

VICTORIA LAND TITLE OFFICE

LAND TITLE ACT

Oct-22-2020 15:56:34.001

FORM C (Section 233) CHARGE

GENERAL INSTRUMENT - PART 1 Province of British Columbia

CA8513450 CA8513451

PAGE 1 OF 10 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.

Benjamin Philip
Ramsden
EJS3H8

Digitally signed by
Benjamin Philip Ramsden
EJS3H8
Date: 2020.10.22 15:51:41
-07'00'

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

Ben Ramsden, Lawyer

Carvello Law Corporation

203-1005 Broad Street

Victoria

BC V8W 2A1

File: 124095 - 481 Joffre St. (CD Zone 141)

Phone: (250) 590-7230

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID] [LEGAL DESCRIPTION]

003-150-909 LOT 4, SECTION 11, ESQUIMALT DISTRICT, PLAN 4729STC? YES

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

SEE SCHEDULE

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):

SEE SCHEDULE

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

CORPORATION OF THE TOWNSHIP OF ESQUIMALT

1229 ESQUIMALT ROAD

ESQUIMALT

BRITISH COLUMBIA

V9A 3P1

CANADA

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)

Hoiwon Kim
Barrister & Solicitor

201-300 Gorge Road West
Victoria, BC V9A 1M8

("Witnessed as to execution only. No
advice sought or given.")

Execution Date		
Y	M	D
20	09	08

Transferor(s) Signature(s)

Lynn Mitchell

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

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Officer Signature(s)

Rachel Dumas

Commissioner for Taking Affidavits in British Columbia

Corporate Officer
 Corporation of the Township of
 Esquimalt
 1229 Esquimalt Rd.
 Esquimalt, BC V9A 3P1

(as to all signatures)

Oliver Soriano Manuba

Notary Public

City of Toronto, Limited to the
 attestation of Instruments and the
 taking of affidavits for The Royal Bank
 of Canada, Royal Trust Corporation
 of Canada and The Royal Trust
 Company. Expires Nov. 20, 2022.

Royal Bank of Canada
 10 York Mills Rd, Toronto, ON M2P 0A2
 (as to all signatures)

Execution Date

Y	M	D
20	10	19

Transferor / Borrower / Party Signature(s)

Corporation of the Township of
 Esquimalt, by its authorized signatory
 (ies):

Name: Barbara Desjardins, Mayor

Name: Laurie Hurst, CAO

Royal Bank of Canada, by its
 authorized signatory(ies):

Name: Catherine Nakata, Team Leader
 (as to priority and consent only)

Name: Gillian Tseng, Team Leader
 (as to priority and consent only)

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT
FORM E**SCHEDULE**

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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Section 219 Land Title Act

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Granting the Covenant herein priority over Mortgage CA6533668

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

SCHEDULE

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

5. TRANSFEROR(S):

LYNN MITCHELL

ROYAL BANK OF CANADA (as to Priority and Consent only)

TERMS OF INSTRUMENT - PART 2

S.219 COVENANT

RECITALS:

A. The Transferor ("Owner") is the registered owner in fee-simple of the following lands in the Township of Esquimalt in the Province of British Columbia:

PID: 003-150-909
Lot 4, Section 11, Esquimalt District, Plan 4729 (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. 141 (481 South Joffre Street) CD No. 141 further to ZONING BYLAW, 1992, NO. 2050, AMENDMENT BYLAW NO. 2999 (the "Amendment Bylaw") to authorize the development of a detached accessory dwelling unit in addition to existing single family dwelling (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 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 – No Subdivision, Limited Uses

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:
 - (a) subdivided (including under the *Strata Property Act*);

- (b) built upon or used for more than (2) dwelling units; and
- (c) built upon, contain or be used for tourist accommodation uses.

2. The Transferor and Transferee 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 – Design and Landscaping

3. The Owner further covenants and agrees that the Lands must not be built upon or used, unless the Owner has provided, and continues to provide, the following on the Lands, associated with the detached accessory dwelling unit, generally in accordance with the Landscape Plan prepared by Adapt Design and date-stamped "received" by the Township on July 9, 2020, a copy of which is appended to this Covenant as Schedule "A":

- (a) an entrance oriented and visible from the street, well lit, and protected from the elements;
- (b) a pathway from the street to the entrance that is at least 1.2 metres wide;
- (c) 20 square metres of landscaped open space at grade;
- (d) a screened garbage and recycling area; and
- (e) a screened bicycle storage area,

all at the Owner's sole cost and without expectation of compensation from the Township.

Indemnity and Release

4. 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.

5. 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.

6. 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.

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

Registration

8. 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.
9. 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.
10. 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 December 31, 2020 and the related Development applications are abandoned, then this Agreement shall be discharged from the Lands.
11. 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

12. 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.
13. 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.
14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

Priority

21. ROYAL BANK OF CANADA (the “**Chargeholder**”) the registered holder of a charge by way of MORTGAGE against the Lands, registered under No. CA6533668 (the “**Charge**”) agrees with the Transferee, in consideration of the sum of Ten Dollars (\$10.00) paid by the Transferee 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 Charge.

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

