

LAND TITLE ACT  
FORM C (Section 233) CHARGE

Jan-13-2021 16:38:57.001

CA8702656 CA8702658

GENERAL INSTRUMENT - PART 1 Province of British Columbia

PAGE 1 OF 11 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.

Paul Gareth  
Cowper Morgan  
M67WIW

Digitally signed by Paul  
Gareth Cowper Morgan  
M67WIW  
Date: 2021.01.13 16:15:26  
-08'00'

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

Blue Bridge Law

100 - 388 Harbour Road

Victoria

BC V9A 3S1

Document Fees: \$224.61

File: 10089-001

Phone: 250-940-5896

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

005-010-390

LOT D, SECTION 10, ESQUIMALT DISTRICT, PLAN 11683

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:

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)

Paul G. Morgan

Barrister &amp; Solicitor

#100-388 Harbour Road

Victoria, BC V9A 3S1

Execution Date

Y	M	D
20	08	25

Transferor(s) Signature(s)

1175902 B.C. Ltd.  
by its authorized signatory:

Andrew Trevor Mills

## 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

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

\_\_\_\_\_  
Rachel Dumas  
Commissioner for Taking Affidavits in British Columbia  
1229 Esquimalt Road  
Esquimalt, BC V9A 3P1  
  
(as to both signatures)

Y	M	D
20	09	14
20	09	03

The Corporation of the Township of  
Esquimalt  
by its authorized signatory(ies):

\_\_\_\_\_  
Name: Barbara Desjardins

\_\_\_\_\_  
Name: Laurie Hurst

[as to priority]

Coast Capital Savings Credit Union  
by its authorized signatory(ies):

\_\_\_\_\_  
Name: Andrea Martisca

\_\_\_\_\_  
Name: Nancy McNeill

\_\_\_\_\_

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 11 PAGES

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Section 219 Covenant Part 2 except paragraph 23 therein

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Granting Covenant _____ priority over Mortgage CA7092514 Part 2, paragraph 23

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Granting Covenant _____ priority over Assignment of Rents CA7092515 Part 2, paragraph 23

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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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):**

1175902 B.C. Ltd. (Inc. No. BC1175902)

Coast Capital Savings Credit Union  
[as to priority]

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

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**RECITALS:**

- A. The Transferor ("**Owner**") is the registered owner in fee-simple of the following lands in the Township of Esquimalt in the Province of British Columbia:
- PID: 005-010-390  
 Lot D, Section 10, Esquimalt District, Plan 11683 (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. 132 (1048 Tillicum Road) CD No. 132 further to ZONING BYLAW, 1992, NO. 2050, AMENDMENT BYLAW NO. 2994 (the "**Amendment Bylaw**") to authorize the development of five strata townhouse residences in two buildings (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 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*:

**Restrictions and Requirements – Permitted Uses and Density**

1. 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:
  - (a) until the Development is constructed, the Lands may only be used for the uses

and buildings existing as of the date of registration of this Agreement;

- (b) the Lands must not be subdivided (including under the *Strata Property Act*), built upon, or used for any use (other than continuation of the already established lawful uses with existing buildings), until the Owner has, at its sole cost, demolished, removed or re-purposed the existing buildings on the parcel; and
  - (c) in accordance with the proposed Development, the Lands must not be subdivided, built upon or used for more than a total of five (5) dwelling units.
2. 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 – Parking and Screening**

3. The Owner covenants and agrees that the Lands must not be built upon, used or continue to be used, unless the Owner has provided, at its sole cost and without expectation of compensation from the Township, and continues to provide:
- (a) two (2) visitor bicycle lockups within the parking area, and
  - (b) garbage and recycling area fully and effectively screened,
- all as generally shown on the Site Plan, SK-1, prepared by ZebraDesign and date-stamped by the Township "Received April 20, 2020", the original of which is within Township files, and a copy attached as Schedule "A" for convenience ("**Site Plan**").
4. The Owner further covenants and agrees that the Lands must not be built upon, used or continue to be 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 eight (8) 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):
- (a) each of the five (5) dwelling units will be built with a garage within the principal building that contains one (1) vehicular parking space, for use by that dwelling unit (the "**Garage Parking Spaces**");
  - (b) in addition to the five (5) Garage Parking Spaces, a minimum of three (3) vehicular parking spaces must be exclusively for the use of "Visitors", and signed or labelled accordingly (the "**Visitor Spaces**"), must be provided on the Lands as shown on the Site Plan;
  - (c) all eight (8) vehicular parking spaces must be wired for, and have installed, Level 2 (240V, AC plug with a dedicated 40 amp circuit) electric vehicle charging stations (or better); and
  - (d) without limiting the above, the Owner must not divest or allocate the Visitor Spaces, in a manner that would allow them 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.

5. The Owner further covenants and agrees that the Township's Director of Development Services, may, but is not obligated to, inspect the parking spaces, bicycle facilities and other features shown on the Site Plan and secured by this Agreement, and the Owner shall implement any reasonable measures identified by the Director of Development Services as a result of such inspection.

### **Indemnity and Release**

6. 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.
7. 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.
8. 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.
9. The releases and indemnities of this Agreement shall survive its termination.

### **Registration**

10. 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.
11. 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.

12. The Owner agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement. However, the Township acknowledges that if the Amendment Bylaw is not adopted by the Township by December 31, 2020 and the related Development applications are abandoned, then this Agreement shall be discharged from the Lands.
13. 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

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

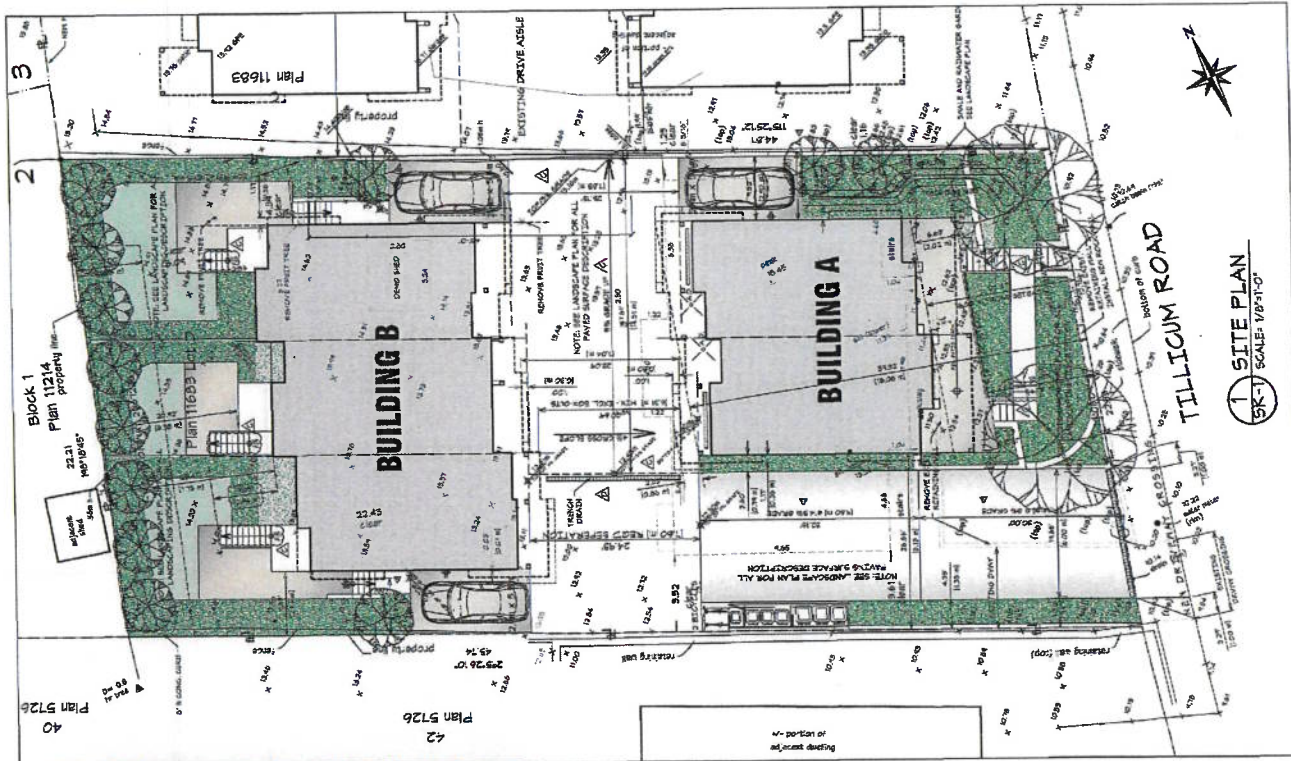
### Priority

- 23. COAST CAPITAL SAVINGS CREDIT UNION (the "**Chargeholder**") the registered holder of charges by way of MORTGAGE and ASSIGNMENT OF RENTS against the Lands, registered under No. CA7092514 and No. CA7092515 (the "**Charges**"), agrees with the Transferee, in consideration of the sum of Ten Dollars (\$10.00) paid by the Transferee to the Chargeholder (receipt and sufficiency acknowledged), that the 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 attached.

**Schedule A – Site Plan SK-1 date stamped April 20, 2020**

*[see attached]*



**PROJECT DATA**

LEGAL DESCRIPTION  
LOT D, SECTION D,  
ESQUIMALT DISTRICT, PLAN 11683

CURRENT ADDRESS  
1048 TILLICUM ROAD

ZONING  
COMMERCIAL ZONE, RD-1 (TWO-FAMILY)

PROPOSED ZONE: CD

**SITE AREA**  
4654 m<sup>2</sup> (10,752 sq ft) PER SURVEY

**NO. OF UNITS**  
5 (REV)

**TOTAL COVERAGE**  
1915.5 m<sup>2</sup> (4171.3 sq ft) = 41.4%

**FLOOR AREA**  
BLDG. A COV. 146.19 m<sup>2</sup> (1583.5 sq ft)  
BLDG. B COV. 146.19 m<sup>2</sup> (1583.5 sq ft)  
TOTAL COV. 292.38 m<sup>2</sup> (3137.0 sq ft)

**FLOOR AREA**  
BLDG. A COV. 146.19 m<sup>2</sup> (1583.5 sq ft)  
BLDG. B COV. 146.19 m<sup>2</sup> (1583.5 sq ft)  
TOTAL COV. 292.38 m<sup>2</sup> (3137.0 sq ft)

**FLOOR AREA**  
BLDG. A COV. 146.19 m<sup>2</sup> (1583.5 sq ft)  
BLDG. B COV. 146.19 m<sup>2</sup> (1583.5 sq ft)  
TOTAL COV. 292.38 m<sup>2</sup> (3137.0 sq ft)

**SETBACKS BUILDING A**

SETBACK TYPE	COMPARE	PROPOSED
FRONT @ STREET	6.60 m 22.31	6.60 m 22.31
PERMITTED REDUCTION OF FRONT YARD FOR EX. DECKS	2.56 m 8.73	2.02 m 6.63
SEPARATION TO BLDG. B AT GRADE	7.6 m 24.95	7.6 m 24.95
SIDE NORTH	2.4 m 7.87	3.10 m 10.17
SIDE SOUTH	2.4 m 7.87	3.10 m 10.17

**SETBACKS BUILDING B**

SETBACK TYPE	COMPARE	PROPOSED
REAR	6.40 m 21.0	1.15 m 3.77
PERMITTED REDUCTION OF REAR YARD FOR EX. DECKS	2.56 m 8.73	2.44 m 8.0
SEPARATION TO BLDG. A AT GRADE	7.6 m 24.95	7.6 m 24.95
SIDE NORTH	3.10 m 10.17	3.10 m 10.17
SIDE SOUTH	3.10 m 10.17	3.10 m 10.17

**RECEIVED**  
**APR 20 2020**  
**CORP OF TOWNSHIP SERVICES**  
**OF ESQUIMALT DEVELOPMENT**

**SK-1**

**ZEBRADESIGN**

**1161 NEWPORT AVE**  
**VICTORIA B.C. V8S 3E6**  
**PHONE 250 960 2144**

**SITE PLAN & PROJECT DATA**  
**PROPOSED REZONING AT**  
**1048-1050 TILLICUM RD.**  
**ESQUIMALT B.C.**

**05.07.19**  
**SCALE = 1/8"=1'-0"**

