

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.

**Gary Wayne
Kinar 8E1PFP**

Digitally signed by Gary
Wayne Kinar 8E1PFP
Date: 2020.05.28
10:15:53 -07'00'

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

Kinar Curry Lawyers

852 Fort Street

Suite 200

Victoria

BC V8W 1H8

Document Fees: \$74.87

File 8036/GWK

Telephone: 250-383-8685

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

SEE SCHEDULE

STC? YES ☐

3. NATURE OF INTEREST

Covenant

CHARGE NO.

ADDITIONAL INFORMATION

s 219

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):

DIMMA PACIFIC PROPERTIES LTD. (INC. NO. 459190)

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

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)

Execution Date

Transferor(s) Signature(s)

Gary Wayne Kinar

Barrister & Solicitor

**200-852 Fort Street, Victoria, British
Columbia V8W 1H8**

Y	M	D
20	05	15

**Dimma Pacific Properties Ltd. (Inc.
No. 459190) by its authorized
signatory:**

**Christopher Anthony Brand Travis,
Secretary/director**

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 15 PAGES

Officer Signature(s)

Execution Date

Y M D

Rachel Dumas

20 05 26

Commissioner for Taking Affidavits in British Columbia

Corporate Officer
Corporation of the Township of
Esquimalt
1229 Esquimalt Rd., Esquimalt, BC
V9A 3P1

(as to all signatures)

Transferor / Borrower / Party Signature(s)

TOWNSHIP OF ESQUIMALT, by its
authorized signatories:

Barbara Desjardins, Mayor

Laurie Hurst, CAO

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

**LAND TITLE ACT
FORM E****SCHEDULE**PAGE 3 OF 15 PAGES

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

002-923-157 LOT 2, SUBURBAN LOTS 50 AND 41, ESQUIMALT DISTRICT, PLAN 25565

STC?

YES ☐

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

002-923-211 LOT 3 OF SUBURBAN LOT 41, ESQUIMALT DISTRICT, PLAN 25565

STC?

YES ☐

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

STC?

YES ☐

TERMS OF INSTRUMENT - PART 2

RECITALS:

- A. The Transferor (the “**Owner**”) is the registered owner in fee-simple of those lands with a current civic address of 636 and 640 Drake Avenue, more particularly described in Item #2 of Form C, in the Township of Esquimalt in the Province of British Columbia, namely:
- 002-923-157 Lot 2, Suburban Lots 50 and 41, Esquimalt District, Plan 25565
- 002-923-211 Lot 3 of Suburban Lot 41, Esquimalt District, Plan 25565
- (collectively, 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. 116 (636/ 640 Drake Avenue) CD No. 116 further to OFFICIAL COMMUNITY PLAN BYLAW, 2018, NO. 2922, AMENDMENT BYLAW NO. 2950 and ZONING BYLAW, 1992, NO. 2050, AMENDMENT BYLAW NO. 2951 (the “**Amendment Bylaws**”) to authorize the development of 7 residential dwelling units, (including five 3 bedroom units and two 2 bedroom units) to be constructed in three buildings on the Lands, with 11 parking spaces including 7 parking spaces located within the garages of the dwelling units, 1 permanent visitor parking space, and 3 additional strata parking spaces (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 – Consolidation prior to Development

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 that the Lands must not be subdivided (including under the *Strata Property Act*), built upon, or used for any use (other than continuation of the uses lawful at the time of this Agreement), until the Owner has, at its sole cost and without expectation of compensation from the Township, consolidated the two (2) parcels that comprise the Lands into one parcel (the "**Consolidation**").
3. The Owner further covenants and agrees that the two (2) parcels that comprise the Lands must not be sold or otherwise transferred separately. This provision is only in effect until the Consolidation has occurred.

Restrictions and Requirements – No Additional Suites and No Restriction on Rentals

4. 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 no more than seven (7) dwelling units will be built upon, used or otherwise permitted on the Lands.
5. The dwelling units must only be used for residential purposes and must not contain additional suites.
6. The Owner further covenants and agrees for itself, its heirs, executors, successors and assigns, including any future strata corporations, that it will not restrict rentals of the dwelling units as residential rental units.

Restrictions and Requirements – BC Building Code Step 3

7. The Lands must not be built upon except with buildings that meet the standards and requirements of BC Building Code Step 3.

Restrictions and Requirements – Outdoor Social Area, Visitor Bike Rack, and Garbage Area

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 the following amenities, developed in accordance with the February 10, 2020 Landscape Grading Plan and the February 10, 2020 Landscape Plan, both prepared by Keith N. Grant Landscape Architecture Ltd. and date-stamped "received" by the Township on February 19, 2020, a copy of each of which are appended to this Covenant as Schedule "A":
 - (a) an outdoor social area with benches and a wood arbour;
 - (b) a bike rack; and

- (c) a screened garbage area.

Restrictions and Requirements – Drainage Field Area

9. 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 on the Lands a drainage field area with overflow to retain a percentage of Stormwater on site, developed and located in accordance with the Preliminary Servicing plan prepared by J E Anderson & Associates and date-stamped “received” by the Township on October 21, 2019, a copy of which is appended to this Covenant as Schedule “B”.

Restrictions and Requirements – Parking and EV Charging

10. 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 a minimum of eleven (11) vehicular parking spaces and facilities on the Lands, developed and located in accordance with the March 5, 2018 Site plan which was revised on January 20, 2020, prepared by Powell & Associates and date-stamped “received” by the Township on February 19, 2020, a copy of which is appended to this Covenant as Schedule “C”, in accordance with all of the following conditions (in addition to, and not in relief of, the Township’s bylaws and development approvals):
 - (a) each of the seven (7) dwelling units will be built with a garage within the principal building that contains one (1) vehicular parking space, for use by the residents of that dwelling unit, that is wired (240V, AC plug with a dedicated 40 amp circuit) for Level 2 electric vehicle charging stations (the “**Garage Parking Spaces**”);
 - (b) a minimum of one (1) vehicular parking space that is exclusively for the use of visitors, and signed or labelled accordingly (the “**Visitor Space**”);
 - (c) without limiting the above, the Owner or any future strata corporation 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;
 - (d) in addition to the seven (7) Garage Parking Spaces and one (1) Visitor Space, a minimum of three (3) additional outdoor vehicular strata parking spaces (the “**Additional Strata Spaces**”) that are administered by the Owner until the Lands are stratified and by the Strata Corporation after stratification of the Lands;
 - (e) without limiting the above, the Owner or any future strata corporation must not sell or transfer ownership of the three (3) Additional Strata Spaces, but may:
 - (i) lease these parking spaces to residents of the seven (7) dwelling units,
 - (ii) use them as additional visitor parking spaces, or
 - (iii) use them as parking spaces for use of both visitors and residents;

- (f) residents of the seven (7) dwelling units must not park in:
 - (i) the Visitor Space,
 - (ii) the three (3) Additional Strata Spaces, unless permitted to do so by the Owner or, once the land is stratified, by the Strata Corporation, or
 - (iii) on other parts of the parking area or Lands; and
 - (g) 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. For greater certainty, the Owner further covenants and agrees that the Owner, or any future strata corporation, will not permit commercial use of the three (3) Additional Strata Spaces, and will not permit use of these three parking spaces by any person other than a resident of one of the Development's seven (7) dwelling units or a visitor of one of these dwelling units.

Restrictions and Requirements – Transit Passes

12. 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 new property purchaser of a dwelling unit in the development in accordance with the following:
- (a) the Owner will only be required to provide a maximum of seven (7) Transit Passes, one Transit Pass per dwelling unit; and
 - (b) the Owner further covenants and agrees that the Lands must not be built upon, subdivided (including under the *Strata Property Act*), or used for residential purposes, and the Owner will not be entitled to apply for, and will not apply for, building permits in respect of the Development unless and until the Owner has:
 - (i) provided the required funds in the amount of Seven Thousand Dollars (\$7,000) (the **"Transit Pass Funds"**) to BC Transit to fund the seven (7) Transit Passes;
 - (ii) provided the Township with written confirmation from BC Transit which states that:
 1. BC Transit is in possession of the Transit Pass Funds,
 2. the Transit Pass Funds are non-refundable to the Owner, unless BC Transit receives written approval of Township Staff to release the funds to the Owner, and
 3. upon notification from the Owners that the dwelling units have been purchased and occupied, BC Transit will:
 - a. issue a Transit Pass for a registered owner of each of the seven (7) dwelling units, or their designate, and

- b. deliver the issued Transit Passes to the Owners so that the Owners can deliver the Transit Passes to the registered owners of the seven (7) dwelling units or their designates; and
- (c) The Owner further covenants and agrees to deliver the Transit Passes to the registered owners of the seven (7) dwelling units, or their designates, upon receipt of the Transit Passes from BC Transit.

Indemnity and Release

- 13. 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.
- 14. 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.
- 15. 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.
- 16. The release and indemnity provisions of this Agreement survive its termination.

Registration

- 17. 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.
- 18. 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.
- 19. The Owner agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
- 20. 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

- 21. 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.
- 22. 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.
- 23. 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.
- 24. 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.
- 25. 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.
- 26. 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*.

27. The Owner covenants and agree that the Township's Director of Development Services may, but is not obligated to, inspect the eleven (11) vehicular parking spaces, including the Additional Strata Spaces and the Visitor Space, 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.
28. 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.
29. 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 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.
30. 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.
31. 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.
32. 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.

33. 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.
34. 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.
35. 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.
36. 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.
37. 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.

SCHEDULE C

Site Plan, dated March 5, 2018 and revised January 20, 2020

