

TITLE SEARCH PRINT

File Reference: 23955 Wilkin

Declared Value \$600000

2018-05-31, 18:04:16

Requestor: Kristin Marrs

****CURRENT INFORMATION ONLY - NO CANCELLED INFORMATION SHOWN******Land Title District**

Land Title Office

VICTORIA

VICTORIA

Title Number

From Title Number

CA6781364

CA5075126

Application Received

2018-05-04

Application Entered

2018-05-08

Registered Owner in Fee Simple

Registered Owner/Mailing Address:

1160983 B.C. LTD., INC.NO. BC1160983

109 - 2605 BRIDGE STREET

VICTORIA, BC

V8T 4Y4

Taxation Authority

Esquimalt, Corporation of the Township of

Description of Land

Parcel Identifier:

004-757-742

Legal Description:

LOT B, SECTION 11, ESQUIMALT DISTRICT, PLAN 12446

Legal Notations

NONE

Charges, Liens and Interests

Nature:

UNDERSURFACE RIGHTS

Registration Number:

M76301

Registered Owner:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

Remarks:

INTER ALIA

A.F.B. 3.257.3685; DD 289 OS;
SECTION 172(3)

Nature:

MORTGAGE

Registration Number:

CA6781452

Registration Date and Time:

2018-05-04 14:20

Registered Owner:

RPM CAPITAL INC.

INCORPORATION NO. BC1078913



TITLE SEARCH PRINT

File Reference: 23955 Wilkin
Declared Value \$600000

2018-05-31, 18:04:16
Requestor: Kristin Marrs

Nature: ASSIGNMENT OF RENTS
Registration Number: CA6781453
Registration Date and Time: 2018-05-04 14:20
Registered Owner: RPM CAPITAL INC.
INCORPORATION NO. BC1078913

Nature: COVENANT
Registration Number: CA6816235
Registration Date and Time: 2018-05-24 12:11
Registered Owner: THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT

Nature: PRIORITY AGREEMENT
Registration Number: CA6816236
Registration Date and Time: 2018-05-24 12:11
Remarks: GRANTING CA6816235 PRIORITY OVER CA6781452 AND CA6781453

Duplicate Indefeasible Title

NONE OUTSTANDING

Transfers

NONE

Pending Applications

NONE



LAND TITLE ACT
FORM C (Section 233) CHARGE

May-24-2018 12:11:54.001

GENERAL INSTRUMENT - PART 1 Province of British Columbia

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.

Kristin Rosalie
Ann Marrs
XJ2132

Digitally signed by Kristin
Rosalie Ann Marrs XJ2132
Date: 2018.05.24 12:07:10
-07'00'

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

HERALD STREET LAW

Attn: K. Marrs, Solicitor

101 - 536 Herald Street

Victoria

BC V8W 1S6

Tel. 250.381.1505

File Wilkin.Esq.

Document Fees: \$143.16

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

004-757-742

LOT B SECTION 11 ESQUIMALT DISTRICT PLAN 12446

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

VICTORIA

BRITISH COLUMBIA

V9A 3P1

CANADA

7. ADDITIONAL OR MODIFIED TERMS:

n/a

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)

Execution Date

Transferor(s) Signature(s)

KRISTIN R. MARRS

Barrister & Solicitor

101 - 536 Herald Street

Victoria, BC V8W 1S6

Y	M	D
18	05	18

1160983 B.C. Ltd. by its authorized
signatory:

MIKAIL BRUCE WILKIN

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	
<div><div></div><div>Anja Nurvo</div><div>Commissioner for Taking Affidavits in British Columbia</div><div>Corporate Officer</div><div>Corporation of the Township of Esquimalt, 1229 Esquimalt Road Esquimalt, BC V9A 3P1</div></div>	18	05	23	<div>THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT by its authorized signatory(ies):</div> <div><div></div>Barbara Desjardins, Mayor</div> <div><div></div>Laurie Hurst, CAO</div>
<div><div></div><div>R. Keith Reed</div><div>Barrister & Solicitor</div><div>202 - 1007 Fort Street</div><div>Victoria, BC V8V 3K5</div></div>	18	05	18	<div>RPM CAPITAL INC. by its authorized signatory(ies):</div> <div><div></div>J. L. McKinnon</div> <div>(as to priority only)</div> <div><div></div></div>
<div><div></div></div>				<div><div></div></div>

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**

PAGE 3 OF 11 PAGES

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Covenant

SECTION 219 COVENANT

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Priority Agreement

GRANTING SECTION 219 COVENANT HEREIN
PRIORITY OVER MORTGAGE CA6781452
and ASSIGNMENT OF RENTS CA6781453
DOCUMENT REFERENCE PAGE 10

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

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CHARGE NO.

ADDITIONAL INFORMATION

**LAND TITLE ACT
FORM E**

SCHEDULE

PAGE 4 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.

5. TRANSFEROR(S):

1160983 B.C. LTD. (Inc. No. BC1160983)

RPM CAPITAL INC. (Inc. No. BC1078913) (as to priority only)

TERMS OF INSTRUMENT - PART 2
S.219 COVENANT

RECITALS:

- A. The Transferor ("**Owner**") is the registered owner in fee-simple of the following lands in the Township of Esquimalt in the Province of British Columbia:
- PID: 004-757-742
Lot B, Section 11, Esquimalt District, Plan 12446 (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. 105 (615 Fernhill Road) CD No. 105 further to ZONING BYLAW, 1992, NO. 2050, AMENDMENT BYLAW NO. 2906 to authorize the development of a four-storey, 10-unit multiple family residential building with twelve (12) off-street parking spaces (the "**Development**"), and acknowledging that the amenities and the restrictions contained herein are in the public interest, 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 rezoning (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;
 - 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*:

Definitions and Schedules

1. In this Agreement:
 - (a) "**Parking Plan**" means the sketch plan entitled "10 Unit Apartment Development – Rezoning Application – Parkade Plan (SK-2)" prepared by MJM Architect Inc., dated June 20, 2017 Rev 17/10/05 stamped "Received" by the Township on

October 5, 2017, a reduced copy of which is attached as Schedule "A";

- (b) The definitions in the Township's Zoning Bylaw, 1992, No. 2050, as amended or replaced from time to time (the "**Zoning Bylaw**") shall apply to the interpretation of the terms in this Agreement.
2. The parties acknowledge and agree that the Plan in Schedule "A" is schematic only and the exact configuration of the property boundaries, buildings and associated roads, sidewalks, green spaces, parking spaces, landscaping and improvements may be determined in accordance with subsequent surveys provided that the Township, in its sole discretion, approves of such subsequent surveys. The parties may modify this Agreement from time to time to reflect the more accurate description of the Lands and the above noted areas.

Restrictions and Requirements – Parking

3. The Owner covenants and agrees that the Lands must not be built upon, used or continue to be used, until the Owner has, at its sole cost and without expectation of compensation from the Township, provided vehicular parking spaces and facilities on the Lands, in accordance with all of the following conditions (in addition to the Township's bylaws and development approvals):
 - (a) no fewer than twelve (12) parking spaces must be provided, generally as shown on the Parking Plan;
 - (b) of those, a minimum two (2) parking spaces must be exclusively for the use of "Visitors", and signed or labeled accordingly (the "**Visitor Spaces**");
 - (c) without limiting the above, the Owner must not divest or allocate the Visitor Spaces, whether as limited common property or otherwise, in a manner that would allow them to be assigned or reserved for the exclusive use of unit holders, occupants or owners. The Owner further covenants and agrees that the Lands must not be subdivided (including as limited common property under the *Strata Property Act*, but excepting as common property under the *Strata Property Act*) in any manner that results or can result in more than ten (10) parking spaces, being sold, leased, or licenced separately from the other parking spaces. The Owner further acknowledges and agrees that these restrictions and requirements are also intended to prevent any lease or licence of a parking space where that lease or licence causes inconsistency with the terms of this Agreement.
4. The Owner further covenants and agrees that the Township's Director of Development Services may, but is not obligated to, inspect the Visitor Spaces, and the Owner shall implement any reasonable measures identified by the Director of Development Services as a result of such inspection as necessary for the proper functioning of the parking, in conjunction with the Council of any Strata Corporation that controls the parking spaces.

Improvements and Financial Security

5. The Owner further covenants and agrees the Lands must not be subdivided (including under the *Strata Property Act*), built upon, or used, until the Owner has provided and planted either two (2) boulevard trees, of a species, height and in a location to the satisfaction of the Township's Director of Parks and Recreation, or provided financial

security for those public realm improvements.

6. This financial security shall be in an amount acceptable to the Township's Director of Parks and Recreation and, if requested, based on an estimate provided by a certified Landscape Architect, generally representing one hundred and twenty percent (120%) of the value of the improvements.
7. For greater certainty:
 - (a) the parties acknowledge that the improvements exceed the minimum requirements of the Township's Subdivision and Development Control Bylaw 1997, No. 2175, but shall be constructed as part of the Development;
 - (b) the Owner has offered to provide the financial security, if necessary, prior to the issuance of the Building Permit for construction of the Development;
 - (c) in the event that a Building Permit is not issued for construction of the Development, or any portion of the Development (or similar development that includes the Improvements), the financial security will be returned to the person or corporation that provided the security; and
 - (d) the receipt or such holding of the financial security in no way fetters Council's discretion or the discretion of the Approving Officer.

Indemnity and Release

8. 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.
9. 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.
10. Without limiting the above release and indemnity, the Owner acknowledges that this Agreement contains 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.

11. The releases and indemnities of this part shall survive the termination of this Agreement.

Registration

12. 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. For greater certainty:
 - (a) future owners of the Lands, or portions thereof, shall be considered the Owner under this Agreement;
 - (b) this Agreement will be discharged or released from individual strata units upon provision of a replacement Covenant for restrictions and requirements that have not been satisfied or are intended to remain, upon terms acceptable to the Township, in its sole discretion; and
 - (c) this Agreement will continue to form a charge against the common property of any strata development on the Lands and be binding against the Strata Corporation.
13. 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.
14. 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 *ZONING BYLAW, 1992, NO. 2050, AMENDMENT BYLAW NO. 2906* is not adopted by the Township by July 31, 2018 and the related rezoning application is abandoned, then this Agreement shall be discharged from the Lands.
15. 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

16. 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.
17. 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.
18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

Priority Agreement:

25. **RPM CAPITAL INC. (INCORPORATION NO. BC1078913)** (the "**Chargeholder**"), the registered holder of charges by way of MORTGAGE and ASSIGNMENT OF RENTS against the Lands, registered under No. CA6781452 and CA6781453, respectively (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 Forms C and D attached.

