

**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 D**

EXECUTIONS CONTINUED

PAGE _____ of _____ PAGES

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

PAGE OF PAGES

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND

STC for each PID listed below? YES

[PID] [LEGAL DESCRIPTION – must fit in a single text line]

**LAND TITLE ACT
FORM E**

SCHEDULE

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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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TERMS OF INSTRUMENT - PART 2

RECITALS:

A. The Transferor (the “**Owner**”) is the registered owner in fee-simple of those with a current civic address of 616 Constance Avenue, 620 Constance Avenue, 619 Nelson Street, 623 Nelson Street, and 1326 Miles Street, more particularly described in Item #2 of Form C, in the Township of Esquimalt in the Province of British Columbia, namely:

000-713-465	Lot 95, Suburban Lot 44, Esquimalt District, Plan 2854
000-819-832	Lot 4, Suburban Lot 44, Esquimalt District, Plan 3135
006-393-608	Lot 84, Suburban Lots 44 and 45, Esquimalt District, Plan 2854
006-278-647	Lot 3, Suburban Lot 44, Esquimalt District, Plan 3135
006-375-723	Lot 96, Suburban Lot 44, Esquimalt District, Plan 2854
006-375-693	Lot 85, Suburban Lot 44, 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. 121 (612 Constance Avenue) CD No. 121 further to OFFICIAL COMMUNITY PLAN BYLAW, 2018, NO. 2922, AMENDMENT BYLAW NO. 2964 and ZONING BYLAW, 1992, NO. 2050, AMENDMENT BYLAW NO. 2965 (the “**Amendment Bylaws**”) to authorize the development of a 12 storey commercial-residential mixed use building on the Lands, which building is planned to include eight (8) affordable housing units, three (3) special needs housing units, and a minimum of 126 underground parking stalls (including 17 permanent visitor parking stalls) (the “**Development**”), and acknowledging that the amenities and restrictions contained herein 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*:

Restrictions and Requirements – Consolidation and No Further Subdivision

1. Notwithstanding broader or greater uses, density or other regulations in the Township's Zoning Bylaw, as amended from time to time, the Owner covenants and agrees that the Lands must not be subdivided (including under the *Strata Property Act*), built upon, or used for any use (other than continuation of the uses lawful at the time of this Agreement), until the Owner has, at its sole cost and without expectation of compensation from the Township, consolidated the six (6) parcels that comprise the Lands into one (1) parcel (the "**Consolidation**").
2. The Owner further covenants and agrees that the six (6) parcels that comprise the Lands must not be sold or otherwise transferred separately. This provision is only in effect until the Consolidation has occurred.
3. 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 –Step Code

4. The Lands must not be built upon except in accordance with all the following:
 - (a) The Owner shall not commence any construction or development activities upon the Lands, and shall not apply for a building permit, until it has submitted to the Township such architectural design drawings, building specifications, and any other professional reports and information that the Township may reasonably require, including a report or letter from the Owner's architect or other appropriate consulting professional, that the principal building to be constructed on the Lands is designed to achieve the Performance Standard.
 - (b) The Owner shall construct the Development so that it achieves the Performance Standard, and shall do so strictly in accordance with the design and specifications provided to the Township under subsection 4(a) of this Agreement.
 - (c) The Owner agrees that the Township's review and approval of the designs, specifications, and reports set out in subsection 4(a) does not relieve the Owner of the obligation to construct the Development in accordance with the requirements of the BC Building Code and the bylaws of the Township.
 - (d) In this Agreement the following terms have the following meanings:

- (i) **“Performance Standard”** means the requirements of Step 4 (R2000) of the BC Energy Step Code.

Restrictions and Requirements – Underground Power Lines

5. The Lands must not be built upon or used, and the Owner will not be entitled to a building permit unless and until the Owner has buried the existing BC Hydro power lines from:
- (a) Esquimalt Road to the northern portion of the Lands along Nelson Street, and
 - (b) Esquimalt Road to the northern portion of the Lands along Constance Street;
- each in accordance with the plans and specifications prescribed by BC Hydro, and to the satisfaction of the Township’s Director of Engineering and Public Works.
6. The parties acknowledge that the Township is under no obligation to agree to, pay for, commence or complete such works, or otherwise facilitate the timing of such undergrounding works, and the Owner will undertake such works at its sole cost and without expectation of compensation from the Township.

Restrictions and Requirements – Public Space, Walkway and SRWs

7. 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, a perpetual statutory right of way granted in favour of the Township pursuant to section 218 of the *Land Title Act*, on the Township’s standard terms (attached as **Schedule A** hereto) for the following purposes and areas:
- (a) for the purpose of providing privately-owned and publicly accessible open space, over those portions of the Lands in the southeast corner of the Lands comprising an area of 150 square metres (the **“Public Space”**); and
 - (b) for the purpose of providing a public walkway, over those portions of the Lands located within 6 metres of the northern lot line between Constance Avenue and Nelson Street (the **“Public Walkway”**).
8. The Owner further covenants and agrees that, prior to issuance of an occupancy permit for the Lands, the Owner must construct and establish, at its sole cost and without expectation of compensation from the Township, the Public Walkway.

Restrictions and Requirements – Dwelling Units, 3-Bedroom Units and Group Day Care

9. The Lands must not be built upon, used or continue to be used, except for the Development that includes:
- (a) Group Children’s Day Care and facilities on the Lands (the **“Day Care Centre”**), with a minimum floor area of 150 square metres;
 - (b) The number of residential units permitted by the Amendment Bylaws and the development permit issued in connection with the Development for the purpose of providing residential

housing to individuals and families (“**Dwelling Units**”);

- (c) Of those Dwelling Units permitted by the Amendment Bylaws and the development permit,
- (i) a minimum of six (6) of the Dwelling units shall be 3-bedroom units;
 - (ii) a minimum of eight (8) of the Dwelling Units, including four (4) one-bedroom housing units and four (4) two-bedroom housing units, must be affordable rental units (the “**Affordable Units**”) (meaning that these housing units are to be occupied by households with a gross household income at or below the British Columbia Housing Income Limits for the Victoria region at a rent of no more than 30% of each of such households’ gross annual household income), as further defined and secured by a Housing Agreement under section 483 of the *Local Government Act*;
 - (iii) in addition to the Affordable Units, a minimum of three (3) of the Dwelling Units, including two (2) one-bedroom housing units and one (1) two-bedroom housing unit (the “**Special Needs Units**”), must be special needs rental units (meaning for occupation by households that require additional or specialized services or accommodations by reason of one or more difficulties such as physical, emotional, behavioural, developmental, or otherwise), as further defined and secured by a Housing Agreement under section 483 of the *Local Government Act*; and
10. The Owner shall designate as the Group Children’s Day Care that non-residential unit shown in the architectural plan attached to this Agreement as **Schedule B**.
11. Without limiting the foregoing, the Owner further covenants and agrees that, prior to issuance of an occupancy permit for the Lands, the Owner and the Township may modify this Agreement as follows:
- (a) by replacing the architectural plan attached to this Agreement as **Schedule C**, which designates no less than eight (8) Dwelling Units in the Development as the Affordable Units and no less than three (3) Dwelling Units in the Development as Special Needs Units in accordance with the Housing Agreement dated _____, as may be amended from time to time, with an as-built plan which shows each of the designated units. The Owner will be entitled to determine in its sole discretion which units in the Development will be designated as the Affordable Units provided such designation complies in all respects with the Housing Agreement, and
 - (b) in the event the Township requires an as-built plan of the Development which designates one (1) unit in the Development as the Day Care Centre, by replacing the architectural plan attached as **Schedule B** with an as-built plan.

The modification of this Agreement contemplated by this section may be made without further public hearing.

12. The parties acknowledge and agree that the Plans in Schedules “B” and “C” are schematic only and the exact configuration of the property boundaries, buildings and associated daycare space and special needs units may be determined in accordance with subsequent surveys provided that the Township, in its sole discretion, approves of such subsequent surveys. The parties may modify this Agreement from time to time, at the Owner’s sole cost, to reflect the more accurate description of the Lands and building

areas, provided the indemnity and release provisions continue to apply to all the Lands. The attachment of these schedules is not intended to create a specific covenant area and the Owner expressly acknowledges and agrees that these covenant restrictions may be registered against the whole of the Lands until such modification.

Restrictions and Requirements – Parking and EV Charging

13. 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 vehicular parking spaces and facilities on the Lands, in accordance with all of the following conditions (in addition to, and not in relief of, the Township’s bylaws and development approvals):
- (a) no fewer than 126 off street vehicular parking spaces that are each wired (240V, AC plug with a dedicated 40 amp circuit) for Level 2 electric vehicle charging stations, and of these 126 vehicular parking spaces:
 - (i) a minimum of twenty-five (25) must each be equipped with a Level 2 electric vehicle charging station, and
 - (ii) a minimum of seventeen (17) must be exclusively for the use of “Visitors”, and signed or labelled accordingly (the “**Visitor Spaces**”), and residents must not park in Visitor Spaces or other parts of the parking area or Lands; and
 - (b) without limiting the above, 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 parking space where that lease or licence causes inconsistency with the terms of this Agreement.

Restrictions and Requirements – Car Share Services, Transit Passes, and Vehicles

14. The Owner covenants and agrees:
- (a) in this section the following terms have the following meanings:
 - (i) “**Shared Vehicle Service Agreement**” means the agreement between the Owner and the Shared Vehicle Organization which sets out the terms by which the Shared Vehicle Organization will provide a Shared Vehicle Service to the owners in the Development;
 - (ii) “**Shared Vehicle Organization**” means an entity whose principal business objective is to provide its members with a Shared Vehicle Service;
 - (iii) “**Shared Vehicle Service**” means the provision, for a fee, of a car-sharing service by which such members have self-serve access to a fleet of shared vehicles which they may reserve for use on an hourly or other basis;
 - (b) at its expense, to use its best efforts to enter into and maintain a Shared Vehicle Service

Agreement with a Shared Vehicle Organization for the provision of a Shared Vehicle Service to each residential household in the Development;

- (c) in the event the Owner enters into a Shared Vehicle Service Agreement as set out in section 14(b) of this Agreement, the Owner further covenants and agrees:
- (i) to pay or cover the cost of memberships (each a “**Membership**”) with the Shared Vehicle Organization in accordance with the following:
1. only those occupants who are residents of a Dwelling Unit will be entitled to a Membership;
 2. the Owner will be required to pay or cover the cost of up to one hundred (100) Memberships on the basis that each Membership is for a one (1) year term;
 3. to provide a Membership to those occupants who desire to be part of the Shared Vehicle Organization within 30 days of the occupant entering into a residential tenancy agreement with the Owner, it being acknowledged by the parties that not every occupant of a Dwelling Unit in the Development may desire to be part of a Shared Vehicle Organization;
 4. the Owner’s obligation to provide Memberships in accordance with this section only applies during the first year following the issuance of an occupancy permit in respect of the Development (the “**Membership Qualifying Period**”). For greater clarity, the Owner will not be required to provide a Membership to an occupant who otherwise qualifies under this section if the occupant enters into a residential tenancy agreement with the Owner after the Membership Qualifying Period has expired notwithstanding the Owner may not have provided the maximum number of Transit Passes contemplated by section 14(c)(2);
 5. the Membership may be in the form of:
 - a. an actual Membership with the Shared Vehicle Organization entered into by the Owner and assigned to the occupant; or
 - b. a reimbursement equal to the cost of a Membership paid to the occupant by the Owner upon the Owner receiving evidence that the occupant has paid the cost of the Membership directly and has received the Membership directly from the Shared Vehicle Organization.

15. The Owner covenants and agrees:

- (a) in this section the following terms have the following meanings:
- (i) “**Transit Pass**” means a transit pass (or combination of passes) which permit the holder to access the Victoria Regional Transit System for one (1) year;
- (b) at its expense, to provide Transit Passes to occupants of the Development in accordance with the following:

- (i) the Owner will be required to pay or cover the cost of up to eighty-eight (88) Transit Passes on the basis that each Transit Pass is for a one (1) year term;
 - (ii) to provide a Transit Pass to those occupants who desire a Transit Pass within 30 days of the occupant entering into a residential tenancy agreement with the Owner, it being acknowledged by the parties that not every occupant of a Dwelling Unit in the Development may desire a Transit Pass;
 - (iii) 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 Period Qualifying Period has expired notwithstanding the Owner may not have provided the maximum number of Transit Passes contemplated by section 14(b)(i);
 - (iv) the Transit Pass may be in the form of:
 1. an annual Transit Pass;
 2. a combination of weekly, monthly, or quarterly Transit Passes which permit the holder to access the Victoria Regional Transit System for a total of one (1) year; or
 3. a reimbursement equal to the cost of the Transit Pass paid to the occupant by the Owner upon the Owner receiving evidence that the occupant has paid the cost of the Transit Pass directly and received the Transit Pass directly from an authorized vendor of Transit Passes.
16. On application from the Owner or Shared Vehicle Organization the Township may, but is not obligated to, approve the construction by the Owner of one (1) parking space situated on the dedicated highway abutting or adjacent to the Lands in a final location to be agreed to in writing by the Township and the Owner and may, but is not obligated to, reserve such parking space for the exclusive use of a Shared Vehicle provided in connection with the Shared Vehicle Service Agreement contemplated by this Agreement (the "**Shared Vehicle Space**"). While the preference is for an off-site space on the abutting street, the Owner acknowledges that such disposition requires statutory procedures and remains a discretionary decision of the Township that cannot be fettered by this Agreement. In the event the Township agrees to reserve the Shared Vehicle Space in accordance with this Agreement then the Owner agrees to construct the Shared Vehicle Space at its sole expense.
17. The Owner covenants and agrees to provide two (2) small passenger vehicles (the "**Passenger Vehicles**") for use by the occupants of residential units within the Development in accordance with the following:
- (a) the Passenger Vehicles will be provided by the Owner separate and in addition to vehicles which may be available through the Shared Vehicle Service;
 - (b) the Owner will, at its cost, cause the Passenger Vehicles to be maintained and insured in the manner a prudent owner of such vehicles would; and

- (c) the Owner will be permitted to place conditions on the access and use of the Passenger Vehicles in order to provide for the safe, efficient, legal and equitable use of the Passenger Vehicles by the occupants of the Development including without limitation in respect of: duration of use, hours of availability, and frequency of use; ensuring operators have and maintain a valid British Columbia driver license; and any other matters relating to the safety of operators and their passengers and compliance with applicable laws by operators and their passengers.
18. The parties agree that, under this Part, to facilitate timely decision making:
- (a) The Township's Director of Development Services may provide approval or relief, in his or her sole discretion;
 - (b) Either the Director of Development Services or the person requesting approval or relief may seek further direction from Township Council;
 - (c) Relief is only effective for so long as the facts that lead to the relief remain applicable; and
 - (d) the approval or relief must be made in writing, but may be made without Modification under s.219 of the *Land Title Act*.
19. The Township and the Owner further acknowledge and agree that:
- (a) the requirements set out in sections 14 and 15 only apply to the Owner as owner-developer of the Development and that any successors in title to the Owner named herein will not be required to provide Memberships or Transit Passes as contemplated by those sections provided the Owner's obligations in respect of Memberships and Transit Passes have been satisfied.

Indemnity and Release

20. 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, arising out of or connected with the restrictions or requirements of this Agreement, the breach of any covenant in this Agreement, or the use of the Lands contemplated under this Agreement.
21. 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 can or may have against the Township for any loss, damage, deprivation, enrichment or injury, including economic loss, arising out of or connected with the restrictions or requirements of this Agreement, the breach of any covenant in this Agreement, or the use of the Lands contemplated under this Agreement.
22. 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 law, although consistent with the Township's Regional Growth Strategy, Official Community Plan and Zoning Bylaw. The Owner hereby expresses its intention to be solely responsible for the costs resulting from satisfying the conditions of this Agreement. 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.

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

Registration

24. The restrictions and requirements in this Agreement are covenants running with the Lands in favour of the Township and intended to be perpetual, and shall continue to bind all of the Lands when subdivided.
25. 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.
26. The Owner agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
27. The Owner, as a personal covenant between the parties, agrees to pay the legal fees and land title office costs of the Township in connection with the preparation and registration of this Agreement.

General

28. The Township and Owner agree that this Agreement shall be interpreted in accordance with the definitions in the Transferee's zoning bylaw, as amended from time to time.
29. 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.
30. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns
31. 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.
32. 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.
33. 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.
34. 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* or as contemplated by this Agreement.
35. The Owner covenants and agree that the Township's Director of Development Services may, but is not obligated to, inspect the parking spaces, including Visitor Spaces, and any Shared Vehicle Service Agreement, vehicular charging station, Day-Care Centre, and such other matters addressed in this Agreement, and the Owner shall implement any reasonable measures identified by the Director of Development Services as a result of such inspection as necessary for the proper implementation of this Agreement and the proper function of the parking and car-share.
36. 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.
37. 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 fifteen (15) 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 3% 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.
38. 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.
39. 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.

40. The Section 219 covenants set forth herein shall charge the Lands pursuant to Section 219 of the *Land Title Act* and shall burden and shall run with the Lands and none of the Section 219 covenants herein contained shall be personal or binding upon the Owner, save and except during the Owner's seisin or ownership of any interest in the Lands, and with respect only to that portion of the Lands of which the Owner shall be seised or in which it shall have an interest, but that the Lands, nevertheless, be and remain at all times charged therewith.
41. In accordance with subsection 219(8) of the *Land Title Act*, no person who enters into a covenant under this section is liable for a breach of the covenant occurring after the person has ceased to be the owner of the Lands, the parties further acknowledging that this provision does not absolve persons from liability for breaches that occurred while they were owner of the Lands.
42. 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.
43. 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.
44. The Owner acknowledges having received legal advice prior to executing this Agreement, and the Owner agrees that it fully and completely understands this Agreement and its impact on the Lands.
45. Any notice required or permitted to be given in connection with this Agreement will be in writing and delivered personally or sent by prepaid express mail to the applicable addresses set out above. If notice is delivered personally, it will be considered given when delivered. If notice is mailed, it will be considered given five days after mailing by deposit at a Canada Post mailing point or office. A party may only change their address for delivery under this section by notice to the other party in accordance with this section.
46. 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.
47. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

The Owner and Township acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D (pages 1 and 2) attached.

CONSENT AND PRIORITY AGREEMENT

WHEREAS FISGARD CAPITAL CORPORATION (Inc. No. C0603095) (the “**Chargeholder**”) is the holder of Mortgages and Assignments of Rents (collectively called the “**Charge**”) encumbering the lands (the “**Lands**”) described in Item 2 of the Land Title Act Form C attached hereto, which were registered in the Victoria Land Title Office under numbers CA8114662 and CA8114663 respectively.

THEREFORE THIS CONSENT AND PRIORITY AGREEMENT IS EVIDENCE THAT IN CONSIDERATION OF \$1.00 AND OTHER GOOD AND VALUABLE CONSIDERATION PAID BY THE TRANSFEREE TO THE CHARGEHOLDER:

1. The Chargeholder hereby consents to the granting and registration of the Covenant attached hereto and the Chargeholder hereby agrees that the Covenant shall be binding upon its interest in and to the Lands.

2. The Chargeholder hereby grants to the Transferee described in Item 6 of the Land Title Act Form C attached hereto priority for the Covenant over the Chargeholder’s right, title and interest in and to the Lands, and the Chargeholder does hereby postpone the Charge and all of its right, title and interest thereunder to the Covenant as if the Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Charge.

IN WITNESS WHEREOF, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing the Land Title Act Form C above which is attached hereto and forms part of this Agreement.

TERMS OF INSTRUMENT - PART 2

RECITALS:

A. The Transferor (the “**Owner**”) is the registered owner in fee-simple of those with a current civic address of 616 Constance Avenue, 620 Constance Avenue, 619 Nelson Street, 623 Nelson Street, and 1326 Miles Street, more particularly described in Item #2 of Form C, in the Township of Esquimalt in the Province of British Columbia, namely:

000-713-465	Lot 95, Suburban Lot 44, Esquimalt District, Plan 2854
000-819-832	Lot 4, Suburban Lot 44, Esquimalt District, Plan 3135
006-393-608	Lot 84, Suburban Lots 44 and 45, Esquimalt District, Plan 2854
006-278-647	Lot 3, Suburban Lot 44, Esquimalt District, Plan 3135
006-375-723	Lot 96, Suburban Lot 44, Esquimalt District, Plan 2854
006-375-693	Lot 85, Suburban Lot 44, Esquimalt District, Plan 2854

(collectively the “**Lands**”).

B. The Transferee is the Township of Esquimalt (“**Transferee**” or “**Township**”).

C. The Lands are subject to a number of restrictions and requirements secured under Covenant CA [REDACTED], registered [REDACTED] [REDACTED], 2020 (the “**Main Covenant**”), and the Owner wishes to obtain a building permit for the Lands that first requires a restriction or requirement of the Main Covenant to be addressed, and acknowledging that it is in the public interest that the subdivision, building and use of the Lands continue to be limited, the Owner has volunteered and wishes to grant this Covenant and Blanket Statutory Right of Way over the Lands to the Township, and the Township has accepted this Statutory Right of Way and Covenant (collectively the “**Agreement**”).

D. The Owner further acknowledges that provision of the Statutory Right of Way granted by this Agreement is necessary before the Lands can be built upon or used, and the Owner accepts and acknowledges that this Agreement is necessary to implement a requirement of the Main Covenant and the ZONING BYLAW, 1992, NO. 2050, AMENDMENT BYLAW NO. 2965, being the securing of a statutory right of way granted under Section 218 of the *Land Title Act*, prior to issuance of a building permit, for the purpose of providing both the privately-owned and publicly accessible open space over those portions of the Lands in the southeast corner of the Lands comprising an area of 150 square metres (the “**Public Space**”) and the public walkway, including construction of the public walkway, over those portions of the Lands located within 6 metres of the northern lot line between Constance Avenue and Nelson Street (the “**Public Walkway**”).

E. Section 218 of the *Land Title Act*, R.S.B.C 1996, c. 250 enables the Owner to grant in

favour of the Township an easement without a dominant tenement to be known as a statutory right of way, and the Owner wishes to grant such a statutory right of way.

F. 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 Sections 218 and 219 of the *Land Title Act*:

PART 1 – S.218 STATUTORY RIGHT OF WAY (“SRW”)

1. The Owner, for himself, his heirs, executors, administrators, successors and assigns, hereby grants and conveys in perpetuity and at all times to the Township, its officials, employees, contractors, subcontractors, agents, licensees, invitees, permittees, and the public generally, with or without invitation, a blanket statutory right of way over the Lands and the full, free and uninterrupted right, licence, liberty, privilege, easement and right of way in common with the Owner, and the Owner’s invitees, over the Lands (the “**Statutory Right of Way**”), for the purpose of a privately-owned public space and a public walkway for pedestrian and other non-vehicular use and access (collectively, the “**Works**”), including all associated services, including but not limited to curbs, gutters, structures, improvements, furniture, walkways, hard and soft landscaping (including but not limited to lawns, trees, shrubs, bushes, flowers and other flora), surfacing and retaining walls and such works required by the Township or necessary or convenient for lighting, drainage, irrigation and all other related utilities, furniture, equipment and elements to be installed or constructed on the Statutory Right of Way, and all other works of a similar nature or kind that may be required by the Township from time to time (collectively, the “**Related Works and Services**”), and in connection therewith:

- (a) to facilitate uninterrupted access of the Township and the public to and through the Statutory Right of Way, on foot, bicycles, or in wheelchairs or strollers (or scooters for disabled persons but not in other private motorized vehicles).

2. No part of the title in fee-simple to the soil shall pass to or be vested in the Township under or by virtue of these presents, and the Owner may fully use and enjoy all the Lands of the Owner, subject only to the rights and restrictions herein contained.

PART 2 – S.219 COVENANT

3. The Owner hereby covenants and agrees with the Township that the Owner:
 - (a) will, at its sole cost, construct and install the Works and the Related Works and Services within the Statutory Right of Way to the satisfaction of the Township's Director of Engineering and Public Works;
 - (b) will not, and will not permit any other person, to erect, place, install or maintain any building, structure, addition to a building or structure, concrete driveway or patio, pipe, wire or other conduit on, over or under any portion of the Statutory Right of Way, without the express written consent of the Township's Director of Engineering and Public Works;
 - (c) will not do or permit to be done any act or thing which will interfere with or injure the Works or the Related Works and Services and in particular will not carry out any blasting on or adjacent to the Statutory Right of Way, without the express written consent of the Township's Director of Engineering and Public Works, the parties acknowledging that consent shall not be unreasonably withheld;
 - (d) will maintain, care for and clean, and repair and replace as necessary, the Works, the Related Works and Services, and the surface of the Statutory Right of Way to at all times keep the Works and the Related Works and Services in a good and safe state;
 - (e) will trim or, if necessary, cut down any tree or other growth on the Lands which in the opinion of the Township constitutes or may constitute a danger or obstruction to those using the Statutory Right of Way;
 - (f) will allow the Township, its officials, employees, contractors, subcontractors, agents, licensees, invitees, permittees and the public generally to enter upon the Statutory Right of Way as provided in Section 1 of this Agreement, and will not interfere with in any way or prevent any such person coming on to the respective area for the purposes permitted by this Agreement;
 - (g) will from time to time and at all times at the reasonable request of the Township do and execute or cause to be made, done or executed any further and other lawful acts, deeds, things, devices, conveyances and assurances in law required to ensure the Township of its rights under this Agreement; and
 - (h) will permit the Township to peaceably hold and enjoy the rights granted by this Agreement.
4. The Owner further covenants and agrees that Township, and any of its officers or employees, may but is not obligated to inspect the Statutory Right of Way for the purpose of ascertaining compliance with this Agreement.
5. 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, arising out of or connected with the restrictions or requirements of this Agreement, the breach of any covenant in this Agreement or the use of the Lands contemplated under this Agreement.

6. 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 its successors and assigns can or may have against the Township for any loss, damage, deprivation, enrichment or injury, including economic loss, arising out of or connected with the restrictions or requirements of this Agreement, the breach of any covenant in this Agreement or the use of the Lands contemplated under this Agreement.
7. 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.

CONVERSION TO SPECIFIC SRW AND COVENANT

8. The Township and the Owner covenant and agree that the Owner at its sole cost, and without expectation of compensation from the Township, may:
 - (a) undertake further surveying and prepare a survey plan outlining and identifying the specific right of way areas (the “**Specific SRW Plan**”), including:
 - (i) the Public Space, being an area for the purpose of providing a privately-owned and publicly accessible open space over those portions of land in the southeast corner of the Lands comprising an area of 150 square metres, and
 - (ii) the Public Walkway, being an area for the purpose of providing a public walkway over those portions of the Lands located within 6 metres of the the northern lot line between Constance Avenue and Nelson Street; and
 - (b) convert this Agreement to a Specific Statutory Right of Way and covenant under Sections 218 and 219 of the *Land Title Act* (the “**Specific SRW**”) for public walkways and privately owned public spaces substantially in accordance with the terms of this Agreement but limited to the area of the Lands generally described in subsection (a) of this Section, including registration by the Owner of the Specific SRW on the title of the Lands and a corresponding discharge of this Agreement to be provided by the Township to the Owner and to be registered concurrently at the Victoria Land Title Office.
9. The Owner further covenants and agrees that the Township may, at their sole discretion, require the Owner to convert this Agreement to the Specific SRW before the Lands can be built upon or used, and the Owner agrees to convert this Agreement to the Specific SRW, in accordance with Section 8 of this Agreement, if directed to do so by the Township.

10. The parties further covenant and agree that, if the Township has directed the Owner to convert this Agreement to the Specific SRW, the Township may agree, upon written request of the Owner with reasons provided for the request, to allow the Owner to delay conversion of this Agreement to the Specific SRW, in which case conversion of this Agreement to the Specific SRW will be required before an occupancy permit can be issued for the development to be built on the Lands.

11. The parties further acknowledge and agree that the invitation to the public to access the Public Walkway and the Public Space granted by either this Agreement or the Specific SRW will not be allowed until:
 - (a) an occupancy permit has been issued for the development to be built on the Lands; or
 - (b) construction of the development to be built on the Lands has been stalled, and the Township has advised the Owner that they want the invitation to the public provided by the statutory right of way to become active so that the public will have access to the Public Walkway and the Public Space.

12. For greater certainty, the Owner and Township acknowledge and agree that this Agreement is registered as a blanket statutory right of way charge over all the Lands to facilitate development and surveying on the Lands, and the parties acknowledge and agree that the Owner may undertake further surveying to replace this Agreement with a specific statutory right of way and covenant, and the Township agrees to generally limit its use of the rights granted herein to the area outlined in **bold** on the sketch plan attached hereto as Schedule 'A', which is in general accordance with the area described in Section 8 of this Agreement, however, any uncertainty is to be resolved in favour of the Township given this blanket charge.

General Provisions:

13. 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.

14. The Owner, as a personal covenant between the parties, agrees to pay the legal fees and land title office costs of the Township in connection with the preparation and registration of this Agreement.

15. 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 Section 1 of this Statutory Right of Way 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.

16. No default by the Township with respect to this Agreement and no act or failure to act by the Township in connection with this Agreement will result or be deemed to result in the interruption, suspension, or termination of the Agreement, and the Owner will refrain from seeking any judgment, order, declaration, or injunction to that effect.

17. The restrictions and requirements in this Agreement are covenants running with the Lands in favour of the Township and intended to be perpetual, and shall continue to bind all of the Lands when subdivided.

18. 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.

19. 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.

20. 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 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.

21. 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 fifteen (15) days of notice or other longer time 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 Owner may add such costs to property taxes for the Lands.

22. 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. Damages will be an inadequate

remedy for the Township; and the Township is entitled to an order for specific performance or a prohibitory or mandatory injunction in order to compel performance of the obligations in this Agreement.

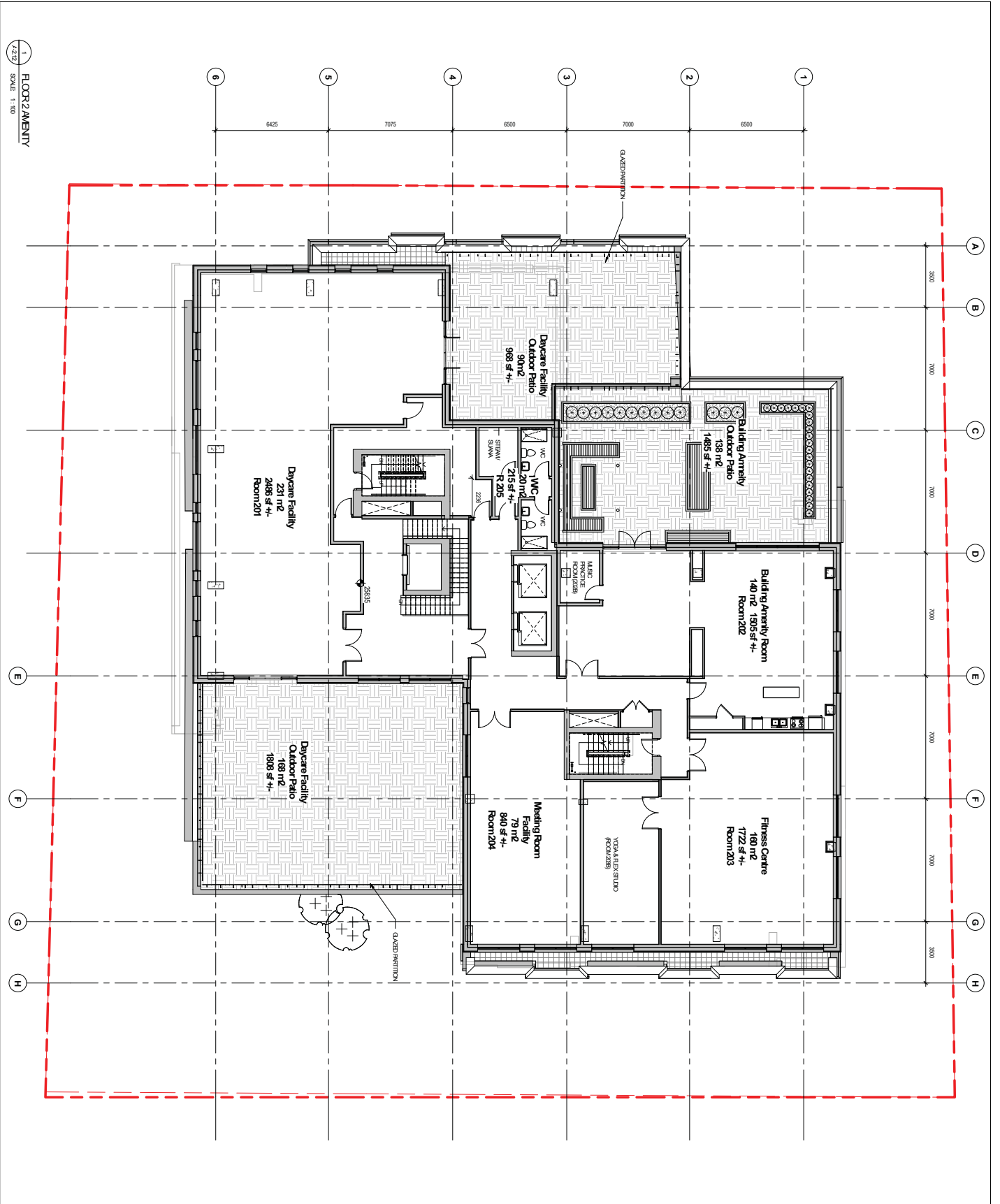
23. The waiver by a party of any breach of this Agreement or failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar, and no waiver is effective unless it is written and signed by both parties.
24. 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.
25. The Owner acknowledges having received legal advice prior to executing this Agreement, and the Owner agrees that it fully and completely understands this Agreement and its impact on the Lands.
26. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

The Owner and Township acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D (pages 1 and 2) attached.

SCHEDULE A

SKETCH PLAN OF STATUTORY RIGHT OF WAY AREA

SCHEDULE B



1
2.12
FLOOR 2 AVENTY
SCALE 1:100

DIALOG



NORTH

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1 2020-04-20 RE-ZONING

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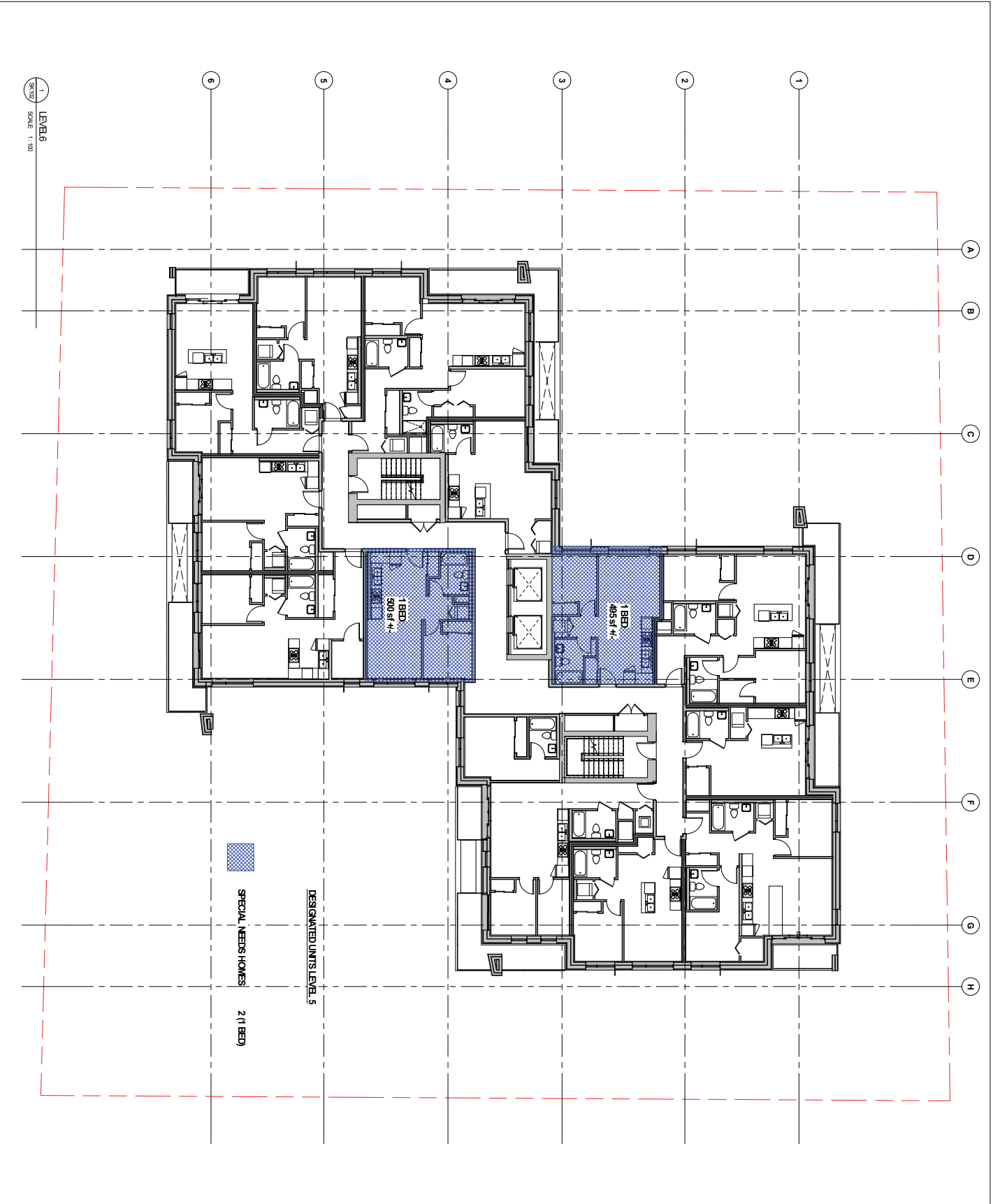
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DRYAN AAVE
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SCHEDULE C



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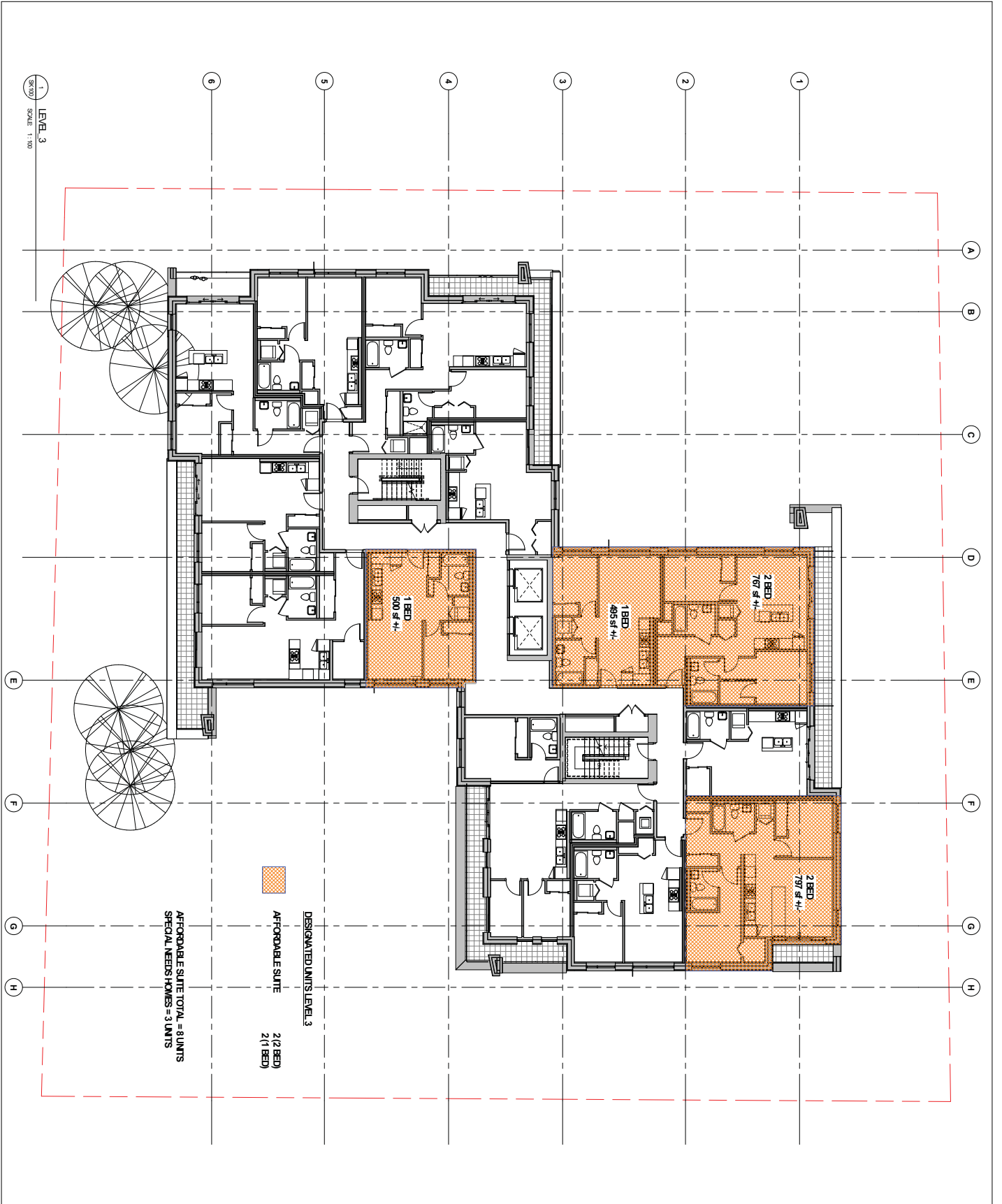
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 REGISTERED MECHANICAL ENGINEER
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 REGISTERED ENVIRONMENTAL ENGINEER
 REGISTERED ENVIRONMENTAL SCIENTIST
 REGISTERED ENVIRONMENTAL HEALTH AND SAFETY ENGINEER
 REGISTERED ENVIRONMENTAL HEALTH AND SAFETY SCIENTIST
 REGISTERED ENVIRONMENTAL HEALTH AND SAFETY SPECIALIST
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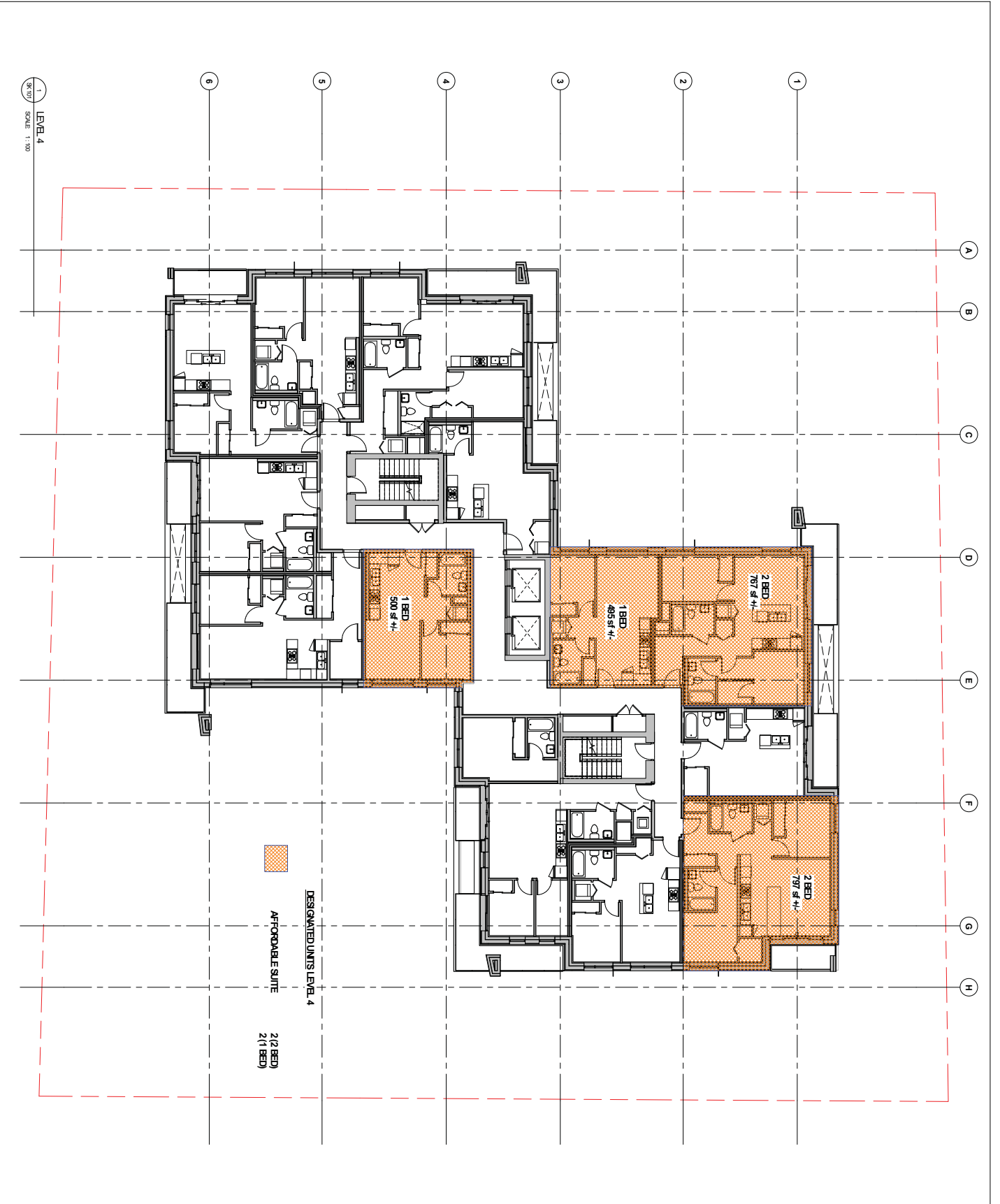
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 CORNING AVENUE, SONoma, CA
**LEVEL 3 -
 DESIGNATED UNITS**

SK 100

09/24/20
 CHECKED: OWNER
 DATE: 09/24/20
 09/24/20

SCHEDULE C



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SHOALING HEIGHTS RESIDENTIAL DEVELOPMENT
 CONSULTING AGENCIES: SONNENSTEIN ST. ESQUAMONTE, BC
LEVEL 4 - DESIGNATED UNITS

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