

TERMS OF INSTRUMENT - PART 2

RECITALS:

- A. The Transferor (the “**Transferor**”, or the “**Owner**”) is the registered owner in fee-simple of those lands created from the parent parcel having a civic address of 622 Admirals Road, more particularly described in Item #2 of Form C, in the Township of Esquimalt in the Province of British Columbia, namely:

PID: 030-615-992

Lot A Suburban Lot 43 Esquimalt District Plan EPP82555

(the “**Lands**”).

- B. The Transferee is the Township of Esquimalt (the “**Township**”).
- C. Acknowledging that it is in the public interest that the development and use of the Lands be limited, and as a condition of rezoning the Lands to facilitate the subdivision and of the Lands and proposed development at that time, the previous owner of the Lands granted a Covenant and Indemnity to the Township in February of 2014, in accordance with Section 219 of the *Land Title Act*, registered February 26, 2014 against the parent parcels of the Lands, under charge number CA3608095 (the “**Development Covenant**”). The Owner subsequently consolidated the Lands and, at the request of the Owner, agreed with the Township to modify the Development Covenant and related Housing Agreement to reflect a revised development proposal (the “**Development**”), and this 2019 modification of the Development Covenant and Indemnity was registered in the Victoria Land Title Office on May 15, 2019 (the “**2019 Modification**”).
- D. The Owner has requested a reduction in the number of proposed strata lots in the Development required by the Development Covenant, as amended by the 2019 Modification, from forty-one (41) strata lots to thirty-seven (37) strata lots.
- E. As a result of changes to the number of strata lots within the planned Development, the Owner, acknowledging that it remains in the public interest that the use and development of the Lands be limited, has requested amendments to the Development Covenant, as previously amended by the 2019 Modification, and the parties have agreed to further amend the Development Covenant as set out in this Agreement (the “**2021 Modification**”).
- F. 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 2021 Modification 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 the Township agree that the Development Covenant, as amended by the 2019 Modification, is further modified as follows:
 - (a) Replacing the word and number “*forty-one (41)*” with the word and number “*thirty-seven (37)*” in Section 3; and
 - (b) Replacing the number “41” with the number “37” in Subsection 3(d).

For convenience, the updated Section 3 shall read:

3. Once consolidated, the Transferor covenants and agrees that the Lands, or any building on the Lands, may not be further subdivided (including under the Strata Property Act) unless to create thirty-seven (37) strata lots corresponding generally with the following, including uses, units, parking and open space allocated for and on the respective strata lots:

*(a) Proposed Strata Lot 1 – Commercial Uses (the “**Commercial Strata Lot**”);*

*(b) Proposed Strata Lot 2 – Legion Facility (club house) (the “**Legion**”)*

(c) Proposed Strata Lot 3 – Congregate Care rental units, including:

- lobby and amenities to support the congregate care (1st and 11th Floors),

- 48 memory care units (24 per floor – 2nd and 3rd floors); and

- 95 rental Congregate Care units (19 per floor – 4th, 5th, 6th, 7th and 8th floors)

*(collectively the “**Rental Units**”); and*

*(d) Proposed Strata Lots 4-37 – Congregate Care owner units (the “**Owner Units**”);*

*(collectively, the “**Proposed Development**”), such terms to be interpreted consistently with Township Bylaws. And for greater certainty, the Transferor covenants and agrees that individual non-commercial uses (including units and parking spaces) may not be further subdivided (including under the Strata Property Act).*

2. This 2021 Modification is an amendment to the Development Covenant, as amended, which the parties agree is ratified, approved and confirmed in each and every respect. Unless specifically amended by this 2021 Modification, all of the terms and conditions of the Development Covenant, as previously amended by the 2019 Modification, remain in full force, unamended by this 2021 Modification.

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 release and indemnity provisions of this 2021 Modification survive its termination.

Registration

6. 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.
7. At the Transferor's sole cost, the Transferor must do everything necessary to secure priority of registration and interest for this 2021 Modification over all encumbrances of a financial nature.
8. The Transferor agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this 2021 Modification.
9. The Transferor agrees to pay the legal fees and land title office costs of the Township in connection with the preparation and registration of this 2021 Modification.

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. The Owner covenants and agrees that the Township's Director of Development Services may, but is not obligated to, inspect the strata bylaws and parking spaces of the Development, and the Owner, in conjunction with the Council of any Strata Corporation, shall implement any reasonable measures identified by the Director of Development Services as a result of such inspection as necessary for the proper implementation of this Agreement.
12. The Owner agrees that the Township is entitled to obtain an order for specific performance or prohibitory or mandatory injunction in respect of any breach of this Agreement by the Owner.
13. 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.

14. 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.
15. The parties are agreed that, in addition to the above Sections 10 to 14 of this Agreement, the General Provisions (Sections 12 – 23) of the Development Covenant apply equally to this 2021 Modification.

Priority Agreements

16. ROYAL CANADIAN LEGION, BRANCH NO. 172, (“**RCL**”), the registered holder of a charge by way of MORTGAGE against the Lands, registered under No. CA6654256 (the “**RCL Charge**”), agrees with the Township, in consideration of the sum of Ten Dollars (\$10.00) paid by the Township to RCL (receipt and sufficiency acknowledged), that the Agreement shall be an encumbrance upon the Lands in priority to the RCL Charge in the same manner and to the same effect as if the Agreement had been dated and registered prior to the RCL Charge.
17. COMPUTERSHARE TRUST COMPANY OF CANADA, Inc. No. A0052313 (“**CTC**”), the registered holder of charges by way of MORTGAGE and ASSIGNMENT OF RENTS against the Lands, registered under No. CA7733811 and CA7733812 (the “**CTC Charges**”), agrees with the Township, in consideration of the sum of Ten Dollars (\$10.00) paid by the Township to CTC (receipt and sufficiency acknowledged), that the Agreement shall be an encumbrance upon the Lands in priority to the CTC Charges in the same manner and to the same effect as if the Agreement had been dated and registered prior to the CTC Charges.
18. THE TORONTO-DOMINION BANK (“**TD**”), the registered holder of charges by way of MORTGAGE and ASSIGNMENT OF RENTS against the Lands, registered under No. CA7790657 and CA7790658 (the “**TD Charges**”), agrees with the Township, in consideration of the sum of Ten Dollars (\$10.00) paid by the Township to TD (receipt and sufficiency acknowledged), that the Agreement shall be an encumbrance upon the Lands in priority to the TD Charges in the same manner and to the same effect as if the Agreement had been dated and registered prior to the TD Charges.

The Owner and Township acknowledge that this 2021 Modification has been duly executed and delivered by the parties executing Form C (pages 1, 2 and 3) attached.