



1. Application

Sandi Klaver - Reed Pope Law Corporation 202 1007 Fort Street Victoria BC V8V 3K5 250-383-3838

9866-001

2. Description of Land

PID/Plan Number	Legal Description
000-165-646	LOT 21, BLOCK B, SECTION 11, ESQUIMALT DISTRICT, PLAN 292

3. Nature of Interest

Type	Number	Additional Information
COVENANT	SECTION 219	
PRIORITY AGREEMENT		Granting herein Covenant priority over Mortgage CA8841129

4. Terms

Part 2 of this instrument consists of:
(b) Express Charge Terms Annexed as Part 2

5. Transferor(s)

JOSE GERARDO MARTINO LOPEZ
THE TORONTO-DOMINION BANK (AS TO PRIORITY)

6. Transferee(s)

THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT 1229 ESQUIMALT ROAD VICTORIA 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)



R. KEITH REED
Barrister & Solicitor
 202-1007 Fort Street
 Victoria, BC V8V 3K5
 Telephone: 250-383-3838

YYYY-MM-DD
 2024-08-09



Jose Gerardo Martino Lopez

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)

YYYY-MM-DD

The Corporation of the Township of Esquimalt
 By their Authorized Signatory

Print name:

Print name:

Officer Certification

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Land Title Act
Charge
General Instrument – Part 1

Witnessing Officer Signature

Execution Date

YYYY-MM-DD

Transferor / Transferee / Party Signature(s)

The Toronto-Dominion Bank
By their Authorized Signatory

print name:

print name:

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.

TERMS OF INSTRUMENT – PART 2

S.219 COVENANT

RECITALS:

- A. The Transferor ("Owner") is the registered owner in fee-simple of the lands identified in item 2 on Form C associated with these Terms, in the Township of Esquimalt in the Province of British Columbia (the "Lands").
- B. The Transferee is the Township of Esquimalt ("Transferee" or "Township").
- C. The Owner seeks to develop a Detached Accessory Dwelling Unit ("DADU") in accordance with the density-bonusing provisions of the Township's Zoning Bylaw, and the conditions of such additional density include a Covenant under Section 219 of the *Land Title Act* with the Township, including for the purposes of ensuring the DADU is not subdivided under the provisions of either the *Land Title Act* or the *Strata Property Act*, including building strata, and for ensuring the DADU is a secondary use only within the singular control of the owner of the principal dwelling.
- D. The Owner acknowledges and agrees that the restrictions and requirements contained in this Agreement are in the public interest. The Owner has offered and voluntarily provided this Agreement to the Township, and the Township has accepted it and required its registration as a condition of the Owner obtaining the additional density available under the Zoning Bylaw.
- 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 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

2. 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 *Land Title Act*, the *Strata Property Act*, including building strata subdivision, or otherwise;
 - (b) built upon, contain or be used except for:
 - (i) a maximum of one (1) principal single family residential dwelling unit,
 - (ii) a maximum of one (1) detached accessory dwelling unit, and
 - (iii) accessory uses permitted by Township zoning; and
 - (c) built upon, contain or be used for secondary suite use.
3. The Owner further covenants and agrees that the detached accessory dwelling unit must not be used except as a secondary use only within the singular control of the owner of the principal dwelling on the Lands.

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 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.
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 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.

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

Registration

7. 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.
8. 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.
9. The Owner agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
10. 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

11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.

18. 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.
19. The Owner acknowledges having been directed to obtain independent legal advice and having read and fully understood all the terms and conditions of this Agreement.
20. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

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

CONSENT AND PRIORITY AGREEMENT

WHEREAS The Toronto-Dominion Bank (the "Chargeholder") is the holder of a charge by way of Mortgage (called the "Charge") encumbering the lands (the "Lands") described in item 2 of the *Land Title Act* Form C attached hereto, which was registered in the Victoria Land Title Office under number CA8841129.

THEREFORE THIS CONSENT AND PRIORITY AGREEMENT IS EVIDENCE THAT IN CONSIDERATION OF \$1.00 AND OTHER GOOD AND VALUABLE CONSIDERATION PAID BY THE TRANSFEREE TO THE CHARGEHOLDER:

1. The Chargeholder hereby consents to the granting and registration of a Covenant attached hereto (the "Covenant") and the Chargeholder hereby agrees that the Covenant shall be binding upon its interest in and to the Lands.
2. The Chargeholder hereby grants to the transferee described in item 6 of the *Land Title Act* Form C attached hereto priority for the Covenant over the Chargeholder's right, title and interest in and to the Lands, and the Chargeholder does hereby postpone the Charge and all of its right, title and interest thereunder to the Covenant as if the Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Charge.

IN WITNESS WHEREOF, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing the *Land Title Act* Form C above which is attached hereto and forms part of this Agreement.

END OF DOCUMENT.