

VICTORIA LAND TITLE OFFICE

LAND TITLE ACT
FORM C (Section 233) CHARGE

Jan-07-2020 14:38:35.001

CA7965814 CA7965816

GENERAL INSTRUMENT - PART 1 Province of British Columbia

PAGE 1 OF 19 PAGES

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

Keyvan
Shojania
91R1UZ

Digitally signed by Keyvan
Shojania 91R1UZ
Date: 2020.01.07
14:35:46 -08'00'

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

INFINITY LAW

BARRISTERS & SOLICITORS

200 - 931 FORT STREET

VICTORIA

BC V8V 3K3

250 385 6004

File No: 5678-1

1104488 B.C. Ltd. (Babak)

Document Fees: \$222.48

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

030-151-562 LOT A, SECTION 11, ESQUIMALT DISTRICT, PLAN EPP69557

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:

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)

HOSSEIN KAMOOSI

Notary Public

203 - 1819 Capilano Road

North Vancouver, BC V7P 3B6

Execution Date

Y M D

19 12 30

Transferor(s) Signature(s)

1104488 B.C. LTD. by its authorized
signatory(ies):

BEHZAD BEHESHTI FOROUTAN

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 19 PAGES

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

 Bijan Ahmadian
 Barrister & Solicitor
 1801 - 701 W. Georgia St., Box 10107
 Vancouver, BC V7Y 1C6

Y	M	D
20	01	03

 MABNA HOLDING COMPANY, by its
 authorized signatory(ies):

 Name: MOSTAFA TAVAKOLIJOU

 Name:
 (as to Priority and Consent Only)

 R. LAWRENCE SPOONER
 Barrister & Solicitor
 800 - 1070 DOUGLAS STREET
 VICTORIA, BC V8W 2C4

19	12	30
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 FIRST ISLAND FINANCIAL SERVICES
 LTD. by its authorized signatory(ies):

 Name: Darrell Morgan

 Name:
 (as to Priority and Consent Only)

 RACHEL JANE DUMAS
 Commissioner for Taking Affidavits in British Columbia
 1229 Esquimalt Road
 Esquimalt, BC V9A 3P1

20	01	07
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 THE CORPORATION OF THE
 TOWNSHIP OF ESQUIMALT by its
 authorized signatory(ies):

 Name: BARBARA DESJARDINS

 Name: LAURIE HURST

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 Document

Person Entitled to Interest: Transferee

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Priority Agreement

Document Reference page 14 paragraph 38
Granting the Restrictive Covenant herein priority
over CA7418875 & CA7418876
Person Entitled to Interest: Transferee

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Priority Agreement

Document Reference page 14 paragraph 39
Granting the Restrictive Covenant herein priority
over CA7862860 & CA7862861
Person Entitled to Interest: Transferee

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

**LAND TITLE ACT
FORM E**

SCHEDULE

PAGE 4 OF 19 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):

1104488 B.C. LTD., INC. NO. BC1104488
(the "Owner")

MABNA HOLDING COMPANY LTD., INC. NO.
(the "2nd Chargeholder")
as to Priority and Consent Only

FIRST ISLAND FINANCIAL SERVICES LTD., INC. NO. BC116225
(the "1st Chargeholder")
as to Priority and Consent Only

TERMS OF INSTRUMENT - PART 2

S.219 COVENANT**RECITALS:**

- A. 1104488 B.C. Ltd., Inc. No. BC1104488 (the “**Owner**”) is the registered owner in fee-simple of those lands with a current civic address of 899 Esquimalt Road, more particularly described in Item #2 of the Form C, in the Township of Esquimalt in the Province of British Columbia, namely:
- PID: 030-151-562
Lot A Section 11 Esquimalt District Plan EPP69557
- (the “**Lands**”).
- B. The Transferee is the Township of Esquimalt (“**Transferee**” or “**Township**”).
- C. The Owner has submitted an application to the Township to amend the Official Community Plan further to OFFICIAL COMMUNITY PLAN BYLAW, 2018, No. 2922, AMENDMENT BYLAW, 2019, NO. 2962 and to rezone the Lands to Comprehensive Development District No. 120 (899 Esquimalt Road) CD No. 120 further to ZONING BYLAW, 1992, NO. 2050, AMENDMENT BYLAW NO. 2963, (collectively, the “**Amendment Bylaws**”) to authorize the development of a ten (10) storey mixed-use building which will include a Health Clinic and may also contain other commercial uses and up to 66 residential dwelling units (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 the Amendment Bylaws, including to evidence agreement with respect to the implementation details related to amenities provided to achieve density bonusing (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*:

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

Restrictions and Requirements – Land Uses

2. 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 the Lands must not be subdivided (including under the *Strata Property Act*), built upon, or used except for a development which:
 - (a) must not include any commercial, office or non-residential uses along the Wollaston Street frontage, whether directly or indirectly accessed from Wollaston Street (the parties acknowledging the intent is to better integrate the Development with nearby residential uses, however this restriction does not apply to parking in a parkade for non-residential uses permitted on the Lands); and
 - (b) must include a minimum of 370 square metres of gross floor area dedicated to Health Clinic or facility use on the Lands. "Health Clinic or facility use" is defined as a clinic which clinic is staffed by a minimum of four (4) family physicians who are registered with and licenced by the College of Physicians and Surgeons of British Columbia as well as affiliated nurses, technicians, and office support staff (the parties acknowledging that, if there is additional clinic space, other professionals associated with the provision of health services may work in the clinic including, but not limited to, medical specialists who are registered with and licenced by the College of Physicians and Surgeons of British Columbia, naturopaths, dentists, chiropractors, optometrists, and physiotherapists).
3. The Owner further covenants and agrees the Lands must not be subdivided (including under the *Strata Property Act*), or used for any use unless the Owner has first constructed the floor area dedicated to Health Clinic or facility use which includes purpose-built medical centre construction incentives (e.g. medical specific wiring, plumbing and other rough-ins), and the building on the Lands must not be built expect in accordance with this condition.
4. The Owner further covenants and agrees the Lands must not be subdivided (including under the *Strata Property Act*), until the Owner has either secured one or more tenants for the Health Clinic or facility use at a subsidized rental rate determined in accordance with the following conditions, or provided security to the Township in the amount of \$160,000.00 related to the implementation of these subsidy incentives, all at the Owner's sole cost:

Table of Subsidies/Incentives

The following table is based on \$30/sq.ft. net per year lease/rental rate which the Owner will provide as set out in the following table.

Actual lease (\$30/Sq.Ft. NET/year on 4000 Sq. Ft., No operational cost): \$120,000				lease Equipment
year	lease rate	Incentive \$		improvement \$
1	0	\$120,000		\$25,000.0
2	50%	\$60,000.0		\$23,000.0
3	60%	\$48,000.0		\$21,000.0
4	65%	\$42,000.0		\$19,000.0
5	70%	\$36,000.0		\$17,000.0
6	75%	\$30,000.0		\$15,000.0
7	80%	\$24,000.0		\$13,000.0
8	85%	\$18,000.0		\$11,000.0
9	90%	\$12,000.0		\$9,000.0
10	95%	\$6,000.0		\$7,000.0
Sum		\$396,000		\$160,000.0*
One-time initial cash incentive		\$54,000.0*		
Extra excavation to accommodate 4000Sq.Ft.				

The lease/rental rate includes basic rent only and not Operating Costs. "Operating Costs" are defined as the standard costs not included in basic rent, these standard costs being property taxes, management fees, repair costs, landscaping costs, snow removal services costs, power and utilities service costs, and administration costs. The value of the net rent amenity must be confirmed by an independent auditor provided by the property owner.

5. The Owner has voluntarily offered to provide a cash contribution to the betterment of the community and therefore acknowledges that the Lands shall not be built upon, and the Township is not obligated to issue a building permit, for any development that exceeds a Floor Area Ratio of 1.5, unless the Owner has made a cash contribution of \$54,000 to the Township, to be used at the Township's discretion in relation to health and community well-being matters generally, on-or-off-site, including but not limited providing incentives or grants, undertaking or commissioning studies or reports, promotions and public information, establishing temporary clinics, and so on. The Owner makes such contribution in addition to and without expectation of credit towards other fees, charges, dedications and other requirements of the Township or other governmental authority.
6. The parties agree that compliance with the sections of this part shall be sufficient satisfaction of the density-bonusing-for-amenity-conditions identified in the Amendment Bylaw concerning the same subject matter (subsection (2)(b)(vi) of the CD 120 Zone).

Restrictions and Requirements – Kayak Dock

7. The Owner has voluntarily offered to provide a cash contribution to the betterment of the community, for the provision of installation and maintenance of a kayak dock in the Township, and therefore covenants and agrees that the Lands must not be built upon or used until the Owner has provided a cash contribution to the Township, in the amount of up to One Hundred and Fifty Thousand Dollars (\$150,000.00, the "**Dock Funds**"), in addition to and without expectation of credit towards other fees, charges, dedications and other requirements of the Township or other governmental authority, except that the parties agree that provision of the Dock Funds shall be sufficient satisfaction of the

density-bonusing-for-amenity-condition identified in the Amendment Bylaw (subsection (2)(b)(i) of the CD 120 Zone).

Restrictions and Requirements – Parking and EV Charging Stations

8. The Owner covenants and agrees that the Lands must not be built upon or used unless the Owner has provided, at its sole cost and without expectation of compensation from the Township, and continues to provide vehicular parking spaces and facilities on the Lands for a minimum of 10 years from the date the final Occupancy Certificate has been issued, in accordance with all of the following conditions (in addition to, and not in relief of, the Township's bylaws and development approvals):
 - (a) no fewer than five (5) parking spaces must be exclusively for the use of the "Public", for a minimum of six (6) hours a day, and signed or labeled accordingly, without fee or charge (the "Public Spaces");
 - (b) the Public Spaces must each contain electric vehicle charging stations, maintained and operated in good condition, for the free use of the public;
9. The parties agree that compliance with the previous section shall be sufficient satisfaction of the density-bonusing-for-amenity-condition identified in the Amendment Bylaw concerning the same subject matter (subsection (2)(b)(ii) of the CD 120 Zone).

Restrictions and Requirements – Built Green Canada Silver Certification

10. The Owner has voluntarily offered and committed to construction of the building(s) on the Lands to achieve the Built Green Canada Silver Certification standard, at its sole cost, and therefore covenants and agrees that:
 - (a) the building constructed upon the Lands must not be subdivided (including under the *Strata Property Act*) until it has achieved Built Green Canada Silver Certification;
 - (b) the building constructed upon the Lands must not be used or occupied, and the Owner will not apply for or seek to compel issuance of an occupancy permit/certificate, until it has provided the report of a qualified independent professional that it has constructed the building with the goal of, and in anticipation of, the Built Green Canada Silver Certification;
 - (c) within one (1) year of the earlier of completion or construction or the issuance of an occupancy permit/ certificate, the Owner must provide either:
 - (i) certification that the building(s) on the Land has been constructed to Built Green Canada Silver Certification; or
 - (ii) report of a qualified professional detailing outstanding deficiencies and a timeline for completion to attend to outstanding deficiencies in order for the building to achieve Built Green Canada Silver Certification.
11. The parties agree that:

- (a) compliance with the previous section shall be sufficient satisfaction of the density-bonusing-for-amenity-condition identified in the Amendment Bylaw concerning the same subject matter (subsection (2)(b)(iii) of the CD 120 Zone);
- (b) upon application by the Owner with sufficient rationale that stratification of the proposed building would not delay or hinder achievement of Built Green Canada Silver certification, Township Council may, but is not obligated to grant relief from the stratification constraints and expected timing of section 10 of this Agreement. Furthermore, the parties agree such relief may be granted by resolution, without public hearing and without modification of this Covenant, but always at the sole cost of the Owner.

Restrictions and Requirements – Hydro Works

12. The Lands must not be subdivided (including under the *Strata Property Act*), built upon or used, and the Owner will not apply for or seek to compel the issuance of a building permit, unless and until:

- (a) The owner has removed the existing BC Hydro pole located at the southeast corner of Esquimalt Road and Head Street in accordance with the plans and specifications prescribed by BC Hydro, and to the satisfaction of the Township's Director of Engineering and Public Works; and
- (b) The owner has buried all BC Hydro power lines, transformers and other infrastructure relevant to electrical utilities servicing, and located on or adjacent to, the Lands in accordance with the plans and specifications prescribed by BC Hydro, and to the satisfaction of the Township's Director of Engineering and Public Works,

or, with respect to the requirements of this section, provided security to the Township in the amount determined by the Township of Esquimalt's engineer.

13. The parties agree that compliance with the previous section shall be sufficient satisfaction of the density-bonusing-for-amenity-condition identified in the Amendment Bylaw concerning the same subject matter (subsection (2)(b)(iv) of the CD 120 Zone).

Restrictions and Requirements – Expanded Sidewalk SRW and Covenant

14. The Owner further covenants and agrees that Lands must not be subdivided (including under the *Strata Property Act*) built upon or used unless the Owner has provided, at its sole cost and without expectation of compensation from the Township, a Statutory Right of Way for pedestrian and other non-vehicular use and access, and related Covenant. A survey of the area shall be prepared by the Owner and not be less than the area of the Lands located within 3.2 metres of the northern lot line abutting Esquimalt Road. The terms of such right of way and covenant shall be in the Township's customary form, at its discretion (current sample appended as Schedule A), noting however the responsibility for maintenance and safe use of the right of way area is to remain with the Owner, and the Township is to be fully indemnified and released.
15. The parties agree that compliance with the previous section shall be sufficient satisfaction of the density-bonusing-for-amenity-condition identified in the

Amendment Bylaw concerning the same subject matter (subsection (2)(b)(v) of the CD 120 Zone).

Restrictions and Requirements – Crosswalks

16. The Owner has voluntarily offered to provide a cash contribution to the betterment of the community, for the provision and installation of pedestrian activated crosswalk signals in two locations in the general vicinity of the Lands (the “**Crosswalks**”), and therefore covenants and agrees that the Lands must not be built upon or used until the Owner has provided a cash contribution to the Township, in the amount of Thirty Thousand Dollars (\$30,000.00), in addition to and without expectation of credit towards other fees, charges, dedications and other requirements of the Township or other governmental authority, except that the parties agree that provision of the Crosswalk Funds shall be sufficient satisfaction of the density-bonusing-for-amenity-condition identified in the Amendment Bylaw (subsection (2)(b)(ix) of the CD 120 Zone).

Restrictions and Requirements – Transit Passes

17. The Owner further covenants and agrees to provide a one-year BC Transit bus pass for the Victoria Regional Transit System (each a “**Transit Pass**”) to each occupant of a dwelling unit on the Lands (each an “**Occupant**”) in accordance with the following:
 - (a) only those Occupants who are residents of a dwelling unit will be entitled to a Transit Pass;
 - (b) the Owner will only be required to provide a maximum of 66 Transit Passes, on average up to one Transit Pass per dwelling unit, however where no pass is requested for a dwelling unit, then requests for a second and third pass for alternate units must be accommodated, up to 66 Transit Passes in total;
 - (c) the Transit Passes may be in the form of an actual transit pass, a voucher, or a reimbursement and must be provided to each resident within 30 days of occupation of the dwelling unit (the “**Transit Contribution Date**”);
 - (d) unless the parties agree that this Section has been or may be satisfied in another manner, acting reasonably, then:
 - (i) prior to applying for occupancy permits in respect of the building it constructs upon the Lands, the Owner will provide security (the “**Transit Security**”) to secure the performance of the Owner’s covenants of this Section, such amount being determined by the following calculation:

Number of Units

x One Pass per Unit

x (Cost of Annual Pass OR Cost of Monthly Pass x 12 times)

- (ii) the Owner will provide the Transit Security in accordance with Council Policy entitled “Financial Security FIN-14” (April 18, 2006), unless Council resolves otherwise, as determined in the Township’s sole discretion;

- (iii) the Transit Security, or such proportionate amount, will be released upon the Owner providing evidence to the satisfaction of the Township's Director of Development Services, acting reasonably, that each Occupant has received a Transit Pass on or before the applicable Transit Contribution Date, such evidence may include an acknowledgment and receipt signed by each respective Occupant.

Indemnity and Release

- 18. 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.
- 19. 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.
- 20. 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.
- 21. The releases and indemnities of this Agreement shall survive its termination.

Registration

- 22. 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.
- 23. 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.
- 24. 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 June 30, 2020 and the related Development applications are abandoned, then this Agreement shall be discharged from the Lands.
- 25. 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

- 26. 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.
- 27. 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.
- 28. 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.
- 29. The Owner covenants and agrees that the Township's Director of Development Services may, but is not obligated to, inspect the parking spaces, vehicular charging, bicycle parking and kayak dock, 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 implementation of this Agreement, in conjunction with the Council of any Strata Corporation.

30. 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.
31. 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.
32. 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.
33. 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.
34. 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.
35. 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.
36. 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.

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

Priority Agreements

38. **MABNA HOLDING COMPANY LTD., INC. NO. BC773042** (the “**2nd Chargeholders**”) are the registered holder of charges by way of MORTGAGE and ASSIGNMENT OF RENTS, registered under No. CA7418875 and CA7418876 respectively (the “**2nd Charges**”), and agrees with the Township, in consideration of the sum of Ten Dollars (\$10.00) paid by the Township to the 2nd Chargeholder (receipt and sufficiency acknowledged), that the Agreement shall be an encumbrance upon the Lands in priority to the 2nd Charges in the same manner and to the same effect as if the Agreement had been dated and registered prior to the 2nd Charges.
39. **FIRST ISLAND FINANCIAL SERVICES LTD., INC. NO. BC116225** (the “**1st Chargeholders**”) are the registered holder of charges by way of MORTGAGE and ASSIGNMENT OF RENTS, registered under No. CA7862860 and CA7862861 respectively (the “**1st Charges**”), and agrees with the Township, in consideration of the sum of Ten Dollars (\$10.00) paid by the Township to the 1st Chargeholder (receipt and sufficiency acknowledged), that the Agreement shall be an encumbrance upon the Lands in priority to the 1st Charges in the same manner and to the same effect as if the Agreement had been dated and registered prior to the 1st Charges.

The Owner, Township, the 1st Chargeholder and the 2nd Chargeholder acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D attached.

Schedule A
Sample SRW/ Covenant Terms for Esquimalt Road Sidewalk

PART 1 - S.218 STATUTORY RIGHT OF WAY ("SRW")

1. The Owner, for himself, his heirs, executors, administrators, successors and assigns, hereby grants and conveys in perpetuity and at all times to the Township, its officials, employees, contractors, subcontractors, agents, licensees, invitees, permittees, and the public generally, with or without invitation, a blanket statutory right of way over the Lands and the full, free and uninterrupted right, licence, liberty, privilege, easement and right of way in common with the Owner over the Lands (the "**Statutory Right of Way**"), for the purpose of pedestrian and other non-vehicular use and access (collectively, the "**Works**"), including all associated services, including but not limited to curbs, gutters, structures, improvements, furniture, walkways, hard and soft landscaping (including but not limited to lawns, trees, shrubs, bushes, flowers and other flora), surfacing and retaining walls and such works required by the Township or necessary or convenient for lighting, drainage, irrigation and all other related utilities, furniture, equipment and elements to be installed or constructed on the Statutory Right of Way, and all other works of a similar nature or kind that may be required by the Township from time to time (collectively, the "**Related Works and Services**"), and in connection therewith:
 - (a) to facilitate uninterrupted access of the Township and the public to and through the Statutory Right of Way, on foot, bicycles, or in wheelchairs or strollers (or scooters for disabled persons but not in other private motorized vehicles).
2. No part of the title in fee-simple to the soil shall pass to or be vested in the Township under or by virtue of these presents, and the Owner may fully use and enjoy all the Lands of the Owner, subject only to the rights and restrictions herein contained.

PART 2 - S.219 COVENANT

3. The Owner hereby covenants and agrees with the Township that the Owner:
 - (a) will, at its sole cost, construct and install the Works and the Related Works and Services within the Statutory Right of Way to the satisfaction of the Township's Director of Engineering and Public Works;
 - (b) will not, and will not permit any other person, to erect, place, install or maintain any building, structure, addition to a building or structure, concrete driveway or patio, pipe, wire or other conduit on, over or under any portion of the Statutory Right of Way, without the express written consent of the Township's Director of Engineering and Public Works;
 - (c) will not do or permit to be done any act or thing which will interfere with or injure the Works or the Related Works and Services and in particular will not carry out any blasting on or adjacent to the Statutory Right of Way, without the express written consent of the Township's Director of Engineering and Public Works, the parties acknowledging that consent shall not be unreasonably withheld;
 - (d) will maintain, care for and clean, and repair and replace as necessary, the Works,

the Related Works and Services, and the surface of the Statutory Right of Way to at all times keep the Works and the Related Works and Services in a good and safe state;

- (e) will trim or, if necessary, cut down any tree or other growth on the Lands which in the opinion of the Township constitutes or may constitute a danger or obstruction to those using the Statutory Right of Way;
 - (f) will allow the Township, its officials, employees, contractors, subcontractors, agents, licensees, invitees, permittees and the public generally to enter upon the Statutory Right of Way as provided in Sections 1 of this Agreement, and not to interfere with in any way or prevent any such person coming on to the respective area for the purposes permitted by this Agreement;
 - (g) will from time to time and at all times at the reasonable request of the Township do and execute or cause to be made, done or executed any further and other lawful acts, deeds, things, devices, conveyances and assurances in law required to ensure the Township of its rights under this Agreement; and
 - (h) will permit the Township to peaceably hold and enjoy the rights granted by this Agreement.
- 4. 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.
 - 5. The Owner, as a personal covenant between the parties, agrees to pay the legal fees and land title office costs of the Township in connection with the preparation and registration of this Agreement.
 - 6. The Owner further covenants and agrees that Township, and any of its officers or employees, may but is not obligated to inspect the Statutory Right of Way for the purpose of ascertaining compliance with this Agreement.
 - 7. 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.
 - 8. 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 and its successors and assigns 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.
 - 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.

Conversion of Agreement to a Specific Statutory Right of Way and Covenant

10. The Owner further covenants and agrees that the Lands, or any building on the Lands, must not be subdivided (including under the Strata Property Act) until the Owner at its sole cost, and without expectation of compensation from the Township, has:
 - (a) undertaken further surveying and prepared a plan outlining and identifying the specific right of way area a minimum 3.2 metres wide adjacent Esquimalt Road the full length of the frontage of the Lands (the "**Specific Right of Way Plan**"), that is substantially in accordance with the right of way area shown in the Proposed SRW Plan, and
 - (b) converted this Agreement to a Specific Statutory Right of Way and covenant under Sections 218 and 219 of the Land Title Act (the "**Specific SRW**") for public sidewalks and green spaces substantially in accordance with the terms of this Agreement but limited to the area of the Lands outlined and identified in the Proposed SRW Plan, including registration by the Owner of the Specific SRW on the title of the Lands and a corresponding discharge of this Agreement to be provided by the Township to the Owner and to be registered concurrently at the Victoria Land Title Office.
11. For greater certainty, the Owner and Township acknowledge and agree that this Agreement is registered as a blanket statutory right of way charge over all the Lands to facilitate development and surveying on the Lands, and the Owner covenants and agrees to undertake further surveying to replace this Agreement with a specific statutory right of way and covenant, and the Township agrees to generally limit its use of the rights granted herein to the area shown on the Proposed SRW Plan, however any uncertainty is to be resolved in favour of the Township given this blanket charge.

General Provisions:

12. Nothing in this Agreement implies that the Township has any obligation to the Owner or to any person to exercise any of its rights under Section 1 and the Township may, at its sole option, execute a release of this Agreement at any time without liability to any person for doing so.
13. No default by the Township with respect to this Agreement and no act or failure to act by the Township in connection with this Agreement will result or be deemed to result in the interruption, suspension, or termination of the Agreement, and the Owner will refrain from seeking any judgment, order, declaration, or injunction to that effect.
14. 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.
15. 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.

16. 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.
17. 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 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.
18. 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 fifteen (15) 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 Owner may add such costs to property taxes for the Lands.
19. 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. Damages will be an inadequate remedy for the Township; and the Township is entitled to an order for specific performance or a prohibitory or mandatory injunction in order to compel performance of the obligations in this Agreement.
20. 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.

21. 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.
22. 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.
23. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

The Owner and Township acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D (pages 1 and 2) attached.