

TERMS OF INSTRUMENT - PART 2

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, more particularly described in Item #2 of the Form C (the "**Lands**").
- B. The Transferee is the Township of Esquimalt ("**Transferee**" or "**Township**").
- C. The Owner granted a Covenant to the Township in accordance with section 219 of the *Land Title Act*, registered August 11, 2020 under charge number CA8354956 (the "**Covenant**").
- D. The Owner has made changes to the building floor plans which require amending the Schedules in the Covenant to correspond with new floor plans prepared by Formed Alliance Architecture Studio, dated stamped received by the Township March 4, 2021, and the Owner and Township agree to the modification of the Schedules accordingly and have evidenced their agreement with this Covenant Modification ("**Modification**").
- E. 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 Transferee 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; 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 Transferee to the Transferor (receipt and sufficiency acknowledged), the mutual covenants and agreements contained in this Modification 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 the Township agree the Covenant is hereby modified as follows:
 - (a) Schedule B of the Covenant is deleted entirely and replaced with the Schedule 1 attached to this Modification; and
 - (b) Schedule C of the Covenant is deleted entirely and replaced with the Schedule 2 attached to this Modification.
2. The Transferor covenants and agrees to indemnify and save harmless the Transferee 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 Transferee or which the Transferee 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 the Agreement or this Modification, the breach of any covenant in the Agreement or this Modification, or the use of the Lands contemplated under the Agreement or this Modification.

3. As a personal agreement between the parties, the Transferor releases and forever discharges the Transferee 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 Transferor can or may have against the Transferee for any loss, damage, deprivation, enrichment or injury, including economic loss, arising out of or connected with the restrictions or requirements of the Agreement or this Modification, the breach of any covenant in this Modification, or the use of the Lands contemplated under this Modification.
4. The release and indemnity provisions of this Modification survive its termination.
5. This Modification is an amendment to the Covenant, which the parties agree is ratified, approved and confirmed in each and every respect. Unless specifically amended by this Modification, all of the terms and conditions of the Covenant remain in full force, unamended and are applicable to this Covenant Modification.
6. FISGARD CAPITAL CORPORATION (the "Chargeholder"), the registered holder of charges by way of MORTGAGE and ASSIGNMENT OF RENTS against the Lands, registered under No. CA8114662 and CA8114663 (the "Charges"), 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 this Modification shall be an encumbrance upon the Lands in priority to the Charges in the same manner and to the same effect as if this Modification had been dated and registered prior to the Charges.

The Transferor and Transferee acknowledge that this Covenant Modification has been duly executed and delivered by the parties executing Forms C and D (pages 1 and 2) attached.

