

TERMS OF INSTRUMENT - PART 2
S.219 COVENANT

RECITALS:

- A. 1104488 B.C. Ltd., Inc. No. BC1104488 (the “**Owner**”) is the registered owner in fee-simple of those lands with a current civic address of 899 Esquimalt Road, more particularly described in Item #2 of the Form C, in the Township of Esquimalt in the Province of British Columbia, namely:

PID: 030-151-562

Lot A Section 11 Esquimalt District Plan EPP69557

(the “**Lands**”).

- B. The Transferee is the Township of Esquimalt (“**Transferee**” or “**Township**”).
- C. The Owner has submitted an application to the Township to amend the Official Community Plan further to OFFICIAL COMMUNITY PLAN BYLAW, 2018, No. 2922, AMENDMENT BYLAW, 2019, NO. 2962 and to rezone the Lands to Comprehensive Development District No. 120 (899 Esquimalt Road) CD No. 120 further to ZONING BYLAW, 1992, NO. 2050, AMENDMENT BYLAW NO. 2963, (collectively, the “**Amendment Bylaws**”) to authorize the development of a ten (10) storey mixed-use building which will include a Health Clinic and may also contain other commercial uses and up to 69 residential dwelling units (the “**Development**”), and acknowledging that the amenities and the restrictions contained herein are in the public interest, the Owner has offered and voluntarily provided this covenant to the Township, and the Township has accepted this covenant and required its registration as a condition of the Amendment Bylaws, including to evidence agreement with respect to the implementation details related to amenities provided to achieve density bonusing (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 Transferee's zoning bylaw, as amended from time to time.

Restrictions and Requirements - Health Clinic

2. 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 the Lands must not be subdivided (including under the *Strata Property Act*), built upon, or used except for a development which includes a minimum of 370 square metres of gross floor area dedicated to Health Clinic or facility use on the Lands.
3. The Owner further covenants and agrees the Lands must not be subdivided (including under the *Strata Property Act*), or used for any use unless the Owner has first constructed the floor area dedicated to Health Clinic or facility use which includes purpose-built medical centre construction incentives (e.g. medical specific wiring, plumbing and other rough-ins), and the building on the Lands must not be built except in accordance with this condition.
4. The Owner further covenants and agrees the Lands must not be subdivided (including under the *Strata Property Act*), until the Owner has either secured one or more tenants for the Health Clinic or facility use at a subsidized rental rate determined in accordance with the following conditions, or provided security to the Township in the amount of \$160,000.00 related to the implementation of these subsidy incentives, all at the Owner's sole cost:

Table of Subsidies/ Incentives

The following table is based on \$30/sq.ft. net per year lease/rental rate which the Owner will provide as set out in the following table.

year	Actual lease (\$30/Sq.Ft. NET/year on 4000 Sq. Ft., No operational cost): \$120,000	lease rate	Incentive \$	lease Equipment improvement \$
1		0	\$120,000	\$25,000.0
2		50%	\$60,000.0	\$23,000.0
3		60%	\$48,000.0	\$21,000.0
4		65%	\$42,000.0	\$19,000.0
5		70%	\$36,000.0	\$17,000.0
6		75%	\$30,000.0	\$15,000.0
7		80%	\$24,000.0	\$13,000.0
8		85%	\$18,000.0	\$11,000.0
9		90%	\$12,000.0	\$9,000.0
10		95%	\$6,000.0	\$7,000.0
Sum			\$396,000	\$160,000.0*
	One-time initial cash incentive		\$54,000.0*	
	Extra excavation to accommodate 4000Sq.Ft.			

5. The Owner has voluntarily offered to provide a cash contribution to the betterment of the community and therefore acknowledges that the Lands shall not be built upon, and the Township is not obligated to issue a building permit, for any development that exceeds a Floor Area Ratio of 1.5, unless the Owner has made a cash contribution of \$54,000 to the Township, to be used at the Township's discretion in relation to health and community well-being matters generally, on-or-off-site, including but not limited providing incentives or grants, undertaking or commissioning studies or reports, promotions and public information, establishing temporary clinics, and so on. The Owner makes such contribution in addition to and without expectation of credit towards other fees, charges, dedications and other requirements of the Township or other governmental authority.
6. The parties agree that compliance with the sections of this part shall be sufficient satisfaction of the density-bonusing-for-amenity-conditions identified in the Amendment Bylaw concerning the same subject matter (subsection (2)(b)(vi) of the CD 120 Zone).

Restrictions and Requirements - Kayak Dock

7. The Owner has voluntarily offered to provide a cash contribution to the betterment of the community, for the provision of installation and maintenance of a kayak dock in the Township, and therefore covenants and agrees that the Lands must not be built upon or used until the Owner has provided a cash contribution to the Township, in the amount of up to One Hundred and Fifty Thousand Dollars (\$150,000.00, the "**Dock Funds**"), in addition to and without expectation of credit towards other fees, charges, dedications and other requirements of the Township or other governmental authority, except that the parties agree that provision of the Dock Funds shall be sufficient satisfaction of the density-bonusing-for-amenity-condition identified in the Amendment Bylaw (subsection (2)(b)(i) of the CD 120 Zone).

Restrictions and Requirements - Parking and EV Charging Stations

8. The Owner covenants and agrees that the Lands must not be built upon or 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 for a minimum of 10 years from the date the final Occupancy Certificate has been issued, 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 five (5) parking spaces must be exclusively for the use of the "Public", for a minimum of six (6) hours a day, and signed or labeled accordingly, without fee or charge (the "Public Spaces");
 - (b) the Public Spaces must each contain electric vehicle charging stations, maintained and operated in good condition, for the free use of the public;
9. The parties agree that compliance with the previous section shall be sufficient satisfaction of the density-bonusing-for-amenity-condition identified in the Amendment Bylaw concerning the same subject matter (subsection (2)(b)(ii) of the CD 120 Zone).

Restrictions and Requirements – Building Green Canada Silver Certification

10. The Owner has voluntarily offered and committed to construction of the building(s) on the Lands to achieve the Building Green Canada Silver Certification standard, at its sole cost, and therefore covenants and agrees that:
- (a) the building constructed upon the Lands must not be subdivided (including under the *Strata Property Act*) until it has achieved Building Green Canada Silver Certification;
 - (b) the building constructed upon the Lands must not be used or occupied, and the Owner will not apply for or seek to compel issuance of an occupancy permit/certificate, until it has provided the report of a qualified independent professional that it has constructed the building with the goal of, and in anticipation of, the Building Green Canada Silver Certification;
 - (c) within one (1) year of the earlier of completion or construction or the issuance of an occupancy permit/ certificate, the Owner must provide either:
 - (i) certification that the building(s) on the Land has been constructed to Building Green Canada Silver Certification; or
 - (ii) report of a qualified professional detailing outstanding deficiencies and a timeline for completion to attend to outstanding deficiencies in order for the building to achieve Building Green Canada Silver Certification;
 - (d) within three (3) years of the earlier of completion or construction or the issuance of an occupancy permit/ certificate, the Owner must either provide certification

that the building(s) on the Land has been constructed to Building Green Canada Silver Certification or cease use and occupation of all uses other than the Health Clinic or facility use.

11. The parties agree that:
- (a) compliance with the previous section shall be sufficient satisfaction of the density-bonusing-for-amenity-condition identified in the Amendment Bylaw concerning the same subject matter (subsection (2)(b)(iii) of the CD 120 Zone);
 - (b) upon application by the Owner with sufficient rationale that stratification of the proposed building would not delay or hinder achievement of Building green Canada Silver certification, Township Council may, but is not obligated to grant relief from the stratification constraints and expected timing of section 9 of this Agreement. Furthermore, the parties agree such relief may be granted by resolution, without public hearing and without modification of this Covenant, but always at the sole cost of the Owner.

Restrictions and Requirements – Hydro Works

12. The Lands must not be subdivided (including under the *Strata Property Act*), built upon or used, and the Owner will not apply for or seek to compel the issuance of a building permit, unless and until:
- (a) The owner has removed the existing BC Hydro pole located at the southeast corner of Esquimalt Road and Head Street 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; and
 - (b) The owner has buried all BC Hydro power lines, transformers and other infrastructure relevant to electrical utilities servicing, and located on or adjacent to, the Lands 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,

or, with respect to the requirements of this section, provided security to the Township in the amount determined by the Township of Esquimalt’s engineer.

13. The parties agree that compliance with the previous section shall be sufficient satisfaction of the density-bonusing-for-amenity-condition identified in the Amendment Bylaw concerning the same subject matter (subsection (2)(b)(iv) of the CD 120 Zone).

Restrictions and Requirements – Expanded Sidewalk SRW and Covenant

14. The Owner further covenants and agrees that Lands must not be subdivided (including under the *Strata Property Act*) built upon or used unless the Owner has provided, at its

sole cost and without expectation of compensation from the Township, a Statutory Right of Way for pedestrian and other non-vehicular use and access, and related Covenant. A survey of the area shall be prepared by the Owner and not be less than the area of the Lands located within 3.2 metres of the northern lot line abutting Esquimalt Road. The terms of such right of way and covenant shall be in the Township's customary form, at its discretion, noting however the responsibility for maintenance and safe use of the right of way area is to remain with the Owner, and the Township is to be fully indemnified and released.

[NOTE: TERMS CAN BE ADDED AS A SCHEDULE PRIOR TO PUBLIC HEARING OR CONSIDERATION OF FINAL ADOPTION.]

15. The parties agree that compliance with the previous section shall be sufficient satisfaction of the density-bonusing-for-amenity-condition identified in the Amendment Bylaw concerning the same subject matter (subsection (2)(b)(v) of the CD 120 Zone).

Restrictions and Requirements – Crosswalks

16. The Owner has voluntarily offered to provide a cash contribution to the betterment of the community, for the provision and installation of pedestrian activated crosswalk signals in two locations in the general vicinity of the Lands (the “**Crosswalks**”), and therefore covenants and agrees that the Lands must not be built upon or used until the Owner has provided a cash contribution to the Township, in the amount of Thirty Thousand Dollars (\$30,000.00), in addition to and without expectation of credit towards other fees, charges, dedications and other requirements of the Township or other governmental authority, except that the parties agree that provision of the Crosswalk Funds shall be sufficient satisfaction of the density-bonusing-for-amenity-condition identified in the Amendment Bylaw (subsection (2)(b)(ix) of the CD 120 Zone).

Amenity Valuation and Alternative Security Provisions.

17. The Owner further covenants and agrees that the value of conditions identified in this Covenant with a dollar value (“**Amenities**”) must be confirmed by independent professional auditor provided by and at the sole cost of the Owner in accordance with the following procedure:
 - (a) An independent auditor shall determine the actual value of the Amenities (“**Actual Value**”). For certainty, management, administrative and report costs shall not be included in the calculation of Actual Value.
 - (b) The report of the Auditor must be made available to the Township and the Owner at the same time, and neither party shall be permitted to review drafts of the report.
 - (c) Where the Actual Value of the amenities provided is less than the total amount identified, the Owner must, within thirty (30) days of the Auditor's report, make

an additional cash contribution equivalent to the shortfall plus 25% to the Township.

- (d) The Owner acknowledges that such additional cash amenity contribution does not relieve the Owner of the provision of the amenities listed above.
18. The parties agree that the Actual Value of certain Amenities cannot be determined at the time of subdivision, and therefore the Owner covenants and agrees that the Lands shall not be subdivided and no building on the Lands may be stratified, until the Owner has:
- (a) Satisfied the previous section with respect to the Amenities that can be determined prior to subdivision, and received approval of same from the Township; and
- (b) Provided security, in a form acceptable by the Township, for the value of the remaining Amenities plus 25% contingency.

Indemnity and Release

19. 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.
20. 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.
21. Without limiting the above release and indemnity, the Owner acknowledges that this Agreement contains 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.

22. The releases and indemnities of this Agreement shall survive its termination.

Registration

23. 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. For greater certainty:
- (a) future owners of the Lands, or portions thereof, shall be considered the Owner under this Agreement;
 - (b) this Agreement will be discharged or released from individual strata units upon provision of a replacement Covenant for restrictions and requirements that have not been satisfied or are intended to remain, upon terms acceptable to the Township, in its sole discretion; and
 - (c) this Agreement will continue to form a charge against the common property of any strata development on the Lands and be binding against the Strata Corporation.
24. 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.
25. The Owner agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement. However, the Township acknowledges that if the Amendment Bylaw is not adopted by the Township by June 30, 2020 and the related Development applications are abandoned, then this Agreement shall be discharged from the Lands.
26. The Owner, as a personal covenant between the parties, 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.

General

27. 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.
28. 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.

29. 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.
30. The Owner covenants and agrees that the Township's Director of Development Services may, but is not obligated to, inspect the parking spaces, vehicular charging, bicycle parking and kayak dock, 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, in conjunction with the Council of any Strata Corporation.
31. 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.
32. 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 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 Township may add such costs to property taxes for the Lands.
33. 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.
 34. 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.
 35. 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.
 36. 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.
 37. 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.
 38. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

Priority Agreements

39. **CHRISTOPHER MAPLETOFF BURKE, CERBERUS ENTERPRISES LTD. INCORPORATION NO. BC0498904 and URBING VENTURES CORP. INCORPORATION NO. BC0883756** (the “Chargeholders”) is the registered holder of charges by way of MORTGAGE and ASSIGNMENT OF RENTS, registered under No. CA5794537 and CA5794538 respectively (the “Charges”), and agrees with the Township, in consideration of the sum of Ten Dollars (\$10.00) paid by the Township to the Chargeholder (receipt and sufficiency acknowledged), that the Agreement shall be an encumbrance upon the Lands in priority to the Charges in the same manner and to the same effect as if the Agreement had been dated and registered prior to the Charges.

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