corporation only and, in particular, without limiting the generality of the foregoing, the Strata Corporation will make all payments required to be made hereunder, will receive all payments to be paid hereunder, will be responsible for obtaining the insurance policies required hereunder and will be entitled, upon compliance with the applicable requirements of the *Strata Property Act*, to release and discharge from the common property of the Strata Corporation, the benefit of any of the easements granted hereunder on behalf of the Strata Unit Owners;
- (b) the Strata Corporation so created will:
 - (i) perform and observe the Owner's covenants herein at the expense of the Strata Corporation and the Strata Unit Owners;
 - (ii) upon deposit of the Strata Plan, enter into an assumption agreement with the Owner of the stratified Parcel and the Other Owners in a form satisfactory to the Other Owners, acting reasonably, pursuant to which the Strata Corporation assumes all of the obligations, liabilities and covenants of the Owner of the stratified Parcel from and after the date of deposit of the Strata Plan and the Other Owners agree to release such Owner (in its capacity as the owner of the Parcel but not in its capacity as a Strata Unit Owner and subject to such Owner's obligations as "owner developer" under the *Strata Property Act*) from all of its liabilities, obligations and covenants arising hereunder from and after the date of assumption of such obligations, liabilities and covenants by the Strata Corporation under the assumption agreement, provided however that nothing herein will operate so as to release an Owner from observing and performing any term, obligation or covenant which may arise or accrue, or which is required to be observed and performed prior to the date of assumption of the obligations, liabilities and covenants by the Strata Corporation;
 - (iii) take into consideration the content of this Agreement when creating, amending or rescinding the rules and regulations of the Strata Corporation

applicable to Strata Unit Owners, and will cause the Strata Unit Owners to comply with the obligations, restrictions and limitations as provided herein;

- (iv) be responsible for any breach arising from any action or omission of any and all of the Strata Unit Owners of the obligations, restrictions and limitations as provided herein; and
 - (v) be entitled to give all permissions and consents permitted to be given by the Owner, subject to applicable legislation;
- (c) the liability of each Strata Unit Owner for the performance and observance of the covenants and obligations of the Owner of the Parcel subdivided by Strata Plan, as provided herein, will be limited to the unit entitlement of his, her or its Strata Unit in the common property as established in accordance with the *Strata Property Act*;
- (d) any modification to this Agreement or any agreement to modify, release or discharge the easements granted herein pursuant to the terms of this Agreement can be effected with a resolution passed by a percentage vote (as provided in the *Strata Property Act*) of the Strata Corporation, unless prohibited by the *Strata Property Act* or the *Land Title Act* and such prohibition cannot be waived by Strata Unit Owners; and
- (e) the Strata Unit Owners will not attempt to enforce or in any way interfere with the administration by the Strata Corporation of the easements herein granted.

9.3 Subdivision by Strata Plan - Pedestrian Access Routes

In the event of a subdivision of a Parcel by the deposit of a Strata Plan in accordance with the *Strata Property Act*, then:

- (a) the Strata Plan, including any amendment to the Strata Plan, must not include any portion of a Pedestrian Access Route within a Strata Unit or designate any portion of a Pedestrian Access Route as limited common property for the exclusive use of one or more Strata Unit Owners; and
- (b) the Owner of such stratified Parcel must not otherwise designate any portion of a Pedestrian Access Route as limited common property for the exclusive use of one or more Strata Unit Owners; and if the Other Owners determine that a portion of a Pedestrian Access Route is within a Strata Unit or has been designated as limited common property for the exclusive use of one or more Strata Unit Owners, then the Owner of the stratified Parcel, at its cost:
 - (i) will amend the Strata Plan so that such Pedestrian Access Route is not within a Strata Unit or is not designated as limited common property, as the case may be; or

- (ii) if the designation as limited common property is made other than in the Strata Plan, will remove the designation of any portion of a Pedestrian Access Route as limited common property.

10. GENERAL

10.1 Severability

If any term of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that term is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unamended by that holding or by the severance of that term.

10.2 Covenants Run with the Land

The burden of the easements, covenants, charges and agreements set forth herein will run with each Parcel, as applicable, and will bind each Parcel, as applicable, and will attach thereto and run with each and every part into which the same may be subdivided or consolidated, but no part of the fee or soil of any Parcel will pass to or be vested in the Other Owner under or by virtue of this Agreement.

10.3 Priority

Each Owner will, after execution hereof by the Township and the Owners, do or cause to be done, at its own cost and expense, all things and acts necessary to ensure that the covenants and easements in Sections 2 to 4 inclusive and subject to Section 7.9, the equitable charges in Section 7.8, are registered, at the cost of the Owners, against title to the Parcels, as applicable, with priority over all other financial charges or interests in or to the Parcels, as applicable, except encumbrances in favour of the Township.

10.4 Rights of Owner Preserved

Except as otherwise expressly provided for herein, nothing in this Agreement will be interpreted so as to restrict or prevent any Owner from using its Parcel including, without limitation, the Easement Areas within its Parcel, in any manner which does not interfere with the exercise by the owner of the dominant tenement of such easement of its rights hereunder.

10.5 Waiver

No alleged waiver of any breach of this Agreement is effective unless it is an express waiver in writing of the breach in respect of which it is asserted against the party alleged to have given the waiver. Waiver by an Owner of any default hereunder by any Other Owner will not be deemed to be a waiver by such Owner of any subsequent default by any Other Owner.

10.6 Notice

Any demand or notice which may be given to any of the parties hereto pursuant to this Agreement will be in writing, and will be delivered, or sent by postage prepaid mail and addressed

to the intended recipient at the address of the recipient as set forth in Item 5 or Item 6 on Form C or if the intended recipient is a Strata Corporation then at the mailing address filed in the Land Title Office in accordance with the *Strata Property Act* or at such other physical mail address as the intended recipient may have most recently notified the other party hereto as an address for the delivery of notices hereunder. The time of receiving any such demand or notice will be deemed to be the day of delivery if delivered or on the fourth Business Day after the date of mailing thereof if sent by postage prepaid mail. During any interruption of mail service in or between the place of intended mailing and the location of the intended recipient of a demand or notice, a demand or notice will not be effective if sent by mail until it is actually received by the intended recipient.

10.7 Governing Law

This Agreement will be governed and construed in accordance with the laws in force in the Province of British Columbia.

10.8 No Derogation

Nothing contained or implied herein will prejudice or affect the Township's rights, powers, duties and obligations in the exercise of its functions pursuant to the *Community Charter* or *Local Government Act* of British Columbia, and the rights, powers, duties and obligations of the Township under all of its public and private statutes, bylaws, orders and regulations, all of which may be as fully and effectively exercised in relation to the Project as if this Agreement had not been executed and delivered by the Owners and the Township.

10.9 Entire Agreement

This is the entire agreement between the parties concerning the subject matter of this Agreement.

10.10 Further Assurances

The parties hereto will do and cause to be done all things and execute and cause to be executed all documents that may be necessary to give proper effect to the intention of this Agreement.

10.11 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns and all of the covenants herein are made by each Owner, for itself and its successors and assigns and the owner or owners from time to time of an interest in all or any portion of the Parcels, except that the covenants of each of the Owners herein will be personal and binding upon each of them only during their ownership of any interest in the respective Parcel.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed as of the date first above written on Form C, which forms and constitutes a part hereof.

SCHEDULE A - COST SHARING

July 2, 2020 1:13 Subdivision
Cost Sharing

SCHEDULE A

Item	Scope	Party Responsible for Operations and Upkeep	Cost Sharing Basis	Cost Allocation to	Calculation	Cost Sharing Percentage
1	Entire Parkade General Maintenance (cleaning/management/utilities/insurance/servicing/repair/painting etc.)	Remainder Portion	Per Staff in underground Basis: Total 179 Staffs	Lot A Lot B* Lot C Remainder Portion Township of Esquimalt Total	71 74 30 0 4 179	39.7% 41.3% 16.8% 0.0% 2.2% 100%
2	Structural/Building Envelope Parkade Capital repair and replacement	Remainder Portion	Per Staff Basis	Lot A Lot B* Lot C Remainder Portion Township of Esquimalt Total	71 74 30 0 4 179	39.7% 41.3% 16.8% 0.0% 2.2% 100%
3	Gas/Electricity bill for common electrical/mechanical systems, except for Geothermal system.	Remainder Portion	By Capacity (SPM) as designed by the Mechanical Engineer	Lot A Lot B Lot C Remainder Portion Township of Esquimalt Total	190 190 105 0 0 485	39.2% 39.2% 21.6% 0.0% 0.0% 100.0%
4	Common Mechanical/Electrical Systems, Geothermal system, and miscellaneous repair and Replacement	Remainder Portion	By Capacity (GPM) as designed by the Mechanical Engineer	Lot A Lot B Lot C Remainder Portion Township of Esquimalt Total	190 190 105 0 0 485	39.2% 39.2% 21.6% 0.0% 0.0% 100.0%
5	Monthly electricity bill of Geothermal system	Remainder Portion	By Energy meter on Geothermal System.	Lot A Lot B Lot C Remainder Portion Township of Esquimalt Total	Based on use as percentage per billing cycle Based on use as percentage per billing cycle Based on use as percentage per billing cycle 0 0 TBC	Based on use as percentage per billing cycle Based on use as percentage per billing cycle Based on use as percentage per billing cycle 0 0 100%
6	Elevator capital repair and replacement	Owner	None	N/A	N/A	N/A

7	Domestic Water use and maintenance	Owner	None	N/A	N/A	N/A
8	Natural Gas lines and meters	Owner	None	N/A	N/A	N/A
9	Maintenance SRW and SRW Access Area including Art Walk, (cleaning/management/utilities/insurance/ snow clearing/lighting maintenance, irrigation water, Artwork maintenance).	Remainder Portion	42% to township. (Per purchase agreement Public Open Space Agreement). Remaining portion split by unit entitlement across all Owners. Total square footage 161,386sq. ft.	Lot A	74,530	26.8%
				Lot B*	52,126	18.7%
				Lot C	34,730	12.5%
				Remainder Portion	0	0.0%
				Township of Esquimalt	0	42.0%
Total				161,386	100.0%	
10	SRW Area and SRW Access Area Capital Repair and Replacement including Art Walk. Refer to SRW CA6613268 to CA6613270	Remainder Portion	42% to township Per SRW CA6613268 to CA6613270. Remaining portion split by unit entitlement across all owners total square footage 161,386sq. ft.	Lot A	74,530	26.8%
				Lot B*	52,126	18.7%
				Lot C	34,730	12.5%
				Remainder Portion	0	0.0%
				Township of Esquimalt	0	42.0%
Total				161,386	100.0%	
11	Above Ground Parking Area Maintenance (cleaning/management/utilities/insurance/ snow clearing/lighting maintenance etc.)	Remainder Portion	Per stall basis, plus one (1) additional stalls allocated to the township for the garbage enclosure. **	Lot A	5,54	14.6%
				Lot B*	3,88	10.2%
				Lot C	2,58	6.8%
				Remainder Portion	0	0.0%
				Township of Esquimalt	25+1**	68.4%
Total				38.0%	100.0%	
12	Above Ground Parking Area Capital repair and replacement.	Remainder Portion	Per stall basis, plus one (1) additional stalls allocated to the township for the garbage enclosure. **	Lot A	5,54	14.6%
				Lot B*	3,88	10.2%
				Lot C	2,58	6.8%
				Remainder Portion	0.00	0.0%
				Township of Esquimalt	25+1**	68.4%
Total				38.0%	100.0%	
13	Town Hall Generator and Garbage Enclosure maintenance and Capital Replacement	Township of Esquimalt	None	Township of Esquimalt		100%
14	Expenses associated with and property taxes and other miscellaneous fees associated with Remainder Parcel	Remainder Portion	By unit entitlement	Lot A	74,530	46.2%
				Lot B	52,126	32.3%
				Lot C	34,730	21.5%
				Remainder Portion	0	0.0%
				Township of Esquimalt	0	0.0%
Total				161,386	100.0%	
15	Expenses associated with and property taxes and other miscellaneous fees associated with Leased Portion	Remainder Portion	By unit entitlement	Lot A	74,530	46.2%
				Lot B	52,126	32.3%
				Lot C	34,730	21.5%
				Remainder Portion	0	0.0%
				Township of Esquimalt	0	0.0%
Total				161,386	100.0%	

* Note- For expenses with regards to the parking area and the SRW area and SRW access area Lot B's portion the library strata lot shall be excluded from these costs and the costs shared by the other strata lots in lot B alone. Note that the library will still be responsible for its proportion other common area costs for lot B as they are not captured in this table or relevant to this agreement.

** Note - The township has been assigned additional maintenance costs and capital repair costs for access and collection to their garbage structure in the above ground parking area. For the purpose of this table those cost are allocated via a "parking stall" so that an appropriate percentage portion can be assigned. This proportion may be adjusted from time to time depending on the townships method of garbage collection and its impact on the above ground parking area.

SCHEDULE B – ARCHITECT'S OPINIONS

SCHEDULE B

D'AMBROSIO
ARCHITECTURE + URBANISM2860 Juliard Road
Victoria, BC, Canada V8T5K2
Tel: 250.384.2400
eml: mail@dars.ca
web: www.dars.ca

David L. Killion
Senior Building and Plumbing Official
Community Safety Services
Township of Esquimalt
Phone: 1.250.414.7106

July 7, 2020

Re: Esquimalt Town Square Project – Proposed Subdivision

Dear Mr. Killion,

As Certified Registered Professional for the Esquimalt Town Square project, we have reviewed the proposed subdivision (prepared by JE Anderson and Associates) of the project site into 4 parcels:

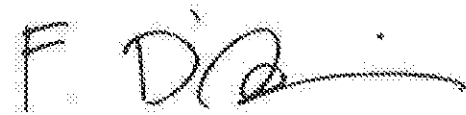
- Parcel A – Containing Residential **Buildings A & B** and portions of the Parkade below
- Parcel B – Containing Commercial **Building C** and portions of the Parkade below
- Parcel C – Containing Residential **Building D** and portions of the Parkade below
- Remainder Parcel – containing portions of the parkade and at-grade outdoor spaces

The subdivision plan is accompanied by proposed legal easements that ensure access between parcels as required for egress and exiting, as well as movement through the site for maintenance and servicing; these easements are detailed in the Property Subdivision report prepared by GHL Consultants Ltd.. Secured through legal agreement, these easements ensure the proposed subdivision will not impact building code compliance for the project. Furthermore, public access through the site, as established in the Rezoning / Development Permit processes, will be maintained through these easements.

This technical review has been prepared for the Authority Having Jurisdiction, the Subdivision Approving Officer and Aragon Properties Ltd., and shall not be relied upon (without prior written authorization by DAU) by any other party.

If you have any questions regarding this matter please do not hesitate to contact us.

Sincerely,



Franc D'Ambrosio, Architect AIBC FRAIC LEED AP
Principal
D'AMBROSIO architecture + urbanism

SCHEDULE C - CODE REPORT

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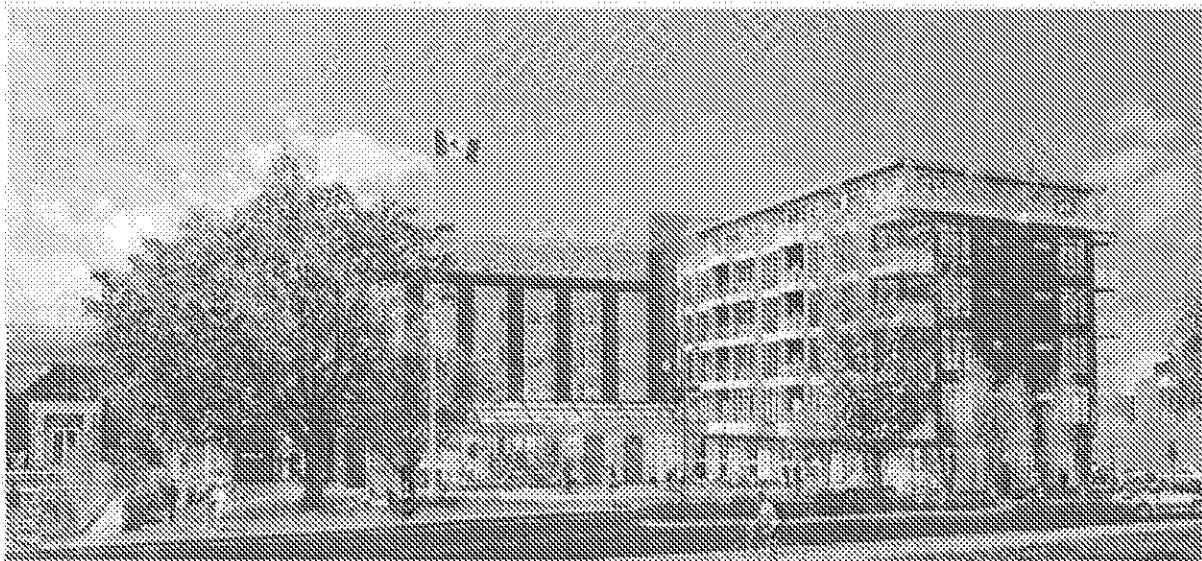


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**APPROACH TO BUILDING CODE COMPLIANCE
 PROPERTY SUBDIVISION**

for

**ESQUIMALT TOWN CENTRE
 1235 ESQUIMALT ROAD
 ESQUIMALT, BC**



Prepared for

**Aragon Esquimalt TC Properties Ltd
 201 – 1628 West 1st Avenue
 Vancouver, BC
 V6J 1G1**

July 8, 2020

GHL File 5970.02



VANCOUVER ✈ TORONTO



TABLE OF CONTENTS

	Page
1.0 INTRODUCTION	1
1.1 Project Description.....	1
1.2 Applicable Building Code.....	1
1.3 Property Subdivision Description.....	1
1.4 Building Code Approach.....	2
2.0 BUILDING CODE CONFORMANCE ISSUES	2
2.1 Egress Routes and Exits.....	2
2.2 Encroachment.....	3
2.3 Access.....	4
2.4 Spatial Separation and Exposure Protection.....	5
2.5 Fire Alarm System.....	5
2.6 Fire Department Access.....	5
2.7 Alternative Solutions.....	6
2.8 Building Services.....	6
2.9 Building Structure.....	7
2.10 Building Envelope.....	7
3.0 SUMMARY	8

ATTACHMENTS

- Attachment 1.1 Overall Site Survey Plan
- Attachment 1.2 Floor Plan Mark-up, Easements for Egress
- Attachment 1.3 Floor Plan Mark-up, Easements for Encroachments
- Attachment 1.4 Floor Plan Mark-up, Easements for Common Access
- Attachment 1.5 Floor Plan Mark-up, Spatial Separation



1.0 INTRODUCTION

This report addresses issues pertaining to items arising from the property subdivision of the buildings located at 1235 Esquimalt Road, Esquimalt, BC. The issues pertaining to Division B, Part 3 of the Building Code will be addressed through legal agreements.

Building Code and fire protection features not specifically addressed in this report are assumed to be in compliance with the appropriate Codes and Standards and as described in GHJ's report on Building Code Compliance and Alternative Solutions dated June 7, 2017, June 17, 2019 and October 31, 2019.

This report should be reviewed in conjunction with architectural drawings prepared by D'Ambrosio Architecture + Urbanism and survey drawings by JE Anderson & Associates.

1.1 Project Description

The Esquimalt Town Centre consists of three buildings on a common basement parking garage. The site faces Esquimalt Road to the north, Carlisle Avenue to the south, Park Place to the west and a property line to the east. Buildings A and B are separate 6 storey wood frame residential buildings. Building C/D is a single building. The basement is a separate building for the purpose of construction requirements under Article 3.2.1.2.

Included in *Attachment 1.1* is an overall site survey plan.

1.2 Applicable Building Code

The buildings were constructed under the BC Building Code 2012 and the current edition of the Building Code is the BC Building Code 2018. There are no changes to the 2018 edition relative to the creation of air space parcels that differ from the 2012 edition. The air space parcel (ASP) subdivision is simply the creation of property lines and does not include any alterations to the buildings. References to the Building Code are to the 2018 edition unless otherwise noted.

1.3 Property Subdivision Description

The property is being subdivided into four separate parcels. One property line will intersect Building C/D. The lots and related building portion contained within each are summarized as follows:

- * Parcel A -- Containing Building A and B and associated parkade below
- * Parcel B -- Containing Building C and includes Plan EPP76482 (Leased Lands) containing parkade below and parts of the plaza at grade
- * Parcel C -- Containing Building D
- * Remainder Lot 1, containing parts of the parkade and plaza.

We understand that the Parcel B Leased Lands is an agreement between the Parcel B Owners and the Township of Esquimalt, granting the Parcel B Owners and its Users exclusive and full use of the leased lands. For the purpose of applying the Building Code, the Leased Lands is considered part of Parcel B. Overall site survey plans are attached in *Attachment 1.1*.



1.4 Building Code Approach

The buildings will be subdivided through the creation of four parcels as described above and as indicated on the plans attached to this report.

Generally, the Building Code provides two methods for considering buildings separate buildings, through the use of vertical or horizontal firewalls in Subsections 3.1.10 and 3.2.1, and by spatial separation. It is proposed to subdivide the parent lot into four parcels to facilitate separate ownership; however, neither firewalls nor spatial separations are provided at the internal property lines.

Appendix A – 3.2.3.4.(1) states “When a building spans a property line, constructing a partywall on the property line is not mandated by the Code but subdividing the building at the property lines is an option the owner can consider. The Code permits a single building constructed on more than one property to be designed as a single undivided building, whether the properties have a common owner or not.”

In this case, the buildings have been designed as separate buildings on a basement parking garage designed to Article 3.2.1.2, and the Building Code’s requirements applied accordingly. The creation of property lines has no impact on Building Code compliance, the buildings function the same as they would without the creation of property lines. The issue is the legality of one party accessing portions of a building they do not own for access or exit or to service or maintain building elements necessary to the function of their building. For example, owners of the Remainder Lot need the right to access the water service room in Parcel A to service equipment necessary to the function of their portion of the building and residential occupants exiting via stairs that discharge onto the Remainder Lot need the right to cross that lot to get to the public thoroughfare.

These rights to access for the four properties; three parcels and the Remainder Lot, will be covered in a legal agreement as follows:

- * Grant easements necessary to ensure access into and exit from buildings and access to fire protection and occupant safety systems required for the buildings to function and to allow the owners to operate and maintain their buildings and common systems.
- * Release and indemnify the Township of Esquimalt and its employees for agreeing to treat the buildings as they were designed under the Building Code regardless of subdivision creation.
- * Require the owners to inspect, test and keep in good working order their own and common fire protection and occupant safety systems and common spaces and services.

2.0 BUILDING CODE CONFORMANCE ISSUES

The following subheadings 1 through 8 address Building Code issues arising from the property subdivision, to be addressed by a legal agreement:

2.1 Egress Routes and Exits

Building Code Reference: Section 3.4

Each phase of development will be mainly provided with exiting and egress independent of the remaining phases at all levels. This includes the parking levels which contain openings between building portions but are provided with required Code-conforming exits within each portion.



This project also contains areas where an easement agreement is required for the purposes of unrestricted pedestrian access for exit/egress to a safe open space (i.e. the street). These locations are summarized as follows in Table 1:

Table 1. Easements for Exit / Egress

#	Level	Area Requiring Exit / Egress	Description of Configuration	Easement
E1	P1	Parcel A: P1 Parking Garage	Access to exit in Remainder Lot, Stair #9	In favour of Parcel A
E2	P1	Parcel A: P1 Parking Garage	Access to exit in Parcel B, Stair #3	In favour of Parcel A
E3	P1	Parcel B: P1 Parking Garage	Access to exit in Parcel A, Stair #5, #7	In favour of Parcel A
E4	P1	Parcel B: P1 Parking Garage	Access to exit in Remainder Lot, Stair #9	In favour of Parcel B
E5	P1	Parcel C: P1 Parking Garage	Access to exit in Parcel B, Stair #3	In favour of Parcel C
E6	P1	Remainder Lot: P1 Parking Garage	Access to exit in Parcel B, Stair #3	In favour of Remainder Lot
E7	L1	Parcel A: Stair #8	Access to open space in Remainder Lot, Public Parking	In favour of Parcel A
E8	L1	Parcel B: Stair #4 Library Concourse	Access to open space in Remainder Lot, Parcel A (north sidewalk) and Parcel C (Town Center Plaza)	In favour of Parcel B
E9	L1	Parcel C: Commercial Retail Unit #101 Commercial Retail Unit #102	Access to open space in Remainder Lot and Parcel B, Town Center Plaza	In favour of Parcel C

Included in *Attachment 1.2* are marked floor plans noting locations for the above noted easements for egress.

2.2 Encroachment

There will be physical encroachments of building portions in the form of roof overhangs and portions of vertical walls into adjacent properties such that encroachment agreements will be needed (e.g. projections over property lines). These locations are summarized as follows:

Table 2. Easements for Encroachments

#	Building Portion	Area of Encroachment	Description of Configuration	Easement
EN1	Level L1	Parcel B Concourse north wall	Exterior wall encroachment onto Parcel C	In favour of Parcel B
EN2	Level L1	Parcel B L1 south roof overhang	Roof overhang encroachment onto Parcel A	In favour of Parcel B



Included in *Attachment 1.3* are marked floor plans noting locations for the above noted easements for physical encroachments.

2.3 Access

This project contains areas where easement agreements are required for purposes of unrestricted access to facilities/areas on either side of property lines. Easements will be required for vehicular and pedestrian access. These locations are summarized as follows:

Table 3. Easements for Access

#	Building Portion	Area Requiring Access	Description of Configuration	Easement
A1	Level P1	Parcel A parking areas, Underground parking ramp and aisle	Pedestrian and vehicular access through Parcel A to Parcel B, Parcel C and Remainder Lot parking, service and storage areas	In favour of Parcel B, Parcel C, Remainder Lot
A2	Level P1	Parcel B parking areas	Pedestrian and vehicular access through Parcel B to Parcel C and Remainder Lot parking, service and storage areas	In favour of Parcel C, Remainder Lot
A3	Level P1	Parcel A parking areas	Pedestrian and vehicular access through Parcel B and Remainder Lot parking areas	In favour of Parcel A
A4	Level L1	Parcel A parking areas, Underground parking entrance ramp	Vehicular access through Parcel A	In favour of Parcel B, Parcel C, Remainder Lot
A5	Level L1	Remainder Lot, Town Center Plaza and public parking areas	Pedestrian and vehicular access through Remainder Lot to Parcel A, Parcel B and Parcel C areas	In favour of Parcel A, Parcel B, Parcel C
A6	Level L1	Parcel A, Art Walk sidewalk	Pedestrian access through Parcel B to Parcel A areas	In favour of Parcel B
A7	Level L1	Parcel B, East sidewalk	Pedestrian access through Parcel A to Parcel B areas	In favour of Parcel A
A8	Level L1	Parcel B, Concourse / Gallery Flex Space, sidewalk	Pedestrian access through Parcel C to Parcel B areas	In favour of Parcel C
A9	Level L1	Parcel C, Commercial Retail Unit #102	Pedestrian access through Parcel B to Parcel C areas	In favour of Parcel B
A10	Level L1	Parcels A, B, C, Town Center Plaza and sidewalk areas	Pedestrian and vehicular access through Remainder Lot to Parcel A, Parcel B and Parcel C areas	In favour of Remainder Lot

Included in *Attachment 1.4* are marked floor plans noting locations for the above noted easements for common access.



2.4 Spatial Separation and Exposure Protection

Building Code Reference: Subsection 3.2.3

For Building Code application purposes, the spatial separation requirements of Subsection 3.2.3 require that limiting distances be measured to the property lines.

Subdivision of the parent lot and reconfiguration of property lines creates a variance of the initial spatial separation requirements for Parcel B (Building C). To retain unprotected openings, legal agreement will acknowledge the following locations relating to spatial separation requirements:

Table 4. Interface between Property Lines

#	Building Portion	Description of Configuration
SP1	Level 2 to 4	Limiting distance for the east face of Building C was established as 5.2m measured from the L2-L4 building face to accommodate 74.6% unprotected openings. 6.0m Restrictive covenant in favor of Parcel B (Building C) to establish a portion of the required 5.2m limiting distance over the Remainder Lot.
SP2	All Above Grade Levels	Limiting distance for Buildings and C was established by measuring to an imaginary line between the buildings at a distance of 4.18m from the north face of Building A and 5.2m from the south face of Building C. 6.0m Restrictive covenant in favor of Parcel B (Building C) to establish a portion of the required limiting distance over Parcel A.
SP3	Level 1	Limiting distance for the east face of Building C was established as 2.1m measured from the L1 building face to accommodate 33.5% unprotected openings. 2.0m Restrictive covenant in favor of Parcel B (Building C) to establish a portion of the required limiting distance over Parcel A.

Included in *Attachment 1.5* are mark floor plans noting locations for the above noted easements for spatial separation.

2.5 Fire Alarm System

Building Code Reference: Subsection 3.2.4

The buildings are served by a single fire alarm system that has been subdivided into evacuation zones under an alternative solution. This fire alarm system serves all four properties; the three subdivided parcels and the Remainder Lot. An agreement addressing maintenance, testing and servicing of the fire alarm system as mandated by the BC Fire Code is required for proper functioning for the fire alarm system, see Section 2.8 below.

2.6 Fire Department Access

Building Code Reference: Subsection 3.2.5

Each parcel will be provided with separate Fire Department access; however, it is recognized that the Fire Department will be able to respond and use the parcels of each phase to gain access to other areas in the entire project.



Locations where easement is required for firefighter access to each parcel is the same as the Common Access easements indicated under Table 2 of this report.

Fire department access for Buildings A and C/D is from Park Place and Building B is from Carlisle Avenue. Each building entry is within 15m from the access route per Article 3.2.5.5, except for Building B's entry, which is over 15m as addressed by Alternative Solution 7. The main entry at each building will be the designated fire department response point equipped for the following:

- * Fire alarm annunciator panel.
- * Access to the building, location for keys for access will be coordinated with the fire department.
- * Fire department connection for sprinkler and standpipe systems at not more than 45m from a fire hydrant.

Building B's fire department connection will be within 15m of Carlisle Avenue, and the building served by a secondary fire department response point from the parking lot at the north.

2.7 Alternative Solutions

Building Code Reference: Division A Clause 1.2.1.1.(1)(b), and Division C Section 2.3.

Division A, Clause 1.2.1.1.(1)(b) and Division C Section 2.3 permit development of alternative solutions to achieve the minimum level of performance required by Division B in the areas defined by the acceptable solutions and their objective and functional statements.

The alternative solutions prepared by GHL Consultants Ltd in previous reports are as follows:

Solution 1	Combustible Construction
Solution 2	Fire Alarm System Design
Solution 3	Glazing in Parking Garage
Solution 4	Exit Exposure Protection
Solution 5	Glazing in Fire Separations
Solution 6	Combustible Elements at First Storey
Solution 7	Fire Department Access
Solution 8	Pot Light Penetrations at 1h Fire Rated Floor and Roof Assemblies
Solution 9	Group A, Division 2 Major Occupancy (Building C/D)

These solutions include measures related to sprinkler and fire alarms systems, and these systems require regular maintenance as described in Sections 2.5 and 2.8, there are no special maintenance requirements related to the alternative solutions.

2.8 Building Services

Some services must be shared and these span across the property lines. Legal agreements will be developed to address the following:

- i. Prime responsibility for care and maintenance of fire protection systems such as sprinklers and standpipes.
- ii. Prime responsibility for care and maintenance of fire alarm systems.



- iii. Responsibility for maintenance or replacement of building services.
- iv. A basis for apportioning costs and methods of addressing maintenance or replacement of building services.
- v. Service access (including for exit) agreements and covenants.

Building services to be addressed through legal agreements are summarized as follows:

Table 5. Building Services Shared by and/or Serving Different Subdivision Parcels

Building Service	Code Reference
Water supply and distribution system, plumbing and piping	Part 7
Sanitary sewer drainage system and piping	Part 7
Rainwater drainage system and piping	Part 7
Groundwater drainage system and piping	Part 7
Automatic sprinkler and standpipe	Part 3, NFPA 13, NFPA 14
Natural gas distribution	Technical Safety BC Gas Safety Regulation
Heating, cooling, venting and related distribution	Part 6
Highrise smoke control systems	Part 3, Subsection 3.2.6
Electrical systems and distribution, including emergency and related systems and distribution	Technical Safety BC Electrical Safety Regulation
Telecommunication system and distribution	Technical Safety BC Electrical Safety Regulation
Fire alarm systems and wiring	Part 3, Subsection 3.2.4 Technical Safety BC Electrical Safety Regulation
Energy and Water Efficiency	Part 10

To limit the potential for conflict or miscommunication, one party will be responsible for maintenance of the buildings' fire protection and occupant safety systems.

2.9 Building Structure

Building Code Reference: Part 4

The configuration of the parcels and Remainder Lot is such that the parcels are dependent on each other for structural support. A legal agreement will be provided to satisfy the various owners' interests and ensure that structural integrity and support is maintained for the life of the building.

2.10 Building Envelope

Building Code Reference: Part 5

A legal agreement will be provided to address responsibility, right to access for inspection, maintenance and repair of the common building envelope systems.



3.0 SUMMARY

This report has summarized issues pertaining to the requirements of the BC Building Code 2018 arising from the conventional subdivision of the buildings to be addressed by means of legal agreements satisfactory to the Township of Esquimalt.

Prepared by,
GHL CONSULTANTS LTD

Reviewed by,

Steev Wong



Steev Wong, DipIT, BCQ

Andrew Harmsworth, M Eng, P Eng, CP, FEC

Enclosures

*** Limitation of Liability ***

This technical report addresses only specific Building Code issues under the GHL/Client agreement for this project and shall in no way be construed as exhaustive or complete. This technical report is issued only to the Authority Having Jurisdiction, the Client, Prime Consultants and Fire Suppression Designer to this project and shall not be relied upon (without prior written authorization from GHL) by any other party.

SW/ev/kl F:\PROJECTS\59\5970.02 - Esquimalt Town Centre Airspace Parcel Report\2020-07-08 Property Subdivision Report (GHL 5970.02).doc

Attachment 1.1

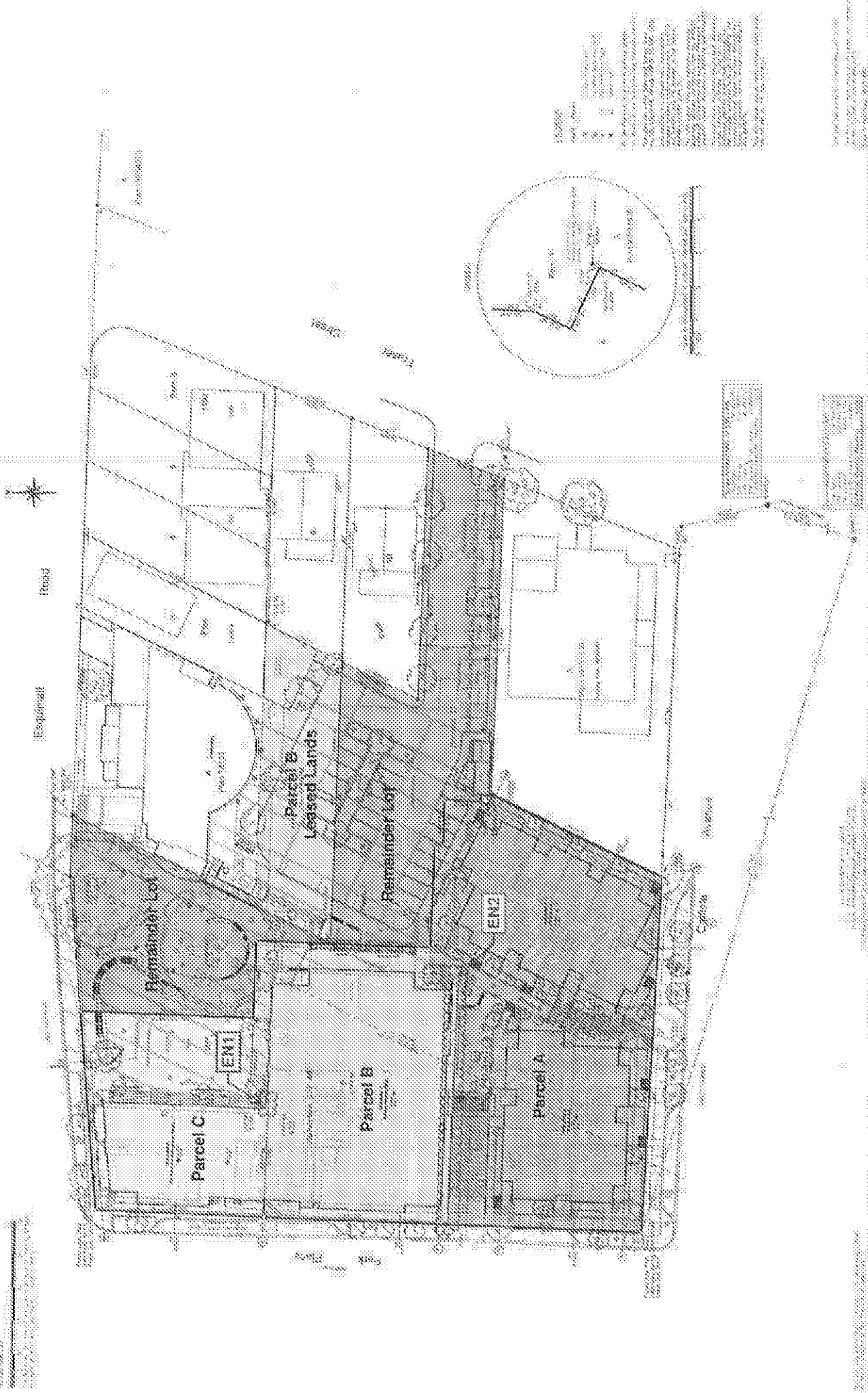
Overall Site Survey Plan

Attachment 1.2

Floor Plan Mark-up, Easements for Egress

PL 46 22795243

SUBDIVISION PLAN OF PART OF LOT 7, SECTION 11, SUBURBAN LOT 40, ESCUMALT DISTRICT, PLAN EPP 22782

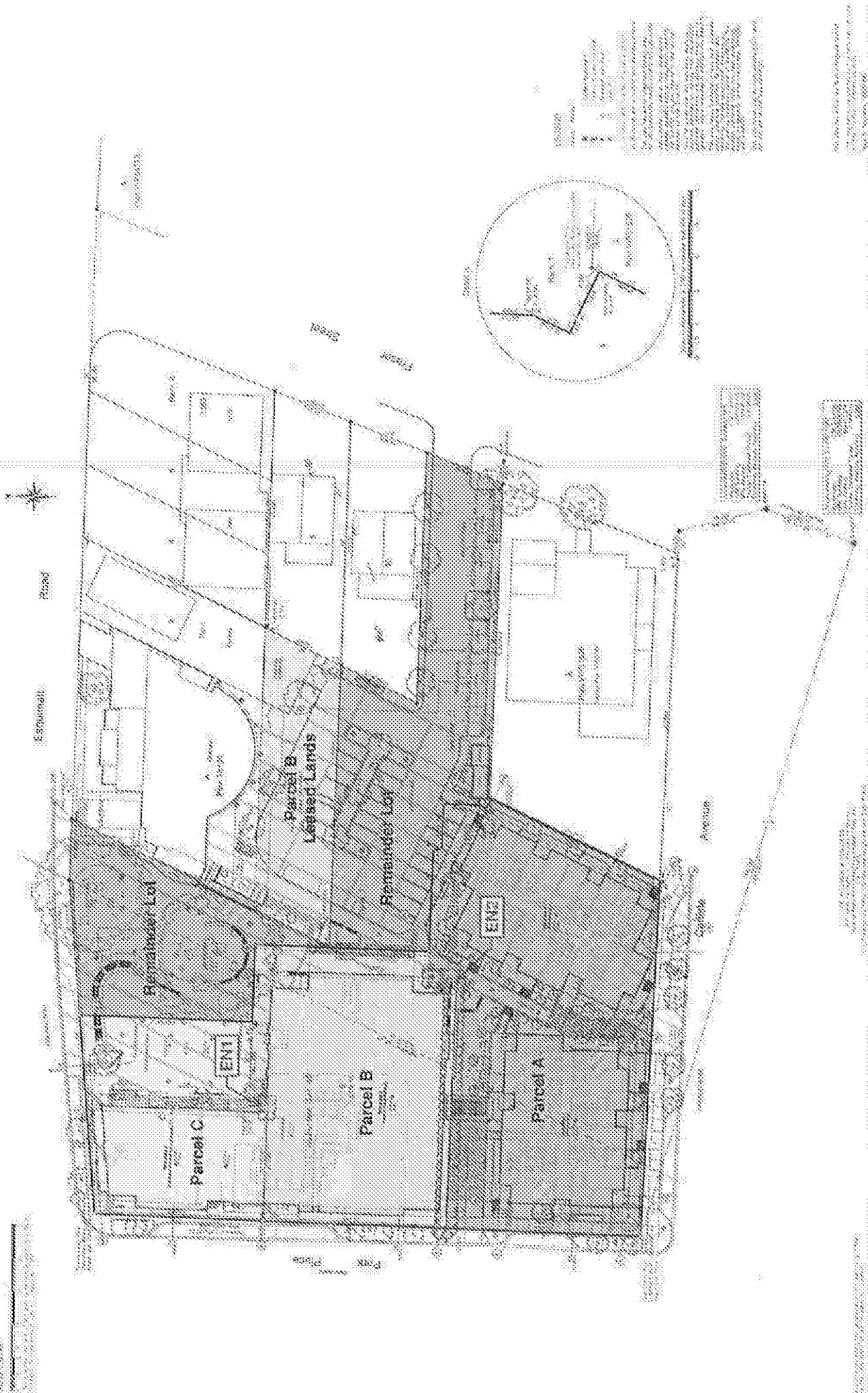


Attachment 1.3

Floor Plan Mark-up, Easements for Encroachments

PLAN EPP27/82

SUBDIVISION PLAN OF PART OF LOT 1, SECTION 17, SUBURBAN LOT 40, ESCURMANT DISTRICT, PLAN EPP27/82

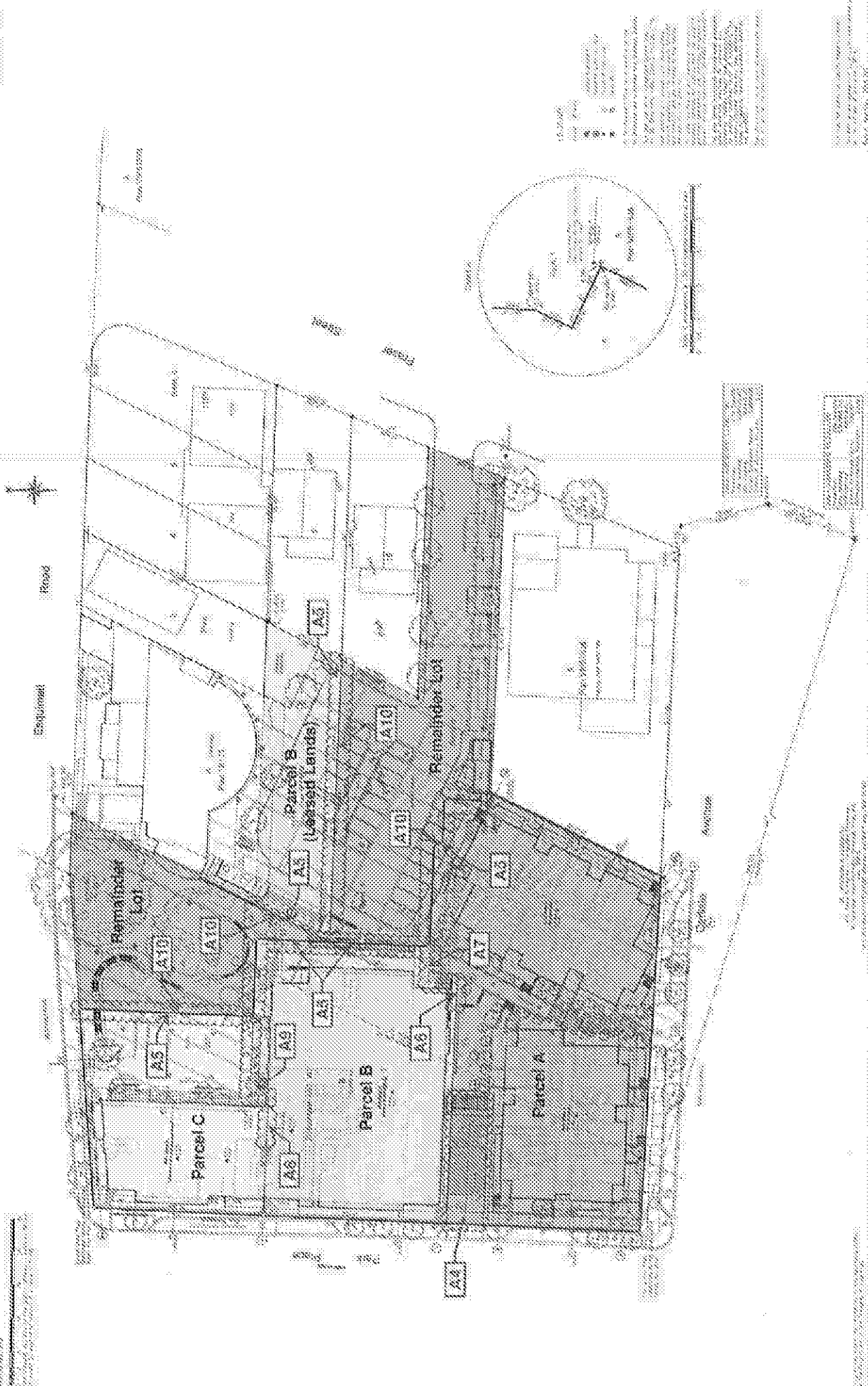


Attachment 1.4

Floor Plan Mark-up, Easements for Common Access

PLAN 2020-08-14

SUBDIVISION PLAN OF PART OF LOT 3, SECTION 11, SUBURBAN LOT 40, ESCUMALT DISTRICT, PLAN EPT32782



Attachment 1.5

Floor Plan Mark-up, Spatial Separation

PLAN EPP59827

SUBDIVISION PLAN OF PART OF LOT 1, SECTION 11, SUBURBAN LOT NO. ESCUJIMAT DISTRICT, PLAN EPP52782

