



Land Title Act
Charge
General Instrument – Part 1

VICTORIA LAND TITLE OFFICE
SEP 12 2023 08:45:00.001
CB884691-CB884692

1. Application

Document Fees: \$156.34

Darren Williams
League and Williams Law Corporation
210-174 Wilson Street
Victoria BC V9A 7N6
250-888-0002

File No. 6363-001*DW/sr

2. Description of Land

PID/Plan Number	Legal Description
004-774-701	LOT 5, SECTION 11, ESQUIMALT DISTRICT, PLAN 946

3. Nature of Interest

Type	Number	Additional Information
COVENANT		Section 219; Pages 4 to 8
PRIORITY AGREEMENT		Granting Covenant with one registration number less than this priority agreement priority over Mortgage CA9490465; Page 8

4. Terms

Part 2 of this instrument consists of:
(b) Express Charge Terms Annexed as Part 2

5. Transferor(s)

DANIEL FRANCISCUS VAN NETTEN
ALAYNA KRISTEN BRIEMON
THE BANK OF NOVA SCOTIA, AS TO PRIORITY

6. Transferee(s)

THE TOWNSHIP OF ESQUIMALT
1229 ESQUIMALT ROAD
ESQUIMALT BC V9A 3P1

7. Additional or Modified Terms



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8. Execution(s)

This instrument creates, assigns, modifies, enlarges 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.

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

G. Darren Williams
Barrister & Solicitor
210-174 Wilson Street
Victoria BC V9A 7N6

YYYY-MM-DD

2023-04-21

Daniel Franciscus van Netten

Alayna Kristen Briemon

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.

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

Denyse Andrea Griffin
Notary Public
10 Wright Blvd.
Stratford ON N4Z 1H3

YYYY-MM-DD

2023-08-29

The Bank of Nova Scotia
as to Priority
By their Authorized Signatory

Print Name: Jaimie Eaton

Print Name: Sherry Davidson

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.



Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

Sarah Holloway
Commissioner for Taking Affidavits
for British Columbia
1229 Esquimalt Road
Esquimalt BC V9A 3P1

YYYY-MM-DD

2023-05-09

Township of Esquimalt
By their Authorized Signatory

Print Name: Barbara Desjardins,
Mayor

Print Name: Debra Hopkins,
Corporate 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.

Electronic Signature

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.

Matthew Alexander
Melnyk KLID1G
Digitally signed by
Matthew Alexander
Melnyk KLID1G
Date: 2023-09-11
15:56:30 -07:00

TERMS OF INSTRUMENT - PART 2

RECITALS:

- A. The Transferor (the “**Owner**”) is the registered owner in fee-simple of those lands with a current civic address of 1209 Lyall Street, more particularly described in Item #2 of Form C, in the Township of Esquimalt in the Province of British Columbia, namely:
- 004-774-701 Lot 5, Section 11, Esquimalt District, Plan 946 (the “**Lands**”).
- B. The Transferee is the Township of Esquimalt (“**Transferee**” or “**Township**”).
- C. The Owner has submitted an application to the Township for a zoning amendment to allow an additional permitted secondary use of “Beverage Manufacturer – Micro” on the Lands further to ZONING BYLAW, 1992, NO. 2050, AMENDMENT BYLAW NO. 3082 (the “**Amendment Bylaw**”) and to authorize the development of a Micro Beverage Manufacturer building in an accessory building on the lands (the “**Development**”), and acknowledging that the amenities and restrictions contained in this Agreement are in the public interest the Owner has offered and voluntarily provided this Section 219 Covenant to the Township, and the Township has accepted this covenant and required its registration as a condition of the Amendment Bylaw (the “**Agreement**”).
- D. Section 219 of the *Land Title Act* gives authority for a covenant and indemnity, whether of a negative or positive nature, to be registered against the Lands and granted in favour of the Township with provisions:
- in respect of the use of land or the use of a building on or to be erected on land;
 - that land is to be built on in accordance with the covenant;
 - that land is not to be built on or subdivided except in accordance with the covenant;
 - that land is not to be used, built on or subdivided;
 - that parcels of land designated in the covenant and registered under one or more indefeasible titles are not to be sold or otherwise transferred separately; and
 - that land or a specified amenity in relation to it be protected, preserved, conserved, maintained, enhanced, restored or kept in its natural or existing state in accordance with the covenant and to the extent provided in the covenant.

NOW THEREFORE in consideration of the payment of the sum of \$10.00 by the Township to the Owner (receipt and sufficiency acknowledged), the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the parties covenant and agree as to the following, including under Section 219 of the *Land Title Act*:

1. The Owner and Township agree that this Agreement shall be interpreted in accordance with the definitions in the Township’s Zoning Bylaw, as amended from time to time.

Restrictions and Requirements

2. The Owner covenants and agrees that the Lands must not be subdivided (including under the *Strata Property Act*), built upon or used unless the Owner complies with all of the following restrictions and requirements:

- (a) no retail sales are permitted on the Lands;
- (b) no customers are permitted on the Lands;
- (c) no group events associated with the Micro Beverage Manufacturer use or business are permitted on the Lands;
- (d) if the Township receives complaints from two or more neighbour tenants or owners of at least two different parcels of land regarding any odor emanating from or caused by the Development or the Micro Beverage Manufacturer use, the Owner must, at their sole cost, contract with an air quality specialist to install an appropriate commercial air scrubber system, and provide evidence of same to the Township's Director of Development Services;
- (e) delivery and shipping related to the Micro Beverage Manufacturer use on the Lands is not permitted outside the hours of 8:00 a.m. to 6:00 p.m. on Monday to Friday; and
- (f) distillation of alcohol is not permitted on the Lands.

Indemnity and Release

3. The Owner covenants and agrees to indemnify and save harmless the Township from any and all claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees (on a solicitor-client basis) whatsoever, in law or equity, which anyone has or may have against the Township or which the Township incurs as a result of any loss, damage, deprivation, enrichment or injury, including economic loss and death, arising out of or connected with the restrictions or requirements of this Agreement, the breach of any covenant in this Agreement, the granting of any approvals, or the use of the Lands contemplated under this Agreement.
4. The Owner releases and forever discharges the Township of and from any claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees (on a solicitor-client basis) whatsoever, in law or equity, which the Owner and anyone, including third parties, can or may have against the Township for any loss, damage, deprivation, enrichment or injury, including economic loss and death, arising out of or connected with the restrictions or requirements of this Agreement, the breach of any covenant in this Agreement, the granting of any approvals, or the use of the Lands contemplated under this Agreement.
5. Without limiting the above release and indemnity, the Owner acknowledges that this Agreement may be interpreted to contain conditions, restrictions, requirements, benefits or gifts that may not be specifically identified or required by bylaw. The Owner hereby expresses its intention to be solely responsible for the costs resulting from satisfying the conditions of this Agreement, and to donate any contribution to the Township as a gift without any expectation of credit, payment or reward of any kind. The Owner further releases, waives and forever discharges the Township from and against any claims, actions, or causes of action, whether based in contract, tort or equity, for damages or losses, for the recovery of the contributions or costs incurred, including legal expenses, or for unjust enrichment, in connection with the provision of those contributions.

6. The release and indemnity provisions of this Agreement survive its termination.

Registration

7. The restrictions and requirements in this Agreement are covenants running with the Lands in favour of the Township and are intended to be perpetual, and shall continue to bind all of the Lands when subdivided. For greater certainty, future owners of the Lands, or portions thereof, shall be considered the Owner under this Agreement.
8. At the Owner's sole cost, the Owner must do everything necessary to secure priority of registration and interest for this Agreement over all encumbrances of a financial nature on the Lands.
9. The Owner agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
10. The Owner agrees to pay the reasonable legal fees and land title office costs of the Township in connection with the preparation and registration of this Agreement.
11. The parties agree that this Agreement may be removed or discharged from title to the Lands if the Township's Council does not adopt the Amendment Bylaw and the Owner has withdrawn or abandoned its applications for the Development.

General

12. The Owner covenants and agrees that the Township's Director of Development Services, may, but is not obligated to, inspect the Development, any air scrubber system installed in the Development and such other matters addressed by this Agreement, and the Owner shall implement any reasonable measures identified by the Director of Development Services as a result of such inspection.
13. The Owner covenants and agrees for itself, its heirs, executors, successors and assigns, that it will at all times perform and observe the requirements and restrictions set out in this Agreement.
14. It is mutually understood, acknowledged and agreed by the parties that the Township has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Owner other than those contained in this Agreement.
15. Nothing contained or implied in this Agreement:
 - (a) prejudices or affects the rights, powers or discretion of the Township in the exercise of its functions under any public or private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands as if the Agreement had not been executed and delivered by the Owner;
 - (b) imposes any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement or the breach of any provision in this Agreement; or
 - (c) imposes any public law duty, whether arising from the principles of procedural fairness or the rules of natural justice, on the Township with respect to its exercise

of any right or remedy expressly provided in this Agreement or at law or in equity.

16. The parties agree that this Agreement shall not be modified or discharged except in accordance with the provisions of section 219(9) of the *Land Title Act*.
17. The Owner covenants and agrees that the Township may withhold development permits, building permits and other approvals related to the use, building or subdivision of land as necessary to ensure compliance with the covenants in this Agreement, and that the issuance of a permit or approval does not act as a representation or warranty by the Township that the covenants of this Agreement have been satisfied.
18. The Owner covenants and agrees that:
 - (a) if the Township advises of a breach of this Agreement, as determined in its reasonable discretion, the Owner must promptly remedy that breach at its sole cost;
 - (b) if the Owner has not remedied the breach to the reasonable satisfaction of the Township within thirty (30) days of notice or other time longer period specified by the Township, the Township may, but is under no obligation to, remove or rectify the breach at the expense of the Owner without further notice; and
 - (c) any costs to the Township of such removal or rectification is a debt due from the Owner to the Township together with interest at a rate of 1% per annum in excess of the Prime Lending Rate of the Royal Bank of Canada in effect from time to time, and:
 - (i) the Owner shall pay such costs and interest to the Township forthwith upon demand; and
 - (ii) failing payment, the Township may add such costs to property taxes for the Lands.
19. No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity. The Owner agrees that the Township is entitled to obtain an order for specific performance or a prohibitory or mandatory injunction in respect of any breach of this Agreement by the Owner.
20. The waiver by a party of any breach of this Agreement or failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar, and no waiver is effective unless it is written and signed by both parties.
21. Whenever the plural, singular, masculine or neuter is used herein, the same shall be construed as including the plural, singular, feminine, body corporate or politic unless the context requires otherwise.
22. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
23. The Owner acknowledges having been directed to obtain independent legal advice prior

to executing this Agreement, and the Owner agrees and acknowledges that it has read and fully understands all of the terms and conditions of this Agreement and its impact on the Lands.

24. Where there is a reference to an enactment of the Province of British Columbia in this Agreement, that reference shall include a reference to any subsequent enactment of the Province of British Columbia of like effect, and unless the context otherwise requires, all statutes referred to herein are enactments of the Province of British Columbia.
25. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

Priority Agreements

26. THE BANK OF NOVA SCOTIA ("**Scotiabank**"), the registered holder of a charge by way of MORTGAGE against the Lands registered under No. CA9490465 (the "**Scotiabank Charge**"), agrees with the Township, in consideration of the sum of Ten Dollars (\$10.00) paid by the Township to Scotiabank (receipt and sufficiency acknowledged), that the Agreement shall be an encumbrance upon the Lands in priority to the Scotiabank Charge in the same manner and to the same effect as if the Agreement had been dated and registered prior to the Scotiabank Charge.

The Owner and Township acknowledge that this Agreement has been duly executed and delivered by the parties executing the Form C attached to, and forming part of, this Agreement.