

**LAND TITLE ACT  
FORM C (Section 233) CHARGE**

**GENERAL INSTRUMENT - PART 1 Province of British Columbia**

PAGE OF 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.

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

Deduct LTSA Fees? Yes

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

STC? YES

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

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

(a) Filed Standard Charge Terms D.F. No.

(b) Express Charge Terms Annexed as Part 2

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

5. TRANSFEROR(S):

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

7. ADDITIONAL OR MODIFIED TERMS:

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

**Execution Date**

Transferor(s) Signature(s)

Y	M	D

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**

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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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**LAND TITLE ACT  
FORM D**

**EXECUTIONS CONTINUED**

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Officer Signature(s)

**Execution Date**

Transferor / Borrower / Party Signature(s)

Y	M	D

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**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**

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

**PART 2 – TERMS OF INSTRUMENT**

**Public Open Spaces Operating Agreement  
Section 219 Covenant and Statutory Right of Way**

**THIS AGREEMENT**, dated for reference October 16<sup>th</sup>, 2017

**BETWEEN:**

**ARAGON ESQUIMALT TC PROPERTIES LTD. (INC. NO. BC1068481)**, a corporation under the *Business Corporations Act* (British Columbia) and having offices at 201-1628 1<sup>st</sup> Avenue West, Vancouver, British Columbia, V6J 1G1

(the “**Owner**”)

**AND:**

**CORPORATION OF THE TOWNSHIP OF ESQUIMALT**, a municipality under the *Local Government Act* (British Columbia) and having offices at 1229 Esquimalt Road, Esquimalt, British Columbia, V9A 3P1

(the “**Municipality**”)

**WHEREAS:**

- A. The Owner is the registered owner in fee simple of all and singular that certain parcel or tract of land and premises situate in the Township of Esquimalt, British Columbia, and legally described in Item 2 of the General Instrument (the “**Lands**”);
- B. The Owner is undertaking the development of the Lands pursuant to a Phased Development Agreement between the parties; and
- C. Under the Phased Development Agreement, the Owner is required to grant a Statutory Right of Way over the public outdoor spaces specified therein and the parties must allocate responsibility and the cost of maintaining the outdoor public spaces between them sufficient for the operation and maintenance of the Municipality’s undertaking and in connection with the Owner’s development of the Lands;
- D. Section 218 of the *Land Title Act* enables the Owner to grant in favour of the Municipality an easement without a dominant tenement to be known as a Statutory Right of Way and Section 219 provides that a covenant, whether of negative or positive nature, may be granted in favour of the Municipality and may be registered as a charge against the title to the Lands; and
- E. The Statutory Right of Way in this Agreement is necessary for the operation and maintenance of the Municipality’s undertaking for public open space facilitating public access and movement.

**NOW THEREFORE** in consideration of the matters referred to in the foregoing recitals, the covenants and agreements herein contained and the sum of One Dollar (\$1.00) now paid by the Municipality to the Owner and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the parties), the parties hereto hereby covenant and agree as follows:

**ARTICLE 1  
DEFINITIONS AND INTERPRETATION**

1.1 Definitions

Terms defined in this section 1.1 for all purposes of this Agreement, unless specifically provided in this Agreement, have the meanings hereinafter specified. The terms herein defined are:

- (a) **“Agreement”** or **“this Agreement”** means this agreement and includes all recitals and schedules to this agreement and all instruments comprising this agreement;
- (b) **“Building”** means any building to be constructed on the Lands pursuant to the Permit;
- (c) **“Certificate of Completion”** means the written certificate issued by the Municipality to the Owner upon the Municipality being satisfied that the Works have been completed by the Owner in accordance with the Permit, the Servicing Agreement and this Agreement;
- (d) **“Claims”** has the meaning set forth in section 4.5;
- (e) **“Community Charter”** means the *Community Charter*, SBC 2003, c 26, and amendments and re-enactments thereof;
- (f) **“Development”** means the proposed mixed-use commercial, public, residential and potential future institutional development of the Lands by the Owner in accordance with the Phased Development Agreement;
- (g) **“Director”** means the Director of Development Services for the Municipality appointed by the Municipality from time to time;
- (h) **“General Instrument”** means the Form C - Land Title (Transfer Forms) Regulation pursuant to the Land Title Act to which these Terms of Instrument are attached and all schedules and addenda to the Form C;
- (i) **“Land Title Act”** means the *Land Title Act*, RSBC 1996, c. 250, and amendments thereto and re-enactments thereof;
- (j) **“Land Title Office”** means the Land Title Office located in Victoria, British Columbia;

- (k) **“Lands”** has the meaning set forth in Recital A;
- (l) **“Landscape Maintenance Calendar”** means the most recent published landscape maintenance calendar published by Murdoch de Greef Inc., Landscape Architects;
- (m) **“Local Government Act”** means the *Local Government Act*, RSBC 2015, c 1 and amendments and re-enactments thereof;
- (n) **“Maintenance Costs”** means those costs of maintaining, operating, repairing and replacing, as the case may be, the Works as described in section 2.1(e)(i) of this Agreement;
- (o) **“Municipal Personnel”** means the Municipality’s elected officials, officers, employees, agents, contractors, licensees, permittees, nominees and delegates;
- (p) **“Municipal Solicitor”** means the Municipal Solicitor for the Municipality appointed by the Municipality from time to time;
- (q) **“Municipality”** has the meaning set forth on page 3;
- (r) **“Municipality’s Contribution”** means 42% of the Maintenance Costs or capital repair and replacement costs for the Works;
- (s) **“Owner”** has the meaning set forth on page 3 and includes the Owner’s successors and assigns under section 5.14;
- (t) **“Permit”** means the development permit or building permit, as the case may be, authorizing the Development of or construction on the Lands (as the case may be), or any portion(s) thereof;
- (u) **“Phased Development Agreement”** means the phased development agreement between the parties dated for reference October 16<sup>th</sup>, 2017;
- (v) **“Plans”** means plans for the Works approved by the Municipality pursuant to section 2.1(a);
- (w) **“Prime Rate”** means the rate of interest equal to the floating interest rate established from time to time by the main Victoria, British Columbia branch of the Royal Bank of Canada as the base rate that will be used to determine rates of interest charged by it for Canadian dollar loans to customers in Canada and designated by the Royal Bank of Canada as its prime rate;
- (x) **“Public Art”** means the public art having a value of at least \$300,000 to be designed and installed in the SRW Area in accordance with Plans approved by the Municipality;

- (y) **“Reference Plan EPP104130”** means Reference Plan EPP104130 (Control Number 159-727-0087) prepared by Ryan Hourston, BCLS, and certified correct by him on August 12<sup>th</sup>, 2020, a copy of which is attached hereto as Schedule A;
- (z) **“Servicing Agreement”** means the servicing agreement, if any, between the Municipality and the Owner in respect to the Development of the Lands;
- (aa) **“SRW Area”** means that part of the Lands identified as Area 1, Area 2 and Area 3 in Reference Plan EPP104130 as shown in Schedule A;
- (bb) **“Statutory Right of Way”** means the Statutory Right of Way granted by the Owner pursuant to Article 3 of this Agreement;
- (cc) **“Subdivision Plan EPP95431”** means Subdivision Plan EPP95431 (Control Number 159-484-0744) prepared by Ryan Hourston, BCLS, and certified correct by him on July 15<sup>th</sup>, 2020; and
- (dd) **“Works”** means:
  - (i) all structures, improvements, roads, curbs, gutters, street paving, sidewalks, boulevards, surfacing of all kinds including gravel, concrete, asphalt, bark-mulch, stone or brick, hard and soft landscaping (including but not limited to lawns, trees, shrubs, bushes, flowers and other flora), retaining walls, fences, railings, benches, bicycle racks and lockers, furniture, equipment and elements, kiosks, vending machines, the Public Art, signs, waste receptacles, and such other works, facilities and appurtenances required by the Municipality or necessary for lighting (including, without limitation, lamp-posts, conduits and junction boxes), drainage-irrigation and all other related utilities, and
  - (ii) all wiring, cables, pipes, valves, fittings, pumps, culverts, water mains, sewers, storm sewers, equipment, geothermal works, communication works, drains, manholes, ducts, poles, equipment, apparatus, conduits, lines, facilities and appurtenances together with all necessary or ancillary facilities and appurtenances, and all works of a similar nature or kind as part of the Municipality’s system of communication, utility and drainage works,

and all works of a similar nature or kind to be installed or constructed on the SRW Area including without limitation those works set out in the Servicing Agreement and/or the Permits.

## 1.2 Schedules

The following Schedule is attached hereto and forms part of this Agreement:

<u>Schedule</u>	<u>Description</u>
A	Plan of SRW Area



## B Owner's Obligations for Ongoing Maintenance and Repairs

### 1.3 Headings

The division of this Agreement into Articles and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article or other portion hereof and include any agreement or instrument supplemental or ancillary hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles are to Articles of this Agreement.

### 1.4 Number

Words importing the singular number only will include the plural and vice versa, words importing the masculine gender will include the feminine and neuter genders and vice versa and words importing persons will include individuals, partnerships, associations, trusts, unincorporated organizations and corporations, and vice versa.

### 1.5 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

### 1.6 Use of "including"

The word "including", when following any general statement, term or matter, will not be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, but will be construed to refer to all other items or matters that could reasonably fall within the scope of such general statement, term or matter, whether or not non-limiting language (such as "without limitation", "but not limited to" or words of similar import) is used with reference thereto.

### 1.7 Municipality Approval and Exercise of Discretion

Any Municipality approval or consent to be given pursuant to or in connection with this Agreement is not effective or valid unless provided by the Municipality in writing. Any Municipality approval or consent to be granted by the Municipality in this Agreement may, unless stated expressly otherwise, be granted or withheld in the absolute discretion of the Municipality.

**ARTICLE 2**  
**SECTION 219 COVENANT**

2.1 Construction, Maintenance and Repair of the SRW Area

The Owner agrees, pursuant to section 219 of the *Land Title Act*, as a covenant in respect of the use of the Lands and annexed to and running with the Lands that:

- (a) the Owner will, prior to issuance of any Building Permit for the first Building to be constructed on the Lands, design the Works in accordance with Plans approved by the Municipality and the Owner agrees that, notwithstanding that the Owner may be otherwise entitled, the Municipality will not be obligated to issue any Building Permit for the construction of any Building, as the case may be, until the Owner has complied with this section 2.1(a);
- (b) the Owner will, at the Owner's expense construct, install and complete the Works on the SRW Area in accordance with the Plans, the Permit and the Servicing Agreement;
- (c) the Owner will comply with and abide by all laws and by-laws that apply to the SRW Area and the construction, installation and completion of the Works, including without limitation, Municipality by-laws and provincial and federal laws, regulations and orders;
- (d) notwithstanding that the Owner may be otherwise entitled, the Municipality will not be obligated to permit occupancy of any Building within the Lands if the Owner is in breach of any of its obligations under this Agreement or any other agreement between the Municipality and the Owner in connection with the Development of the Lands;
- (e) the Owner shall:
  - (i) maintain, operate, repair and replace, as the case may be, the Works in accordance with Municipality standards and in concert with the Municipality's Contribution and in accordance with the requirements set out in Schedule B of this Agreement;
  - (ii) not do or permit to be done any act or thing on the Lands which may interfere with, or injure the construction, maintenance, use or operation of the Works, without the prior consent of the Municipality;
  - (iii) permit the Municipality, Municipal Personnel and the Municipality's invitees generally to enjoy the rights granted under the Statutory Right of Way;
  - (iv) not do anything which materially interferes with the Statutory Right of Way; and

- (v) not alter the SRW Area if much alternation under the Municipality's bylaws would require a building permit, without the prior consent of the Municipality, such consent not to be unreasonably held; and
- (f) the Owner shall use its best efforts to establish a separate reserve fund to pay for the costs of capital repair and replacement of the Works.

## 2.2 Owner's Default

Subject to section 5.4, if the Owner defaults in observing or performing any obligation under this Agreement, the Owner will rectify such default within 30 days after receipt of notice from the Municipality, except that if the Owner, by reason of the nature of the default, cannot in the opinion of the Municipality, rectify such default within 30 days, the Owner will have a further reasonable period to rectify so long as the Owner proceeds promptly and diligently. If the Owner fails to rectify such default within the permitted time period or if the Municipality, in case of emergency, does not consider that it has time to deliver such notice, the Municipality may rectify the default on the Owner's behalf, although the Municipality will be under no obligation to do so. If any default by the Owner results in the need for the Owner to take positive action to rectify such default, the Owner will take such positive action as the Municipality considers necessary, and if the Owner fails to do so, the Municipality may apply to court for a mandatory injunction requiring the Owner to take such action and to seek recovery of its costs for doing so.

This section 2.2 will survive the completion of the Works and/or termination or release of this Agreement.

## **ARTICLE 3 STATUTORY RIGHT OF WAY**

### 3.1 Grant of Right of Way

Pursuant to Section 218 of the *Land Title Act*, the Owner itself and for its successors and assigns, hereby agrees to grant and convey in perpetuity the non-exclusive, full, free and uninterrupted right, license, liberty, privilege, easement and statutory right of way to the Municipality, Municipal Personnel and the Municipality's invitees generally, with or without invitation:

- (a) subject to the Owner's rights under section 3.4, for the Municipality and Municipal Personnel to come upon, over and under the SRW Area to do all things necessary to carry out the intent of this Agreement; and
- (b) for the Municipality at all times to permit all members of the public at the Municipality's will and pleasure the full, free and uninterrupted right, license, liberty, privilege, permission and right of way at all times of day or night, to enter, use, go, pass, return and re-pass over, along and across the SRW Area in vehicles, on foot or by handcart, wheelchair, scooter, bicycle, roller skates, in-line rollerblades, skateboards and other similar modes of conveyance and do all acts necessary or incidental to the foregoing, provided that the Municipality will not give permission to the public until the Works have been completed and further

provided that public access rights under this section shall be subject to the Owner's rights under subsection 3.4(g). The Municipality may withdraw and reinstate such permission to the public from time to time as the Municipality considers necessary;

- (c) for the Municipality to permit public events in the SRW Area including the following:
- (i) weekly farmers' markets;
  - (ii) Canada Day, Heritage Day and other celebrations;
  - (iii) seasonal events such as Christmas and New Years;
  - (iv) First Nations and sporting events, including running and cycling events;
  - (v) cultural and social events and food festivals;
  - (vi) music events, literary and artistic events and presentations including literary events associated with the public library, arts and craft events and art shows;
  - (vii) environmental and scientific events and presentations including Earth Day celebrations, presentations by speakers;

provided the Municipality seeks the prior consent of the Owner at least seven (7) days before the planned event, such consent not to be unreasonably withheld, and provided that the Municipality assumes responsibility for all costs of the events; and

to have and to hold unto the Municipality, from and after the date that this Agreement is registered against the Lands in the Land Title Office unless and until terminated by the Municipality in accordance with the provisions of this Agreement.

### 3.2 No Derogation from Occupier's Liability

The Owner covenants and agrees that the grant of the rights of way contained in section 3.1 will not abrogate or detract from the liabilities and obligations of the Owner as the occupier thereof.

### 3.3 Discharge of the Right of Way

All the rights, privileges, easements and statutory rights of way hereby granted will exist and continue in perpetuity unless discharged by the Municipality and the Municipality will have the right unilaterally to do so, and in such case the Municipality will execute a registrable discharge for removal of this Agreement from title to the Lands.

### 3.4 Municipality's Covenants

The Municipality agrees that:

- (a) Municipal Personnel must exercise their rights under section 3.1(a) in a reasonable manner so as to reasonably minimize the inconvenience to the Owner and residents or other occupants of the Lands and to avoid damage to the Lands;
- (b) it may not exercise such of its rights as can be reasonably foreseen to be likely to cause damage to the Lands without first obtaining the written consent of the Owner except in an emergency;
- (c) subject to subsection (d) below, it shall notify the Owner in writing of work to be performed on the Lands at least two working days before exercising the access rights in section 3.1(a);
- (d) if an emergency occurs or unforeseen scheduling problems arise making the notice in subsection (c) unreasonable, it shall provide the Owner as much advance oral or written notice as possible, and provide a written report of the work performed on the Lands as soon as possible after the start of such work;
- (e) it shall not bury debris or rubbish of any kind in excavations or backfill on the SRW Area, and that it will remove shoring and like temporary structures as backfilling proceeds;
- (f) it shall remove any Works-related debris, equipment or materials from the SRW Area upon completion of any work by the Municipality thereon;
- (g) in respect of the access rights granted under subsection 3.1(b), the Owner may prohibit or impose reasonable limitations on the public from engaging in any of the following within the SRW Area:
  - (i) panhandling or begging;
  - (ii) soliciting;
  - (iii) disturbing the peace, using abusive or grossly insulting language, singing or shouting in a boisterous manner or engaging in unruly behaviour as to create a disturbance;
  - (iv) participating in a fight or other similar physical confrontation;
  - (v) loitering, obstructing or creating a nuisance with any other person; or
  - (vi) engaging in any illegal activity;
- (h) to pay the Municipality's Contribution toward the Maintenance Costs; and
- (i) to create a capital reserve fund based on a capital assets depreciation schedule prepared by a qualified professional that will be used to fund the Municipality's

Contribution towards capital repair and replacement costs for the Works within the SRW Area, provided that:

- (i) the Owner shall provide the Municipality with all relevant documentation in respect of the proposed capital repair and replacement costs for the Works, including a cost report prepared by a qualified professional;
- (ii) the documentation and cost report to be provided to the Municipality under subsection (a) above shall be provided at least sixty (60) days prior to the capital expenditure, unless there is an emergency that requires the expenditure sooner than sixty days, in which case the documentation shall be provided as soon as possible;
- (iii) the parties shall reach agreement on the anticipated capital repair and replacement costs for the Works before they are incurred and failing agreement, the cost shall be determined in accordance with the dispute resolution provisions in section 5.4 of this Agreement; and
- (iv) the establishment and maintenance of such fund shall be subject to, and in accordance with, all the Municipality's obligations and requirements under the *Community Charter* and any other applicable enactment, including the *Municipal Liabilities Regulation*.

#### **ARTICLE 4 INSURANCE AND INDEMNITY**

##### **4.1 Insurance**

The Owner shall, at its sole expense, obtain and maintain the following insurance coverage while this Agreement remains in effect:

- (a) comprehensive general liability insurance providing coverage for death, bodily harm and injury, property loss and damage, and all other losses arising out of or in connection with the operation, use and occupation of the SRW Area in an amount of not less than \$5,000,000 per occurrence;
- (b) any other form or forms of insurance that the Owner may reasonably require from time to time in amounts and for such perils against which a prudent owner acting reasonably would protect itself in similar circumstances; and
- (c) such additional insurance as the Municipality may require from time to time, provided that the Municipality shall pay the costs of such additional insurance.

##### **4.2 Insurance Policy Terms**

All policies of insurance required to be taken out by the Owner must:

- (a) name the Municipality as an additional insured;

- (b) include that the Municipality is protected notwithstanding any act, neglect or misrepresentation by the Owner which might otherwise result in the avoidance of a claim and that such policies are not affected or invalidated by any act, omission or negligence of any third party which is not within the knowledge or control of the insureds;
- (c) be issued by an insurance company entitled to carry on the business of insurance under the laws of British Columbia;
- (d) be primary and non-contributing with respect to any policies carried by the Municipality and that any coverage carried by the Municipality is excess coverage;
- (e) not be cancelled without the insurer providing the Municipality with 60 days written notice to the Director stating when such cancellation is to be effective;
- (f) not include a deductible greater than \$25,000.00 per occurrence;
- (g) include a cross liability clause; and
- (h) be on other terms acceptable to the Municipality, acting reasonably.

#### 4.3 Certificate of Insurance

The Owner must obtain all required insurance at its sole expense and must provide the Municipality with certificates of insurance confirming the placement and maintenance of all required insurance as reasonably requested by the Municipality.

#### 4.4 Failure to provide insurance

If the Owner fails to insure or provide proof of insurance as required, the Municipality may, immediately and without notice to the Owner, effect the insurance in the name of and at the expense of the Owner. For clarity, the Municipality has no obligation to effect such insurance.

#### 4.5 Release and indemnity

The Owner agrees to waive, remise, release, indemnify and save harmless the Municipality and Municipal Personnel from and against 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) (collectively, the “**Claims**”), which the Municipality or Municipal Personnel may suffer, incur or be put to arising out of or in connection with, directly or indirectly, or that would not or could not have occurred "but for" this Agreement, including without limitation:

- (a) the design, construction and installation activities of the Owner or its servants, agents, contractors or subcontractors on the SRW Area or in connection to the Works;

- (b) any breach by the Owner of any covenant or agreement contained in this Agreement; and
- (c) any wrongful act, omission or negligence of the Owner in, on or around the Lands or the SRW Area.

This section 4.5 shall survive the completion of the Works and/or termination or release of this Agreement.

#### 4.6 No Liability

The parties agree that neither the Owner, nor any successor in title to the Lands, or portions thereof, will be liable for breaches of or non-observance or non-performance of covenants contained in this Agreement occurring after the date that the Owner or its successor in title, as the case may be, ceases to be the registered or beneficial owner of the Lands; provided, however, the Owner or its successors in title, as the case may be, shall remain liable after ceasing to be the registered or beneficial owner of the Lands for all breaches of and non-observance and non-performance of covenants in this Agreement if the breach, non-observance or non-performance occurred prior to the Owner or any successor in title, as the case may be, ceased to be the registered or beneficial owner of the Lands.

### ARTICLE 5 MISCELLANEOUS

#### 5.1 Runs with the Lands

The interest in lands including all covenants, rights of way, and easements, as the case may be, contained in this Agreement will, unless discharged in accordance with this Agreement, run with and bind the Lands in perpetuity.

#### 5.2 Subdivision

If the Owner subdivides all or any part of the Lands, the interests in land, including all covenants and rights of way, as the case may be, contained in this Agreement will charge any portion of the Lands which contain the SRW Area or any portion thereof. If the Lands are subdivided by strata plan, the SRW Area will be located wholly on common property (but for certainty, the covenants and Statutory Right of Way granted herein will be registered as a charge against title to all strata lots created by the strata plan) and will not be subject to any limited common property designation.

#### 5.3 Strata Titles

Without limiting the generality of section 5.2, if the Lands, or any portion of the Lands, are subdivided by way of strata plan:

- (a) this Agreement shall charge each strata lot and shall be noted on the common property sheet of the strata corporation;



- (b) the strata corporation so created shall be, at its cost, responsible for the performance and observance of the Owner's covenants and obligations in this Agreement; and
- (c) the liability of each strata lot owner for the performance and observance of the Owner's covenants and obligations in this Agreement shall be in proportion to the unit entitlement of his, her or its strata lot as established by the strata plan and shall be treated as a common expense.

#### 5.4 Dispute Resolution

In the event of any dispute between the parties with respect to the interpretation of this Agreement, the parties shall attempt to amicably resolve such dispute through negotiations and failing negotiation, by mediation with the assistance of a mediator approved by the parties, or failing agreement, by a mediator appointed by the court with each party paying one-half of the costs of such mediation. Each party shall be responsible for its own legal costs in connection with any such dispute, subject to any award of costs by the courts.

#### 5.5 Assignment of Rights

The Municipality, upon prior written notice to the Owner, may assign or license all or any part of this Agreement or any or all of the Municipality's rights under this Agreement to any governmental agency or to any corporation or entity charged with the responsibility for providing such public facilities, services or utilities.

#### 5.6 Severability

If any section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a Court of competent jurisdiction, the remainder of this Agreement will continue in full force and effect and, in such case, the parties hereto will agree upon an amendment to be made to the section, subsection, sentence, clause or phrase previously found to be invalid and will do or cause to be done all acts reasonably necessary in order to amend this Agreement so as to reflect its original spirit and intent.

#### 5.7 Priority

The Owner agrees to cause the registrable interests in land granted pursuant to this Agreement to be registered as first registered charges against the Lands, save only for any reservations, liens, charges or encumbrances:

- (a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;
- (b) registered in favour of the Municipality; or
- (c) which the Municipality has determined may rank in priority to the registrable

interests in land granted pursuant to this Agreement.

#### 5.8 No Fettering and No Derogation.

Nothing contained or implied in this Agreement shall fetter in any way the discretion of the Municipality or the Municipal Council of the Municipality. Further, nothing contained or implied in this Agreement shall derogate from the obligation of the Owner under any other agreement with the Municipality or, if the Municipality so elects, prejudice or affect the Municipality's rights, powers, duties or obligation in the exercise of its functions pursuant to the *Community Charter* or the *Local Government Act*, or act to fetter or otherwise affect the Municipality's discretion, and the rights, powers, duties and obligations of the Municipality under all public and private statutes, by-laws, orders and regulations, which may be, if the Municipality so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the Municipality.

#### 5.9 Equitable Relief

The Owner covenants and agrees that in addition to any remedies which are available under this Agreement or at law, the Municipality will be entitled to all equitable remedies, including, without limitation, specific performance, injunction and declaratory relief, or any combination thereof, to enforce its rights under this Agreement. The Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a default by the Owner under this Agreement. The Owner acknowledges and agrees that no failure or delay on the part of the Municipality to exercise any right under this Agreement will operate as a waiver by the Municipality of such right.

#### 5.10 No Waiver

The Owner and the Municipality acknowledge and agree that no failure on the part of either party hereto to exercise and no delay in exercising any right under this Agreement will operate as a waiver thereof nor will any single or partial exercise by either party of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies in this Agreement provided will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for either party in this Agreement will be deemed to be in addition to and not, except as expressly stated in this Agreement, restrictive of the remedies of either party hereto at law or in equity.

#### 5.11 Notice

Any notice or communication required or permitted to be given pursuant to this Agreement will be in writing and delivered by hand or sent by prepaid mail to the party to which it is to be given as follows:

- (a) to the Municipality:

Township of Esquimalt  
1229 Esquimalt Road, Esquimalt, British Columbia, V9A 3P1

Attention: Corporate Officer

with a copy to the Director of Engineering and Public Works, Director of Development Services and the Municipal Solicitor

(b) to the Owner, to the address as set out on the title for the Lands,

or to such other address as any party may in writing advise. Any notice or communication will be deemed to have been given when delivered, if delivered by hand, two business days following mailing if sent by prepaid mail.

#### 5.12 No Obligations by Municipality

Nothing in this Agreement implies that the Township has any obligation to the Owner or to any person to exercise any of its rights under this Agreement and the Township may, at its sole option, execute a release of this Agreement at any time without liability to any person for doing so.

#### 5.13 Further Acts

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

#### 5.14 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

#### 5.15 Joint and Several

If the Owner is comprised of more than one person, firm or body corporate, then the covenants, agreements and obligations of the Owner shall be joint and several.

#### 5.16 Entire Agreement

This Agreement represents the entire agreement between the Municipality and the Owner regarding the matters set out in this Agreement, and supersedes all prior agreements, letters of intent, or understandings about those matters.

**IN WITNESS WHEREOF** the parties have executed this Agreement on the General Instrument – Part 1 which is part hereof.

## PRIORITY AGREEMENT

THE BANK OF NOVA SCOTIA (the “**Chargeholder**”) is the holder of charges encumbering the Lands registered in the Victoria Land Title Office under the following registration numbers (the “**Bank Charges**”):

- 1) Registration number CA7339335 (Mortgage); and
- 2) Registration number CA7339336 (Assignment of Rents)

The Chargeholder, being the holder of the Bank Charges, by signing the Form C General Instrument attached hereto as Part I, in consideration of the payment of One Dollar (\$1.00) and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder) hereby consents to the granting of this Section 219 Covenant and Statutory Right of Way and hereby covenants that this Section 219 Covenant and Statutory Right of Way shall bind the Bank Charges in the Lands and shall rank in priority upon the Lands over the Bank Charges as if the Section 219 Covenant and Statutory Right of Way had been registered prior to the Bank Charges and prior to the advance of any monies pursuant to the Bank Charges. The grant of priority is irrevocable, unqualified and without reservation or limitation.



**SCHEDULE B**  
**OWNER'S OBLIGATIONS FOR MAINTENANCE AND REPAIR**

- Paver maintenance.
- Irrigation.
- Landscaping maintenance.
- Waste management.
- Snow clearing.
- Gum and graffiti removal.
- Pressure washing the plaza.
- Leaf blowing.
- Lighting maintenance.
- Signage.

**END OF DOCUMENT**