



## 1. Application

**Cox Taylor, Barristers & Solicitors**  
**Third Floor, Burnes House**  
**26 Bastion Square**  
**Victoria BC V8W 1H9**  
**250-388-4457**

G-741-56\*LRL

## 2. Description of Land

PID/Plan Number

Legal Description

**002-900-246****LOT B, SECTION 10, ESQUIMALT DISTRICT, PLAN 25267**

## 3. Nature of Interest

Type

Number

Additional Information

**COVENANT****PRIORITY AGREEMENT**

**Priority of the Covenant having a registration number one less than this Priority Agreement over Mortgage CA7901915 (modified by CA8829200) and Assignment of Rents CA7901916**

## 4. Terms

Part 2 of this instrument consists of:

**(b) Express Charge Terms Annexed as Part 2**

A selection of (a) includes any additional or modified terms.

## 5. Transferor(s)

**GREATER VICTORIA HOUSING SOCIETY, NO.S-0005025**

**BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION, (AS TO PRIORITY OVER MORTGAGE CA7901915 (MODIFIED BY CA8829200) AND ASSIGNMENT OF RENTS CA7901916)**

## 6. Transferee(s)

**CORPORATION OF THE TOWNSHIP OF ESQUIMALT**  
**1229 ESQUIMALT ROAD**  
**ESQUIMALT BC V9A 3P1**

## 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.

Witnessing Officer Signature

Execution Date

Transferor Signature(s)

\_\_\_\_\_  
**Lindsay R. LeBlanc**  
**Barrister & Solicitor**

Third Floor, Burnes House  
26 Bastion Square  
Victoria BC V8W 1H9

YYYY-MM-DD

**2021-02-08**

**Greater Victoria Housing Society**  
By their Authorized Signatory

\_\_\_\_\_  
**Kaye Melliship**

\_\_\_\_\_  
**Kent Verge**

**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.

Witnessing Officer Signature

Execution Date

Transferor Signature(s)

\_\_\_\_\_  
**Charlotte K. Wong**  
**Barrister & Solicitor**

2110 Burquitlam Drive  
Vancouver BC V5P 2P1

YYYY-MM-DD

**2021-02-24**

**British Columbia Housing  
Management Commission**  
By their Authorized Signatory

\_\_\_\_\_  
**Print Name: Stephanie Allen**

(as to both signatures)

\_\_\_\_\_  
**Print Name: Stacey Lee**

**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.



Witnessing Officer Signature

Execution Date

Transferor Signature(s)

\_\_\_\_\_  
**Rachel Dumas**  
**Commissioner for Taking Affidavits**  
**for British Columbia**  
1229 Esquimalt Rd.  
Esquimalt BC V9A 3P1

YYYY-MM-DD

**2021-03-17**

**Corporation of the Township of**  
**Esquimalt**

By their Authorized Signatory

\_\_\_\_\_  
**Print Name: Barbara Desjardins,**  
**Mayor**

Corporate Officer  
Corporation of the Township of Esquimalt  
(witness as to both signatures)

\_\_\_\_\_  
**Print Name: 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.

**Electronic Signature**

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.

**Lindsay Rae**  
**LeBlanc K9BM9H**

Digitally signed by  
Lindsay Rae LeBlanc  
K9BM9H  
Date: 2021-03-18  
15:42:11 -07:00

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: 002-900-246

Lot B, Section 10, Esquimalt District, Plan 25267 (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. 130 (874 Fleming Street) CD No. 130 further to ZONING BYLAW, 1992, NO. 2050, AMENDMENT BYLAW NO. 2988 (the "**Amendment Bylaw**") to authorize the development of 137 rental apartment residences as affordable dwelling units in one (1) building on the Lands (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 – Building**

2. The Owner covenants and agrees that the Lands must not be built upon, or building used, except with a principal building that:
  - (a) meets or exceeds the standards and requirements of Step 3 of the BC Energy Step Code and the Township's Bylaws;
  - (b) does not include a primary heating source that uses fossil fuels.

### **Restrictions and Requirements – Amenity Spaces, Scooter Parking, and Bicycle Parking**

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, (in addition to, and not in relief of, the Township's bylaws and development approvals), at its sole cost and without expectation of compensation from the Township, and continues to provide the following amenities, all as generally shown on the Parkade and Site Plan, prepared by Low Hammond Rowe Architects and date-stamped by the Township "Received June 19, 2020", the original of which is within Township files, and a copy attached as Schedule "A" for convenience ("**Parkade and Site Plan**"):
  - (a) three (3) distinct amenity rooms and associated outdoor patios, for the use and enjoyment of all residents of the building, and their guests;
  - (b) 14 mobility scooter parking spaces with charging infrastructure located together on the First Storey;
  - (c) 137 bicycle parking spaces; and
  - (d) not less than 50% of the bicycle parking spaces shall include charging infrastructure for electric bicycles.

### **Restrictions and Requirements – Parking**

4. The Owner further 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 67 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) a minimum seven (7) of the vehicular parking spaces must be wired for, and have installed, Level 1 (120V, AC plug with a dedicated 20 amp circuit) electric vehicle charging stations (or better) (the "**Electric Vehicle Charging Spaces**");
  - (b) a minimum of 60 of the vehicular parking spaces must contain electrical conduit, power and electrical panel infrastructure sufficient for future Level 1 (120V, AC plug with a dedicated 20 amp circuit) electric vehicle charging stations;
  - (c) a minimum of one (1) vehicular parking space must be exclusively for the use of "Loading", and signed or labelled accordingly (the "**Loading Space**"), must be provided on the Lands as shown on the Parkade and Site Plan;

- (d) a minimum of 13 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 Parkade and Site Plan; and
- (e) without limiting the above, the Owner must not divest or allocate the Visitor Spaces, 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. 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 Parkade and 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.

### **Restrictions and Requirements – Tree Protection**

5. The Transferor acknowledges that development of the Lands affects surrounding trees and vegetation, and although the following refers to specific areas, the parties are agreed these provisions may be registered as a blanket charge, until such time as the parties agree to survey or otherwise further detail such areas for registration as a specific charge if necessary. The Transferor covenants and agrees that the Lands must not be built upon except in compliance with all of the following tree protection and preservation measures being undertaken on the Lands:
  - (a) the existing arbutus tree ("**Protected Tree**") on the Lands as shown on the Parkade and Site Plan must be retained, protected and preserved;
  - (b) the Protected Root Zone ("**PRZ**") of the Protected Tree must be established as twelve (12) times the diameter of the Protected Tree;
  - (c) excavation inside the PRZ of the tree identified in this Agreement for any reason must take place under the supervision of the project arborist or his designate;
  - (d) any excavation of the stump of a tree inside the PRZ must be supervised by the project arborist;
  - (e) any excavation for underground services inside the PRZ must be supervised by the project arborist;
  - (f) all blasting within 10m of the PRZ of the Protected Tree must be approved and supervised by the project arborist. Dynamite must not be used (no ANFO) and the smallest blast possible will be employed;
  - (g) any required pruning to accommodate any services or construction must be approved and supervised by the project arborist;

- (h) prior to site preparation and construction, temporary fencing must be installed in the areas sufficient to protect the tree determined by the project Arborist, subject to approval by the Township ("**Tree Protection Area**");
  - (i) the Tree Protection Area fencing must be anchored in the ground and made of 2x4 or similar material frame, panelled with securely affixed orange snow fence or plywood and clearly marked as TREE PROTECTION AREA- NO ENTRY;
  - (j) the area inside the Tree Protection Area must remain free of all traffic and storage of materials; and
  - (k) areas outside the Tree Protection Area fence but still within the PRZ may be left open for construction access, but these areas must be protected by vehicle traffic with either 3/4" plywood or a minimum 20cm of coarse wood chips (root zone armour).
6. The Transferor covenants and agrees that tree protection measures will not be amended in any way without approval from the project arborist, and the Township, but if amended with written consent from the Township, such may proceed without written modification of this Agreement.
  7. Prior to occupancy or use of any dwelling on the Lands, the Transferor further covenants and agrees to provide, at its sole cost, to the Township the report of an independent professional arborist confirming each of the above conditions were implemented, and such other alternatives or conditions that were necessary or required for alternative or further protection.
  8. Where a protected tree is dead, diseased, dying, severely damaged, unstable or severely leaning and in danger of falling or otherwise hazardous to persons using the Lands or neighbouring properties, the Transferor must engage an independent professional arborist to advise the Township of same in writing, and attend to the removal and replacement of the Protected Tree.
  9. In the event a Protected Tree is removed or cut down contrary to the provisions of this covenant or a Protected Tree is otherwise required to be replaced in accordance with this covenant, the Transferor must plant a replacement tree in approximately the same location as the Protected Tree removed of a similar species and comparable in size, subject to alternative requirements of the Township, and thereafter the restrictions and requirements of this Agreement shall apply to the replacement tree.
  10. For certainty, the parties acknowledge and agree that the above requirements may be additional to the Township's *Tree Protection Bylaw, 2015 No. 2837* (as amended or replaced from time to time), and nothing in this Agreement relieves compliance with that bylaw. However, the parties also agree that following development in accordance with the above restrictions and requirements, the Transferor may avail themselves of the bylaw's exemptions for protected trees that become hazardous, for municipal works and for public utilities.

## **Indemnity and Release**

11. 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.
12. As a personal covenant between the parties, 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.
13. 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. As a personal covenant between the parties, 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.
14. The releases and indemnities of this Agreement shall survive its termination.

## **Registration**

15. 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.
16. 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.
17. 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 May 31, 2021 and the related Development applications are abandoned, then this Agreement shall be discharged from the Lands.
18. 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

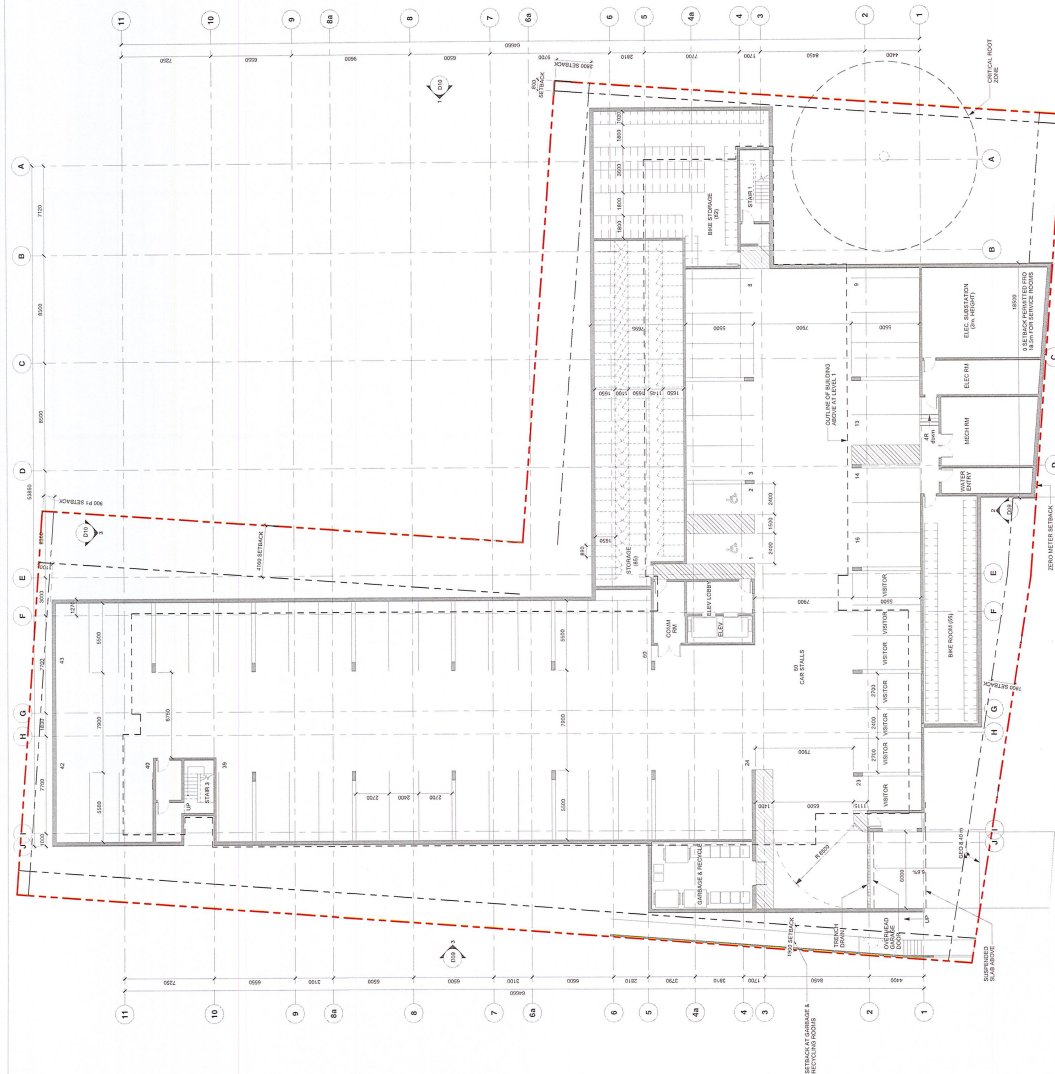
19. The Owner covenants and agrees for itself, its heirs, executors, successors and assigns, that it will at all times perform and observe the requirements and restrictions set out in this Agreement.
20. It is mutually understood, acknowledged and agreed by the parties that the Township has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Owner other than those contained in this Agreement.
21. 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.
22. 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.
23. 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.

24. 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.
25. 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.
26. 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. However, where a provision that contains an agreement or covenant between the parties is found not to be authorized under section 219 of the *Land Title Act*, that provision shall be interpreted as a personal agreement and contractual obligation between the parties, the Owner acknowledging the receipt and sufficiency of consideration.
27. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

#### **Priority Agreement**

28. BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION (the “**Chargeholder**”), the registered holder of charges by way of MORTGAGE and ASSIGNMENT OF RENTS against the Lands, registered under No. CA7901915 (modified by CA8829200) and CA7901916 (the “**Charges**”), 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 attached.



PRELIMINARY - NOT FOR CONSTRUCTION



LOW HAMMOND ROWE ARCHITECTS



ESQUIMALT RENTAL HOUSING  
874 FLEMING STREET, ESQUIMALT, BC

LEVEL PARKADE FLOOR PLAN

scale 1 : 150      date 2020.06.17

874 Fleming Street (CD-130) Rezoning Covenant / February 8, 2021

