



1. Application

Document Fees: \$162.54

JOHNS SOUTHWARD LLP
Barristers & Solicitors
#204 - 655 TYEE ROAD
VICTORIA BC V9A 6X5
250-381-7321

2. Description of Land

PID/Plan Number	Legal Description
001-180-991	LOT 9, SECTION 11, ESQUIMALT DISTRICT, PLAN 265
015-233-227	LOT 10, SECTION 11, ESQUIMALT DISTRICT, PLAN 265

3. Nature of Interest

Type	Number	Additional Information
COVENANT		s.219
PRIORITY AGREEMENT		granting the within covenant priority over Mortgage CA8903578 and Assignment of Rents CA8903579 Page 11

4. Terms

Part 2 of this instrument consists of:

(b) Express Charge Terms Annexed as Part 2

5. Transferor(s)

861-865 ESQUIMALT HOLDINGS LTD., NO.BC1183905
COASTAL COMMUNITY CREDIT UNION, NO.FI 114, (AS TO PRIORITY)

6. Transferee(s)

THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT
1229 ESQUIMALT ROAD
ESQUIMALT BC V9A 3P1

7. Additional or Modified Terms



8. Execution(s)

This instrument creates, assigns, modifies, enlarges 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.

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

DONNA MURRAY
Commissioner for Taking Affidavits
for British Columbia
#204-655 Tyee Road
Victoria BC V9A 6X5

YYYY-MM-DD

2025-01-16

861-865 ESQUIMALT HOLDINGS LTD.
By their Authorized Signatory

Matthew Phillips

Johns Southward LLP
Expiry Date: August 31, 2025

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.

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

CHARLES BLANARU
Barrister & Solicitor
#200-1808 Bowen Road
Nanaimo BC V9S 5W4

YYYY-MM-DD

2025-02-06

COASTAL COMMUNITY CREDIT
UNION
By their Authorized Signatory

Print Name: Dana Nichols, BBA,
ABL, AVP Commercial Services

Ph. (250) 753 2202 Fax: (250) 753 3949

Print Name: Leigh Power, ABL
Business Relationship Manager

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.



Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

Sarah Holloway
Commissioner for Taking Affidavits
for British Columbia
1229 Esquimalt Rd.
Esquimalt BC V9A 3P1

YYYY-MM-DD

2025-02-14

THE CORPORATION OF THE
TOWNSHIP OF ESQUIMALT
By their Authorized Signatory

Print Name: Barbara Desjardins
Mayor

Deputy Corporate Officer
Corporation of the Township of
Esquimalt

Print Name: Debra Hopkins
Corporate Officer

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.

Electronic Signature

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.

Eric Alexander
Kerr 6KUFG3

Digitally signed by
Eric Alexander Kerr 6KUFG3
Date: 2025-02-18
15:08:22 -08:00

TERMS OF INSTRUMENT - PART 2

RECITALS:

- A. The Transferor (the “**Owner**”) is the registered owner in fee-simple of those lands with a current civic address of 861 and 863 Esquimalt Road, more particularly described in Item #2 of Form C, in the Township of Esquimalt in the Province of British Columbia, namely:

001-180-991 LOT 9, SECTION 11, ESQUIMALT DISTRICT, PLAN 265;

and

015-233-227 LOT 10, SECTION 11, ESQUIMALT DISTRICT, PLAN 265

(collectively, the “**Lands**”).

- B. The Transferee is the Township of Esquimalt (“**Transferee**” or “**Township**”).

The Owner has submitted an application to the Township to rezone the Lands to Comprehensive Development District No. 158 (859 Esquimalt Road) CD No. 158 further to ZONING BYLAW, 1992, NO. 2050, AMENDMENT BYLAW NO. 3078 (the “**Amendment Bylaw**”) to authorize the development of a maximum six storey multiple family purpose built residential rental building containing a maximum of 59 dwelling units (the “**Dwelling Units**”), including at least two three-bedroom dwelling units, and a parking garage with at least 44 vehicular parking spaces (the “**Development**”), and, acknowledging that the amenities and restrictions contained herein are in the public interest, the Owner has offered and voluntarily provided this Section 219 Covenant to the Township, and the Township has accepted this covenant and its registration as a condition of the adoption of the Amendment Bylaw (the “**Agreement**”).

- C. 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 Township's Zoning Bylaw, as amended from time to time.

Restrictions and Requirements – Consolidation

2. Notwithstanding broader or greater uses, density or other regulations in the Zoning Bylaw, the Owner covenants and agrees the Lands must not be subdivided (including under the *Strata Property Act*), built upon, altered, or used for any use (other than continuation of the uses lawfully established at the time of this agreement), unless and until the Owner has, at its sole cost and without expectation of compensation from the Township, consolidated the two (2) parcels that comprise the Lands as one (the "**Consolidation**").
3. The Owner further covenants and agrees that, prior to the Consolidation, the two (2) parcels that comprise the Lands must not be sold or otherwise transferred separately. This provision is only in effect until the Consolidation has occurred.

Restrictions and Requirements – Step 3 of BC Energy Step Code

4. The Owner covenants and agrees that the Lands must not be built upon, except with buildings that meet or exceed the standards and requirements of Step 3 of the BC Energy Step Code and the Township's Bylaws.
5. For greater certainty, the restrictions and requirements of Section 4 of this Agreement are intended to supplement, not replace or override, Township Bylaws and Building Code requirements.

Restrictions and Requirements – At Least 2 three-bedroom Dwelling Units

6. The Owner covenants and agrees that the Lands must not be subdivided (including under the *Strata Property Act*), built upon, used, or continue to be used unless the Development has been designed and constructed to include, and continues to include, a minimum of Two (2) three-bedroom dwelling units. For certainty, this covenant shall not prevent the Owner from using or building upon the Lands during the period of and as required for the purposes of construction of the Development as contemplated by this Agreement.

Restrictions and Requirements – Car Share Services

7. Owner covenants and agrees:
 - (a) in this section, the following terms have the following meanings:
 - (i) "**Car Share Vehicle**" means a four (or more)-seat, four-wheel automobile, van or pickup truck provided by the Owner for the Shared Vehicle Service pursuant to the Shared Vehicle Service Agreement;
 - (ii) "**Shared Vehicle Service Agreement**" means the agreement between the Owner and the Shared Vehicle Organization which sets out the terms by which the Shared Vehicle Organization will provide a Shared Vehicle Service to the occupants of the Development;

- (iii) "**Shared Vehicle Organization**" means an entity whose principal business objective is to provide its members with a Shared Vehicle Service;
 - (iv) "**Shared Vehicle Service**" means the provision, for a fee, of a car-sharing service by which such members have self-serve access to a fleet of shared vehicles which they may reserve for use on an hourly or other basis;
 - (b) at its expense, to enter into and maintain a Shared Vehicle Service Agreement with a Shared Vehicle Organization for the provision of a Shared Vehicle Service to each residential household in the Development;
 - (c) to provide and maintain in safe and good working condition one Car Share Vehicle;
 - (d) the Owner further covenants and agrees to pay or cover the cost of memberships (each a "**Membership**") with the Shared Vehicle Organization, in accordance with the following:
 - (i) only residents of the Dwelling Units will be entitled to a Membership, with a maximum of one Membership available to each Dwelling Unit;
 - (ii) the Owner will be required to pay or cover the cost of up to fifty-nine (59) Memberships, for the life of the Development;
 - (iii) to provide a Membership to those occupants who desire to be part of the Shared Vehicle Organization within 30 days of the occupant entering into a residential tenancy agreement with the Owners;
 - (iv) it being acknowledged by the parties that not every occupant of a Dwelling Unit in the Development may desire to be part of a Shared Vehicle Organization;
 - (v) the Membership may be in the form of:
 - (1) an actual Membership with the Shared Vehicle Organization entered into by the Owner and assigned to the occupant; or
 - (2) a reimbursement equal to the cost of a Membership paid to the occupant by the Owner upon the Owner receiving evidence that the occupant has paid the cost of the Membership directly and has received the Membership directly from the Shared Vehicle Organization.
8. The Owner covenants and agrees to obtain the written approval of the Township's Director of Development Services (such approval not to be unreasonably withheld, conditioned or delayed) for:
- (a) any change in the Shared Vehicle Organization, and
 - (b) any Shared Vehicle Service agreement made between the Owner and any Shared Vehicle Organization.

Restrictions and Requirements – Parking

9. The Owner covenants and agrees that the 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, and continues to provide (in addition to, and not in relief of, the Township's bylaws and development approvals) a minimum of Six (6) parking spaces on the Lands exclusively for the use of "Visitors", and signed or labelled accordingly (the "**Visitor Spaces**"); and
10. Without limiting the above, the Owner further covenants and agrees that the Owner:
 - (a) must not divest or allocate the Visitor Spaces, in a manner that would allow them to be assigned or reserved for the exclusive use of the Dwelling Units, occupants or owners, or otherwise sold, leased, or licenced separately, and the Owner further acknowledges and agrees that these restrictions and requirements are also intended to prevent any lease or licence of a Visitor Space where that lease or licence causes inconsistency with the terms of this Agreement; and
 - (b) the occupants of the Dwelling Units must only park on the Lands in parking stalls specifically designated for residents' parking and not in the Visitor Spaces.

Restrictions and Requirements – Cash Contributions

11. The Owner covenants and agrees that the Lands must not be subdivided (including under the *Strata Property Act*), built upon, used or continue to be used unless and until the Owner has provided to the Township, concurrent with the Owner's application for a building permit for the Lands and prior to issuance of a building permit for the Lands and in a form and manner directed by the Township in accordance with all relevant Township procedures and policies, and without expectation of compensation or recuperation of such contributions, irrespective of whether the Development proceeds:
 - (a) a cash contribution of Twenty-Five Thousand Dollars (\$25,000.00) to be used by the Township to construct a traffic island within the Township of Esquimalt at a location that is at the sole discretion of the Township; and
 - (b) a cash contribution of Fifty Thousand Dollars (\$50,000.00) to be used by the Township to construct crosswalk signal upgrades within the Township of Esquimalt at a location that is at the sole discretion of the Township.

Restrictions and Requirements – Bicycle Parking

12. The Owner covenants and agrees that the 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, and continues to provide, in accordance with all of the following conditions (in addition to, and not in relief of, the Township's bylaws and development approvals) a minimum of Seventy-Seven (77) bicycle stalls on the Lands, each capable of storing at least One (1) bicycle,

including that a minimum Thirty-Nine (39) of the bicycle stalls on the Lands must be provided with electrical charging through provision of accessible Level One (120V) electric outlets that are available and dedicated to charging electric bicycles.

Restrictions and Requirements – Statutory Right of Way along Esquimalt Road

13. The Owner covenants and agrees that the Lands must not be subdivided (including under the *Strata Property Act*), built upon, used or continue to be used (other than the continuation of the uses lawful and lawfully established at the time of this Agreement) unless the Owner has provided at its sole cost and continues to provide, on the Township's standard terms with content that is at the sole discretion of the Township, a perpetual statutory right of way granted in favour of the Township pursuant to section 218 of the *Land Title Act* and associated *Land Title Act* section 219 covenant and indemnity for the purpose of providing public access and public realm improvements on a 2.5 metre wide area of the Lands running the length of the front lot line of the Lands abutting Esquimalt Road.

Indemnity and Release

14. 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 and death, arising out of or connected with the restrictions or requirements of this Agreement, the breach of any covenant in this Agreement, the granting of any approvals, or the use of the Lands contemplated under this Agreement.
15. 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 and anyone, including third parties, can or may have against the Township for any loss, damage, deprivation, enrichment or injury, including economic loss and death, arising out of or connected with the restrictions or requirements of this Agreement, the breach of any covenant in this Agreement, the granting of any approvals, or the use of the Lands contemplated under this Agreement.
16. Without limiting the above release and indemnity, the Owner acknowledges that this Agreement may be interpreted to contain 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.
17. The release and indemnity provisions of this Agreement survive its termination.

Registration

18. The restrictions and requirements in this Agreement are covenants running with the Lands in favour of the Township and are intended to be perpetual, and shall continue to bind all of the Lands when subdivided. For greater certainty, future owners of the Lands, or portions thereof, shall be considered the Owner under this Agreement.
19. 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.
20. The Owner agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
21. The Owner 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

22. The Owner covenants and agrees that the Township's Director of Development Services, may, but is not obligated to, inspect the Visitor Spaces and the Development and such other matters addressed by this Agreement, and the Owner shall implement any reasonable measures identified by the Director of Development Services as a result of such inspection.
23. 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.
24. 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.
25. The Owner acknowledges that the Township does not represent to the Owner or to any other person that any future application for subdivision of the Lands by the owner will be approved.
26. 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.

27. The parties agree that this Agreement shall not be modified or discharged except in accordance with the provisions of section 219(9) of the *Land Title Act*.
28. 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.
29. 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 time longer 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.
30. 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.
31. 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.
32. Whenever the plural, singular, masculine or neuter is used herein, the same shall be construed as including the plural, singular, feminine, body corporate or politic unless the context requires otherwise.
33. 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.
34. The Owner acknowledges having been directed to obtain independent legal advice prior to executing this Agreement, and the Owner agrees and acknowledges that it has read

and fully understands all of the terms and conditions of this Agreement and its impact on the Lands.

35. Where there is a reference to an enactment of the Province of British Columbia in this Agreement, that reference shall include a reference to any subsequent enactment of the Province of British Columbia of like effect, and unless the context otherwise requires, all statutes referred to herein are enactments of the Province of British Columbia.
36. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

Priority Agreements

37. COASTAL COMMUNITY CREDIT UNION, Inc. No. FI 114 (the “**Chargeholder**”), the registered holder of charges by way of MORTGAGE and ASSIGNMENT OF RENTS against the Lands, respectively registered under No. CA8903578 and No. CA8903579 (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 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 the Form C attached to, and forming part of, this Agreement.