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FORM_C_V18 (Charge)

VICTORIA LAND TITLE OFFICE

Apr-03-2012 13:08:40.012

CA2470948 CA2470949

LAND TITLE ACT
FORM C (Section 233) CHARGE

GENERAL INSTRUMENT - PART 1 Province of British Columbia

PAGE 1 OF 20 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

Carmine Louise
Boskovich
YQ6G76

Digitally signed by Carmine Louise
Boskovich YQ6G76
DN: cn=Carmine Louise Boskovich
YQ6G76, o=CA, ou=Verify
IDat=www.juricert.com/LKUP.cfm?
id=YQ6G76
Date: 2012.04.03 08:38:10 -07'00'

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)
Carmine Boskovich, Solicitor of Fasken Martineau DuMoulin LLP
Barristers & Solicitors
2900 - 550 Burrard Street
Vancouver BC V6C 0A3
Document Fees: \$145.00
LTO Client No. 11565
Matter No. 279000.00001/13625
Telephone: 604 631 3131
Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]

SEE SCHEDULESTC? YES ☐

3. NATURE OF INTEREST CHARGE NO. ADDITIONAL INFORMATION
SEE SCHEDULE

4. TERMS: Part 2 of this instrument consists of (select one only)
(a) ☐ Filed Standard Charge Terms D.F. No. (b) ☒ Express Charge Terms Annexed as Part 2
A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):
SEE SCHEDULE

6. TRANSFEREE(S): (including postal address(es) and postal code(s))
COWICHAN VALLEY REGIONAL DISTRICT

175 INGRAM STREET
DUNCAN BRITISH COLUMBIA
V9L 1N8 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)

CARMINE BOSKOVICH
Barrister & Solicitor
Fasken Martineau DuMoulin LLP
2900 - 550 Burrard Street
Vancouver, BC V6C 0A3
604 631 4831

Execution Date		
Y	M	D
12	03	21

Transferor(s) Signature(s)

0716880 BC LTD. by its authorized
signatory(ies):

STEFAN MOORES

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.

EXECUTIONS CONTINUED

PAGE 2 of 20 pages

Transferor / Borrower / Party Signature(s)

FIRST WEST CREDIT UNION by its
authorized signatory(ies):

DOUG BUTTON
Manager, Commercial Banking

ARDEN THACKER
Senior Commercial Account Manager
Commercial Banking

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.

EXECUTIONS CONTINUED

PAGE 3 of 20 pages

Transferor / Borrower / Party Signature(s)

COWICHAN VALLEY REGIONAL
DISTRICT by its authorized signatories

ROBERT HUTCHINS, Chairperson

J.E. BARRY, Corporate Secretary

Cowichan Valley Regional District

175 Ingram Street

Duncan, BC V9L 1N8

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

LAND TITLE ACT
FORM E

SCHEDULE

PAGE 4 OF 20 PAGES

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

000-446-670

BLOCK 176 MALAHAT DISTRICT EXCEPT THOSE PARTS IN PLANS 249 RW,
518 RW, 13486, 13743, 35492, 41475, 50295, 1065 RW AND VIP82580

STC?

YES

☐

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

STC?

YES

☐

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

STC?

YES

☐

LAND TITLE ACT
FORM E

SCHEDULE

PAGE 5 OF 20 PAGES

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		over part on Plan EPP18896

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		granting the Covenant herein priority over Mortgage CA1848469 and Assignment of Rents CA1848470

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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LAND TITLE ACT
FORM E

SCHEDULEPAGE 6 OF 20 PAGES

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

5. TRANSFEROR(S)

0716880 BC LTD. (Inc. No. BC0716880)

FIRST WEST CREDIT UNION (as to priority)

SEI Covenant – I-4 Zone

TERMS OF INSTRUMENT - PART 2

RECITALS:

- A. The **Transferor** is the registered owner in fee-simple of the following lands located in the Cowichan Valley Regional District in Province of British Columbia:
- PID 000-446-670
Block 176, Malahat District, except those parts in Plans 249 RW, 518 RW, 13486, 13743, 35492, 41475, 50295, 1065 RW and VIP82580 (the "**Transferor's Lands**").
- B. The **Transferee** is the Cowichan Valley Regional District ("**Transferee**" or "**Regional District**").
- C. The Transferor has submitted an application to the Regional District to rezone the Transferor's Lands, and other adjacent lands owned by the Transferor and its affiliates, to Bamberton Light Industrial (I-3), Light Industrial (I-3A), Business Park Industrial/Commercial (I-4) and Forestry/Outdoor Recreation (F-1A) Zones further to "CVRD Bylaw No. 3498 – Electoral Area A – Mill Bay Malahat Zoning Amendment Bylaw (Bamberton Business Park Industrial), 2011" ("**Zoning Amendment Bylaw**"), and acknowledging that it is in the public interest that the development and use of the Lands (as defined below) provide for, in particular an assessment conducted by a Registered Professional Biologist ("**RPBio**") of the areas of the Lands included within the studies prepared for Environment Canada and titled: "Sensitive Ecosystem Inventory: East Vancouver Island and Gulf Islands 1993-1997" and "Disturbance Mapping and Re-evaluation of Major Riparian Corridors, March 2004" (collectively, the "**SEI**"), including protection of the respective areas in accordance with the assessments, the Transferor has volunteered and wishes to grant this covenant to the Transferee over a portion of the Transferor's Lands shown outlined in heavy black line on explanatory plan EPP18896 prepared by D.R. Carrier, BCLS and dated March 13, 2012 (the "**Lands**"), a reduced copy of which is attached as Schedule "A", and the Transferee has accepted this covenant and required its registration as a condition of rezoning (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 Transferee with provisions:

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- 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 Transferee to the Transferor (receipt and sufficiency acknowledged), the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the parties covenant and agree as to the following, including under Section 219 of the *Land Title Act*:

Restrictions, Requirements and Exceptions

1. Notwithstanding broader or greater uses, density or other regulations in the Transferee's zoning and other regulatory bylaws, the Transferor covenants and agrees the Lands must not be subdivided, built upon or used for any use except on strict compliance with the conditions, restrictions and requirements in this Agreement.
2. The Transferor and Transferee agree that this Agreement does not prohibit the use, subdivision and development of the Lands in accordance with the Primary Forestry (F-1) Zone of the applicable zoning bylaw as it existed prior to the registration of this Agreement (including new work exclusively related to access and servicing and operation of such uses) so long as such use, subdivision and development are expressly permitted under the applicable zoning bylaw following adoption of the Zoning Amendment Bylaw (the "**Exempted Uses**").
3. The Transferor covenants and agrees that the Lands must not be subdivided, built upon or used for any uses except Exempted Uses until the Transferor has provided to the Regional District, all at no cost of the Regional District:

- (a) an assessment conducted by a RPBio, with experience assessing sensitive ecosystems, to confirm and identify the location of, and provide recommendations regarding, the protection of important ecological attributes identified within the SEI (but excluding riparian ecosystems which are dealt with in a separate riparian agreement), or alternatively, an opinion letter provided by a RPBio concluding that the Lands do not contain important ecological features or attributes as shown in the SEI;
 - (b) if the RPBio's recommendations include setting aside or imposing restrictions on areas, then a reference plan of such areas prepared by a British Columbia Land Surveyor will be provided by the Transferor; and
 - (c) for the purposes of fulfilling the RPBio's recommendations for such areas, either:
 - (i) a dedication of the area as park or a transfer of the area unencumbered to the Regional District if the dedication or transfer is mutually agreed by the Transferor and the Transferee; or
 - (ii) a registrable covenant under section 219 of the *Land Title Act*, in substantially the same form as the covenant attached as Schedule "B" hereof, and to be effective prior to subdivision, development or use of the Lands.
4. Notwithstanding Section 3 of this Agreement, the Lands and any part thereof may be subdivided, built upon or used with the prior written consent of the Transferee's Board, provided such resolution or bylaw that provides such consent includes specific reference to this Agreement.

Indemnity and Release

5. The Transferor covenants and agrees to indemnify and save harmless the Transferee 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 Transferee, or which the Transferee incurs, in either case as a result of any loss, damage, deprivation, enrichment or injury, including economic loss, arising out of or connected with:
- (a) restrictions or requirements of this Agreement as they affect the Transferor;

- (b) the breach of any covenant in this Agreement by the Transferor, or
 - (c) the use of the Lands by the Transferor as restricted under this Agreement.
6. The Transferor releases and forever discharges the Transferee 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 Transferor can or may have against the Transferee for any loss, damage, deprivation, enrichment or injury, including economic loss, arising out of or connected with:
- (a) the restrictions or requirements of this Agreement as they affect the Transferor;
 - (b) the breach of any covenant in this Agreement by the Transferor, or
 - (c) the use of the Lands by the Transferor as restricted under this Agreement.
7. Without limiting the above release and indemnity, the Transferor acknowledges that this Agreement contains conditions, restrictions, requirements, amenities, benefits or gifts (collectively the "Benefits") that may not be specifically identified or required by bylaw. The Transferor hereby expresses its intention to be solely responsible for the costs, including additional costs of subdivision and development, resulting from satisfying the conditions of this Agreement and to provide and donate the Benefits identified in this Agreement to the Regional District as a gift and without any expectation of credit, payment or reward of any kind. The Transferor further releases, waives and forever discharges the Regional District 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 costs incurred, including legal expenses, or for unjust enrichment, in connection with the provision and donation of those Benefits.
8. The releases and indemnities of this part shall survive the termination of this Agreement, other than discharge in accordance with section 9(a).

Registration

9. The restrictions and requirements in this Agreement are covenants running with the Lands in favour of the Transferee and intended to be perpetual, and shall continue to bind all of the Lands when subdivided, except that this Agreement shall not bind the Lands and shall be released by the Transferee:
- (a) if the Zoning Amendment Bylaw is not adopted by May 31, 2012; or

- (b) upon satisfaction by the Transferor of the requirements of Section 3 hereof,

in which case, the Transferee will execute and deliver a registrable Form C discharge of this Agreement within fifteen (15) days of written request by the Transferor including the Form C.

10. At the Transferor's sole cost, the Transferor must do everything necessary to secure priority of registration and interest for this Agreement over all encumbrances of a financial nature.
11. The Transferor agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
12. The Transferor, as a personal covenant between the parties, agrees to pay the land title office costs in connection with the registration of this Agreement.

General

13. The Transferor 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.
14. It is mutually understood, acknowledged and agreed by the parties that the Transferee has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Transferor regarding the matters dealt with in this Agreement, other than those contained in this Agreement.
15. Nothing contained or implied in this Agreement:
 - (a) prejudices or affects the rights, powers or discretion of the Transferee 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 Transferor;
 - (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 Transferee with respect to its exercise of any right or remedy expressly provided in this Agreement or at law or in equity.

16. The Transferor covenants and agrees that the Transferee may withhold development permits, building permits and other approvals related to the use, building or subdivision of or on the Lands 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 Transferee that the covenants of this Agreement have been satisfied.
17. The Transferor covenants and agrees that:
 - (a) if the Transferee advises of a breach of this Agreement, as determined in its reasonable discretion, the Transferor must promptly remedy that breach at its sole cost;
 - (b) if the Transferor has not taken steps to remedy the breach, acting diligently, to the reasonable satisfaction of the Transferee within fifteen (15) days of notice or other time longer period specified by the Transferee, the Transferee may, but is under no obligation to, remove or rectify the breach at the expense of the Transferor without further notice; and
 - (c) any costs to the Transferee of such removal or rectification is a debt due from the Transferor to the Transferee together with interest at a rate of 3% per annum in excess of the Prime Lending Rate of the Royal Bank of Canada in effect from time to time, and:
 - (i) the Transferor shall pay such costs and interest to the Transferee forthwith upon demand; and
 - (ii) failing payment, the Transferee may add such costs to property taxes for the Lands.
18. 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.
19. 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.
20. 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.
21. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

Priority

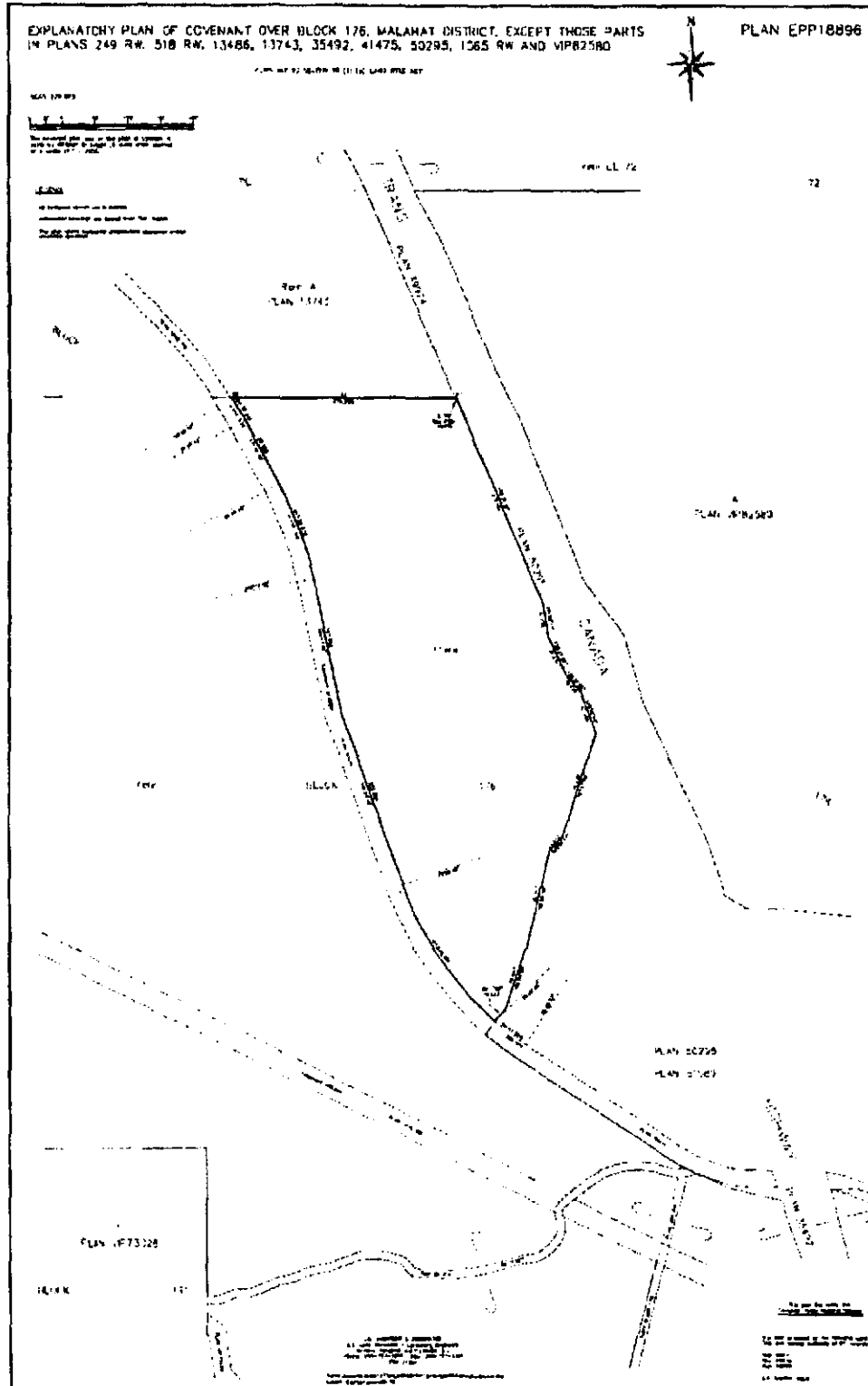
22. First West Credit Union Incorporation No. FI-156 (the "**Chargeholder**") is the registered holder of a charge by way of MORTGAGE against the Lands, registered under Nos. CA1848469 and CA1848470 (the "**Charge**"), agrees with the Transferee, in consideration of the sum of Ten Dollars (\$10.00) paid by the Transferee to the Chargeholder (receipt and sufficiency acknowledged), that the Agreement shall be an encumbrance upon the Lands in priority to the Charge in the same manner and to the same effect as if the Agreement had been dated and registered prior to the Charge.

Counterparts

This Agreement may be executed in any number of counterparts with the same effect as if all parties had signed the same documents, and all such counterparts will be construed together and will constitute one and the same instrument. The execution of this Agreement by any party hereto will not become effective until counterparts hereof have been executed by all parties hereto.

The Transferor and Transferee acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D (pages 1 and 2) attached.

SCHEDULE "A"
EXPLANATORY PLAN OF THE LANDS



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SCHEDULE "B"
FORM OF SEI AREA COVENANT

TERMS OF INSTRUMENT – PART 2

RECITALS:

- A. The **Transferor** is the registered owner in fee-simple of the following lands located in the Cowichan Valley Regional District in Province of British Columbia:

[Note to draft: legal description to be inserted once determined]

(collectively, the "**Transferor's Lands**");

- B. The Transferee is the Cowichan Valley Regional District ("**Transferee**" or "**Regional District**");
- C. The Transferor entered into a covenant with the Regional District to provide an assessment by a Registered Professional Biologist ("**RPBio**") regarding sensitive ecosystems;
- D. The assessment has been completed and it was recommended that the area shown outlined in heavy black line on reference plan <*> prepared by <*>, BCLS dated <*>, 2012, a reduced copy of which is attached as Exhibit "A" (the "**Lands**") be subject to the restrictions outlined in the agreement and the Transferor has volunteered and wishes to grant this covenant to the Regional District over the Lands; and
- E. 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 Transferee 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.

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NOW THEREFORE pursuant to Section 219 of the *Land Title Act*, and in consideration of the premises and the mutual covenants and agreements contained herein and the sum of One Dollar (\$1.00) now paid to the Transferor by the Regional District (the receipt and sufficiency of which is hereby acknowledged), the parties hereto covenant and agree each with the other as follows:

Restrictions

1. The Transferor covenants and agrees with the Regional District that the use of Lands shall be restricted in accordance with the following:
 - (a) **[Note to draft: The applicable restrictions or conditions recommended by the RPBio will be inserted. The covenant may provide for periodic reviews of the applicable issues based on and in accordance with the RPBio's recommendations to determine if the restrictions remain necessary.]**

Indemnity and Release

2. The Transferor covenants and agrees to indemnify and save harmless the Regional District 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 Transferee, or which the Transferee incurs, in either case as a result of any loss, damage, deprivation, enrichment or injury, including economic loss, arising out of or connected with:
 - (a) restrictions or requirements of this Agreement as they affect the Transferor;
 - (b) the breach of any covenant in this Agreement by the Transferor, or
 - (c) the use of the Lands by the Transferor as restricted under this Agreement.
3. The Transferor releases and forever discharges the Transferee 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 Transferor can or may have against the Transferee for any loss, damage, deprivation, enrichment or injury, including economic loss, arising out of or connected with:
 - (a) the restrictions or requirements of this Agreement as they affect the Transferor;

- (b) the breach of any covenant in this Agreement by the Transferor, or
 - (c) the use of the Lands by the Transferor as restricted under this Agreement.
4. Without limiting the above release and indemnity, the Transferor acknowledges that this Agreement contains conditions, restrictions, requirements, amenities, benefits or gifts that may not be specifically identified or required by bylaw. The Transferor hereby expresses its intention to be solely responsible for the costs, including additional costs of subdivision and development, resulting from satisfying the conditions of this Agreement, and to provide and donate the public amenities and other benefits identified in this Agreement to the Regional District as a gift and without any expectation of payment of any kind. The Transferor further releases, waives and forever discharges the Regional District 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 costs incurred, including legal expenses, or for unjust enrichment, in connection with the provision and donation of those amenities.

Registration

5. The restrictions and requirements in this Agreement are covenants running with the Lands in favour of the Transferee and intended to be perpetual, and shall continue to bind all of the Lands when subdivided. **[Note to draft: based on the assessment recommendations the agreement may provide for release based on periodic reviews that determine it is no longer necessary. For certainty, the Regional District will, acting reasonably, consider such release recommendations, and accept if reasonable.]**
6. At the Transferor's sole cost, the Transferor must do everything necessary to secure priority of registration and interest for this Agreement over all encumbrances of a financial nature.
7. The Transferor agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
8. The Transferor, as a personal covenant between the parties, agrees to pay the land title office costs in connection with the registration of this Agreement.

General

9. The Transferor 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.

10. It is mutually understood, acknowledged and agreed by the parties that the Transferee has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Transferor regarding the matters dealt with in this Agreement, other than those contained in this Agreement.
11. Nothing contained or implied in this Agreement:
 - (a) prejudices or affects the rights, powers or discretion of the Transferee 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 Transferor;
 - (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 Transferee with respect to its exercise of any right or remedy expressly provided in this Agreement or at law or in equity.
12. The Transferor covenants and agrees that the Transferee may withhold development permits, building permits and other approvals related to the use, building or subdivision of or on the Lands 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 Transferee that the covenants of this Agreement have been satisfied.
13. The Transferor covenants and agrees that:
 - (a) if the Transferee advises of a breach of this Agreement, as determined in its reasonable discretion, the Transferor must promptly remedy that breach at its sole cost;
 - (b) if the Transferor has not taken steps to remedy the breach, acting diligently, to the reasonable satisfaction of the Transferee within fifteen (15) days of notice or other time longer period specified by the Transferee, the Transferee may, but is under no obligation to, remove or rectify the breach at the expense of the Transferor without further notice; and
 - (c) any costs to the Transferee of such removal or rectification is a debt due from the Transferor to the Transferee together with interest at a rate of 3% per annum in excess of the Prime Lending Rate of the Royal Bank of Canada in effect from time to time, and:

- (i) the Transferor shall pay such costs and interest to the Transferee forthwith upon demand; and
 - (ii) failing payment, the Transferee may add such costs to property taxes for the Lands.
- 14. 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.
- 15. 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.
- 16. 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.
- 17. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

The Transferor and Transferee acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D (pages 1 and 2) attached.

**EXHIBIT "A" to SEI AREA COVENANT
REFERENCE PLAN OF SEI AREAS**

END OF DOCUMENT

DM_VAN/279000-00001/82944181

CA2470935, 37, 39, 41, 44, 46, 48, 51, 53,
CA2470956, 58, 59, 64, 66.

Fasken Martineau DuMoulin LLP *
Barristers and Solicitors
Patent and Trade-mark Agents

www.fasken.com

2900 - 550 Burrard Street
Vancouver, British Columbia, Canada V6C 0A3

604 631 3131 Telephone
604 631 3232 Facsimile

**FASKEN
MARTINEAU** 

Carmine Boskovich
Direct 604 631 4831
Facsimile 604 632 4831
cboskovich@fasken.com

March 2, 2012
File No.: 279000.00001/15054

VIA EMAIL AND COURIER

Victoria Land Title Office
Suite 200 - 1321 Blanshard Street
Victoria, BC V8W 9J3

**Attention: Carlos MacDonald, Registrar of Land Titles
Maureen Johnston, Deputy Registrar**

Dear Sirs/Mesdames:

**Re: Legal Descriptions for Section 219 LTA Covenant Areas within the
Cowichan Valley Regional District (the "CVRD")**

We write on behalf of our client Bamberton Properties LLP and 0176934 B.C. Ltd., 0716945 B.C. Ltd., 0716949 B.C. Ltd., 0716892 B.C. Ltd., 0716886 B.C. Ltd., 0716880 B.C. Ltd. and 0716964 B.C. Ltd. (collectively, "**Bamberton**").

Bamberton has applied to the CVRD for a rezoning of certain properties in the Mill Bay/Malahat area of Vancouver Island. The CVRD Board has given third reading to "*CVRD Bylaw No. 3498 – Electoral Area A – Mill Bay Malahat Zoning Amendment Bylaw (Bamberton Business Park Industrial), 2011*". As a condition of the rezoning, Bamberton will register various covenants under Section 219 of the *Land Title Act* in favour of the CVRD against title to the lands proposed to be rezoned, and against other lands owned by Bamberton. The lands over which the covenants will be registered, referred to in this letter as the "Covenant Areas", are identified on the sketch plans attached as Schedule 1 and Schedule 2. There are five relevant Covenant Areas, which are referred to in this letter and on the Schedules as "I-4", "I-3A", "I-3 North", "I-3 South" and "Southlands".

Each Covenant Area includes one or more portions of existing fee simple parcels. In the ordinary course registration would require preparation and deposit of a reference or in some circumstances, an explanatory plan concurrent with the filing of the Section 219 covenant. The purpose of this letter is to request that the Registrar consider and approve the use of abbreviated or metes and bounds legal descriptions to define each of the Covenant Areas for purposes registering the Section 219 covenants. This letter

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*Fasken Martineau DuMoulin LLP includes law corporations

Vancouver

Calgary

Toronto

Ottawa

Montréal

Québec City

London

Paris

Johannesburg

provides a brief description of each of the proposed Section 219 covenants and then sets out our request in detail with respect to the legal description proposed to be used to identify each Covenant Area.

J.E. Anderson & Associates have been retained by Bamberton to assist with the preparation of legal descriptions and some plans. Mr. Danny Carrier is currently working on all of the draft legal descriptions that we are proposing to use to define the Covenant Areas. We have provided draft descriptions for some of the Covenant Areas in this letter so you have a chance to review and consider. All of the descriptions provided in this letter are in draft form and will likely require refinement prior to registration. We will forward to you all of the draft descriptions that are not included in this letter as soon as possible for your consideration.

1. **Description of Section 219 Covenants**

Bamberton proposes to register the following covenants in favour of the CVRD, which are attached to this letter in their current draft form:

- (a) **Fire Covenant:** The fire covenant will be registered over Covenant Areas I-4 and I-3A. This agreement requires Bamberton to arrange for these covenant areas to be provided with fire protection services. As soon as Bamberton meets this condition, the fire covenant will be released.
- (b) **Riparian Covenant:** The riparian covenant will be registered over Covenant Areas I-4, I-3A, I-3 North and I-3 South. This covenant requires Bamberton to have an assessment conducted to specifically determine the streamside and protection and enhancement areas ("SPEA") within the applicable Covenant Areas. Once the SPEA('s) is/are determined, those smaller, specific areas will be surveyed and thereafter be dedicated to the CVRD or encumbered with a new Section 219 covenant. Once this process is completed for a particular Covenant Area, the riparian covenant will be released.
- (c) **Sensitive Ecosystem Inventory ("SEI") Covenant:** The SEI covenant will be registered over Covenant Areas I-4, I-3A, I-3 North and I-3 South. This covenant requires Bamberton to have an assessment conducted to identify important ecological attributes in the SEI areas situate within the relevant Covenant Areas. The specific areas identified in such assessment as requiring protection/land use restrictions will be surveyed and thereafter be dedicated to the CVRD or encumbered with a new Section 219 covenant. Once this process is completed for a particular Covenant Area, the SEI covenant will be released.

Riparian
SEI
Covenant areas

- see
clause 3
of this letter



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- (d) **Water Covenant:** The water covenant will be registered over Covenant Area I-3A. This covenant requires Bamberton to comply with certain conditions for water monitoring and protection. This covenant is intended to remain registered over Covenant Area I-3A.
- (e) **Southlands Covenant:** The Southlands covenant will be registered over the Southlands area as shown on the sketch plan attached to this letter as Schedule 2. This covenant restricts any use of the Southlands area that is inconsistent with its current natural condition until the covenant is released in accordance with its terms.

2. **Proposed Legal Descriptions of Covenant Areas**

In order to register the Section 219 covenants described at 1(a)-(e) above, we are requesting that the registrar allow Bamberton to define the applicable Covenant Areas in the following manner:

- (a) **Covenant Area I-4:** To be defined by an abbreviated legal description:

Draft legal description: "All that part of Block 176, Malahat District described as lying to the East of Plan 40471 and also lying to the West of Plan 50295"

No, does not fit criteria for m+b.

- (b) **Covenant Area I-3A:** To be defined by a metes and bounds legal description:

Draft legal description: "All that part of Block 176, Malahat District described as commencing at the Northeast corner of Block 391, thence Easterly and following the production of the North boundary of Block 391 to an intersection with the Northeasterly boundary of plan 2110 RW, thence Northerly and perpendicular to said North boundary of Block 391 to an intersection with the Southwesterly boundary of plan 40471, thence Southeasterly and following said Southwesterly boundary to an intersection with the Southwesterly boundary of plan 50295, thence Southeasterly and following said Southwesterly boundary of plan 50295 to an intersection with the Westerly boundary of plan 35492, thence Southerly and following said Westerly boundary of plan 35492 to an intersection with the South boundary of Block 176, thence Westerly and following said South boundary to an intersection with the East boundary of Block 391, thence Northerly and following said East boundary to the point of commencement, together with those parts of plans 249 RW and VIP73029 and DL 114 included within the above description."

description
No.

- (c) **Covenant Area I-3 North:** This Covenant Area includes a portion of two parcels, D.L. 127 (referred to as I-3(127)) and D.L. 95 (referred to as I-3(95)). As described above, only the riparian covenant and SEI covenant will be registered over Covenant Area I-3 North. These covenants are temporary and once the

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relevant SPEA and SEI areas are identified and then defined by survey plan, these temporary covenants will be released.

(i) I-3(127): To be defined by metes and bounds legal description drafted in a manner similar to that proposed for Covenant I-3 (183) below. We will provide a draft legal description for your consideration as soon as it is available.

(ii) I-3(95): To be defined by metes and bounds legal description drafted in a manner similar to that proposed for Covenant I-3 (118) below. We will provide a draft legal description for your consideration as soon as it is available.

(d) Covenant Area I-3 South: This Covenant Area includes a portion of two parcels, D.L. 118 (referred to as I-3(118)), and D.L. 183 (referred to as I-3(183)) and all of D.L. 135 (no further description required). As with Covenant Area I-3 North, only the riparian covenant and SEI covenant are to be registered over Covenant Area I-3 South. These covenants are temporary and once the relevant SPEA and SEI areas are identified and then defined by survey plan, these covenants will be released.

(i) I-3(118): To be defined by an abbreviated legal description:

Draft legal description: "All that part of DL 118, Malahat District described as lying to the East of a straight line or line produced joining the most Northerly corner of DL 118 to a point on the South boundary of DL118, said point distant _____ m Easterly of the Northeast corner of DL135"

(ii) I-3(183): To be described by a metes and bounds legal description:

Draft legal description: "All that part of DL 183, Malahat District described as commencing at the point of intersection of that North Boundary of DL 183 lying east of the trans Canada highway as said highway is shown on plan 591 RW and the Southeast boundary of plan VIP44897, thence Southwest 22°22'41" and following said Southeast boundary of plan VIP44897 for a distance of _____ m, thence Southeast _____ for a distance of _____ m, thence Southeast _____ for a distance of _____ m, thence Northeast _____ for a distance of _____ m more or less to an intersection with the present natural boundary of Saanich Inlet, thence Northerly and following said present natural boundary to the Northeast corner of DL 183, thence Westerly and following the North boundary of DL 183 to the point of commencement"

Reference Plan required
will accept as Explanatory if straight boundaries used

Description accepted in this instance

not acceptable. Reference plan required

**FASKEN
MARTINEAU** 
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- (e) **Southlands Area:** This area includes a portion of Lot 183 (shown hatched on the Schedule 2, referred to as Southlands (183)) and all of Lot 146 (no further description required).

We propose that Southlands (183) be defined by a metes and bounds description:

Draft legal description: "All that part of DL 183, Malahat District described as lying to the East of the Trans-Canada Highway as shown on plan 591 RW and also lying to the South of a line or line produced drawn due East from a point on the East boundary of plan 591 RW, said point distant _____ m measured Southerly along the arc of said East boundary from the intersection of said East boundary with the Southeast boundary of Plan VIP44897"

Accepted
as description
with the
understand
this is
temporary

3. General Considerations

As noted, each Covenant Area described above includes one or more portions of existing fee simple parcels. Blanket registration of the Section 219 covenants over entire parcels is not feasible since blanket registration would impose onerous obligations on Bamberton outside of the Covenant Areas, which is not intended by the parties. Most of the proposed covenants are temporary in nature, and in the case of the riparian and SEI covenants, survey plans are intended to be registered over more specific areas in the near future. In addition, the Covenant Areas are not intended to form the basis for subdivision in the future, so any survey conducted at this stage would only be used once, and not in the future. In our respectful opinion, the preparation of reference plans for these Covenant Areas does not serve the public interest nor is it an efficient or pragmatic process at this stage. It does not further the objectives of the Land Title system in ensuring brevity, accuracy and uniformity in its records.

We would appreciate discussing these matters with you and Bamberton's surveyor, Mr. Danny Carrier. Please let us know when might be a good time to do so. And, of course, do not hesitate to contact us if you have any questions or require any further information.

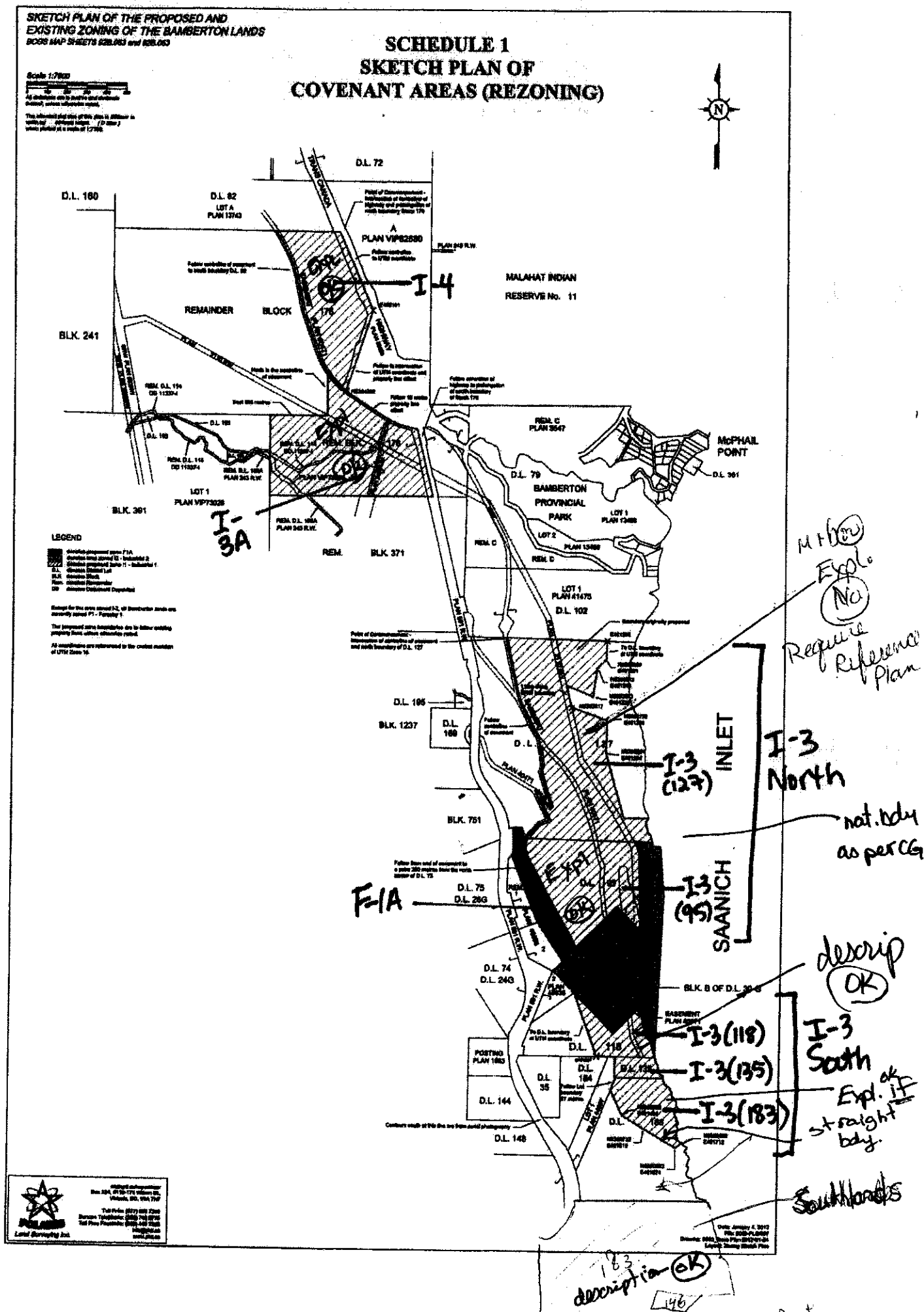
Yours truly,

FASKEN MARTINEAU DuMOULIN LLP


Carmine Boskovich

Attached Schedules: Schedule 1 –Covenant Areas (proposed to be rezoned)
Schedule 2 – Southlands Area
Schedule 3 – Draft Covenants

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**SKETCH PLAN OF PART OF
THE REMAINDER OF DL 183 AND
DL 146, MALAHAT DISTRICT.**

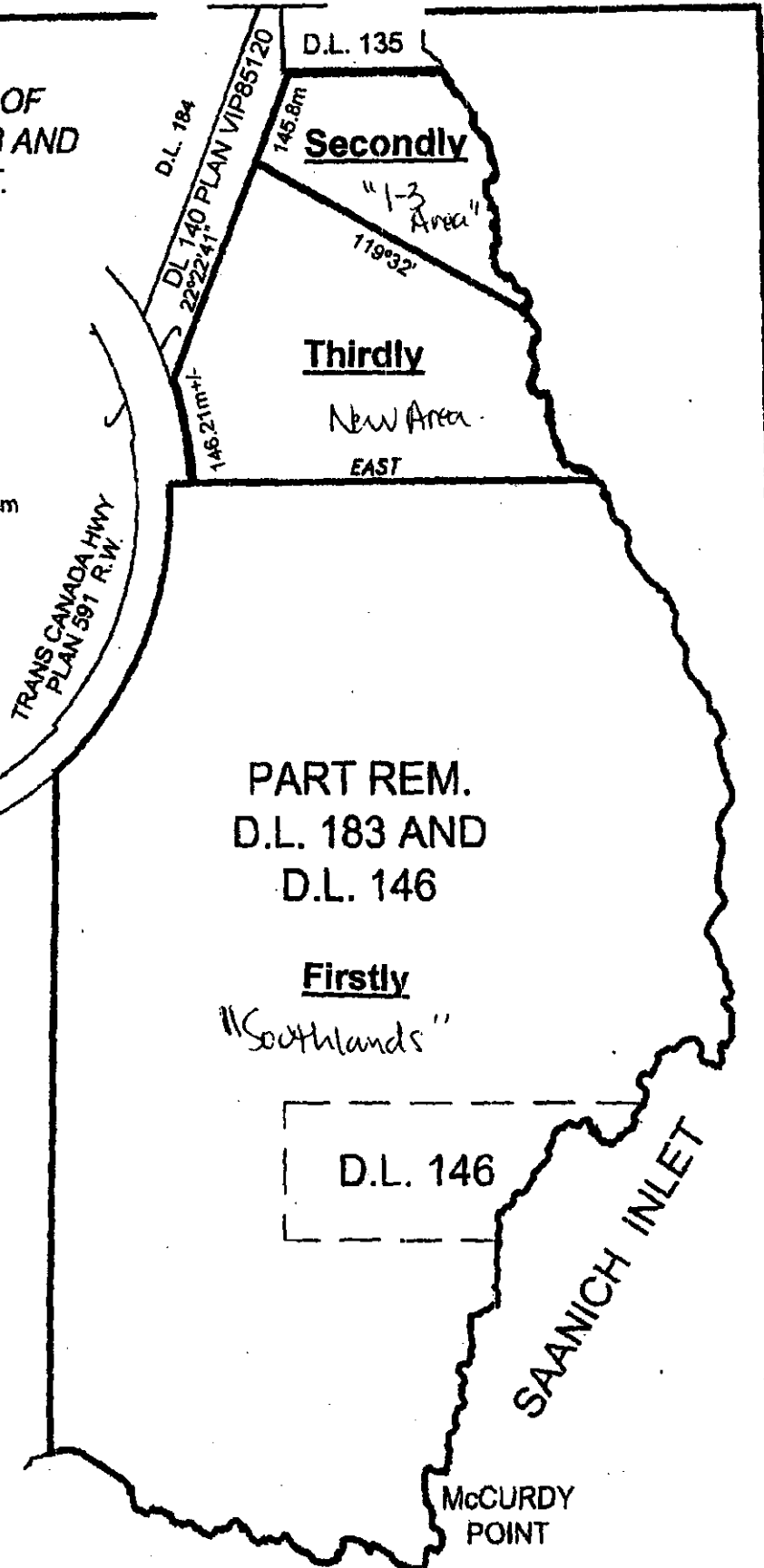
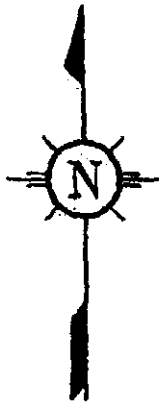
BCGS MAP SHEET 92B.063

Scale 1:10000



All distances are in metres and decimals thereof, unless otherwise noted.

The intended plot size of this plan is 216mm in width by 280mm in height (Letter Size) when plotted at a scale of 1:10000.



OK
as
Explanatory



**J.E. ANDERSON
& ASSOCIATES**
SURVEYORS - ENGINEERS

DATE March 16, 2012
PREPARED BY DEC

PROJECT NO. 27394
Page No. 1 of 1

Johnston, Maureen LTSA:EX

Subject: FW: Bamberton CVRD - Application to use Abbreviated or Metes and Bounds Legal Descriptions for Section 219 Covenants

From: Boskovich_Carmine [mailto:cboskovich@fasken.com]

Sent: March-19-12 4:06 PM

To: Johnston, Maureen LTSA:EX

Subject: Bamberton CVRD - Application to use Abbreviated or Metes and Bounds Legal Descriptions for Section 219 Covenants

Hello Maureen,

We have now received explanatory plans and metes and bounds descriptions for the areas we discussed on March 7, and we are preparing the section 219 covenants for registration within the next week or so. I've not sent these to you for review as you said it was not necessary.

I am emailing you because we've been required by the CVRD to make a change to the restrictive covenant that covers DL 183 and DL 146. We would like to confirm whether we may use a metes and bounds description for that additional area. Basically we've been asked to encumber a portion of DL 183 that was previously unencumbered by covenant (the middle portion).

I've attached a sketch plan for reference which shows DL 183 divided up into three areas (previously we only referred to two):

1. Southlands Area (labelled as firstly - Part Rem DL 183 and DL 146): This area was referred to as the "Southlands Area" in my letter to you. On our conference call you had approved the use of a metes and bounds description for this area, which has been drafted by the surveyor as follows:

"(i) All of DL 146; and

(ii) All that part of DL 183, Malahat District described as lying to the east of the Trans Canada Highway as said highway is shown on plan 591 RW and also lying to the south of a line or line produced drawn due east from a corner on the east boundary of plan 591 RW, said corner distant 146.21 meters more or less measured southerly along the arc of said east boundary from the intersection of said east boundary with the southeast boundary of DL 140 as said south east boundary is shown on Plan VIP85120

2. I-3 Area (labelled as secondly - top NE part of DL 183) This area was referred to as "I-3(183)" in my letter to you. On our conference call you had approved the use of a metes and bounds description for this area, which has been drafted by the surveyor as follows:

"All that part of DL 183, Malahat District described as lying to the north east of line or line produced commencing at a point on that south east boundary of DL 140 having an azimuth of 22°22'41" as shown on Plan VIP85120, said point distant 145.8 meters south westerly from the most easterly corner of DL 140, thence following a straight line having an azimuth of 119°32' to an intersection with the present natural boundary of Saanich Inlet."

3. New Area (labelled as thirdly - middle part of DL 183). This is the area that has been added by CVRD as requiring a separate covenant from Southlands Area and the I-3 Area. You have not yet considered this area's legal description. We would like to use a legal description that basically refers to the lines described in each of the legal descriptions above:

"All that part of DL 183, Malahat District described as lying east of Trans Canada Highway as said highway is shown on Plan 591 RW and also lying to the north of a line or line produced drawn due east from a corner on the east boundary of plan 591 RW, said corner distant 146.21 meters more or less measured southerly along the arc of said east boundary from the intersection of said east boundary with the southeast boundary of DL 140 as said south east boundary is shown on Plan VIP85120, and also lying to the south west of line or line produced commencing at a point on that south east boundary of DL 140 having an azimuth of 22°22'41" as shown on Plan VIP85120, said point distant 145.8 meters south westerly from the most easterly corner of DL 140, thence following a straight line having an azimuth of 119°32' to an intersection with the present natural boundary of Saanich Inlet."

Please let me know if you wish to discuss any of this with me or our surveyor Danny Carrier.

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cboskovich@fasken.com | www.fasken.com