

ATTACHMENT B
EXISTING COVENANTS

FB226410

2
 Page 1 of 10 Pages

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office use)

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent) **City File: RA000202**

Brian J. Senini Law Corporation
 30 Front Street, P.O. Box 190, Nanaimo, B. C.
 (Telephone: 754-1234) (Fax: 754-8080) File: 208062

2. PARCEL IDENTIFIER(s) AND LEGAL DESCRIPTION(s) OF LAND:*

(PID) (Legal Description)
 026-221-268 Lot 4, District Lot 48, Wellington District, Plan VIP78452

3. NATURE OF INTEREST: * Description	DOCUMENT REFERENCE (page and paragraph)	Person Entitled to Interest
S. 219 Land Title Act Covenant	Entire Document	Transferee

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
- (c) Release There is no Part 2 of this instrument

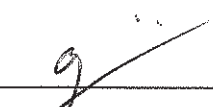
A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(s): ***GEORGIA VIEW VILLAGE LTD.** (Inc. No. BC0675685)

6. TRANSFEREE(s): (including occupation(s), postal address(es) and postal code(s))*
CITY OF NANAIMO, 455 Wallace Street, Nanaimo, BC V9R 5J6

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)

BRIAN J. SENINI
 Barrister & Solicitor
 P.O. Box 190, 30 Front Street
 Nanaimo, BC V9R 5K9
 Tel: (250) 754-1234 • Fax: (250) 754-8080

Execution Date		
Y	M	D
08	09	30

Transferor Signature
GEORGIA VIEW VILLAGE LTD.
 by its authorized signatory:

 Bruce MacDonald

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 matter set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attached schedule in Form E.
 ** If space insufficient, continue executions on additional page(s) in Form D.

RECEIVED
CA17
2021-DEC-24
 Current Planning

EXECUTIONS CONTINUED

Officer Signature(s)

Execution Date
Y M D

Transferor Signature

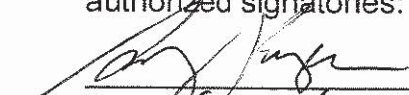
Transferee Signature



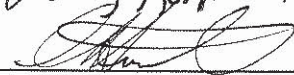
NELDA LOUANNE RICHARDSON
Commissioner for taking
Affidavits for British Columbia
455 Wallace Street
Nanaimo, BC V9R 5J6

08	10	28
----	----	----

CITY OF NANAIMO by its duly
authorized signatories:



Mayor Gary Korpan



Director of Legislative Services

Ian Howat

OFFICER CERTIFICATION:

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TERMS OF INSTRUMENT - PART 2

WHEREAS:

- A. The Transferor, Georgia View Village Ltd. (the "Owner") is the registered owner in fee simple of the lands described in Item 2(1) of the General Instrument - Part 1 (hereinafter called the "Lands").
- B. The Transferee (the "City") is a municipality duly incorporated under the laws of the Province of British Columbia.
- C. The Council of the City is considering the adoption of proposed Zoning Amendment Bylaw No. 4000.433 concerning the Lands (the "Zoning Amendment Bylaw") and acknowledging that it is in the public interest that the development and use of the Lands be limited, and the amenities the Owner has freely offered be secured by agreement and the Owner wishes to grant and has agreed to enter into this Covenant and to register it against the title to the Lands as a covenant and indemnity under Section 219 of the *Land Title Act*.
- D. Section 219 of the *Land Title Act* provides that a covenant, whether of negative or positive nature, in respect of:
 - (a) the use of land or the use of a building on or to be erected on land;
 - (b) that land is to be built on in accordance with the covenant;
 - (c) that land is not to be built on or subdivided except in accordance with the covenant;
 - (d) that land is not to be used, built on or subdivided;
 - (e) that separate parcels of land are not to be sold or transferred separately;
 - (f) that land or specified amenities be protected, preserved, conserved, maintained, enhanced, restored or kept in its natural or existing state;

may be granted in favour of the municipality and may be registered as a charge against the title to that land.

NOW THEREFORE, in consideration of the premises and the payment of ONE DOLLAR (\$1.00) by the City to the Owner and the covenants herein contained and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the parties hereto covenant and agree with the other as follows:

1. **Covenant Restricting Building and Use**

- 1.1 The Owner covenants and agrees that, notwithstanding broader or greater uses permitted in the Zoning Bylaw or other regulations of the City, the Lands shall not be built upon or used except in strict accordance with this Covenant.

2. **Definitions**

- 2.1 In this Covenant the definitions in the City Zoning Bylaw 1993, No. 4000, as amended from time to time, (the "Zoning Bylaw") shall apply to the interpretation of the terms of this Covenant.

3. **Conditions Subsequent**

- 3.1 Should the Zoning Amendment Bylaw, or a bylaw of substantially similar content, not be adopted by the Council of the City on or before **December 31, 2008**, the associated development application shall be withdrawn or abandoned and Covenant EW099701 shall remain registered against the Lands, and this Covenant shall be nullified and shall be of no further force and effect.
- 3.2 Upon nullification of this Covenant under Section 3.1 and upon request by the Owner, the City shall provide the Owner with a discharge of this Covenant, in registrable form.

4. **Restrictions on Development and Community Contribution**

Building and Parking Restrictions

- 4.1 The Owner covenants and agrees that the Lands shall only be built upon and used in accordance with the proposal to construct two 20 storey buildings (the "East Tower" and the "West Tower", collectively, the "Buildings") on the Lands, as presented to the Council of the City for the Zoning Amendment Bylaw, generally in accordance with the "Location Plan, Development Data & Proposed Site Plan" dated January 25, 2008 prepared by Matrix Architecture & Planning Inc., a reduced copy of which is attached hereto as Schedule A, which development shall provide for each of the following:
- (a) a maximum height for the Buildings of 20 storeys and 66 metres;
 - (b) a maximum building footprint of 809 m² for the West Tower, excluding the underground structure of the Building;
 - (c) a maximum building footprint of 838 m² for the East Tower, excluding the underground structure of the Building;
 - (d) a minimum separation of 23.0 m between the Buildings;

- (e) a minimum setback of 17 metres from the northern property lines of the Lands for the West Tower Building;
- (f) provision for underground vehicle parking to accommodate not less than 95% of the vehicle parking stalls required for any development proposed for the Lands; and
- (g) that there are no surface parking stalls permitted between any adjacent public street and the Buildings or any other buildings constructed on the Lands,

and the Owner acknowledges and agrees that the City shall not be obliged to accept a Building Permit application nor to issue any Building Permit in respect thereof unless all such requirements and restrictions are identified.

- 4.2 No portion of the Lands between any public street and the buildings or any other Buildings on the Lands may be used for surface (i.e. above ground) parking of vehicles.

Community Contribution

- 4.3 The Owner further covenants and agrees that the Lands shall not be built upon, no Building Permit may be applied for and the City is not obliged to issue any Building Permit in respect of the Lands until the Owner has paid the community contribution it has offered and committed, being the sum of Sixty-Eight Thousand, Eight Hundred and Eighty Dollars (\$68,880.00), without expectation of credit towards other fees, charges, dedication or other requirements of the Transferee or other local authority.

5. Withholding of Permits

- 5.1 The Owner covenants and agrees that the City may withhold development permits, building permits, occupancy certificates and business licenses as necessary to ensure compliance with the covenants in this Covenant, and the issuance of such a permit, certificate or license does not act as a representation or warranty by the City that the covenants of this Covenant have been satisfied.

6. No Exemption From Jurisdiction

- 6.1 Nothing contained or implied herein shall prejudice or effect the rights and the powers of the City, in the exercise of its' functions under any public or private statutes, bylaws, order and regulations, all of which may be fully and effectively exercised in relation to the Lands as if this Covenant had not been executed and delivered by the City.
- 6.2 The construction of any works or services required to be provided by this Covenant shall not confer any exemption or right of set-off from dedication,

development cost charges, connection charges, application fees, user fees or any other fee or charge of whatever nature as may be required as part of subdivision or other processes.

7. Indemnity

- 7.1 The Owner shall release, discharge, indemnify and save harmless the City, its officers, employees, contractors and agents at all times from all loss, damages, actions, suits, claims, demands, costs, expenses, fines and liabilities of any nature whatsoever whether known or unknown, at law or in equity, for which they become liable, incur or suffer by reason of any personal injury, death, loss of or damage to property, deprivation or economic loss:
- (a) arising out of the restrictions or requirements of this Covenant;
 - (b) arising directly or indirectly from a breach or non-performance of this Covenant by the Owner, its officers, employees, agents, contractors licensees and invitees;
 - (c) arising directly or indirectly from the exercise by the Owner of any rights to use and develop the Lands pursuant to this Covenant or in the fulfilling of its obligations pursuant to this Covenant; or
 - (d) arising directly or indirectly from any intentional act, or from any omission, default or negligence of the Owner, its officers, employees, agents, contractors or invitees in the use and development of the Lands.

8. Interest in Land and Enurement

- 8.1 This Covenant shall charge the Lands pursuant to Section 219 of the *Land Title Act* and the burden of all the covenants herein shall run with the Lands and charge the Lands and every parcel into which the Lands may be subdivided.
- 8.2 This Covenant shall enure to the benefit of the City and be binding upon the parties hereto and their respective heirs, executors and assigns.
- 8.3 No liability for any breach of this Covenant occurring after a person has ceased to be an owner of the Lands shall attach to that person.

9. Legal Fees

- 9.1 The Owner shall pay the legal fees of the City in connection with the review and registration of this Covenant. This is a personal covenant only.

10. Donative Intent

- 10.1 The Owner acknowledges that the City or its officials, employees or agents, has not stated, held out or implied any expectation or requirement that the covenants must be provided in order for the Owner's rezoning application to

be approved, but rather the Owner hereby expresses its intention to voluntarily donate the covenants in this Covenant to the City, and be bound by them, without any expectation of payment or reward of any kind. The Owner further releases, waives and forever discharges the City from and against any claims, actions, or causes of action, whether based in contract, tort or equity, for damages, deprivation or losses, or for the recovery of costs incurred, whether known or unknown, in connection with the provision of these voluntary covenants.

11. Approvals

- 11.1 Wherever in this Covenant the approval of the General Manager of Development Services is required, or some act or thing is to be done to the satisfaction of the General Manager of Development Services:
- (a) such provision shall not be deemed to have been fulfilled or waived unless the approval is in writing signed by the General Manager of Development Services, and no prior approval and no condoning, excusing or overlooking by the City or the General Manager of Development Services on previous occasions when such approval or satisfaction was required shall be taken to operate as a waiver of the necessity for such approval or satisfaction wherever required by this Covenant;
 - (b) such approval may be given on terms and conditions, and security may be required to be posted to ensure compliance with the terms and conditions of any approval given; and
 - (c) the discretion of the General Manager of Development Services shall be contractual only, and shall not be subject to public law duties, and the principles of procedural fairness and the rules of natural justice shall have no application.

12. Non-enforcement

- 12.1 The Owner and the City agree that the enforcement of this Covenant shall be entirely within the discretion of the City and that the execution and registration of this Covenant against the title to the Lands shall not be interpreted as creating any duty on the part of the City to the Owner or to any other person to enforce any provision or the breach of any provision of this Covenant.

13. Miscellaneous

No Derogation

- 13.1 Nothing contained or implied herein shall limit or affect the City's rights and powers in the exercise of its functions pursuant to the *Community Charter* and the *Local Government Act*, or any other enactment, and all such powers and rights may be fully exercised in relation to the Lands as if this Covenant had not been granted by the Owner.

Priority

- 13.2 The Owner shall do or cause to be done all things necessary to obtain priority for this Covenant over all charges and encumbrances which are registered against title to the Lands in the Land Title Office save before registration of this Covenant, and except charges which have been granted to the City.

Further Acts

- 13.3 The Owner shall do and cause to be done all things and shall execute and cause to be executed all plans, documents and other instruments which may be necessary to give proper effect to this Covenant.

Performance at Cost of Owner

- 13.4 Wherever the Owner requests that something be done or is obliged or required to do or cause to be done any act, matter or thing, such act, matter or thing shall be done by the Owner at its sole expense.

Entire Agreement

- 13.5 This Covenant is the entire agreement between the parties and the City has made no representations, warranties, guarantees, promises, covenants or agreements, (oral or otherwise) to or with the Owner in relation to the subject matter of this Covenant other than those expressed in writing in this Covenant.

Amendment

- 13.6 No amendment to this Covenant shall be valid unless made in writing and executed by the parties.

Interpretation

- 13.7 Wherever the singular or masculine is used in this Covenant, the same shall be construed as meaning the plural or the feminine or the body corporate or politic where the context so requires.
- 13.8 Wherever the expressions "Owner", "Transferor" and "Transferee" are used herein they shall be construed as meaning the plural, feminine or body corporate or politic where the context or the parties so require.

Severance

- 13.9 All provisions of this Covenant are to be construed as independent covenants and should any section, or lesser portion of this Covenant be held invalid or unenforceable by a Court of competent jurisdiction, that portion shall be severed and the invalidity or unenforceability of such section or portion shall

not affect the validity of the remainder, which shall remain binding on the Owner and shall charge the Lands.

Joint and Several Liability

13.10 In the case of more than one person acting together as Owner, the grants, covenants, conditions, provisos, agreements, rights, powers, privileges and liabilities of the Owner under this Covenant shall be construed and held to be several as well as joint.

14. Time

14.1 Time is of the essence of this Covenant.

15. Counterparts

15.1 This Covenant may be executed in one or more counterparts which together shall be deemed to constitute one Covenant in writing.

16. Execution

16.1 As evidence of its agreement to be bound by the above terms the Owner has executed and delivered this Covenant by executing the *Land Title Act* Form C to which this Covenant is attached and which forms part of this Covenant.

IN WITNESS WHEREOF the parties hereto hereby acknowledge that this Covenant has been duly executed and delivered by the parties executing the Form C (Page 1) and the Form D (Page 2) attached hereto.

Schedule A

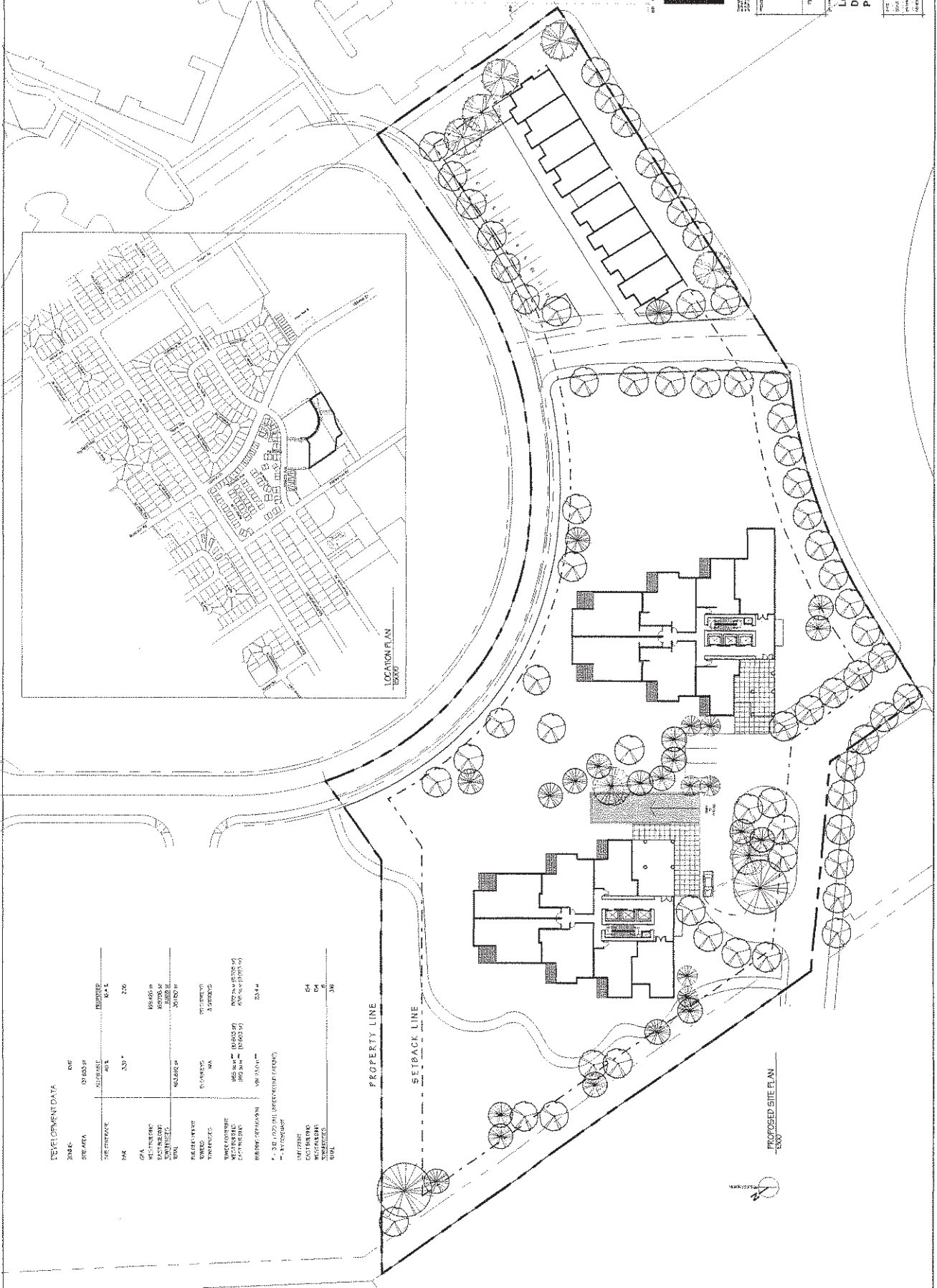


111 Park Street
 Melbourne
 Victoria 3000
 Tel: (03) 9600 1111
 Fax: (03) 9600 1112
 www.matrix.com.au

SEVILLE TOWERS
 111 Park Street
 Melbourne
 Victoria 3000
 Tel: (03) 9600 1111
 Fax: (03) 9600 1112
 www.matrix.com.au

Location Plan,
 Development Data &
 Proposed Site Plan

RA-1



DEVELOPMENT DATA

ITEM	DESCRIPTION	REMARKS
20040	DATE	07/05/04
20041	SCALE	AS SHOWN
20042	THEY	3.20"
20043	AREA	109,400 sq ft
20044	PERCENTAGE	30.70%
20045	PERCENTAGE	30.70%
20046	PERCENTAGE	30.70%
20047	PERCENTAGE	30.70%
20048	PERCENTAGE	30.70%
20049	PERCENTAGE	30.70%
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20097	PERCENTAGE	30.70%
20098	PERCENTAGE	30.70%
20099	PERCENTAGE	30.70%
20100	PERCENTAGE	30.70%

END OF DOCUMENT

Date: 09/01/22 TITLE SEARCH PRINT - VICTORIA
 Requestor: (PA74376) BRIAN J. SENINI, BARRISTER & SOLICITOR
 TITLE - EX24797

Time: 13:44:10
 Page: 001

SECTION 98 LAND TITLE ACT

VICTORIA LAND TITLE OFFICE TITLE NO: EX24797
 FROM TITLE NO: EW142713
 EW81079

APPLICATION FOR REGISTRATION RECEIVED ON: 08 MARCH, 2005
 ENTERED: 15 MARCH, 2005

REGISTERED OWNER IN FEE SIMPLE:
 GEORGIA VIEW VILLAGE LTD., 675685
 #2 - 6421 APPECROSS ROAD
 NANAIMO, BC
 V9V 1N1

TAXATION AUTHORITY:
 CITY OF NANAIMO

DESCRIPTION OF LAND:
 PARCEL IDENTIFIER: 026-221-268
 LOT 4 DISTRICT LOT 48 WELLINGTON DISTRICT PLAN VIP78452

LEGAL NOTATIONS:

HERETO IS ANNEXED EASEMENT EX124369 OVER THAT PART OF LOT 1,
 PLAN VIP78452 AS SHOWN ON PLAN VIP79660

HERETO IS ANNEXED EASEMENT EX124370 OVER THAT PART OF LOT 2,
 PLA VIP78452 AS SHOWN ON PLAN VIP79660

HERETO IS ANNEXED EASEMENT EX124371 OVER THAT PART OF LOT 3,
 PLAN VIP78452 AS SHOWN ON PLAN VIP79660

HERETO IS ANNEXED EASEMENT EX124373 OVER THAT PART OF LOT 5,
 PLAN VIP78452 AS SHOWN ON PLAN VIP79660

THIS TITLE MAY BE AFFECTED BY A PERMIT UNDER PART 26 OF THE LOCAL
 GOVERNMENT ACT, SEE EX12539

HERETO IS ANNEXED EASEMENT FA24816 OVER LOT 2 PLAN VIP78452

HERETO IS ANNEXED EASEMENT FB181024 OVER THAT PART OF LOT 6,
 PLAN VIP78452 AS SHOWN ON PLAN VIP85142

CHARGES, LIENS AND INTERESTS:

NATURE OF CHARGE

CHARGE NUMBER DATE TIME

EXCEPTIONS AND RESERVATIONS

M76300

REGISTERED OWNER OF CHARGE:

ESQUIMALT AND NANAIMO RAILWAY COMPANY

M76300

REMARKS: AFB 9.693.7434A, DD 23763, SECTION 172(3)

CITY OF NANAIMO
FA40746
REMARKS: INTER ALIA
PART IN PLAN VIP80756

CONTINUES ON PAGE 003

Date: 09/01/22 TITLE SEARCH PRINT - VICTORIA Time: 13:44:11
Requestor: (PA74376) BRIAN J. SENINI, BARRISTER & SOLICITOR Page: 003
TITLE - EX24797

STATUTORY RIGHT OF WAY
FA40748 2006-04-03 13:45
REGISTERED OWNER OF CHARGE:
CITY OF NANAIMO
FA40748
REMARKS: PART IN PLAN VIP80756

EASEMENT
FB181022 2008-06-11 13:30
REMARKS: PART AS SHOWN ON PLAN VIP85142 APPURTENANT TO
LOT 6, PLAN VIP78452 EXCEPT PART IN PLAN VIP80045

COVENANT
FB181026 2008-06-11 13:30
REGISTERED OWNER OF CHARGE:
CITY OF NANAIMO
FB181026
REMARKS: INTER ALIA

COVENANT
FB226410 2008-11-04 09:30
REGISTERED OWNER OF CHARGE:
CITY OF NANAIMO
FB226410
REMARKS: SECTION 219

"CAUTION - CHARGES MAY NOT APPEAR IN ORDER OF PRIORITY. SEE SECTION 28, L.T.A."

DUPLICATE INDEFEASIBLE TITLE: NONE OUTSTANDING

TRANSFERS: NONE

PENDING APPLICATIONS: NONE

*** CURRENT INFORMATION ONLY - NO CANCELLED INFORMATION SHOWN ***

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office use) Page 1 of 8 Pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent) **City File: RA000202**

Brian J. Senini Law Corporation
30 Front Street, P.O. Box 190, Nanaimo, B. C.
(Telephone: 754-1234) (Fax: 754-8080) File: 208062

2. PARCEL IDENTIFIER(s) AND LEGAL DESCRIPTION(s) OF LAND:*

(PID) (Legal Description)
026-221-268 Lot 4, District Lot 48, Wellington District, Plan VIP78452

3. NATURE OF INTEREST: * Description	DOCUMENT REFERENCE (page and paragraph)	Person Entitled to Interest
S. 219 Land Title Act Covenant	Entire Document, except Page 8, Para. 14	Transferee
Modification of Covenant FB226410	Page 8, Para. 14	Transferee

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6. TRANSFEREE(s): (including occupation(s), postal address(es) and postal code(s))*


CITY OF NANAIMO, 455 Wallace Street, Nanaimo, BC V9R 5J6

7. ADDITIONAL OR MODIFIED TERMS:*

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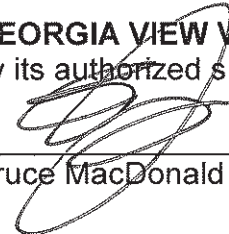


BRIAN J. SENINI
Barrister & Solicitor
P.O. Box 190, 30 Front Street
Nanaimo, BC V9R 5K9
Tel: (250) 754-1234 • Fax: (250) 754-8080

Execution Date		
Y	M	D
09	07	21

Transferor Signature

GEORGIA VIEW VILLAGE LTD.
by its authorized signatory:


Bruce MacDonald

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 matter set out in Part 5 of the **Land Title Act** as they pertain to the execution of this instrument.

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** If space insufficient, continue executions on additional page(s) in Form D.

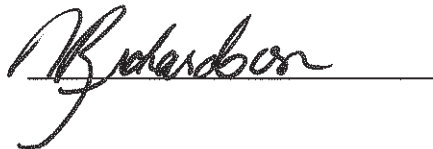
EXECUTIONS CONTINUED

Officer Signature(s)

Execution Date
Y M D

Transferor Signature

Transferee Signature



NELDA LOUANNE RICHARDSON
Commissioner for taking
Affidavits for British Columbia
455 Wallace Street
Nanaimo, BC V9R 5J6

09	07	28
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CITY OF NANAIMO by its duly
authorized signatories.

Mayor


John Rutan, Mayor

Director of Legislative Services


Ian Howat

OFFICER CERTIFICATION:

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TERMS OF INSTRUMENT - PART 2

WHEREAS:

- A. The Transferor, Georgia View Village Ltd. (the "Owner") is the registered owner in fee simple of the lands described in Item 2(1) of the General Instrument - Part 1 (hereinafter called the "Lands").
- B. The Transferee (the "City") is a municipality duly incorporated under the laws of the Province of British Columbia.
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- D. Section 219 of the *Land Title Act* provides that a covenant, whether of negative or positive nature, in respect of:
- (a) the use of land or the use of a building on or to be erected on land;
 - (b) that land is to be built on in accordance with the covenant;
 - (c) that land is not to be built on or subdivided except in accordance with the covenant;
 - (d) that land is not to be used, built on or subdivided;
 - (e) that separate parcels of land are not to be sold or transferred separately;
 - (f) that land or specified amenities be protected, preserved, conserved, maintained, enhanced, restored or kept in its natural or existing state;

may be granted in favour of the municipality and may be registered as a charge against the title to that land.

NOW THEREFORE, in consideration of the premises and the payment of ONE DOLLAR (\$1.00) by the City to the Owner and the covenants herein contained and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the parties hereto covenant and agree with the other as follows:

1. Additional Community Contribution

- 1.1 Notwithstanding the community contribution in the amount of \$68,800.00 to be paid by the Owner to the City in accordance with Section 4.3 of Covenant

FB226410 registered against the title of the Lands, the Owner further covenants and agrees that the Lands shall not be built upon, no Building Permit may be applied for and the City is not obliged to issue any Building Permit in respect of the Lands until the Owner has paid a second community contribution in the sum of One Hundred and Seventy-Five Thousand Dollars (\$175,000.00) which it has offered and committed to pay without expectation of credit towards other fees, charges, dedications or other requirements of the City or other local authority in consideration of an increase in the maximum height of the Buildings from 50 to 66 metres to accommodate an increase in the number of permitted storeys of the Buildings from 15 to 20.

2. Withholding of Permits

2.1 The Owner covenants and agrees that the City may withhold development permits, building permits, occupancy certificates and business licenses as necessary to ensure compliance with the covenants in this Covenant, and the issuance of any such permit, certificate or license does not act as a representation or warranty by the City that the covenants of this Covenant have been satisfied.

3. No Exemption From Jurisdiction

3.1 Nothing contained or implied herein shall prejudice or effect the rights and the powers of the City, in the exercise of its' functions under any public or private statutes, bylaws, order and regulations, all of which may be fully and effectively exercised in relation to the Lands as if this Covenant had not been executed and delivered by the City.

3.2 The construction of any works or services required to be provided by this Covenant shall not confer any exemption or right of set-off from dedication, development cost charges, connection charges, application fees, user fees or any other fee or charge of whatever nature as may be required as part of subdivision or other processes.

4. Indemnity

4.1 The Owner shall release, discharge, indemnify and save harmless the City, its officers, employees, contractors and agents at all times from all loss, damages, actions, suits, claims, demands, costs, expenses, fines and liabilities of any nature whatsoever whether known or unknown, at law or in equity, for which they become liable, incur or suffer by reason of any personal injury, death, loss of or damage to property, deprivation or economic loss:

(a) arising out of the restrictions or requirements of this Covenant;

- (b) arising directly or indirectly from a breach or non-performance of this Covenant by the Owner, its officers, employees, agents, contractors licensees and invitees;
- (c) arising directly or indirectly from the exercise by the Owner of any rights to use and develop the Lands pursuant to this Covenant or in the fulfilling of its obligations pursuant to this Covenant; or
- (d) arising directly or indirectly from any intentional act, or from any omission, default or negligence of the Owner, its officers, employees, agents, contractors or invitees in the use and development of the Lands.

5. Interest in Land and Enurement

5.1 This Covenant shall charge the Lands pursuant to Section 219 of the *Land Title Act* and the burden of all the covenants herein shall run with the Lands and charge the Lands and every parcel into which the Lands may be subdivided.

5.2 This Covenant shall enure to the benefit of the City and be binding upon the parties hereto and their respective heirs, executors and assigns.

5.3 No liability for any breach of this Covenant occurring after a person has ceased to be an owner of the Lands shall attach to that person.

6. Legal Fees

6.1 The Owner shall pay the legal fees of the City in connection with the review and registration of this Covenant. This is a personal covenant only.

7. Donative Intent

7.1 The Owner acknowledges that the City or its officials, employees or agents, has not stated, held out or implied any expectation or requirement that the covenants must be provided in order for the Owner's rezoning application to be approved, but rather the Owner hereby expresses its intention to voluntarily donate the covenants in this Covenant to the City, and be bound by them, without any expectation of payment or reward of any kind. The Owner further releases, waives and forever discharges the City from and against any claims, actions, or causes of action, whether based in contract, tort or equity, for damages, deprivation or losses, or for the recovery of costs incurred, whether known or unknown, in connection with the provision of these voluntary covenants.

8. Approvals

8.1 Wherever in this Covenant the approval of the City is required, or some act or thing is to be done to the satisfaction of the City, it shall require the approval or satisfaction as the case may be of the General Manager of Development Services:

- (a) such provision shall not be deemed to have been fulfilled or waived unless the approval is in writing signed by the General Manager of Development Services, and no prior approval and no condoning, excusing or overlooking by the City or the General Manager of Development Services on previous occasions when such approval or satisfaction was required shall be taken to operate as a waiver of the necessity for such approval or satisfaction wherever required by this Covenant;
- (b) such approval may be given on terms and conditions, and security may be required to be posted to ensure compliance with the terms and conditions of any approval given; and
- (c) the discretion of the General Manager of Development Services shall be contractual only, and shall not be subject to public law duties, and the principles of procedural fairness and the rules of natural justice shall have no application.

9. Non-enforcement

9.1 The Owner and the City agree that the enforcement of this Covenant shall be entirely within the discretion of the City and that the execution and registration of this Covenant against the title to the Lands shall not be interpreted as creating any duty on the part of the City to the Owner or to any other person to enforce any provision or the breach of any provision of this Covenant.

10. Miscellaneous

No Derogation

10.1 Nothing contained or implied herein shall limit or affect the City's rights and powers in the exercise of its functions pursuant to the *Community Charter* and the *Local Government Act*, or any other enactment, and all such powers and rights may be fully exercised in relation to the Lands as if this Covenant had not been granted by the Owner.

Priority

- 10.2 The Owner shall do or cause to be done all things necessary to obtain priority for this Covenant over all charges and encumbrances which are registered against title to the Lands in the Land Title Office save before registration of this Covenant, and except charges which have been granted to the City.

Further Acts

- 10.3 The Owner shall do and cause to be done all things and shall execute and cause to be executed all plans, documents and other instruments which may be necessary to give proper effect to this Covenant.

Performance at Cost of Owner

- 10.4 Wherever the Owner requests that something be done or is obliged or required to do or cause to be done any act, matter or thing, such act, matter or thing shall be done by the Owner at its sole expense.

Entire Agreement

- 10.5 This Covenant is the entire agreement between the parties and the City has made no representations, warranties, guarantees, promises, covenants or agreements, (oral or otherwise) to or with the Owner in relation to the subject matter of this Covenant other than those expressed in writing in this Covenant.

Amendment

- 10.6 No amendment to this Covenant shall be valid unless made in writing and executed by the parties.

Interpretation

- 10.7 Wherever the singular or masculine is used in this Covenant, the same shall be construed as meaning the plural or the feminine or the body corporate or politic where the context so requires.
- 10.8 Wherever the expressions "Owner", "Owner" and "City" are used herein they shall be construed as meaning the plural, feminine or body corporate or politic where the context or the parties so require.

Severance

10.9 All provisions of this Covenant are to be construed as independent covenants and should any section, or lesser portion of this Covenant be held invalid or unenforceable by a Court of competent jurisdiction, that portion shall be severed and the invalidity or unenforceability of such section or portion shall not affect the validity of the remainder, which shall remain binding on the Owner and shall charge the Lands.

Joint and Several Liability

10.10 In the case of more than one person acting together as Owner, the grants, covenants, conditions, provisos, agreements, rights, powers, privileges and liabilities of the Owner under this Covenant shall be construed and held to be several as well as joint.

11. Time

11.1 Time is of the essence of this Covenant.

12. Counterparts

12.1 This Covenant may be executed in one or more counterparts which together shall be deemed to constitute one Covenant in writing.

13. Execution

13.1 As evidence of its agreement to be bound by the above terms the Owner has executed and delivered this Covenant by executing the *Land Title Act Form C* to which this Covenant is attached and which forms part of this Covenant.

14. Modification of Covenant FB226410

14.1 The Owner and the City hereby agree that Covenant No. FB226410 is modified by deleting paragraphs 3.1 and 3.2.

IN WITNESS WHEREOF the parties hereto hereby acknowledge that this Covenant has been duly executed and delivered by the parties executing the Form C (Page 1) and the Form D (Page 2) attached hereto.

VICTORIA LAND TITLE OFFICE

CA8431401

LAND TITLE ACT
FORM C (Section 233) CHARGE
GENERAL INSTRUMENT - PART 1 Province of British Columbia

Sep-16-2020 09:43:48.001

PAGE 1 OF 4 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.

Ryan Anthony
Bortolin APHDIH

Digitally signed by Ryan
Anthony Bortolin APHDIH
Date: 2020.09.16
09:31:32 -07'00'

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

STEWART McDANNOLD STUART
BARRISTERS & SOLICITORS
2nd FLOOR - 837 BURDETT AVENUE
VICTORIA BC V8W 1B3
Document Fees: \$74.87

Tel.: 250 380-7744 Fax.: 250 380-3008
File No.: 194 1426 RB-jn

Modification of FB287633

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID] [LEGAL DESCRIPTION]
026-221-268 LOT 4 DISTRICT LOT 48 WELLINGTON DISTRICT PLAN VIP78452

STC? YES

3. NATURE OF INTEREST

Modification

CHARGE NO.

FB287633

ADDITIONAL INFORMATION

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):

6340 MCROBB HOLDINGS LTD. (INC.NO. BC1162503)

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

CITY OF NANAIMO

455 WALLACE ST

NANAIMO

BRITISH COLUMBIA

V9R 5J6

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)

Wen Bing Zhang

Notary Public

#6 - 2150 Bowen Road

Nanaimo, BC V9S 1H7

Tel: 250-758-3347

Fax: 250-758-1415

Permanent Commission

Execution Date

Y	M	D
20	08	28

Transferor(s) Signature(s)

6340 MCROBB HOLDINGS LTD.
(INC.NO. BC1162503), by its
authorized signatory(ies):

Name: Ahmet Nishori

Name:

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.

RECEIVED
CA17
2021-DEC-24
Current Planning

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

Sky E. Snelgrove

Y	M	D
20	09	03

Commissioner for Taking Affidavits in British Columbia

Expiry Date: 2022-JUN-30

City of Nanaimo

455 Wallace Street, Nanaimo, BC V9R 5J6

CITY OF NANAIMO, by its authorized signatory(ies):

Name: Leonard Krog, Mayor

Name: Karen Robertson D/Corporate Officer

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.

TERMS OF INSTRUMENT - PART 2

WHEREAS:

- A. The Transferor, 6340 McRobb Holdings Ltd., (the "**Owner**") is the registered owner of the following lands and premises:
- PID: 026-221-268
LOT 4 DISTRICT LOT 48 WELLINGTON DISTRICT PLAN VIP78452
- (the "**Lands**");
- B. The Transferee is the City of Nanaimo (the "**City**");
- C. A Covenant was registered against title to the Lands in favour of the City on July 31, 2009, at the Victoria Land Title Office, pursuant to section 219 of the Land Title Act, under registration numbers FB287633, (the "**Section 219 Covenant**");
- D. The Owner and the City have agreed to modify the Section 219 Covenant as provided herein (the "**Modification Agreement**").

NOW THEREFORE WITNESSETH that in consideration of the sum of One (\$1.00) Dollar of lawful money of Canada, now paid by the City to the Owner (the receipt and sufficiency of which is now acknowledged by the Owner), and in consideration of the covenants and conditions agreed to be observed and performed by the parties and for other valuable consideration:

1. The Section 219 Covenant is modified by adding the following to the end of section 1:

"For certainty, payment of the second community contribution of One Hundred and Seventy-Five Thousand Dollars (\$175,000.00) is not required prior to construction of the six-story multi-family residential building authorized by section 4.2.1 of Covenant FB226410 registered against title to the Lands. It is only required prior to any construction of either of the two 20-story buildings permitted under section 4.1 of Covenant FB226410."
2. Except as hereby expressly modified, the Section 219 Covenant is hereby ratified and confirmed by the Owner and City to the effect and with the intent that the Section 219 Covenant and this Modification Agreement shall read and be construed as one document.
3. No alteration or amendment of this Modification Agreement or the Section 219 Covenant shall have effect unless the same is in writing and duly executed by the parties to be charged.
4. This Modification Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.
5. All terms used in this Modification Agreement which are defined in the Section 219 Covenant will have the meaning ascribed to such terms in the Section 219 Covenant unless defined in this Modification Agreement or the context otherwise requires.

6. In the event of any conflict between the terms and conditions of the Section 219 Covenant and the terms and conditions of the Modification Agreement, the terms and conditions of the Modification Agreement will prevail.
7. The Owner shall pay the legal fees of the City in connection with the review and registration of this Modification Agreement. This is a personal covenant only.

IN WITNESS WHEREOF the parties hereto hereby acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D (pages 1 and 2) attached hereto.

VICTORIA LAND TITLE OFFICE

CA8431402

LAND TITLE ACT Sep-16-2020 09:43:48.002
FORM C (Section 233) CHARGE
GENERAL INSTRUMENT - PART 1 Province of British Columbia

PAGE 1 OF 5 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.

Ryan Anthony
Bortolin APHDIH

Digitally signed by Ryan
Anthony Bortolin APHDIH
Date: 2020.09.16
09:31:15 -07'00'

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

STEWART McDANNOLD STUART
BARRISTERS & SOLICITORS
2nd FLOOR - 837 BURDETT AVENUE
VICTORIA BC V8W 1B3
Document Fees: \$74.87

Tel.: 250 380-7744 Fax.: 250 380-3008
File No.: 194 1426 RB-jn

Modification of FB226410

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID] [LEGAL DESCRIPTION]
026-221-268 LOT 4 DISTRICT LOT 48 WELLINGTON DISTRICT PLAN VIP78452

STC? YES

3. NATURE OF INTEREST

Modification

CHARGE NO.

FB226410

ADDITIONAL INFORMATION

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):

6340 MCROBB HOLDINGS LTD. (INC.NO. BC1162503)

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

CITY OF NANAIMO

455 WALLACE ST

NANAIMO

BRITISH COLUMBIA

V9R 5J6

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)

Wen Bing Zhang

Notary Public

#6 - 2150 Bowen Road

Nanaimo, BC V9S 1H7

Tel: 250-758-3347

Fax: 250-758-1415

Permanent Commission

Execution Date

Y	M	D
20	08	28

Transferor(s) Signature(s)

6340 MCROBB HOLDINGS LTD.
(INC.NO. BC1162503), by its
authorized signatory(ies):

Name: Ahmet Nishori

Name:

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)

Sky E. Snelgrove

Commissioner for Taking Affidavits in British Columbia

Expiry Date: 2022-JUN-30

City of Nanaimo

455 Wallace Street, Nanaimo, BC V9R 5J6

Y	M	D
20	09	03

CITY OF NANAIMO, by its authorized signatory(ies):

Name: Leonard Krog, Mayor

Name: Karen Robertson D/Corporate Officer

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.

TERMS OF INSTRUMENT - PART 2

WHEREAS:

- A. The Transferor, 6340 McRobb Holdings Ltd. (the "**Owner**") is the registered owner of the following lands and premises:
- PID: 026-221-268
LOT 4 DISTRICT LOT 48 WELLINGTON DISTRICT PLAN VIP78452
- (the "**Lands**");
- B. The Transferee is the City of Nanaimo (the "**City**");
- C. A Covenant was registered against title to the Lands in favour of the City, on November 4, 2009 at the Victoria Land Title Office, pursuant to section 219 of the *Land Title Act*, under registration number FB226410 (the "**Section 219 Covenant**");
- D. Another Covenant was registered against title to the Lands in favour of the City on July 31, 2009, at the Victoria Land Title Office, pursuant to section 219 of the *Land Title Act*, under registration numbers FB287633 and FB287534 ("**Covenant FB287634**");
- E. In part, Covenant FB287634 modified the Section 219 Covenant;
- F. The Owner and the City have agreed to further modify the Section 219 Covenant as provided herein (the "**Modification Agreement**").

NOW THEREFORE WITNESSETH that in consideration of the sum of One (\$1.00) Dollar of lawful money of Canada, now paid by the City to the Owner (the receipt and sufficiency of which is now acknowledged by the Owner), and in consideration of the covenants and conditions agreed to be observed and performed by the parties and for other valuable consideration:

1. The Section 219 Covenant is further modified as follows:
 - (a) Section 4.2.1 is added as follows, between sections 4.2 and 4.3:

"Notwithstanding section 4.1, the Parties agree that despite Schedule A depicting an eight-unit development on the eastern portion of the Lands, in addition to construction of the Buildings described in section 4.1, the Lands shall only be built upon and used to construct a six-story multi-family residential building on the eastern portion of the Lands, as shown on the plan attached as Schedule B to this Modification Agreement."
 - (b) The Schedule to this Modification Agreement is hereby added as Schedule B to Covenant FB226410.
2. Except as hereby expressly modified in this Modification Agreement, and as modified by Covenant FB287634, the Section 219 Covenant is hereby ratified and confirmed by the Owner and the City to the effect and with the intent that the Section 219 Covenant and this Modification Agreement shall read and be construed as one document.

3. No alteration or amendment of this Modification Agreement or the Section 219 Covenant shall have effect unless the same is in writing and duly executed by the parties to be charged.
4. This Modification Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.
5. All terms used in this Modification Agreement which are defined in the Section 219 Covenant will have the meaning ascribed to such terms in the Section 219 Covenant unless defined in this Modification Agreement or the context otherwise requires.
6. In the event of any conflict between the terms and conditions of the Section 219 Covenant and the terms and conditions of the Modification Agreement, the terms and conditions of the Modification Agreement will prevail.
7. The Owner shall pay the legal fees of the Transferee in connection with the review and registration of this Modification Agreement. This is a personal covenant only.

IN WITNESS WHEREOF the parties hereto hereby acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D (pages 1 and 2) attached hereto.

SCHEDULE B to Covenant FB226410

