

LAND TITLE ACT
FORM C (Section 233) CHARGE
GENERAL INSTRUMENT - PART 1 Province of British Columbia

Apr-08-2019 12:08:53.001

CA7435813 CA7435814

PAGE 1 OF 11 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

Joshua William Tyndale Steeper
L1ABJK
Digitally signed by Joshua William Tyndale Steeper
L1ABJK
Date: 2019.04.08 11:43:13 -07'00'

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

Joshua Steeper

Barrister & Solicitor

200 - 7169 West Saanich Road

Brentwood Bay

BC V8M 1P7

Document Fees: \$148.32

File No. 2019003

Phone No. 250.544.1002

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

005-455-031

LOT 1, SECTION 11, ESQUIMALT DISTRICT, PLAN 44436

STC? YES

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

SEE SCHEDULE

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) Filed Standard Charge Terms D.F. No.(b) Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

SEE SCHEDULE

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT

1229 ESQUIMALT ROAD

ESQUIMALT

BRITISH COLUMBIA

V9A 3P1

CANADA

7. ADDITIONAL OR MODIFIED TERMS:

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges 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.

Officer Signature(s)

Joshua Steeper

Barrister & Solicitor

200 - 7169 West Saanich Road
Brentwood Bay, BC, V8M 1P7
250.544.1002

(as to both signatures)

Execution Date

Y	M	D
19	01	30

Transferor(s) Signature(s)

BYRON FRANCIS ROTGANS

KAREN ELIZABETH ROTGANS

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.

**LAND TITLE ACT
FORM D**

EXECUTIONS CONTINUED

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

Y	M	D
19	04	04

Anja Nurvo

Commissioner for Taking Affidavits in British Columbia

Corporate Officer
Corporation of the Township of
Esquimalt
1229 Esquimalt Rd, Esquimalt, BC
V9A 3P1

The Corporation of the Township of
Esquimalt
by its authorized signatory(ies):

Barbara Desjardins
Mayor

Jeff Miller
Acting CAO

(as to all signatures)

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.

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

Mircho Mirchev

Y	M	D
19	03	11

COMPUTERSHARE TRUST
COMPANY OF CANADA
by its authorized signatory(ies):

Notary Public

100 University Ave., 8th Flr.
Toronto, Ontario M5J 2Y1
416-263-9319

Daniel Lee
Provisional, MBS

(as to all signatures)

James Nguyen
Administrator

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.

**LAND TITLE ACT
FORM E****SCHEDULE**

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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Entire instrument except paragraph 21

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Page 10, paragraph 21, granting the Covenant with one registration number less than this priority agreement priority over Mortgage CA5347995

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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**LAND TITLE ACT
FORM E**

SCHEDULE

PAGE 5 OF 11 PAGES

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

Section 5: Transferors

BYRON FRANCIS ROTGANS

KAREN ELIZABETH ROTGANS

**COMPUTERSHARE TRUST COMPANY OF CANADA
INCORPORATION NO. A-52313
(as to Priority)**

TERMS OF INSTRUMENT - PART 2
S.219 COVENANT

RECITALS:

- A. The Transferor ("**Owner**") is the registered owner in fee-simple with a civic address of 1198 Munro Street, more particularly described in Item #2 of Form C, in the Township of Esquimalt in the Province of British Columbia, namely:

PID: 005-455-031
Lot 1, Section 11 Esquimalt District, Plan 44436
(the "**Lands**").

- B. The Transferee is the Township of Esquimalt ("**Transferee**" or "**Township**").
- C. The Owner has submitted an application to the Township to rezone the Lands to Comprehensive Development District No. 114 (1198 Munro Street) CD No. 114 further to ZONING BYLAW, 1992, NO. 2050, AMENDMENT BYLAW NO. 2947, (the "**Amendment Bylaw**") to permit infill housing by authorizing the proposed subdivision of the Lands into two parcels, one with the existing single family dwelling and secondary suite, and the other with a new single family dwelling with no secondary suite, creating a maximum of three (3) dwelling units in two (2) buildings (the "**Development**"), and acknowledging that it is in the public interest that the use and density of development of the Lands be limited, the Owner has offered and voluntarily provided this covenant to the Township, and the Township has accepted this covenant and required its registration as a condition of the Amendment Bylaw (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 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; 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*:

Restrictions and Requirements – Subdivision and 3 Residential Dwelling Units Only

1. 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 *Strata Property Act*), except for two (2) single family residential fee simple lots, in general compliance with:
 - (i) the Proposed Subdivision Plan prepared by Wey Mayenburg Land Surveying Inc. stamped by the Township "Received November 9, 2018", and
 - (ii) the architectural plans provided by Villamar Design stamped by the Township "Received December 10, 2018",

the originals of which are with the Township's files for the Lands, and a copy of the Proposed Subdivision Survey attached as Schedule "A" for convenience;

- (b) built upon or used for more than three (3) dwellings units, as follows:
 - (i) a maximum of two (2) dwelling units on Site A, identified on the Proposed Subdivision Plan, being a single family dwelling with secondary suite;
 - (ii) a maximum of one (1) dwelling unit on Site B, identified on the Proposed Subdivision Plan, being one new single family dwelling with no secondary suite; and
- (c) built upon, contain or be used for tourist accommodation uses.

2. The Transferor and Transferee agree that this Agreement shall be interpreted in accordance with the definitions in the Transferee's zoning bylaw, as amended from time to time.

Indemnity and Release

- 3. 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, arising out of or connected with the restrictions or requirements of this Agreement, the breach of any covenant in this Agreement, or the use of the Lands contemplated under this Agreement.
- 4. 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 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 restrictions or requirements of this Agreement, the breach of any covenant in this Agreement, or the use of the Lands contemplated under this Agreement.
- 5. The releases and indemnities of this Agreement shall survive its termination.

Registration

6. 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.
7. 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.
8. The Owner agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement. However, the Township acknowledges that if the Amendment Bylaw is not adopted by the Township by May 31, 2019 and the related Development applications are abandoned, then this Agreement shall be discharged from the Lands.
9. The Owner, as a personal covenant between the parties, 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

10. 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.
11. 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.
12. 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.
13. 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.

14. 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.
15. 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.
16. 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.
17. 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.
18. 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 Lands.
19. Any notice required or permitted to be given in connection with this Agreement will be in writing and delivered personally or sent by prepaid express mail to the applicable addresses set out above. If notice is delivered personally, it will be considered given when delivered. If notice is mailed, it will be considered given five days after mailing by deposit at a Canada Post mailing point or office. A party may only change their address for delivery under this section by notice to the other party in accordance with this section.
20. This Agreement is to be construed in accordance with and governed by the laws

applicable in the Province of British Columbia.

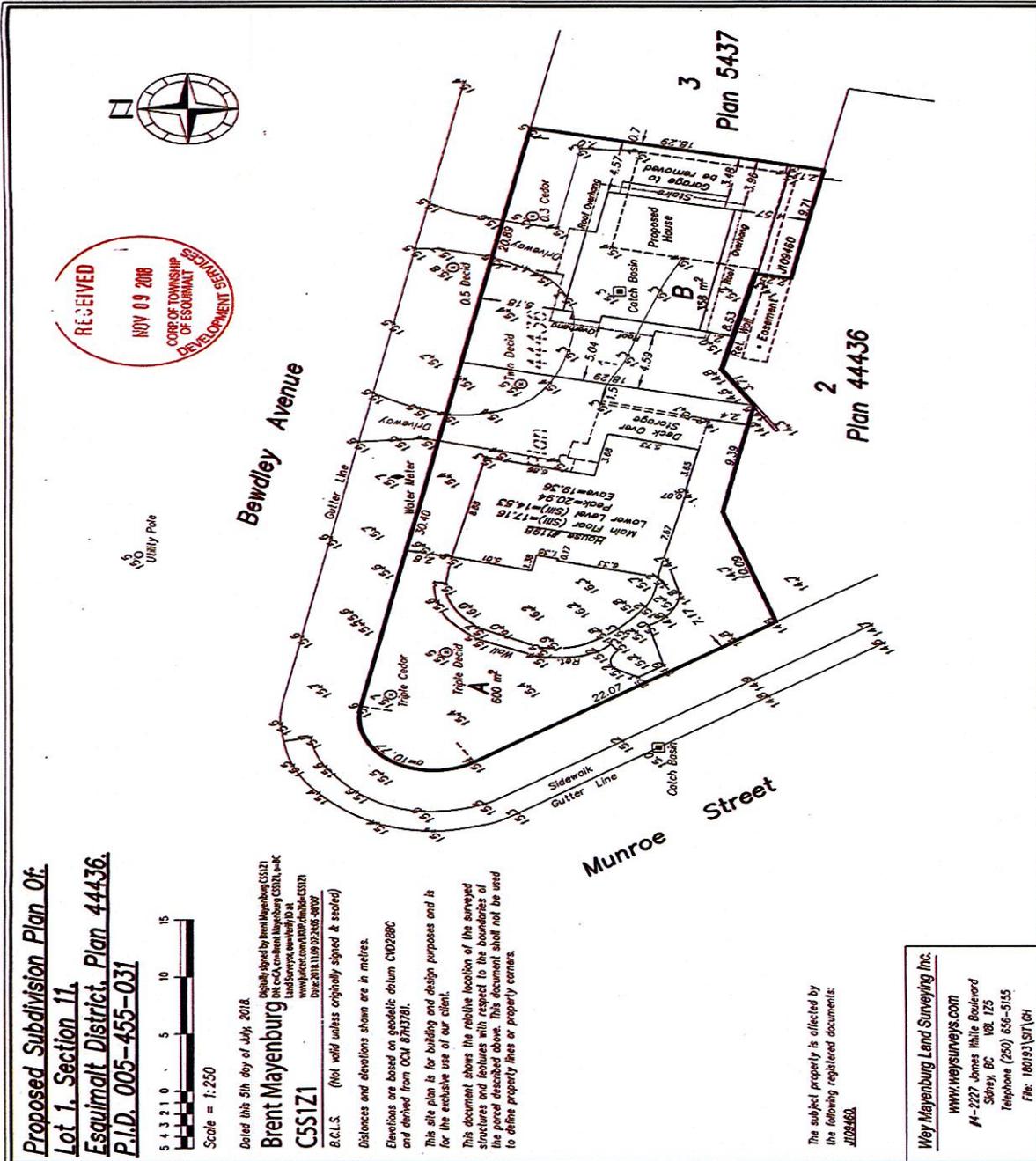
Priority Agreements

21. **COMPUTERSHARE TRUST COMPANY OF CANADA, INCORPORATION NO. A-52313** (the "Chargeholder"), the registered holder of charges by way of MORTGAGE against the Lands, registered under No. CA5347995 (the "Charge"), 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 Charge in the same manner and to the same effect as if the Agreement had been dated and registered prior to the Charge.

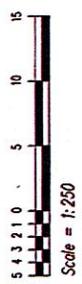
The Owner and Township acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D attached.

Schedule A

Proposed Subdivision Plan (not to scale)



Proposed Subdivision Plan Of:
Lot 1, Section 11,
Esquimalt District, Plan 44436,
P.I.D. 005-455-031



Dated this 5th day of July, 2018.
 Digitally signed by Brent Mayenburg C551Z1
 DN: cn=Brent Mayenburg C551Z1, o=BC
 Land Surveys, ou=Vespa ID at
 www.landconnections.com/cdn/c551Z1
 Date: 2018.11.09 22:05:00Z

C551Z1
 B.C.L.S. (Not valid unless originally signed & sealed)

Distances and elevations shown are in metres.
 Elevations are based on geoidetic datum CND288C
 and derived from OCM 8743781.

This site plan is for building and design purposes and is
 for the exclusive use of our client.

This document shows the relative location of the surveyed
 structures and features with respect to the boundaries of
 the parcel described above. This document shall not be used
 to define property lines or property corners.

The subject property is affected by
 the following registered documents:
 J094860

Wey Mayenburg Land Surveying Inc.
 www.weysurveys.com
 #1-2227 Jones White Boulevard
 Sidney, BC V8L 1Z5
 Telephone (250) 656-5155
 Fax: (800)931(S)T(81)