

## VICTORIA LAND TITLE OFFICE

Jan-27-2019 16:19:04.001

CA7316700 CA7316701

LAND TITLE ACT  
FORM C (Section 233) CHARGE

GENERAL INSTRUMENT - PART 1 Province of British Columbia

PAGE 1 OF 5 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.

Luigi Carvello  
MX9UF9

Digitally signed by Luigi Carvello  
MX9UF9  
DN: c=CA, ou=Luigi Carvello MX9UF9,  
o=Lawyer, ou=Verify ID at  
www.juricert.com/LKUP.cfm?  
id=MX9UF9  
Date: 2019.01.27 16:17:13 -0800

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

Lui Carvello

Carvello Law Corporation

203 - 1005 Broad Street

Victoria

BC V8W 2A1

Subject to Certificate of Pending Litigation CA7189327

846 Phoenix - daycare covenant

Document Fees: \$143.16

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

001-543-547

LOT 16, SECTION 10, ESQUIMALT DISTRICT, PLAN 3060

STC? YES ☐

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Covenant

Priority Agreement

Entire Instrument except p.5 para 16

over Mortgage CA3239104 p.5 para 16

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):

ANGELIE PATRICIA FRIEBE;

THE TORONTO-DOMINION BANK (AS TO PRIORITY)

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:

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)

Charmaine L. Van Tine

Notary Public

7159B West Saanich Road

Brentwood Bay, BC V8M 1P7

Telephone 250-652-4321

Y	M	D
19	01	02

ANGELIE PATRICIA FRIEBE

## 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**

PAGE 2 of 5 PAGES

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

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Anja Nurvo

Commissioner for Taking Affidavits in British Columbia

Corporate Officer

Township of Esquimalt

1229 Esquimalt Rd. BC V9A 3P1

[As to Both Signatures]

Y M D

19 01 22

THE CORPORATION OF THE  
TOWNSHIP OF ESQUIMALT, by its  
authorized signatory(ies):

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Mayor: Barbara Desjardins

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Laurie Hurst, CAO

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Oanj Hoang Nguyen

Commissioner for Taking Affidavits in British Columbia

The Toronto Dominion Bank

10205 - 101 Street 5th Floor

Edmonton, AB T5J 5E8

Commission Expires: May 31, 2019

19 01 18

(AS TO PRIORITY)  
THE TORONTO-DOMINION BANK, by  
its authorized signatories

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Diana Tran, Discharge 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.

TERMS OF INSTRUMENT - PART 2  
**S.219 COVENANT**

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**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: 001-543-547

Lot 16, Section 10, Esquimalt District, Plan 3060

(the "**Lands**").

- B. The Transferee is the Township of Esquimalt ("**Transferee**" or "**Township**").
- C. The Lands have operated with a children's daycare for some time, and a bylaw amendment is in process to eliminate any uncertainty as to whether the use is lawful non-conforming; the Owner acknowledges that the restrictions contained herein are in the public interest, and the Owner has offered and voluntarily provided this covenant to the Township to facilitate the bylaw amendment, and the Township has accepted this covenant.
- 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*:

**Restrictions and Requirements**

1. Notwithstanding broader uses, density and other regulations, any daycare use of the Lands shall be restricted to both:
  - (a) a maximum gross floor area of 197.4 m<sup>2</sup> (or 2,124.8 square feet) and

- (b) a maximum number of 29 children.
2. For greater certainty, this Agreement does not restrict or otherwise relate to other non-daycare uses permitted by the Township'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 part shall survive the termination of this Agreement.

### **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. 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 December 31, 2019, then this Agreement shall be discharged from the Lands.

### **General**

9. 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.
10. 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.

11. 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.
12. 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.
13. 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.
14. 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.
15. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

#### **Priority Agreement**

16. THE TORONTO-DOMINION BANK (the “**Chargeholder**”), the registered holder of a charge by way of MORTGAGE against the Lands, registered under No. CA3239104 (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 this Agreement will 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.