

DATE OF MEETING | November 21, 2022

AUTHORED BY | CALEB HORN, PLANNER, CURRENT PLANNING |

SUBJECT | **COVENANT AMENDMENT APPLICATION NO. CA18**
– 514, 540 HALIBURTON STREET, 120 NEEDHAM STREET AND
575 NICOL STREET



Proposal:

To discharge covenants from the property titles to facilitate future redevelopment.



Zoning:

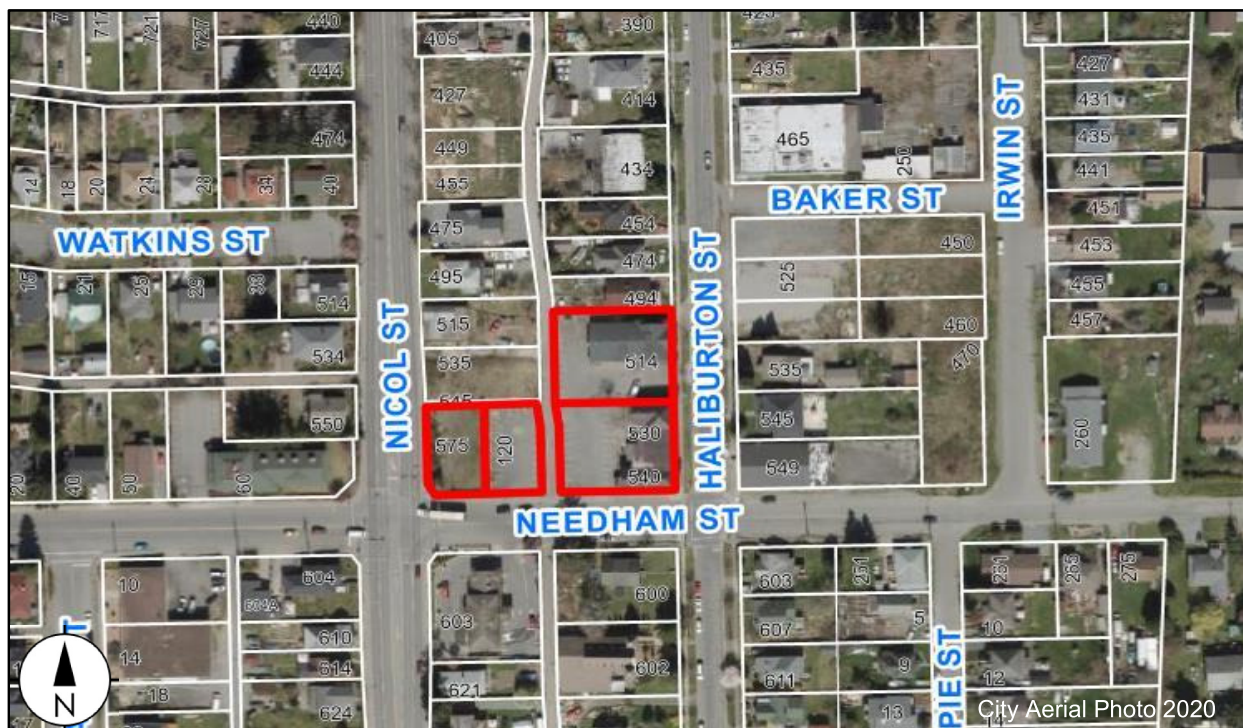
- CC2 – Neighbourhood Centre
- COR3 – Community Corridor
- R1 – Single Dwelling Residential

City Plan Land Use Designation:

- Neighbourhood Centre
- Residential Corridor

Lot Areas:

- 1,200m² – 514 Haliburton Street
- 1,125m² – 540 Haliburton Street
- 526m² – 120 Needham Street
- 568m² – 575 Nicol Street



OVERVIEW

Purpose of Report

To present Council with an application to 1) discharge a Section 215 and Section 219 covenant from the property titles of 514, 540 Haliburton Street, 120 Needham Street, and 575 Nicol Street; and, 2) secure a covenant to bind the titles of 120 Needham Street and 575 Nicol Street, in order to facilitate redevelopment of the subject properties. |

Recommendation

That Council direct Staff to proceed with public notification prior to Council's consideration of Covenant Amendment Application No. CA18 at an upcoming Council meeting. |

BACKGROUND

A Covenant Amendment Application, CA18, was received from Iwang Holdings Corp. to discharge a Section 215 covenant (EK132940 / EK132941) from the property titles of 540 Haliburton Street, 120 Needham Street, and 575 Nicol Street, and to discharge a Section 219 covenant (EX069290 / EX069291) from the property titles of 514 Haliburton Street and 575 Nicol Street.

Subject Properties and Site Context

The subject properties are located in the South End Neighbourhood and are bisected by a public lane. On the west side of the lane: 575 Nicol Street faces the intersection of Nicol Street and Needham Street and is presently vacant except for a freestanding sign, and 120 Needham Street contains an underutilized parking lot. On the east side of the lane: 514 Haliburton Street contains a liquor store, and 540 Haliburton Street contains a vacant structure that was formerly a pub and hotel (the "Jolly Miner Inn").

Surrounding land uses include residential, institutional, and commercial uses. Properties to the east on the opposite side of Haliburton Street are designated as part of the South End Neighbourhood's Commercial Centre.

DISCUSSION

Proposed Covenant Amendment

The applicant is proposing to discharge the following two covenants:

1. *EK132940 / EK132941* is a Section 215 covenant that was registered in 1996 as a condition of rezoning of 575 Nicol Street. The covenant binds the titles of 540 Haliburton Street, 120 Needham Street, and 575 Nicol Street so that the properties cannot be independently sold, and restricts the use at 575 Nicol Street and 120 Needham Street for parking purposes only to serve what was then the business at 540 Haliburton Street (Jolly Miner Inn).

2. EX069290 / EX069291 is a Section 219 covenant that was registered in 2005 as a condition of a development permit for 514 Haliburton Street. The covenant further binds the titles of 514 Haliburton Street with 575 Nicol Street to require parking on the latter property in support of an expansion of the liquor store that was never completed.

The applicant intends to dispose of 120 Needham Street and 575 Nicol Street for future redevelopment of these properties and cannot do so with the above covenants on title.

As a condition of the proposed Covenant Amendment, Staff recommend securing a covenant to keep 120 Needham Street and 575 Nicol Street title-bound until such time as the property owner either a) registers an access agreement across 120 Needham Street for vehicle access to 575 Nicol Street, or b) consolidates the two properties. This will be required to ensure that 575 Nicol Street does not redevelop independently without vehicle access secured from the rear.

Staff support the proposed discharge of both covenants given that parking requirements for the liquor store at 514 Haliburton Street are met and there is currently no active use at 540 Haliburton. As per the City of Nanaimo “Off-Street Parking Regulations Bylaw 2018 No. 7266”, the existing liquor store requires 13 parking stalls and 17 stalls are provided on-site. An additional 20 parking stalls are available in the adjoining parking lot at 540 Haliburton Street. Should either 514 or 540 Haliburton Street redevelop in the future, it is anticipated that required parking will be provided and the covenants for off-site parking at 120 Needham Street and 575 Nicol Street will not be required.

Policy Context

City Plan – Future Land Use

City Plan identifies 120 Needham Street and 575 Nicol Street as part of the Residential Corridor land use designation, and 514 and 540 Haliburton Street as part of the Neighbourhood Centre designation. The existing restrictive covenants do not align with either land use designation where medium-density residential or commercial uses are contemplated. Requiring surface parking lots along a key transportation corridor such as Nicol Street is not supported by City Plan. The proposed Covenant Amendment to discharge both covenants will allow the lots to redevelop in the future in accordance with the City Plan vision for Residential Corridors and Neighbourhood Centres.

Covenant Amendment Process Policy

Council’s *Covenant Amendment Process Policy* (the “Policy”) states that Council can provide direction to proceed with public notification prior to consideration of a proposed Covenant Amendment, and that notification will be consistent with the notification process for development variance permits. Council may also choose to direct the application to a Public Hearing. Staff recommend proceeding with public notification as outlined in the Policy but not to direct the application to a Public Hearing given that the proposed Covenant Amendment is consistent with City Plan and will discharge covenants that are no longer necessary.

SUMMARY POINTS

- Covenant Amendment Application CA18 proposes to 1) discharge a Section 215 covenant (EK132940 / EK132941) from the property titles of 540 Haliburton Street, 120 Needham Street, and 575 Nicol Street, and to discharge a Section 219 covenant (EX069290 / EX069291) from the property titles of 514 Haliburton Street and 575 Nicol Street, and 2) secure a covenant to bind the titles 120 Needham Street and 575 Nicol Street.
- The applicant intends to dispose of 120 Needham Street and 575 Nicol Street for future redevelopment of these properties and cannot do so with the above covenants on title.
- Staff support the proposed discharge of both covenants given that parking requirements for the liquor store are met at 514 Haliburton Street, and there is currently no active use at 540 Haliburton Street.

ATTACHMENTS

ATTACHMENT A: Subject Property Map

ATTACHMENT B: Existing Covenants

Submitted by:

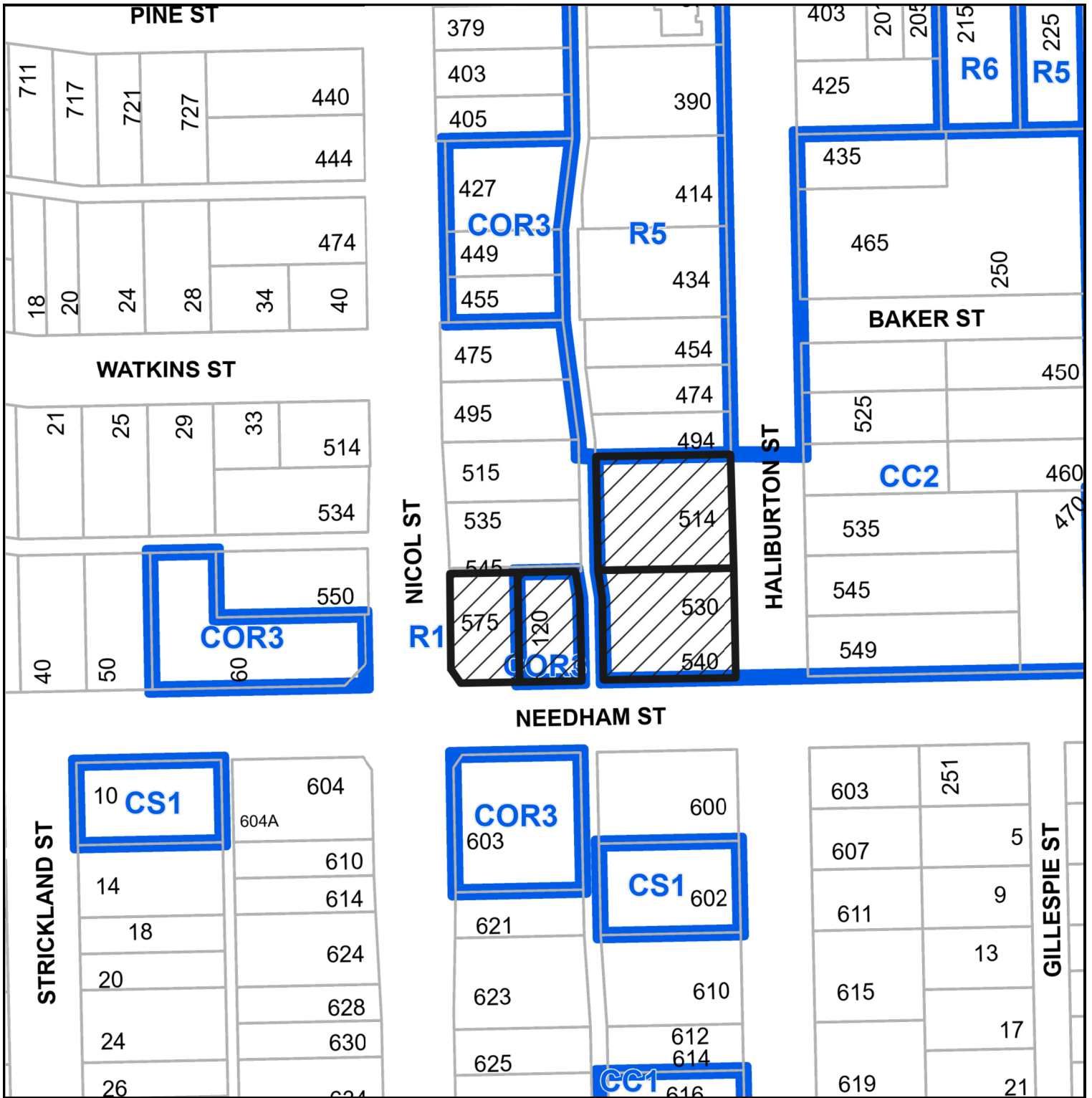
Lainya Rowett
Manager, Current Planning

Concurrence by:

Jeremy Holm
Director, Development Approvals

Dale Lindsay
General Manager, Development Services
/ Deputy CAO

ATTACHMENT A SUBJECT PROPERTY MAP



COVENANT AMENDMENT APPLICATION NO. CA000018

514 AND 540 HALIBURTON STREET; 120 NEEDHAM STREET; 575 NICOL STREET

ATTACHMENT B EXISTING COVENANTS

Status: Registered

Doc #: EK132940

RCVD: 1996-11-26 RQST: 2022-10-05 14.37.26

EK132941

96 NO 26 10 31 6

EK132940

Land Title Act (Section 219.81)
Province of British Columbia

RECEIVED
LAND TITLE OFFICE
VICTORIA

50 chg
FORM C 1# 50 chg

GENERAL INSTRUMENT - PART 1 (This area for Land Title Office Use) Page 1 of 7 pages

1. APPLICATION: ALLIN ANDERSON & MacNEIL, Barristers, Solicitors, Notaries Public
#505-495 Dunsmuir Street, P.O. Box 10, Nanaimo, B.C., V9R 5K4 T. Biederich J.C.
Phone: 763-6436 (Hayes/27047) ~~CCNS CORPORATE SERVICES LTD.~~ *Author Th. Sothen*

Formerly Fraser Rutellar Title Search Ltd.

Signature of Applicant, Solicitor or Agent

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
- | | |
|-------------|-------------------------------------------------------------------------------------------------------|
| 000-868-817 | The Westerly 1/2 of Lot 23, Section 1, Nanaimo District, Plan 4377, Except Part in Plan VIP59819 |
| 005-706-360 | Lot 22, Section 1, Nanaimo District, Plan 4377, Except That Part in Plan VIP53189 |
| 005-706-416 | The Easterly 1/2 of Lot 23, Section 1, Nanaimo District, Plan 4377, Except that Part in Plan VIP53189 |

3. NATURE OF INTEREST:

DESCRIPTION	DOCUMENT REFERENCE	PERSON ENTITLED TO INTEREST
Restrictive Covenant S. 215 Land Title Act	Entire Document	Transferee
Priority Agreement Granting Section 215 Covenant priority over Mortgages EK46655 and EG36221 and Assignment of Rents EK46656 and EG36222	Page 7	Transferee

11/26/96 A95020 CHARGE 100.00 *SM*

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 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):

JOHN HAYES, LINEWICK HOLDINGS LTD. (Inc. 211,626) (as to section 215 covenant)
and BANK OF MONTREAL (as to priority)

6. TRANSFEE(S): (Including postal address and postal code)

CITY OF NANAIMO, 455 Wallace Street, Nanaimo, B.C., V9R 5J6

Land Title Act (Section 219.81)
Province of British Columbia

**FORM C
GENERAL INSTRUMENT - PART 1**

Page 2

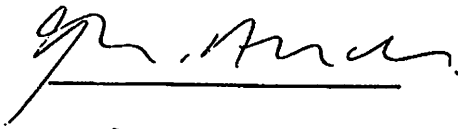
7. ADDITIONAL OR MODIFIED TERMS: * N/A

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(s) Signature(s)

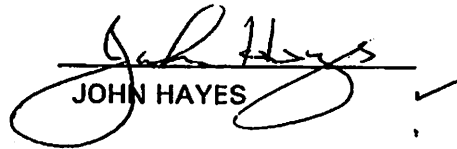
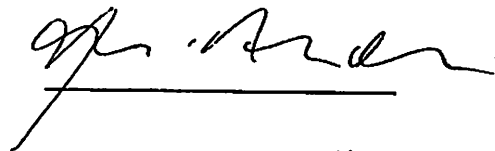
Execution Date

Party(ies) Signature(s)



SHEILA M. ANDERSON
Barrister & Solicitor
505 - 490 DUNSMUIR STREET
P.O. BOX 10
NANAIMO, B.C. V9R 5K4

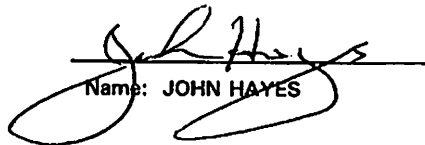
Y	M	D
06	10	08


JOHN HAYES

SHEILA M. ANDERSON
Barrister & Solicitor
505 - 490 DUNSMUIR STREET
P.O. BOX 10
NANAIMO, B.C. V9R 5K4

Y	M	D
06	10	08

LINEWICK HOLDINGS LTD., by its authorized signatory


Name: **JOHN HAYES**

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. 1979, c. 116, 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.

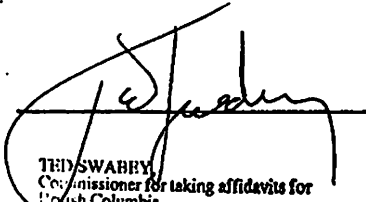
- * If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.
- ** If space insufficient, continue executions on additional page(s) in Form D.

EXECUTIONS CONTINUED

Officer(s) Signature(s)

Execution Date

Party(ies) Signature(s)



THE SWABBY,
Commissioner for taking affidavits for
British Columbia
455 Wallace St., Nanaimo.

(as to both signatures)

Y	M	D
96	11	04

CITY OF NANAIMO,
by its authorized
signatories

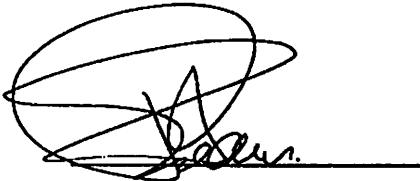


Name:



Name:

(AS TO PRIORITY)



RICHARD EVANS
NOTARY PUBLIC
512 WENTWORTH ST.
NANAIMO, B.C.
V9R 3E4 753-5599

(as to both signatures)

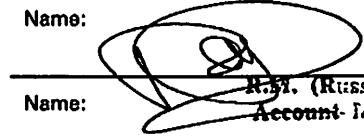
Y	M	D
96	10	18
96	10	18

BANK OF MONTREAL
by its authorized
signatories

Alana Leigh Sloan
Sr. Personal Loan Manager



Name:



Name:

R.M. (Russ) Burke
Account Manager

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. 1979, c. 116, 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.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

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

GENERAL INSTRUMENT - Part 2

Page 4 of 7 Pages

WHEREAS:

- A. The Grantor, JOHN HAYES is the registered owner in fee simple of:
- 000-868-817 THE WESTERLY 1/2 OF LOT 23, SECTION 1, NANAIMO DISTRICT,
PLAN 4377, EXCEPT PART IN PLAN VIP59819
- (hereinafter called "575 Nicol").
- B. The Grantor, Linewick Holdings Ltd., is the registered owner in fee simple of:
- 005-706-360 LOT 22, SECTION 1, NANAIMO DISTRICT, PLAN 4377 EXCEPT THAT
PART IN PLAN VIP53189
- (hereinafter called "540 Haliburton") and
- 005-706-416 THE EASTERLY 1/2 OF LOT 23, SECTION 1, NANAIMO DISTRICT, PLAN
4377 EXCEPT THAT PART IN PLAN VIP53189
- (hereinafter called "120 Needham")
- 575 Nicol, 540 Haliburton and 120 Needham are collectively known as the "Lands".
- C. The Grantee is City of Nanaimo, 455 Wallace Street, Nanaimo, B.C., V9R 5J6.
- D. The Grantor, John Hayes, has requested that 575 Nicol be rezoned and as a condition of rezoning the Grantee has requested certain covenants and considerations.

NOW THEREFORE, in consideration of the premises and the covenants herein contained and for consideration of payment of \$2.00 by the Grantee to the Grantors, receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereto covenant and agree with the other as follows:

1. The Grantors shall not jointly nor severally sell, transfer, agree to sell or agree to transfer 575 Nicol nor 540 Haliburton nor 120 Needham unless the Grantors sell, transfer or agree to sell or transfer all of 575 Nicol, 540 Haliburton and 120 Needham together.
2. 575 Nicol and 120 Needham shall be used only for parking purposes and for no other use and shall be used only by the patrons and employees of the business located at 540 Haliburton while attending at the business, except that the building currently located at 575 Nicol may continue to be used and occupied as a single family dwelling unit. The parties acknowledge that this use will be a non-conforming use and is subject to section 970 of the Municipal Act. The Grantor, John Hayes, shall not develop or improve 575 Nicol or construct or erect any structure thereon which in any way results in the creation of a way of vehicular access to 575 Nicol from any adjoining highway. Any and all

GENERAL INSTRUMENT - Part 2

Page 5 of 7 Pages

vehicular access to and egress from 575 Nicol shall only be over and through 120 Needham and the Grantor, Linewick Holdings Ltd., agrees not to use, develop or build on 120 Needham in any manner which restricts or eliminates such access in any way.

3. The Grantors and the Grantee agree that the enforcement of this agreement shall be entirely within the discretion of the Grantee and that the execution and registration of this covenant against the title to each of 575 Nicol, 540 Haliburton and 120 Needham shall not be interpreted as creating any duty on the part of the Grantee to the Grantors or to any other person to enforce any provision or the breach of any provision of this agreement.
4. The Grantors acknowledge that the covenants are enforceable against the Grantors and their successors in title, but the Grantors are not personally liable for breach of the covenants after the Grantors have ceased to be the owner of the Lands.
5. Nothing contained or implied herein shall prejudice or affect the rights and powers of the Grantee 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 Grantors and nothing shall relieve the Grantors from complying with any statute, bylaw or other enactment.
6. The Grantors hereby release and forever discharge the Grantee of and from any claim, causes of action, suit, demand, expenses, costs, and legal fees whatsoever which the Grantors can or may have against the said Grantee for any loss or damage or injury that the Grantors may sustain or suffer arising out of or connected with the rezoning of 575 Nicol or the performance or breach of this Agreement.
7. The Grantors covenant and agree to indemnify and save harmless the Grantee from any and all claims, causes of action, suites, demands, expenses, costs, and legal fees whatsoever that anyone might have as owner, occupier or user of the Lands, or by a person who has an interest in or comes onto the Lands, or by anyone who suffers loss of life or injury to his person or property, that arises out of or is connected with the rezoning of 575 Nicol Street or the performance or breach of this Agreement.
8. It is mutually understood, acknowledged and agreed by the parties hereto that the Grantee has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Grantors other than those contained in this agreement.
9. The Grantors agree to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this agreement.
10. The Grantors shall pay the legal fees of the Grantee in connection with the preparation and registration of this agreement.

GENERAL INSTRUMENT - Part 2

Page 6 of 7 Pages

11. The Grantors covenant and agrees for itself, its heirs, executors, successors, and assigns, that it will at all times perform and observe the requirements and restrictions hereinbefore set out and they shall be binding upon the Grantors as personal covenants only during the period of their respective ownerships of any interest in the Lands.
12. The restrictions and covenants herein contained shall be covenants running with the land and shall be perpetual, and shall, be registered in the Victoria Land Title Office pursuant to Section 215 of the *Land Title Act* as covenants in favour of the grantee as a first charge against the Lands.
13. This agreement shall endure to the benefit of the grantee and shall be binding upon the parties hereto and their respective heirs, executors, successors, and assigns.
14. Wherever the expressions "Grantors" and "Grantee" 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.
15. At the Grantors' expense, the Grantors shall do or cause to be done all acts reasonably necessary to secure priority and interest for this Agreement over all registered and pending charges encumbrances of a financial nature against 575 Nicol, 540 Haliburton and 120 Needham.
16. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, that part shall be severed and the decision that it is invalid, illegal or unenforceable shall not affect the validity of the remainder of the Agreement.

IN WITNESS WHEREOF the parties hereto acknowledge that this Agreement has been duly executed and delivered by the parties executing Form C (pages 2 and 3) attached hereto.

GRANT OF PRIORITY**GIVEN THAT:**

1. The Grantors (as defined in section 215 covenant to which this Agreement is attached) ("Covenant") are the registered owners of lands described in item 2 of the *Land Title Act* Form C to which this Priority Agreement is attached and which forms part of this Priority Agreement (collectively "Lands");
2. The Grantors granted to the Bank of Montreal ("Prior Chargeholder") mortgages which are registered against the title to the Lands in the Victoria Land Title Office ("LTO") under numbers EK46655 and EG36221, and also granted the Prior Chargeholder assignments of rents which are registered against title to the Lands in the LTO under numbers EK46656 and EG36222 (collectively, "Prior Charge");

GENERAL INSTRUMENT - Part 2

Page 7 of 7 Pages

3. By the Covenant Agreement, the Grantors granted to the Grantee (as defined in the Covenant Agreement) ("Subsequent Chargeholder") the covenant that is described in the Covenant Agreement ("Subsequent Charge"); and
4. Section 202 of the *Land Title Act* permits the Prior Chargeholder to grant priority over a charge to a subsequent chargeholder.

This Priority Agreement is evidence that in consideration of \$2.00 paid by the Subsequent Chargeholder to the Prior Chargeholder (the receipt and sufficiency of which are hereby acknowledged) the Prior Chargeholder grants to the Subsequent Chargeholder priority over the Prior Charge and the Prior Chargeholder covenants and agrees to subordinate and postpone all its right, title and interest in and to the Lands with the intent and with the effect that the interests of the Subsequent Chargeholder in and under the Subsequent Charge are the same as if the Subsequent Charge had been executed, delivered and registered against the title to the Lands before registration of the Prior Charge.

As evidence of their agreement to be bound jointly and severally by the above terms of this Priority Agreement, the parties described in this Priority Agreement as the Prior Chargeholder each have executed and delivered the *Land Title Act* Form C to which this Priority Agreement is attached and which forms part of this Priority Agreement.

END OF DOCUMENT

LAND TITLE ACT
FORM 60
(SECTION 233)
PROVINCE OF
BRITISH COLUMBIA
GENERAL INSTRUMENT - PART 1

EX069291

13 JUN 2005 10 30

EX069290

PAGE 1 OF 7 PAGES

1/3

2C

1. APPLICATION:

DYE & DURHAM CO. INC.

Terri Donaldson (AGENT FOR APPLICANT)

c/o Mont & Walker Law Corporation, Barristers and Solicitors, P.O. Box 10, 505 - 495 Dunsmuir Street, Nanaimo, B. C., V9R 5K4, Phone: 753-6435 (File No. 33211)

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

007-446-918 Lot A, Section 1, Nanaimo District, Plan 45086, Except That Part in Plan VIP53175; and

000-868-817 The Westerly 1/2 of Lot 23, Section 1, Nanaimo District, Plan 4377, Except Part in Plan VIP59819

3. NATURE OF INTEREST:

DESCRIPTION

DOCUMENT REFERENCE
(page & paragraph)

PERSON ENTITLED
TO INTEREST

Section 219
COVENANT
and Priority over EG36216
and EG36217; and Priority
over EK46655 and EK46656

Entire Document

Transferee

Page 6

02 05/06/13 10:31:10 02 VI
CHARGE

639377
\$129.50

4. TERMS: Part 2 of this instrument consists of (select one only)

- (a) Filed Standard 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):*

ATSLING HOLDINGS LIMITED
(as to Priorities). (Inc. No. BC0329683); and JOHN HAYES; and BANK OF MONTREAL

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

CITY OF NANAIMO, 455 Wallace Street, Nanaimo, BC, V9R 5J6, 754-4251

7. ADDITIONAL OR MODIFIED TERMS:

NIL

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) CERTIFICATION Y / M / D PARTY(IES) SIGNATURE(S)

[Handwritten Signature] 2005/4/14


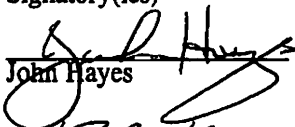

[Handwritten Signature]
JOHN HAYES

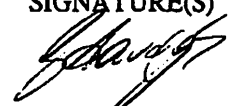
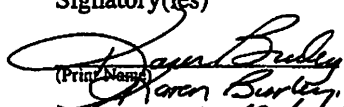

MICHAEL P. WALKER
BARRISTER & SOLICITOR
505-495 DUNSMUIR ST., P.O. BOX 10
NANAIMO, BC V9R 5K4
PHONE: 753-6435

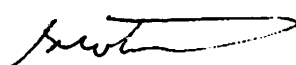
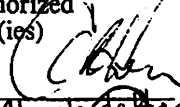
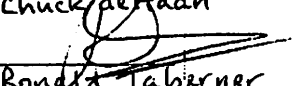
OFFICER CERTIFICATION: Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the EVIDENCE ACT, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the LAND TITLE ACT as they pertain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

LAND TITLE ACT
FORM D

EXECUTIONS

OFFICER SIGNATURE(S)	Y / M / D	PARTY(IES) SIGNATURE(S)
	2005/4/14	u AISLING HOLDINGS LIMITED by its authorized Signatory(ies)
MICHAEL P. WALKER BARRISTER & SOLICITOR 505-496 DUNSMUIR ST., P.O. BOX 10 NANAIMO, BC V9R 5K4 PHONE: 753-8435		 John Hayes  Pauline Hayes
(AS TO BOTH SIGNATURES)		

OFFICER SIGNATURE(S)	Y / M / D	PARTY(IES) SIGNATURE(S)
	05/06/09	 CITY OF NANAIMO by its authorized Signatory(ies)
GRAHAM SAVAGE Commissioner for taking Affidavits for British Columbia 455 Wallace Street Nanaimo, BC V9R 5J6		 (Print Name) Janet Burley General Manager Administration  (Print Name) Lamy McNabb Acting Mayor
(AS TO ALL SIGNATURES)		

OFFICER SIGNATURE(S)	Y / M / D	PARTY(IES) SIGNATURE(S)
	05/4/29	 BANK OF MONTEAL by its authorized Signatory(ies)
GUY C. WHITMAN Barrister & Solicitor CREASE HARMAN & COMPANY 800 - 1070 Douglas Street Victoria BC V8W 2C4		 (Print Name) Chuck deAaan  (Print Name) Ronald Taberner
(AS TO ALL SIGNATURES)		

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.

458

TERMS OF INSTRUMENT - PART 2

THIS Covenant made the _____ day of April, 2005.

BETWEEN:

AISSLING HOLDINGS LIMITED
Inc. No. BC0329683
540 Haliburton Street
Nanaimo, BC, V9R 4W2

(hereinafter called "Covenantor 1")

OF THE FIRST PART

JOHN HAYES
3491 Budenhaven Drive
Nanaimo, BC, V9T 6B1

(hereinafter called "Covenantor 2")

OF THE SECOND PART

AND:

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

(hereinafter called the "City")

OF THE THIRD PART

WHEREAS

- A. Covenantor 1 is the registered owner in fee simple of that parcel of land situated in the City of Nanaimo, civically described as 514 Haliburton Street, and legally described as:
Parcel Identifier: 007-446-918
Lot A, Section 1, Nanaimo District, Plan 45086, Except That Part in Plan VIP53175;
(hereinafter called "Lot A");
- B. Covenantor 2 is the registered owner in fee simple of that parcel of land situated in the City of Nanaimo, civically described as 575 Nicol Street, and legally described as:
Parcel Identifier: 000-868-817
The Westerly 1/2 of Lot 23, Section 1, Nanaimo District, Plan 4377, Except Part in Plan VIP59819
(hereinafter called "The Westerly 1/2 of Lot 23");
- C. Covenantor 1 has applied for development permit approval to expand the existing building in two phases on Lot A; and

- D. Covenantor 1 and Covenantor 2 have agreed to grant this Covenant to ensure that the development of Lot A proceeds in a manner that benefits Covenantor 1 and Covenantor 2 and is in the public interest.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the sum of \$1.00 now paid by the City to Covenantor 1 (receipt and sufficiency of which is acknowledged by Covenantor 1) and the sum of \$1.00 now paid by the City to Covenantor 2 (receipt and sufficiency of which is acknowledged by Covenantor 2), Covenantor 1 and Covenantor 2 covenant and agree with the City pursuant to Section 219 of the *Land Title Act* as follows:

1. **Restriction on Sale**

Neither Lot A nor The Westerly 1/2 of Lot 23 (jointly called the "Lands") shall be sold separately from the other or to any person except the purchaser of the other, it being the intent to ensure that these two properties in the future will be owned by the same person or persons.

2. **Restrictions on Development**

- 2.1 **Use** - The Westerly 1/2 of Lot 23 shall be used to provide parking for the business operations conducted from time to time on Lot A as required to comply with City's parking bylaw requirements. 16 parking spaces will be designated by appropriate signage for the exclusive use of the business operations conducted from time to time on Lot A
- 2.2 **Building** - No building shall be built, constructed or placed on The Westerly 1/2 of Lot 23 which would interfere with the aforesaid use.
- 2.3 Covenantor 1 covenants and agrees that, notwithstanding broader or greater permitted uses, density or other regulations in the Zoning Bylaw or other bylaws, as may be amended from time to time, the liquor store use of Lot A shall be limited to no greater than 179.95 square metres (1,937 square feet) of gross floor area until sixteen parking spaces constructed on The Westerly 1/2 of Lot 23, and legal access to the parking spaces is secured through The Easterly 1/2 of Lot 23 and the Westerly 1/2 of Lot 23 by way of easement to the benefit of Lot A, as shown on the plan prepared by Ellins Architect Inc. and modified by the City and attached as Schedule "B" to the City's Development Permit No. DP000294, a copy of which is attached as Schedule A to this Agreement, at which point the gross floor area may be expanded to 510 square metres (5,500 square feet).
- 2.4 Covenantor 1 covenants and agrees that the City shall be under no obligation to issue a development permit or building permit and it will not make application for a development permit or building permit or will take any action, directly or indirectly, to compel the issuance of a development permit or building permit, or act on any permit so issued, in respect of Lot A, until the parking spaces and access easement referred to in section 2.3 are secured.

- 2.5 Without limiting the generality of the foregoing, Covenantor 1 covenants and agrees that the continued use of greater than 179.95 square metres (1,937 square feet) of liquor store use on Lot A is conditional upon the parking spaces and access easement continuing in full force and effect, and Covenantor 1 agrees that it shall immediately cease any such greater use should the parking spaces be removed, damaged or otherwise obstructed or the easement be amended or discharged, unless alternate arrangements are secured to the sole satisfaction and with the written permission of the City.

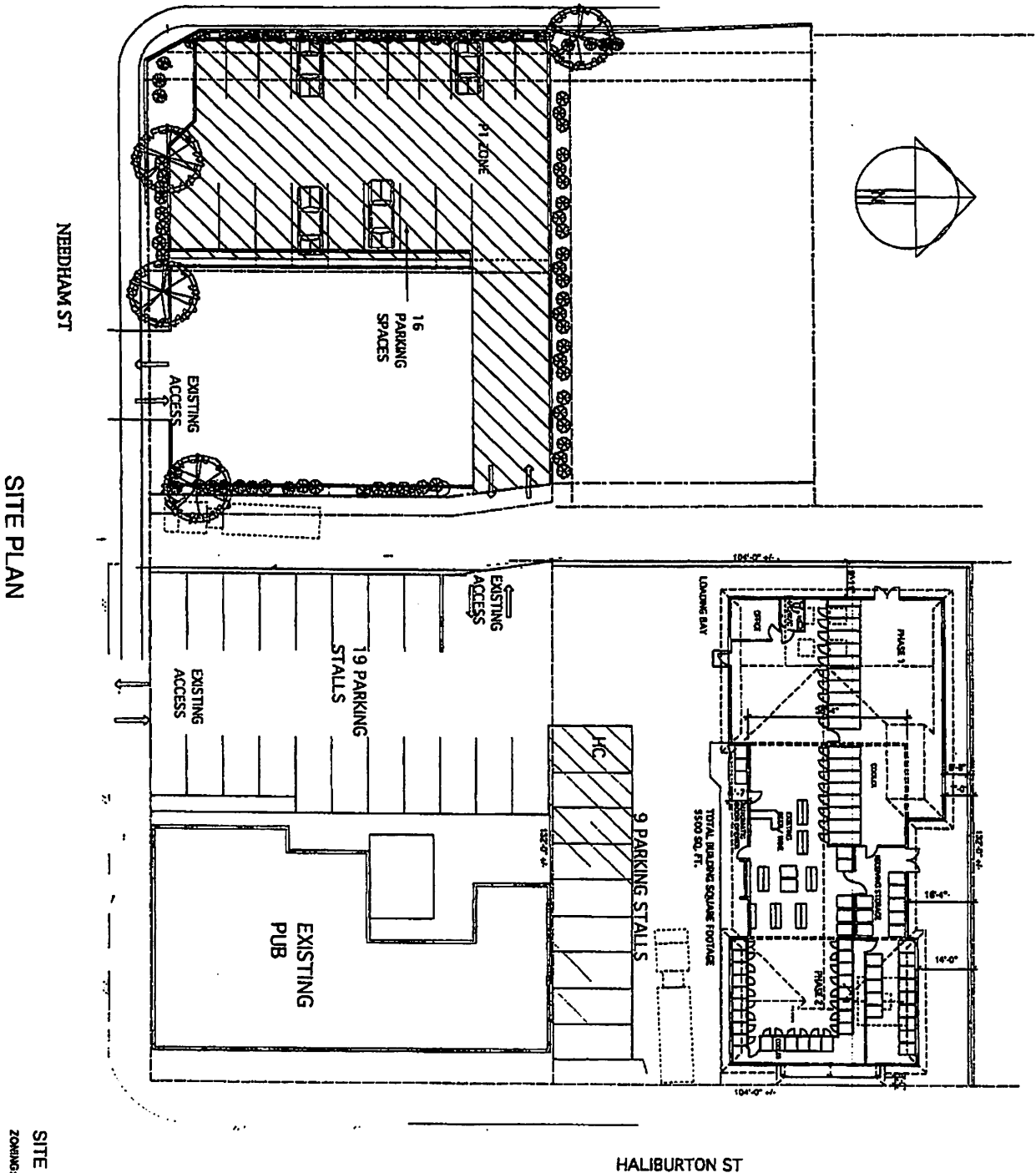
3. **General Provisions.**

- 3.1 Nothing herein contained or implied shall prejudice or affect the rights and powers of the City and the exercise of its functions under any public and private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by Covenantor 1 and Covenantor 2.
- 3.2 Covenantor 1 and Covenantor 2 covenant and agree that the commitments and contributions made in this Covenant are made in addition to and without expectation of credit towards fees, charges, dedications and other requirements of the City or other governmental authority, including with respect to compensation under the *Expropriation Act*, and claims in contract or equity including claims for unjust enrichment.
- 3.3 Covenantor 1, Covenantor 2 and the City agree that the enforcement of this Agreement 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 Covenantor 1 or Covenantor 2 or to any other person to enforce any provision or the breach of any provision of this Agreement.
- 3.4 Covenantor 1 and Covenantor 2 hereby release and forever discharge the City of and from any claim, cause of action, suit, demand, expenses, costs and legal fees whatsoever which Covenantor 1 or Covenantor 2 can or may have against the City for any loss or damage or injury that Covenantor 1 or Covenantor 2 may sustain or suffer arising out of this Agreement.
- 3.5 Covenantor 1 and Covenantor 2 covenant and agree to indemnify and save harmless the City from any and all claims, causes of action, suits, demands, expenses, costs and legal fees whatsoever that anyone might have as owner, occupier or user of the Lands or by a person who has an interest in or comes onto the Lands or by anyone who suffers loss of life or injury to his person or property, that arises out of a breach of this Agreement by Covenantor 1 or Covenantor 2.
- 3.6 It is mutually understood, acknowledged and agreed by the parties hereto that the City has made no representations, covenants, warranties, guarantees, promises or agreement (oral or otherwise) with Covenantor 1 or Covenantor 2 other than those contained in this Agreement.
- 3.7 Covenantor 1 and Covenantor 2 agree to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.

- 3.8 Covenantor 1 and Covenantor 2 covenant and agree for itself, its heirs, executors, successors and assigns, that it will at all times perform and observe the requirements and restrictions hereinbefore set out and they shall be binding upon Covenantor 1 and Covenantor 2 as personal covenants only during the period of its respective ownership of any interest in the Lands.
- 3.9 The restrictions and covenants herein contained shall be covenants running with the Lands and shall be perpetual, and shall continue to bind all of the Lands when subdivided, and shall be registered in the Victoria Land Title Office pursuant to section 219 of the *Land Title Act* as covenants in favour of the City as a first charge against the Lands.
- 3.10 This Agreement shall enure to the benefit of the City and shall be binding upon the parties hereto and their respective heirs, executors, successors and assigns.
- 3.11 Wherever the expressions "City", "Covenantor 1" and "Covenantor 2" are used herein, they shall be construed as meaning the plural, feminine or body corporate or politic where the context of the parties so require.
- 3.12 BANK OF MONTREAL, the registered holder of a charge by way of a mortgage and assignment of rents against PID 007-446-918, Lot A, Section 1, Nanaimo District, Plan 45086, Except that Part in Plan VIP53175, which said charges are registered in the Land Title Office at Victoria, British Columbia, under numbers EG36216 and EG36217 respectively, for and in consideration of the sum of One Dollar (\$1.00) paid by the City to the said Chargeholder (the receipt whereof if hereby acknowledged), agrees with the City, its successors and assigns, that the within Section 219 Covenant shall be an encumbrance upon the within described property in priority to the said charges in the same manner and to the same effect as if it had been dated and registered prior to the said charges.
- 3.13 BANK OF MONTREAL, the registered holder of a charge by way of a mortgage and assignment of rents against PID 000-868-817, The Westerly 1/2 of Lot 23, Section 1, Nanaimo District, Plan 4377, Except Part in Plan VIP59819, which said charges are registered in the Land Title Office at Victoria, British Columbia, under numbers EK46655 and EK46656 respectively, for and in consideration of the sum of One Dollar (\$1.00) paid by the City to the said Chargeholder (the receipt whereof if hereby acknowledged), agrees with the City, its successors and assigns, that the within Section 219 Covenant shall be an encumbrance upon the within described property in priority to the said charges in the same manner and to the same effect as if it had been dated and registered prior to the said charges.

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

Schedule A



SITE PLAN

SITE STATIST
ZONING: C8 TOURIST

HALIBURTON ST

END OF DOCUMENT