

TERMS OF INSTRUMENT

ENCROACHMENT EASEMENT

BETWEEN:

1104488 B.C. LTD., INC. NO. BC1104488
 304-1200 Lonsdale Avenue
 North Vancouver, BC V7M 3H6
 (the "**Grantee**")

OF THE FIRST PART

AND:

CORPORATION OF THE TOWNSHIP OF ESQUIMALT
 1229 Esquimalt Road
 Esquimalt, BC V9A 3P1
 (the "**Township**")

OF THE SECOND PART

RECITALS:

- A. The Township owns a highway adjacent to the Dominant Tenement which is shown and labelled as "HEAD ST" on Plan VIP265 (the "**Highway**"), and includes sidewalks, boulevard, curb, and gutter.
- B. The Grantee is the owner of lands having a civic address of 899 Esquimalt Rd, more particularly described as:
- PID: 030-151-562
 LOT A SECTION 11 ESQUIMALT DISTRICT PLAN EPP69557
- (the "**Dominant Tenement**" or "**Land**").
- C. The Township has authority under section 35(11) of the *Community Charter* to grant a licence of occupation or easement or permit an encroachment in respect of the Highway.
- D. The Grantee has requested from the Township permission to non-exclusively encroach upon, use and occupy the 50.5 m² portion of the Highway shown in heavy outline on Plan EPP135402, a copy of which plan is attached as Schedule "A" to this Agreement, for the purpose of installing, operating, using and maintaining drainage works including trench drains, drain sumps, catch basins, storm pipes, grates and retaining walls necessary for installing or protecting the works (collectively the

"Works"), as shown on the attached Schedule "B", consistent with and for the benefit of the Dominant Tenement, which request the Township has agreed to grant, subject to the provisions set forth.

- E. The encroachment is entirely underground, except for any applicable features shown and described on the attached Schedule "B", and the Township considers that any aboveground work undertaken in relation to the Encroachment is a necessary restriction of the common law right of passage and has agreed to grant the Grantee this Encroachment Easement over a portion of the Highway subject to the provisions set forth.

NOW THIS AGREEMENT WITNESSES that in consideration of the financial consideration [ONE THOUSAND DOLLARS (\$1,000.00)], premises, terms and conditions herein contained, the sufficiency and receipt of which is hereby acknowledged, the parties covenant and agree each with the other as follows:

1.0 ENCROACHMENT EASEMENT

- 1.1 The Township hereby grants to the Grantee and its respective servants, agents, licensees, contractors and subcontractors, with respect to the portion of the Highway shown in heavy outline on the reference Plan EPP135402 prepared by Lloyd R. P. Eakins, B.C.L.S., dated the 8th day of April, 2024, a copy of which is attached as Schedule "A" (the "**Encroachment**"), for the benefit of and appurtenant to the Dominant Tenement for the use and enjoyment of the Grantee, in common with the Township and all other persons now or hereafter having the express or implied permission of the Township, the full, free and non-exclusive permission to encroach upon, use and occupy the Encroachment for the purpose of installing, operating, using and maintaining the Works.
- 1.2 The Township agrees that the Encroachment is permitted to remain until such time as the buildings on the Dominant Tenement to which the Works relate are demolished, deconstructed or otherwise no longer exist, at which time the Agreement shall terminate and the Grantee shall restore the Encroachment to a state similar to the adjacent Highway, and restore any sidewalks, curbs, gutters, road markings and other improvements therefor to the satisfaction of the Director of Engineering & Public Works.
- 1.3 The Grantee acknowledges and agrees that the Encroachment is over a highway and that the Township has limited power to authorize the private use of highways. The Grantee further acknowledges and agrees that any rights granted by the Township to the Grantee by this Agreement are not exclusive and are subject to the public's right to pass and repass. The Grantee will not close or otherwise prevent access to and use of the Encroachment as a public highway, and will only restrict access to the Encroachment insofar as necessary to install, operate, use and maintain its Works.

2.0 NO RELIEF

- 2.1 It is understood, covenanted and agreed by and between the parties hereto that no provision of these presents and no act or omission or finding of negligence, whether joint or several, as against the Township, in favour of any third party, shall operate to relieve, or be deemed to relieve, the Grantee in any manner whatsoever from any liability to the Township in the premises, or under these presents, or under the provisions of the *Community Charter*, the *Local Government Act*, or any bylaw of the Township and amendments thereto.

3.0 GRANTEE COVENANTS

- 3.1 The Grantee covenants and agrees:

Maintenance and Repair

- (a) at all times, and at the Grantee's own expense, to keep and maintain the Works in good and sufficient repair to the satisfaction of the Director of Engineering & Public Works;
- (b) to promptly attend at its own expense to any breakdown, maintenance, and repair of the Works to the satisfaction of the Director of Engineering & Public Works; and
- (c) to be solely responsible for all costs associated therewith.

Non-interference

- (d) to carry out all work under this Agreement in a proper and workmanlike manner so as to do as little injury to the Highway as possible and to cause a minimum of obstruction and inconvenience to the Highway during any construction, maintenance and repair;
- (e) to not excavate on or under the Highway or construct, install, remove, repair, replace, maintain, amend, expand, add to or change the use of the Works without the prior written consent of the Director of Engineering & Public Works. For certainty, before commencement of any of the aforementioned actions, the Grantee shall obtain all permits and licenses necessary therefor under the bylaws of the Township, and the Grantee shall pay any inspection, license or permit fees in respect thereof;
- (f) to use the Encroachment in such a manner as not to interfere with any existing utilities located in the Highway;
- (g) to place and maintain such warning signs, barricades, lights or flares at or near the site of the works in progress as will give reasonable warning and protection to members of the public, and otherwise carry out any and all instructions, either oral or written, given to the Grantee, its agents, employees or contractors, by the Township with respect to the safety and protection and

the continued and uninterrupted use by the Township and the public, subject to the rights hereby granted, of the Highway and the Encroachment;

Disturbance and Restoration

- (h) to make good at its own expense all damage or disturbance caused by the exercise of its rights pursuant to this Agreement, which may include damage or disturbance caused to the surface or support of the Highway, the Encroachment or any other services associated with the Highway or Works;
- (i) to, in the event of the expiry or termination of this Agreement from any cause whatsoever, at the Grantee's own expense, and within a period of one month from the date of such termination, or such further or shorter period as may be specified by the Director of Engineering & Public Works, remove the Works and fill up any excavation made, constructed or maintained, with respect to such encroachment, and replace and put the sidewalk, street, lane or other public place in, under or over such area in the same condition as the adjoining sidewalk, street, lane or other public place to the satisfaction of the Director of Engineering & Public Works;

Fee

- (j) to pay to the Township the fee of ONE THOUSAND DOLLARS (\$1,000.00) upon execution of this Agreement, which the parties agree represents the fair market value of this Encroachment Easement;

Release and Indemnity

- (k) to indemnify and save harmless the Township from any and all liability whatsoever arising out of:
 - (i) the Works encroaching upon, under or over the Encroachment and Highway,
 - (ii) the Grantee's construction of anything upon, under or over the Encroachment and Highway,
 - (iii) the Grantee's maintenance of anything upon, under or over the Encroachment and Highway,
 - (iv) the Grantee's occupation or use of the Encroachment or the ground below or the air above for the purpose of such encroachment by the Works;
- (l) to release and forever discharge 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 Grantee 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 Grantee's installation, use, operation, maintenance and repair of the Works;

- (m) to charge its interest in the Land in favour of the Township for the payment of all sums which may at any time hereafter be payable to the Township in respect of any claims, loss, damage or expense of whatsoever kind arising:
 - (i) from the construction, maintenance or existence of the Works,
 - (ii) from the permission hereby granted.

Insurance

- (n) if requested to do so by the Director of Engineering & Public Works, to deposit with the Township a policy of public liability insurance in the form and amount acceptable to the Director of Engineering & Public Works insuring both the Grantee and the Township against any loss resulting from the occurrences mentioned in section (b) above. Cancellations of such insurance will serve to immediately cancel this Agreement and any right the Grantee derives hereunder

Entry

- (o) that the Township's servants or agents shall have the right at any and all reasonable times of entering into and upon the Land or the Highway for the purpose of constructing, maintaining, inspecting or removing any public structure, service or utility running underneath the Highway in the vicinity of the said Works;

Municipal Works

- (p) to, in the event of any alteration or change being necessary by the construction, maintenance, use or removal of the Works to any meter, water service, sewer or other public works or utility in the vicinity of the Land or the Highway, reimburse the Township for whatever costs may be incurred by the Township in making such alterations or changes as may be deemed necessary by the Director of Engineering & Public Works; and

Default

- (q) at all times to observe and perform the provisions of the bylaws of the Township, and this Agreement shall at all times be subject thereto and in case the Grantee shall fail to comply with the provisions of the said bylaws, or any of them or with any condition, payment of costs or requirement of this Agreement, all rights of the Grantee hereunder shall thereupon terminate and be at an end; but the Township, nevertheless, shall be entitled to proceed with the enforcement of any security or indemnity herein provided, or upon any bond or otherwise in satisfaction of any claim, loss or expense of whatsoever arising under this Agreement, or from the permission hereby granted.

3.2 Should the Grantee:

- (a) fail to keep the Works or covering thereof in good and sufficient repair, to the satisfaction of the Director of Engineering & Public Works,
- (b) fail to remove the Works or to fill up any excavation or fail to return the Encroachment to the satisfaction of the Director of Engineering & Public Works upon the expiry or termination of this Agreement, or
- (c) fail to otherwise abide by any condition of this Agreement,

the Director of Engineering & Public Works, upon fifteen (15) days written notification of such failure (except in the case of emergency when no notice is required) and provided that the Grantee has not resolved the failure within that period of time, may:

- (i) make such repairs, including structural changes, when the Director has deemed necessary, or
- (ii) remove the Works, or fill up such excavation,
- (iii) do any work necessary to fulfill any condition of this Agreement, or
- (iv) permit the Grantee to continue such rectification, repairs or work that the Grantee has commenced and is diligently continuing,

as the case may require, in the sole discretion of the Director of Engineering & Public Works.

3.3 The Grantee shall pay the costs of such work done under this Part forthwith to the Township; and in the default of payment, the amount of such cost and interest at twelve percent per annum may be recovered in any court of competent jurisdiction, or the same may be recovered in like manner as overdue taxes against the Dominant Tenement.

4.0 NO RESTRICTIONS OR REQUIREMENTS ON TOWNSHIP/ TOWNSHIP

4.1 This Agreement shall not in any way operate to restrict the right of the Township at any time to:

- (a) alter the road, curb, gutter, sidewalk or boulevard abutting or adjoining the Land or the Highway, and notwithstanding that the effect of such alteration in width or elevation may be to render the Works useless or of less value for the purposes of the Grantee;
- (b) construct any form of structure or utility on, over or under any portion of the Highway in which the Works encroach and for such purpose require that the Works be removed in part or in whole;

- (c) temporarily block off access to the Works and Encroachment as needed in its sole discretion when conducting Highway maintenance or making Highway improvements; and
 - (c) permit other encroachments or use of the Encroachment and Highway.
- 4.2 The Grantee covenants that, in the event of the Township taking any action under this Part, the Grantee will release and forever discharge, and hereby releases and forever discharges, the Township from all manner of claims of any nature whatsoever, which may arise by reason of such action.
- 4.3 Nothing contained or implied in this Agreement:
- (a) prejudices or affects the rights, powers or discretion of the Township or the Approving Officer 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 Land and the Highway as if the Agreement had not been executed and delivered by the Grantee;
 - (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 or the Approving Officer with respect to its exercise of any right or remedy expressly provided in this Agreement or at law or in equity.
- 4.4 The Township may withhold 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 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.
- 4.5 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 of this Agreement.
- 4.6 The Township, by waiving or neglecting to enforce its rights under this Agreement, including upon breach of this Agreement, does not waive its rights upon any subsequent breach of the same or any other provision of this Agreement.

5.0 SUBDIVISION & ASSIGNMENT

- 5.1 The restrictions and requirements in this Agreement are covenants running with the Land and shall bind the Dominant Tenement and shall attach thereto and run with each and every part into which the same may be subdivided or consolidated.
- 5.2 If the Dominant Tenement, or any portion thereof, is subdivided at any time under the provisions of the *Land Title Act*, and amendments thereto and re-enactments thereof, on the deposit of a fee simple plan of subdivision, the benefit of each of the easements and covenants herein granted shall continue and shall be annexed to and run with each of the new subdivided parcels so created and be registered and shown as charges on each resulting title.
- 5.3 Notwithstanding sections 5.1 and 5.2 of this Agreement, if the Dominant Tenement, or any portion thereof, is subdivided at any time by the deposit of a strata plan (the "**Strata Plan**") in the Land Title Office (or its successor in function) pursuant to the provisions of the *Strata Property Act* (British Columbia):
- (a) then the Grantee shall prepare an assumption agreement in which the new Strata Corporation, in accordance with section 5.4 of this Agreement (the "**Assumption Agreement**"), agrees to perform and observe the obligations of the Grantee under this Agreement and the Grantee shall provide that assumption agreement together with any related strata documents the Township may require to the Township for approval of the Assumption Agreement at their discretion, acting reasonably;
 - (b) upon approval by the Township of the Assumption Agreement, the Grantee shall cause the Strata Corporation to execute and deliver to the Township a signed copy of the Assumption Agreement together necessary land title documents to release this Agreement from the title to each strata lot created by the Strata Plan, so that this agreement will continue to be registered against and run with only the common property of the Strata Plan;
 - (c) the Township will, forthwith upon receipt of the approved and fully executed Assumption Agreement together with the land title documents referred to in section 5.3(b) deliver such release documents (in registrable form) as may be required to discharge this Agreement from title to the individual strata lots created by the Strata Plan;
 - (d) upon delivering to the Township the Assumption Agreement executed by the Strata Corporation, the Grantee shall be automatically released from all obligations under this Agreement as they relate to the period after the effective date of such Assumption Agreement except for their personal liability pursuant to the Assumption Agreement; and
 - (e) this Agreement will continue to be registered against title to the common property of the Dominant Tenement.
- 5.4 The assumption agreement referred to in section 5.3 must include provisions which require that:

- (a) the benefit and burden of the easements granted by this Agreement and the other covenants and agreements in this Agreement shall be accepted on behalf of the owners of the strata lots by the Strata Corporation and shall be administered, enforced, modified, or released by the strata corporation only, including that the Strata Corporation shall, subject to the provisions of the *Strata Property Act*:
- (i) perform and observe the Grantee's covenants herein at the expense of the strata lot owners;
 - (ii) pass bylaws and include in the annual budgets of the Strata Corporation provisions reflecting the obligations of the Grantee in this Agreement; and
 - (iii) be entitled to give all permissions and consents permitted to be given by the Grantee under this Agreement; and
- (b) require that the personal liability of each strata lot owner for the performance and observance of the covenants and obligations in this Agreement of the Grantee shall be in proportion to the unit entitlement of his, her or its strata lot as established by the Strata Plan.

5.5 In the event of a subdivision of the Dominant Tenement, other than by way of strata plan, the Grantee and the Township shall, upon receipt of a written request from the Township or Grantee, surrender and discharge this Agreement by executing a discharge in registerable form, from title to all those parcels which are not intended by the Township or Grantee to have the benefit of the Encroachment.

5.6 The Grantee covenants and agrees not to transfer the Dominant Tenement, or any portion thereof, without advising the purchaser or transferee of this Agreement and without providing to the Township evidence that the purchaser or transferee agrees to take on the benefits and be bound by the obligations of this Agreement. The parties agree that this provision shall not apply to subdivision of the Dominant Tenement under the *Strata Property Act*, and related transfers, except with respect to the Strata Corporation.

6.0 INTERPRETATION

6.1 Time shall be of the essence of this Agreement

6.2 When the singular or neuter is used in this Agreement they include the plural or the feminine or the masculine or the body politic where the context or the parties require.

6.3 The headings to the clauses in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.

- 6.4 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors, administrators and permitted assignees.
- 6.5 No part of the title in fee-simple to the soil shall pass to or be vested in the Grantee under or by virtue of these presents, and the Township may fully use and enjoy all the Highway, subject only to the rights and restrictions herein contained
- 6.6 This Agreement shall be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- 6.7 All provisions of this Agreement are to be construed as covenants and agreements as though the word importing covenants and agreements were used in each separate paragraph.
- 6.8 This Agreement is the entire agreement between the parties and the Township has made no representations, warranties, guarantees, promises, covenants or agreements (oral or otherwise) to or with the Grantee other than those expressed in this Agreement.
- 6.9 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.
- 6.10 The Grantee acknowledges having received legal advice prior to executing this Agreement, and the Grantee agrees that it fully and completely understands this Agreement and its impact on the Highway and the Dominant Tenement.

IN WITNESS WHEREOF the parties acknowledge that this Agreement has been duly executed and delivered by the parties executing Form C (pages 1 and 2) attached hereto.

SCHEDULE A PLAN EPP135402

Explanatory Plan of Part of Head Street, Being Part of Road Dedicated by Plan 265, Section 11, Esquimalt District.

Plan EPP135402

For Easement Purposes.

Pursuant to Section 99(1)(e) of the Land Title Act, and Section 35(11) of the Community Charter.

BCGS 92B.043 and 92B.044

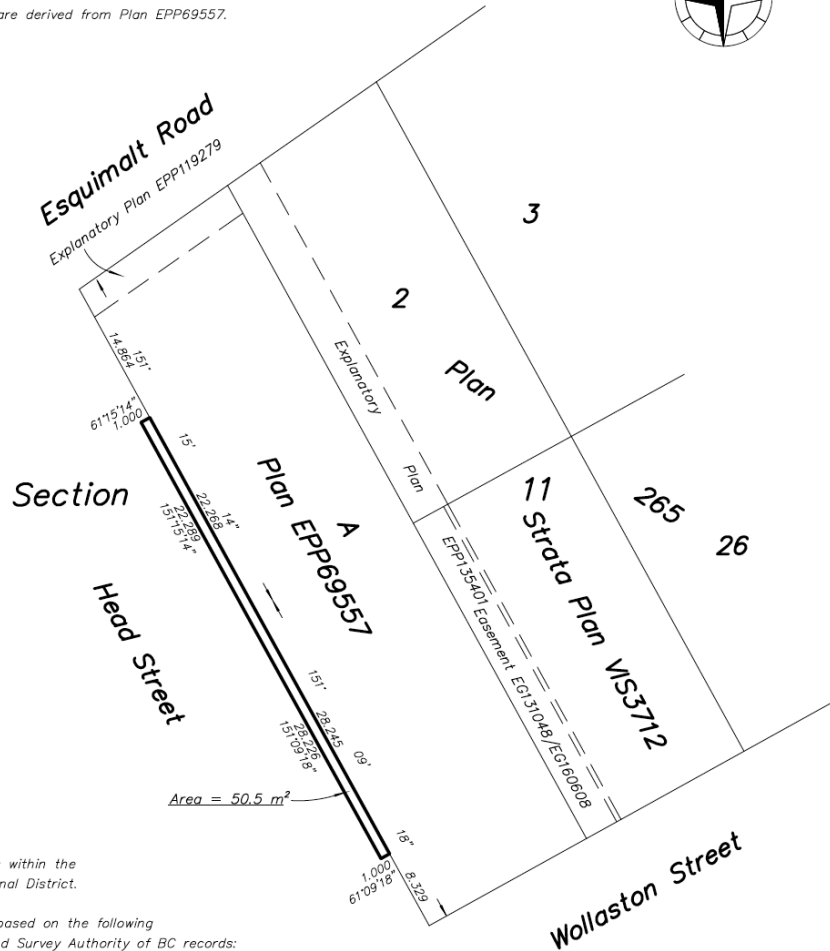


The intended plot size of this plan is 432mm in height by 280mm in width (B size) when plotted at a scale of 1:400.

Distances are in metres unless otherwise indicated.

Integrated Survey Area No. 38, The Township of Esquimalt, NAD83(CSRS) 3.0.0.BC.1.CRD.

Grid bearings are derived from Plan EPP69557.



This plan lies within the Capital Regional District.

*This plan is based on the following Land Title and Survey Authority of BC records:
Plans EPP69557, EPP119279, EPP135401.*

Wey Mayenburg Land Surveying Inc.
www.weysurveys.com
#4-2227 James White Boulevard
Sidney, BC V8L 1Z5
Telephone (250) 656-5155
File: 170051c\EXP\LE

Lloyd R. P. Eakins, BCLS 833
8th day of April, 2024.

SCHEDULE B - The WORKS

