

TERMS OF INSTRUMENT - PART 2

RECITALS:

- A. The Transferor is the registered owner in fee-simple of those lands with a current civic address of 741 Admirals Road, more particularly described in Item #3 of Form C, in the Township of Esquimalt in the Province of British Columbia, namely:

PID: 004-338-596

Parcel B (DD 139365I) of Lot 20, Block 1, Section 10, Esquimalt District, Plan 913

(the "**Lands**").

- B. The Transferee is the Township of Esquimalt ("**Transferee**" or "**Township**").
- C. The Transferor has submitted an application to the Township for a Development Variance Permit ("**DVP**") with regard to parking on the Lands, and for the discharge of the Covenant registered under then s.215 of the *Land Title Act* as Charge EJ28813 (March 17, 1995) (the "**1995 Covenant**"), which restricts development of additional suites on the Lands (collectively, the "**Application**"). The existing parking arrangement on the Lands is not in compliance with the Parking Bylaw, 1992, No. 2011 (the "**Parking Bylaw**"), so the Transferor has made a DVP application in order to legitimize the existing parking arrangement. Likewise, an additional suite was constructed in the building on the Lands (the "**Building**") without a building permit so that the existing number of suites on the Lands is in violation of the 1995 Covenant, and the Transferor has made an application to have the 1995 Covenant discharged in order to legitimize the number of suites currently constructed in the Building. Acknowledging that it is in the public interest that the use and development of the Lands be limited, the Transferor has volunteered and wishes to grant this covenant to the Transferee, and the Transferee has accepted this covenant and required its registration as a condition of issuance of the DVP and discharge of the 1995 Covenant (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 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;
 - 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 Transferee to the Transferor (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 – Development and Parking

1. Notwithstanding broader or greater uses, density or other regulations in the Transferee's zoning bylaw, the Transferor covenants and agrees the Lands and the Building must not be built upon, altered, or used, or continue to be used, except in compliance with each of the following conditions:
 - (a) The Building, which is a 12-unit multiple family residential development, must not be modified in any way so that the total number of dwelling units exceeds twelve (12) dwelling units.
 - (b) Vehicular parking must be provided on the Lands in compliance with the plan prepared by Praxis Architects Inc. in support of the Application and date stamped by the Township "Received May 4 2016", copies available at the Township, with reduced copies attached as Schedule "A" to this Agreement, and in particular:
 - (i) eleven (11) parking spaces, for exclusive use of residents of the dwelling units on the Lands, and for no other users;
 - (ii) one (1) parking space designated and signed for a "Visitor", available for use by visitors to any and all of the dwelling units on the Lands;
 - (iii) the total number of parking spaces for small cars may not exceed sixty percent (60%) of all parking spaces;
 - (iv) the maneuvering isle adjacent to the north property line must be at least 3.5 metres wide; and
 - (v) the maneuvering isle adjacent to the east property line must be at least 5.7 metres wide.
2. The Transferor and Transferee agree that this Agreement shall be interpreted in accordance with the definitions in the Transferee's zoning bylaw and Parking Bylaw, as amended or replaced from time to time.

Indemnity and Release

3. 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 this Agreement, the

discharge of the 1995 Covenant, the breach of any covenant in this Agreement, or the use of the Lands contemplated under this Agreement.

4. 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 this Agreement, the discharge of the 1995 Covenant, the breach of any covenant in this Agreement, or the use of the Lands contemplated under this Agreement.

Registration

5. The restrictions and requirements in this Agreement are covenants running with the Lands in favour of the Transferee and intended to be perpetual, and shall continue to bind all of the Lands when subdivided.
6. At the Transferor's sole cost, the Transferor must do everything necessary to secure priority of registration and interest for this Agreement over all encumbrances of a financial nature.
7. The Transferor agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement. However, the Transferee acknowledges that if the 1995 Covenant is not discharged from the Lands and the DVP is not issued by the Township, then this Agreement shall be discharged from the Lands.
8. The Transferor, as a personal covenant between the parties, agrees to pay the legal fees and land title office costs of the Transferee in connection with the preparation and registration of this Agreement.

General

9. The Transferor 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.
10. It is mutually understood, acknowledged and agreed by the parties that the Transferee has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Transferor other than those contained in this Agreement.
11. Nothing contained or implied in this Agreement:
 - (a) prejudices or affects the rights, powers or discretion of the Transferee 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 and the Building as if the Agreement had not been executed and delivered

by the Transferor;

- (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 Transferee with respect to its exercise of any right or remedy expressly provided in this Agreement or at law or in equity.
12. The Transferor covenants and agrees that the Transferee 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 Transferee that the covenants of this Agreement have been satisfied.
13. The Transferor covenants and agrees that:
- (a) if the Transferee advises of a breach of this Agreement, as determined in its reasonable discretion, the Transferor must promptly remedy that breach at its sole cost;
 - (b) if the Transferor has not remedied the breach to the reasonable satisfaction of the Transferee within fifteen (15) days of notice or other time longer period specified by the Transferee, the Transferee may, but is under no obligation to, remove or rectify the breach at the expense of the Transferor without further notice; and
 - (c) any costs to the Transferee of such removal or rectification is a debt due from the Transferor to the Transferee 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 Transferor shall pay such costs and interest to the Transferee forthwith upon demand; and
 - (ii) failing payment, the Transferee may add such costs to property taxes for the Lands.
14. 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.
15. 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.

16. 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.
17. 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 Building and the Lands.
18. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

Priority Agreements

19. COMPUTERSHARE TRUST COMPANY OF CANADA, INC NO. A0052313 (the "**Computershare Chargeholder**") the registered holder of charges by way of MORTGAGE and ASSIGNMENT OF RENTS against the Lands, registered under No. CA1765105 and CA1765106 respectively (collectively, the "**Computershare Charges**"), agrees with the Transferee, in consideration of the sum of Ten Dollars (\$10.00) paid by the Transferee to the Computershare Chargeholder (receipt and sufficiency acknowledged), that the Agreement shall be an encumbrance upon the Lands in priority to the Computershare Charges in the same manner and to the same effect as if the Agreement had been dated and registered prior to the Computershare Charges.
20. COOPER PACIFIC II MORTGAGE INVESTMENT CORPORATION, INC NO. BC0646002 (the "**Cooper Pacific Chargeholder**") the registered holder of charges by way of MORTGAGE and ASSIGNMENT OF RENTS against the Lands, registered under No. CA4508666 and CA4508667 respectively (collectively, the "**Cooper Pacific Charges**"), agrees with the Transferee, in consideration of the sum of Ten Dollars (\$10.00) paid by the Transferee to the Cooper Pacific Chargeholder (receipt and sufficiency acknowledged), that the Agreement shall be an encumbrance upon the Lands in priority to the Cooper Pacific Charges in the same manner and to the same effect as if the Agreement had been dated and registered prior to the Cooper Pacific Charges.

The Transferor and Transferee 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
PARKING PLAN