

LAND TITLE ACT  
FORM C (Section 233) CHARGE

Jan-21-2020 10:20:18.001

CA7991352 CA7991354

GENERAL INSTRUMENT - PART 1 Province of British Columbia

PAGE 1 OF 14 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.

Robert James  
Maguire E74FZ5

Digitally signed by Robert  
James Maguire E74FZ5  
Date: 2020.01.21  
09:46:55 -08'00'

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

Maguire & Company  
1727 Jefferson Avenue

250-370-0300  
File No.: 036/18  
Section 219 Covenant - 937 Colville

Victoria BC V8N 2B3

Document Fees: \$222.48

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

**003-679-144 LOT 4, BLOCK 1, SECTION 10, ESQUIMALT DISTRICT, PLAN 6277**

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))

**TOWNSHIP OF ESQUIMALT**

1229 ESQUIMALT ROAD

VICTORIA

V9A 3P1

BRITISH COLUMBIA

CANADA

Incorporation No

00000

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)

ROBERT JAMES MAGUIRE

Barrister & Solicitor

1727 Jefferson Avenue

Victoria, BC V8N 2B3

Execution Date

Y	M	D
20	01	09

Transferor(s) Signature(s)

LAPIS HOMES LTD., by its  
authorized signatory

Ryan Thomas Jabs

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.

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 **14** PAGES

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

**Covenant****Section 219 Covenant**

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

**Priority Agreement****granting Covenant priority over Mortgage  
CA6704706**

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

**Priority Agreement****granting Covenant priority over Assignment of  
Rents CA6704707**

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**

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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)**

**OWNERS:**

LAPIS HOMES LTD., INC.NO. BC1063135  
1156835 B.C. LTD., INC.NO. BC1156835

**MORTGAGEE:**

VANCOUVER CITY SAVINGS CREDIT UNION, INC. NO. FI 97

## TERMS OF INSTRUMENT - PART 2

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**RECITALS:**

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- A. The Transferor (the “**Owner**”) is the registered owner in fee-simple of those lands with a current civic address of 937 Colville Road, more particularly described in Item #2 of Form C, in the Township of Esquimalt in the Province of British Columbia, namely:

003-679-144                      Lot 4, Block 1, Section 10, Esquimalt District, Plan 6277

(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. 126 (937 Colville Road) CD No. 126 further to ZONING BYLAW, 1992, NO. 2050, AMENDMENT BYLAW NO. 2975 (the “**Amendment Bylaw**”) to authorize the development of six residential townhouse dwelling units in one building on the Lands, with 5 parking spaces including 1 permanent visitor parking space, and bicycle parking facilities including the provision of two electric bikes (the “**Development**”), and acknowledging that the amenities and restrictions contained herein are in the public interest the Owner has offered and voluntarily provided this Section 219 Covenant to the Township, and the Township has accepted this covenant and required its registration as a condition of the Amendment Bylaw (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 Township’s zoning bylaw, as amended from time to time.

### **Restrictions and Requirements – Development Only except for Existing SFR Use**

2. The Lands shall not be subdivided, built upon or used except for the Development in accordance with the Amendment Bylaw, with the sole exception being continuation of the existing single family residence with one dwelling unit as a lawful non-conforming use.

### **Restrictions and Requirements – No Additional Suites and No Ability to Restrict Rentals**

3. 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 that the Lands must not be subdivided (including under the *Strata Property Act*), built upon or used for more than six (6) dwelling units. For greater certainty, the Owner covenants and agrees that it will at no time allow or permit the creation of additional suites within any dwelling units or otherwise on the Lands.
4. The Owner further covenants and agrees that it will not limit or restrict rental of the dwelling units as residential rental units. For greater certainty, if the dwelling units are stratified, they may be occupied by owners or tenants, or both, for residential use only.

### **Restrictions and Requirements – BC Building Code Step 3**

5. The Owner covenants and agrees that the Lands must not be built upon except with a building that meets or exceeds the standards and requirements of BC Building Code Step 3 and the Township's Bylaws.

### **Restrictions and Requirements – The Landscaped Open Area**

6. The Owner covenants and agrees that the Lands must not be subdivided (including under the *Strata Property Act*) or used for residential purposes, unless and until the Owner has, at its sole cost and without expectation of compensation from the Township:
  - (a) constructed on the Lands a landscaped and open space area no less than forty-two (42) square metres in area (the "**Landscaped Open Area**"), generally to be located on the south-east corner of the Lands in accordance with that area highlighted in purple and labelled as "Landscaped Open Area" by the Township on the copy of the Landscape Concept Plan, as amended by the Township and titled as "SCHEDULE A", prepared by Imagine Garden Design & Landscapes, dated April 18, 2019 and date-stamped "received" by the Township on April 23, 2019, a copy of which is appended to this Covenant as Schedule "A", or
  - (b) provided security to the Township in form, amount and terms acceptable to the Township's Director of Development Services, as a guarantee that the Landscaped Open Area will be constructed by the Owner prior to use and occupancy of Lands for residential purposes.

The parties acknowledge and agree that any site plan or graphic representation of the Landscaped Open Area included in the Schedule A is schematic only and the exact configuration of boundaries may be determined in accordance with subsequent development, with or without surveys, and provided that any changes are consistent with this Agreement and the Transferee's bylaws, permits and regulations, this

Agreement shall be interpreted to apply to the areas so defined. The parties further acknowledge and agree that the parties may modify this Agreement from time to time to reflect the more accurate description of the Landscaped Open Area, at the cost of the Owner, and the Owner agrees that these covenant restrictions may be registered against the whole of the Lands until such modification.

7. The Owner further covenants and agrees that:
  - (a) the Landscaped Open Area and other landscaping on the Lands, as shown on Schedule A and including any landscaping installed within the Landscaped Open Area by the Owner, shall be maintained in perpetuity by the Owner, and this landscaping may include a rain garden or other feature to manage rainwater; and
  - (b) the Landscaped Open Area must not be used for parking.

### **Restrictions and Requirements – Parking and EV Charging**

8. The Owner covenants and agrees that the Lands must not be subdivided (including under the *Strata Property Act*) unless the Owner has provided, at its sole cost and without expectation of compensation from the Township, and continues to provide five (5) vehicular parking spaces and facilities on the Lands in accordance with all of the following conditions (in addition to, and not in relief of, the Township's bylaws and development approvals), and notwithstanding Sections 9(4) and 13 of the Township's Parking Bylaw, 1992, No. 2011:
  - (a) conduits for the 5 vehicular parking spaces that are wired (240V, AC plug with a dedicated 40 amp circuit) for Level 2 electric vehicle charging stations;
  - (b) four (4) of the 5 parking spaces are to be small car spaces with a maximum size of 2.4 meters x 4.5 meters; and
  - (c) of the 5 vehicular parking spaces, a minimum of one (1) vehicular parking space must be a full size parking space, with a maximum size of 2.9 meters x 5.5 meters, and this parking space must be exclusively for the use of "Visitors", and signed or labelled accordingly (the "**Visitor Space**").
9. The Owner further covenants and agrees, without limiting the above, that occupants of the Dwelling Units must only park on the Lands in parking stalls specifically designated for residents' parking and not the Visitor Space.
10. The Owner further covenants and agrees that the Owner must not divest or allocate the Visitor Space, in a manner that would allow it to be assigned or reserved for the exclusive use of the dwelling units, occupants or owners, or otherwise sold, leased, or licenced separately. 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.
11. The Owner further covenants and agrees not to build any parking spaces on the Lands other than the 5 parking spaces specified in Section 8 of this Agreement.



## Restrictions and Requirements – Car Share Services

12. The Owner acknowledges that approval for the Development was sought based on a reduced parking standard and therefore further covenants and agrees to:
  - (a) at its expense, enter into and maintain, in perpetuity, a shared vehicle service agreement that is attached to each of the 6 dwelling units within the Development (a “**Shared Vehicle Service Agreement**”), with Modo Co-operative (“**Modo**”) or a similar Shared Vehicle Organization (“**Shared Vehicle Organization**” meaning an entity whose principal business objective is to provide its members, for a fee, with a car-sharing service by which such members have self-serve access to a fleet of shared vehicles which they may reserve for use on an hourly or other basis) (the “**Shared Vehicle Service**”), the terms of which agreement will include, *inter alia*, that the Shared Vehicle Organization will provide Shared Vehicle Service to the owners or tenants of the 6 dwelling units within the Development during such individual occupant’s period of occupancy of a dwelling unit; and
  - (b) the Owner further covenants and agrees to, in perpetuity, pay the applicable membership fee of the Shared Vehicle Service for the individual users within the 6 dwelling units (the membership fee contemplated to be \$500 per individual user).
13. The parties acknowledge that the Owner’s intended Shared Vehicle Organization is Modo but also acknowledge that the Shared Vehicle Organization may change in the future to another similar organization, and the Owner covenants and agrees to obtain the written approval of the Township’s Director of Development Services, for:
  - (a) any change in the Shared Vehicle Organization if the Owner wishes to contract with a Shared Vehicle Organization other than Modo, and
  - (b) any Shared Vehicle Service Agreement made between the Owner and Modo or any other Shared Vehicle Organization.
14. Individual dwelling units may not be used or occupied, or continue to be used or occupied, for residential uses until and unless the Owner:
  - (a) maintains a Shared Vehicle Service Agreement with a Shared Vehicle Organization in accordance with this Part; or
  - (b) provides a written submission to the Township’s Director of Development Services identifying the circumstances why compliance with the car share provisions of this Agreement cannot be satisfied and the undue hardship that would be caused if relief is not granted.
15. The parties agree that, under this Part, to facilitate timely decision making:
  - (a) The Township’s Director of Development Services may provide approval or relief, in his or her sole discretion;
  - (b) Either the Director or the person requesting approval or relief may seek further direction from Township Council;



- (c) Relief is only effective for so long as the facts that lead to the relief remain applicable; and
- (d) the approval or relief must be made in writing, but may be made without Modification under s.219 of the *Land Title Act*.

### Restrictions and Requirements – Electric Bicycles

16. The Owner acknowledges that approval for the Development was sought based on a reduced parking standard and therefore further covenants and agrees that the Lands must not be subdivided (including under the *Strata Property Act*), unless the Owner has, at its sole cost and without expectation of compensation from the Township:
  - (a) provided, and continued to provide, one exterior bike rack located on the north-east corner of the Lands (the “**Bike Rack**”) and one bike storage area (the “**Bike Storage Area**”) generally as shown on the plans submitted with the Amendment Bylaw (each as may be modified by Development Permit), the latter with a minimum of two (2) electric outlets installed capable of simultaneously charging a minimum of two (2) electric bicycles;
  - (b) provided a minimum of two (2) electric bicycles for shared use by the future strata corporation’s owners and occupants of the 6 dwelling units (the “**Shared E-Bicycles**”); and
  - (c) established and funded, through a one-time payment of five hundred dollars (\$500.00), a maintenance account with Velofix mobile bike services (or such other service provider agreed to in writing by the Director of Development Services) to ensure that the Shared E-Bicycles are maintained in good working order.
17. The Owner covenants and agrees to maintain, and continue to provide in perpetuity, the Bike Rack and the Bike Storage Area.
18. The Owner further covenants and agrees to maintain and continue to provide the Shared E-Bicycles for a period of five (5) years from the date that an occupancy certificate has been issued for the Development on the Lands (the parties acknowledging that thereafter shall be at the discretion of the Owners or Strata Corporation, however acknowledging that the lack of bicycles shall not result in additional parking use of the Lands or surrounding streets).

### Indemnity and Release

19. 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.
20. 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.

21. Without limiting the above release and indemnity, the Owner acknowledges that this Agreement may be interpreted to contain conditions, restrictions, requirements, benefits or gifts that may not be specifically identified or required by law, although consistent with the Township's Regional Growth Strategy, Official Community Plan and Zoning Bylaw. The Owner hereby expresses its intention to be solely responsible for the costs resulting from satisfying the conditions of this Agreement. 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.
22. The release and indemnity provisions of this Agreement survive its termination.

### **Registration**

23. 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.
24. 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.
25. The Owner agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
26. 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.

### **General**

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

28. 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.
29. 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.
30. The Owner acknowledges that the Township does not represent to the Owner or to any other person that any future application for subdivision of the Lands by the owner will be approved.
31. 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.
32. The parties agree that this Agreement shall not be modified or discharged except in accordance with the provisions of section 219(9) of the *Land Title Act*.
33. The Owner covenants and agree that the Township's Director of Development Services may, but is not obligated to, inspect the parking spaces, including Visitor Spaces and, vehicular charging stations, and such other matters addressed in this Agreement, 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 and the proper function of the parking spaces.
34. 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.
35. 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 time longer 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 3% 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.
36. 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.
  37. 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.
  38. 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.
  39. 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.
  40. 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.
  41. Whenever the plural, singular, masculine or neuter is used herein, the same shall be construed as including the plural, singular, feminine, body corporate or politic unless the context requires otherwise.
  42. Where there is a reference to an enactment of the Province of British Columbia in this Agreement, that reference shall include a reference to any subsequent enactment of the Province of British Columbia of like effect, and unless the context otherwise requires, all statutes referred to herein are enactments of the Province of British Columbia.

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

**Priority**

44. VANCOUVER CITY SAVINGS CREDIT UNION, Inc. No. FI 97 (the “**Chargeholder**”) is the registered holder of charges by way of MORTGAGE and ASSIGNMENT OF RENTS, registered under No. CA6704706 and No. CA6704707 respectively charging title to the Lands (collectively all of which charges are referred to below as the “**Charges**”) and 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 (pages 1 and 2) attached.



