

TERMS OF INSTRUMENT - PART 2

RECITALS:

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

PID: 030-615-992

Lot A, Suburban Lot 43, Esquimalt District, Plan EPP82555

(collectively the “**Lands**”).

- B. The Transferee is the Township of Esquimalt (“**Transferee**” or “**Township**”).
- C. In 2014 Covenant CA3608095 (“**2014 Covenant**”) was registered in conjunction with a rezoning of the Lands to facilitate the development proposed at the time. The Transferor has consolidated the Lands and dedicated road, in accordance with the Covenant, and has requested amendments to both the 2014 Covenant and related Housing Agreement to reflect a revised proposal, which is intended to be consistent with the zoning. The Transferor has requested this Modification, acknowledging that it was and remains in the public interest that the use and development of the Lands be limited, and the Transferee has accepted this Modification and required its registration (the “**Modification Agreement**”).
- D. The parties acknowledge and agree that sections 1 and 2 of the 2014 Covenant have been completed and are no longer required to be in effect.
- 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 Transferee 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 parcels of land designated in the covenant and registered under one or more indefeasible titles are not to be sold or otherwise transferred separately.

NOW THEREFORE in consideration of the payment of the sum of \$10.00 by the Transferee to the Transferor (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 parties agree to modify the 2014 Covenant by replacing section 3 with the

following:

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 forty-one (41) 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 4-41 – 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. The parties agree to modify the 2014 Covenant by replacing the “27” in subsection 4(h) with “17” such that the provision now reads:

(h) No less than 17 new trees will be planted on the Lands prior to use in accordance with the Rezoning Bylaw, and perpetually maintained, including replaced;

3. Except as expressly hereby modified, all terms, covenants, conditions and provisos of the 2014 Covenant shall continue in full force and effect. For greater certainty, the modifications above do not relieve of or replace the requirements under the zoning, including amenities for density bonusing, development permit or other bylaws and permits.

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

Registration

8. 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.
9. 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.
10. The Owner agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement..
11. 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

12. 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.

13. 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.
14. 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.
15. The Owner covenants and agrees that the Township's Director of Development Services may, but is not obligated to, inspect the strata bylaws, parking spaces 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,.
16. 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.
17. 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.
18. 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.
 19. 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.
 20. 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.
 21. 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.
 22. Any notice required or permitted to be give 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.
 23. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

Priority

24. CANADIAN WEESTERN BANK (the “**Chargeholder**”) is the registered holder of a charge by way of MORTGAGE and ASSIGNMENT OF RENTS against the Lands, registered under No. CA66544254 AND CA66544255 respectively (the “**Charges**”), and agrees with the Transferee, in consideration of the sum of Ten Dollars (\$10.00) paid by the Transferee to the Chargeholder (receipt and sufficiency acknowledged), that the Modification 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.

25. ROYAL CANADIAN LEGION, BRANCH NO.172 (the "**Chargeholder**") is the registered holder of a charge by way of MORTGAGE against the Lands, registered under No. CA66544256 respectively (the "**Charge**"), and agrees with the Transferee, in consideration of the sum of Ten Dollars (\$10.00) paid by the Transferee to the Chargeholder (receipt and sufficiency acknowledged), that the Modification 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 Transferor and Transferee acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D (pages 1 and 2) attached.