

VICTORIA LAND TITLE OFFICE
OCT 30 2024 09:03:31.001
CB1681365-CB1681366

1. Application

Document Fees: \$162.54

COX TAYLOR
Barristers and Solicitors
3rd Floor, 26 Bastion Square
Victoria BC V8W 1H9
250-388-4457

N-499-1*LRL
Section 219 Covenant

2. Description of Land

PID/Plan Number	Legal Description
004-930-941	LOT B, SUBURBAN LOT 37, ESQUIMALT DISTRICT, PLAN 11993
005-398-860	LOT 1, SUBURBAN LOT 45, ESQUIMALT DISTRICT, PLAN 9871
005-398-991	LOT 2, SUBURBAN LOTS 37 AND 45, ESQUIMALT DISTRICT, PLAN 9871 EXCEPT PART IN PLAN 16394
027-555-356	LOT A SUBURBAN LOT 45 ESQUIMALT DISTRICT PLAN VIP85251
006-375-057	LOT 43, SUBURBAN LOT 45, ESQUIMALT DISTRICT, PLAN 2854
006-375-031	LOT 42, SUBURBAN LOT 45, ESQUIMALT DISTRICT, PLAN 2854
000-774-987	LOT 45, SUBURBAN LOT 45, ESQUIMALT DISTRICT, PLAN 2854
000-774-961	LOT 44, SUBURBAN LOT 45, ESQUIMALT DISTRICT, PLAN 2854
000-122-521	LOT 49, SUBURBAN LOT 45, ESQUIMALT DISTRICT, PLAN 2854
000-122-513	LOT 48, SUBURBAN LOT 45, ESQUIMALT DISTRICT, PLAN 2854

3. Nature of Interest

Type	Number	Additional Information
COVENANT		
PRIORITY AGREEMENT		Granting the Covenant herein priority over Mortgage CB1289151 and Assignment of Rents CB1289152

4. Terms

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

5. Transferor(s)
- NELSON ESQUIMALT DEVELOPMENTS LTD., NO.BC1308317

BANCORP BALANCED MORTGAGE FUND II LTD., NO.BC0856913, (AS TO PRIORITY)

BANCORP GROWTH MORTGAGE FUND II LTD., NO.BC0856914, (AS TO PRIORITY)

BANCORP FINANCIAL SERVICES INC., NO.BC0712503, (AS TO PRIORITY)

6. Transferee(s)

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

7. Additional or Modified Terms

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

Rajiv K. Gandhi
Barrister & Solicitor
Third Floor, Burnes House
26 Bastion Square
Victoria BC V8W 1H9

Execution Date

YYYY-MM-DD

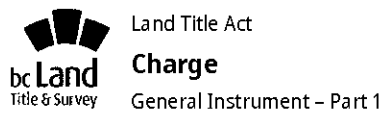
2024-10-24

Transferor / Transferee / Party Signature(s)

**NELSON ESQUIMALT
DEVELOPMENTS LTD.**
By their Authorized Signatory

Print Name: Lindsay R. LeBlanc

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.

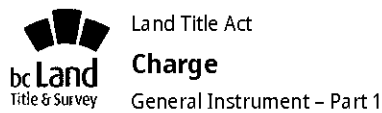


Witnessing Officer Signature	Execution Date	Transferor / Transferee / Party Signature(s)
<div><div></div><div>Sarah Holloway Commissioner for Taking Affidavits for British Columbia 1229 Esquimalt Rd. Esquimalt BC V9A 3P1</div></div>	<div><div>YYYY-MM-DD</div><div>2024-10-28</div></div>	<div>CORPORATION OF THE TOWNSHIP OF ESQUIMALT By their Authorized Signatory</div> <div><div></div><div>Print Name: Barbara Desjardins, Mayor</div></div>
<div>Deputy Corporate Officer Corporation of the Township of Esquimalt</div>		<div><div></div><div>Print Name: Debra Hopkins, Corporate Officer</div></div>

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Witnessing Officer Signature	Execution Date	Transferor / Transferee / Party Signature(s)
<div><div></div><div>Kelly May Chiu Commissioner for Taking Affidavits for British Columbia 1420 - 1090 West Georgia Street Vancouver BC V6E 3V7</div></div>	<div><div>YYYY-MM-DD</div><div>2024-10-28</div></div>	<div>BANCORP BALANCED MORTGAGE FUND II LTD. By their Authorized Signatory</div> <div><div></div><div>Print Name: Mike Saba</div></div>
<div>My Commission expires July 31, 2027</div>		<div><div></div><div>Print Name: Garry Wong</div></div>

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Witnessing Officer Signature	Execution Date	Transferor / Transferee / Party Signature(s)
<div><div></div><div>Kelly May Chiu Commissioner for Taking Affidavits for British Columbia 1420 - 1090 West Georgia Street Vancouver BC V6E 3V7</div></div>	<div>YYYY-MM-DD</div> <div>2024-10-28</div>	BANCORP GROWTH MORTGAGE FUND II LTD. By their Authorized Signatory
My Commission expires July 31, 2027		<div><div></div><div>Print Name: Mike Saba</div></div>

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)
<div><div></div><div>Kelly May Chiu Commissioner for Taking Affidavits for British Columbia 1420 - 1090 West Georgia Street Vancouver BC V6E 3V7</div></div>	<div>YYYY-MM-DD</div> <div>2024-10-28</div>	BANCORP FINANCIAL SERVICES INC. By their Authorized Signatory
My Commission expires July 31, 2027		<div><div></div><div>Print Name: Mike Saba</div></div>
		<div><div></div><div>Print Name: Garry Wong</div></div>

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.

Lindsay Rae LeBlanc K9BM9H

Digitally signed by
Lindsay Rae LeBlanc K9BM9H
Date: 2024-10-30
08:43:11 -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 602, 608, 612 and 618 Nelson Street and 1319, 1331, 1347 Sussex Street, more particularly described in Item #2 of Form C, in the Township of Esquimalt in the Province of British Columbia, namely:

004-930-941 Lot B, Suburban Lot 37, Esquimalt District, Plan 11993

005-398-860 Lot 1, Suburban Lot 45, Esquimalt District, Plan 9871

005-398-991 Lot 2, Suburban Lots 37 and 45, Esquimalt District, Plan 9871, Except Part in Plan 16394

027-555-356 Lot A, Suburban Lot 45, Esquimalt District, Plan VIP85251

006-375-057 Lot 43, Suburban Lot 45, Esquimalt District, Plan 2854

006-375-031 Lot 42, Suburban Lot 45, Esquimalt District, Plan 2854

000-774-987 Lot 45, Suburban Lot 45, Esquimalt District, Plan 2854

000-774-961 Lot 44, Suburban Lot 45, Esquimalt District, Plan 2854

000-122-521 Lot 49, Suburban Lot 45, Esquimalt District, Plan 2854

000-122-513 Lot 48, Suburban Lot 45, Esquimalt District, Plan 2854

(collectively, the "**Lands**").

- B. The Transferee is the Township of Esquimalt ("**Transferee**" or "**Township**").
- C. The Owner has submitted an application to the Township to rezone the Lands to Comprehensive Development District No. 164 (604 Nelson Street) CD No. 164 further to ZONING BYLAW, 1992, NO. 2050, AMENDMENT BYLAW, 2024, NO. 3126 (the "**Amendment Bylaw**") to authorize the development of a maximum twelve (12) storey commercial mixed-use purpose-built rental building, containing a minimum of two (2) commercial units on the ground floor, a maximum of three hundred and fourteen (314) residential rental dwelling units (the "**Dwelling Units**") including that at least eight point three per cent (8.3%) of the Dwelling Units must be affordable units to be designated by the Owner and rented at below market rents (the "**Affordable Units**"), and a parking

garage that contains at least zero point eight five (0.85) parking spaces per Dwelling Unit within the Development including at least zero point one one two (0.112) visitor parking spaces per required off-street parking space within the Development (collectively, 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 – Consolidation, Park Dedication & No Further Subdivision

2. Notwithstanding broader or greater uses, density or other regulations in the Zoning Bylaw, the Owner covenants and agrees the Lands must not be subdivided (including under the *Strata Property Act*), built upon, altered, or used for any use (other than continuation of the uses lawfully established at the time of this agreement), unless and until the Owner has, at its sole cost and without expectation of compensation from the Township, consolidated the ten (10) parcels that comprise the Lands as one (the "**Consolidation**").
3. The Owner further covenants and agrees that, prior to the Consolidation, the ten (10) parcels that comprise the Lands must not be sold or otherwise transferred separately. This provision is only in effect until the Consolidation has occurred.

4. The Owner covenants and agrees that the Lands must not be built upon, used or continue to be used, unless the Owner has, at its sole cost and without expectation of compensation from the Township, dedicated as park a portion of the Lands with a minimum area of 425 square metres (425 m²) located within that area approximately shown and labelled as "Park" on the site plan attached as Schedule "A" to this Agreement (the "**Park Area**") including registration, at the Owner's sole cost, in the Land Title Office of a plan pursuant to section 107 of the *Land Title Act* to dedicate the Park Area as public park.
5. The Owner covenants and agrees that the Park Area must be dedicated prior to, or concurrent with, the Consolidation.
6. The Owner covenants and agrees that, following Consolidation, the Lands, or any building constructed on the Lands, must not be further subdivided (including under the *Strata Property Act*) and, for greater certainty, the building, and dwelling units, it constructs upon the Lands must not be subdivided or stratified or otherwise divided into separate ownership.

Restrictions and Requirements – At Least 3.6% of Dwelling Units are 3-Bedroom Units

7. The Lands must not be built upon, used or continue to be used, unless a minimum of three point six per cent (3.6%) of the Dwelling Units within the Development are designed and constructed to be, and continue to be, 3-bedroom Dwelling Units.

Restrictions and Requirements –Visitor Parking

8. The Owner covenants and agrees that the Lands must not be built upon, used or continue to be used unless the Owner has provided, at its sole cost and without expectation of compensation from the Township, and continues to provide (in addition to, and not in relief of, the Township's bylaws and development approvals) parking spaces on the Lands exclusively for the use of "Visitors", and signed or labelled accordingly, at a ratio of at least zero point one one two (0.112) visitor parking spaces per required off-street parking space within the Development (the "**Visitor Spaces**").
9. The Owner must not divest or allocate the Visitor Spaces, in a manner that would allow them to be assigned or reserved for the exclusive use of the Dwelling Units, occupants or owners, or otherwise sold, leased, or licenced separately. The Owner further acknowledges and agrees that these restrictions and requirements are also intended to prevent any lease or licence of a Visitor Space where that lease or licence causes inconsistency with the terms of this Agreement.

Restrictions and Requirements – \$250,000 Contribution For New Traffic Signal

10. The Owner covenants and agrees that the Lands must not be built upon, used or continue to be used unless the Owner has provided to the Township, concurrent with the Owner's application for a building permit for the Lands and prior to issuance of a building permit

for the Lands, a cash contribution of two hundred and fifty thousand dollars (\$250,000.00) to be used by the Township towards installment of a new traffic signal at the intersection of Nelson Street and Esquimalt Road (the "**New Traffic Signal**"). The Owner acknowledges that approval of the Development without the new traffic signal would be premature and that the New Traffic Signal is necessary as a result of the Development's anticipated impact on future traffic, therefore the Owner has volunteered to pay for installation of the New Traffic Signal in order to facilitate approval of the Development at this time without expectation of compensation or recuperation of such contribution, irrespective of whether the Development proceeds.

Restrictions and Requirements – Transit Passes

11. The Owner further covenants and agrees to provide monthly BC Transit bus passes for the Victoria Regional Transit System (each a "**Transit Pass**") to each occupant of the Affordable Units (each an "**Occupant**"), in accordance with the following:

- (a) only those Occupants who are residents of an Affordable Unit will be entitled to a Transit Pass;
- (b) the Transit Passes may be in the form of an actual transit pass, a voucher, or a reimbursement and must be provided to each resident of the Affordable Unit within 30 days of occupation of the Affordable Unit (the "**Transit Contribution Date**");
- (c) the Owner's obligation to provide Transit Passes in accordance with this section only applies during the first year following the issuance of an occupancy permit in respect of the Development (the "**Transit Pass Qualifying Period**"). For greater clarity, the Owner will not be required to provide a Transit Pass to an occupant who otherwise qualifies under this section if the occupant enters into a residential tenancy agreement with the Owner after the Transit Pass Qualifying Period has expired notwithstanding the Owner may not have provided the maximum number of Transit Passes contemplated by section 10(b);
- (d) prior to applying for occupancy permits in respect of the Development, the Owner will provide security in the amount of sixty-seven thousand six hundred Dollars (\$67,600.00) (the "**Transit Security**") to secure the performance of the Owner's covenants in this section 10, such amount being determined by the following calculation:

*Number of Units x Two Passes per Affordable Unit x (Cost of Annual Pass
OR Cost of Monthly Pass x 12 times)*

- (e) the Owner will provide the Transit Security in accordance with Council Policy

entitled "Financial Security FIN-14" (April 18, 2006), unless Council resolves otherwise, as determined in the Township's sole discretion; and

- (f) the Transit Security, or such proportionate amount, will be released to the Owner, upon the Owner providing evidence to the satisfaction of the Township's Director of Development Services, acting reasonably, that each Occupant who is entitled to receive a Transit Pass and has requested a Transit Pass has received a Transit Pass on or before the applicable Transit Contribution Date, such evidence may include an acknowledgment and receipt signed by each respective Occupant.

Restrictions and Requirements – Statutory Right of Way for Sidewalk and Improvements

- 12. The Owner covenants and agrees that the Lands must not be built upon, used or continue to be used unless the Owner has provided at its sole cost and continues to provide, on the Township's standard terms with content that is at the sole discretion of the Township, a perpetual statutory right of way granted in favour of the Township pursuant to section 218 of the *Land Title Act* and associated *Land Title Act* section 219 covenant and indemnity for the purpose of providing a public sidewalk and future boulevard improvements over that 1.00 metre wide and 55.00 metre long portion of the Lands that runs parallel from the northeast corner of the Lands immediately adjacent to Nelson Street, as approximately shown in pink on the sketch plan attached as Schedule "B" to this Agreement.

Indemnity and Release

- 13. 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.
- 14. 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.

15. 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.
16. The release and indemnity provisions of this Agreement survive its termination.

Registration

17. 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.
18. 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.
19. The Owner agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
20. 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.
21. 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

22. The Owner covenants and agrees that the Township's Director of Development Services, may, but is not obligated to, inspect the Visitor Spaces 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.
23. 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.

24. 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.
25. The Owner acknowledges that the Township does not represent to the Owner or to any other person that any future application for subdivision of the Lands by the owner will be approved.
26. 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.
27. 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*.
28. 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.
29. 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.
- 30. 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.
- 31. 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.
- 32. 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.
- 33. 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.
- 34. 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.
- 35. 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.
- 36. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

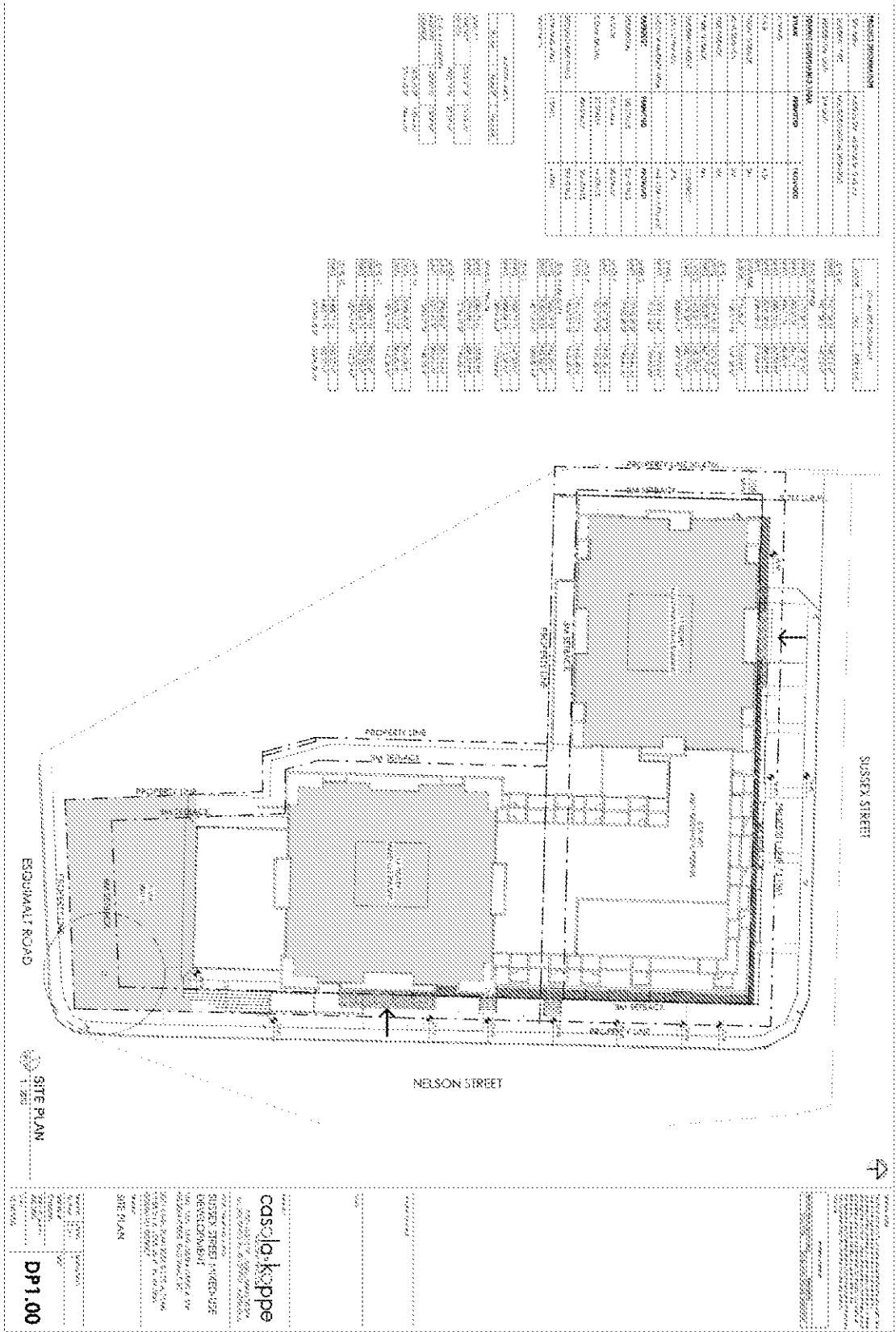
Priority Agreements

- 37. BANCORP BALANCED MORTGAGE FUND II LTD., BANCORP GROWTH MORTGAGE FUND II LTD., BANCORP FINANCIAL SERVICES INC. (the "Bancorp"), the registered holder of charges by way of MORTGAGE and ASSIGNMENT OF RENTS against the Lands, respectively registered under No. CB1289151 and No. CB1289152 (the "**Bancorp Charges**"), agrees with the Township, in consideration of the sum of Ten Dollars (\$10.00) paid by the Township to

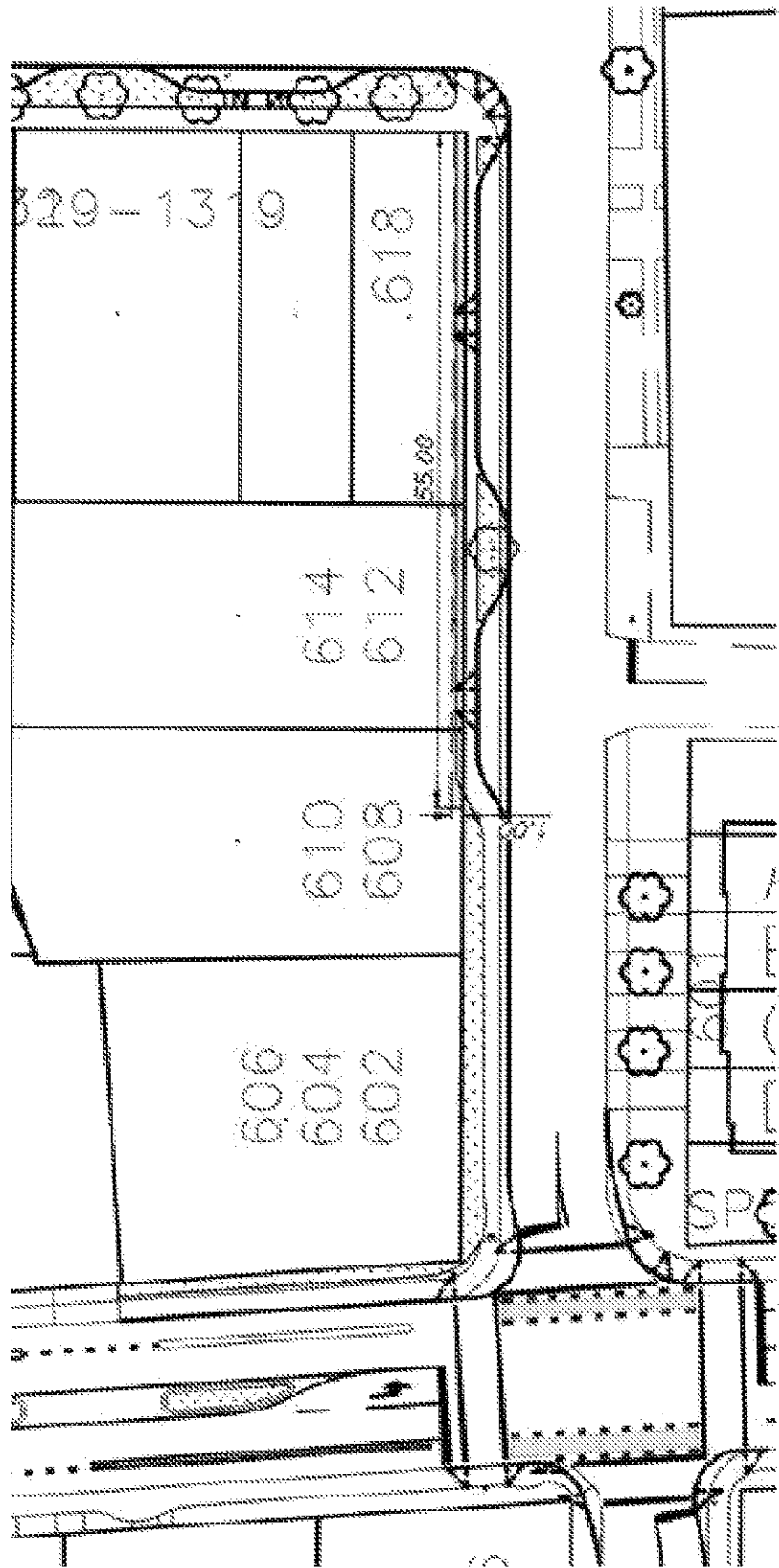
Bancorp (receipt and sufficiency acknowledged), that the Agreement shall be an encumbrance upon the Lands in priority to the Bancorp Charges in the same manner and to the same effect as if the Agreement had been dated and registered prior to the Bancorp Charges.

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.

SCHEDULE A - Site Plan showing Area of Park Dedication



SCHEDULE B - Site Plan showing SRW Area



602, 608, 612 and 618 Nelson Street and 1319, 1331, 1347 Sussex Street - Covenant/March 27, 2024