

TERMS OF INSTRUMENT - PART 2

HOUSING AGREEMENT AND SECTION 219 COVENANT

(Section 483 *Local Government Act* and 219 *Land Title Act*)

THIS AGREEMENT dated for reference the _____ day of _____, 20____, is

BETWEEN:

1296341 B.C. LTD. (Inc. No. BC1296341)
12738 Arran Pl.
Surrey, BC V3V 6J4

(the "**Owner**")

AND:

CITY OF LANGFORD
2nd floor, 877 Goldstream Avenue
Langford, B.C. V9B 2X8

(the "**City**")

WHEREAS:

- A. The Owner is the registered owner in fee simple of the lands and premises in the City of Langford, British Columbia which are legally described in Item 2 of the Form C attached hereto (the "**Lands**");
- B. Section 483 of the *Local Government Act* permits the City to enter into and note on title to lands housing agreements which may include, without limitation, conditions in respect to the form of tenure of housing units, availability of housing units to classes of persons, administration of housing units, and rent that may be charged for housing units;
- C. Section 219 of the *Land Title Act* permits the registration of a covenant of a positive or a negative nature in favour of the City in respect of the use of, construction on, and subdivision of land;
- D. Council of the City has adopted a bylaw authorizing the City to enter into this Agreement as a housing agreement under section 483 of the *Local Government Act*; and
- E. The City and the Owner wish to enter into this Agreement to provide long-term affordable rental housing on the terms and conditions set out in this Agreement.

In consideration of one dollar (\$1.00) and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by both parties), and in consideration of the promises exchanged below, the Owner and the City covenant and agree pursuant to section 483 of the

Local Government Act and section 219 of the *Land Title Act* as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 **Definitions** – In this Agreement, the following words have the following meanings:

- (a) **“Affordable Rent”** means a rent payment amount equal to 10% below the “Private Apartment Average Rents” for the corresponding bedroom type in the City of Langford as established by CMHC’s Housing Market Information Portal for the year the tenancy is entered into, or if that amount is not yet established for the year the tenancy is entered into, then for the most recent year for which that amount has been established;
- (b) **“Below-Market Rental Unit”** has the meaning set out in clause 2.2;
- (c) **“CMHC”** means Canada Mortgage and Housing Corporation;
- (d) **“Eligible Tenant”** means a tenant who, at the time they enter into a Tenancy Agreement, has a gross household income equal to or less than the most recently published Housing Income Limits;
- (e) **“Dwelling Unit”** means a dwelling unit as defined in the City of Langford’s “Langford Zoning Bylaw, 1999” as amended or replaced from time to time;
- (f) **“Housing Income Limits”** means the Housing Income Limits for affordable housing programs (for each category of dwelling unit) established by the British Columbia Housing Management Commission, from time to time, for the “Victoria Planning Area” as shown in the annual Housing Income Limits report published by the British Columbia Housing Management Commission;
- (g) **“LTO”** means the Victoria Land Title Office;
- (h) **“Site Plans”** mean the site plan drafted by Victoria Design Group, project #8459 and dated Oct. 30, 2023, a copy of which is attached as Schedule A;
- (i) **“Subdivide”** means to divide, apportion, consolidate or subdivide the Lands or any building on the Lands, or the ownership or right to possession or occupation of the Lands or any building on the Lands, into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization or development of “cooperative interests” or a “shared interest in land” as defined in the *Real Estate Development Marketing Act* (British Columbia);
- (j) **“Tenancy Agreement”** means a tenancy agreement, lease, license or other agreement granting rights to occupy a Below-Market Rental Unit;
- (k) **“Tenant”** means an occupant of a Below-Market Rental Unit by way of a Tenancy Agreement.

1.2 Interpretation – In this Agreement:

- (a) reference to the singular includes a reference to the plural, and *vice versa*, unless the context requires otherwise;
- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (c) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (d) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- (f) the provisions of section 25 of the *Interpretation Act* (British Columbia) with respect to the calculation of time apply;
- (g) time is of the essence;
- (h) all provisions are to be interpreted as always speaking;
- (i) reference to a “party” is a reference to a party to this Agreement and to that party’s respective successors, assigns, trustees, administrators and receivers. Wherever the context so requires, reference to a “party” also includes a Tenant, agent, officer and invitee of the party;
- (j) reference to a “day”, “month”, or “year” is a reference to a calendar day, calendar month, or calendar year, as the case may be, unless otherwise expressly provided; and
- (k) where the word “including” is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word “including”.

ARTICLE 2 USE AND CONSTRUCTION OF LANDS AND BELOW-MARKET RENTAL UNITS

2.1 Use and Construction of Lands – The Owner covenants and agrees that the Lands will not be used except in accordance with the terms of this Agreement and will not be developed and no building or structure will be constructed or used on the Lands unless as part of the development, construction, or use of any such building or structure, the Owner also designs and constructs to completion, in accordance with a building permit issued by the City, any development permit issued by the City and, if applicable, any rezoning consideration applicable to the development on the Lands, no less than two (2) Dwelling Units to be used as Below-Market Rental Units.

2.2 Rental Units – The Owner covenant and agrees that the Lands must not be used for any purpose whatsoever unless the Dwelling Units labelled on the Site Plan as “Rental”, or such other Dwelling Units as the parties may agree to in writing, (the “**Below-Market Rental Units**”) are used or available for use as residential rental units and such use is pursuant to this Agreement.

2.3 Short-term Rentals Prohibited – The Owner agrees that no Below-Market Rental Unit may be rented to or tenanted by any person for a term of less than thirty (30) days.

2.4 Requirement for Statutory Declaration – The City may, from time to time request the Owner to provide written proof of compliance with this Agreement, and such Owner agrees to provide, or cause an operator of the Lands to provide the City with such proof in a form reasonably satisfactory to the City, including as a declaration made under oath.

2.5 City Authorized to Make Inquiries – The Owner hereby irrevocably authorizes the City to make such inquiries as it considers necessary in order to confirm that the Owner is complying with this Agreement.

2.6 Discharge of Housing Agreement – Subsequent to a construction of the Below-Market Rental Units and subdivision of the Lands which creates individual lots for each Dwelling Unit, the Owner may provide to the City a discharge of this Agreement from any portion of the Lands other than the Below-Market Rental Units, which the City will execute and return to the Owner for filing with the LTO.

2.7 Expiry of Housing Agreement – This Agreement will cease to apply from and after the tenth (10th) anniversary of the date the City of Langford grants an occupancy permit for the Below-Market Rental Units. Upon expiry, the Owner may provide to the City a discharge of this Agreement, which the City will execute and return to the Owner for filing in the LTO.

ARTICLE 3 USE OF BELOW-MARKET RENTAL UNITS

3.1 Occupancy and Tenure of Below-Market Rental Units – The Owner must not rent, lease, license or otherwise permit occupancy of any Below-Market Rental Unit except in accordance with the additional conditions:

- (a) the Below-Market Rental Units must be used or occupied only for residential rental purposes pursuant to a Tenancy Agreement;
- (b) each Below-Market Rental Unit may only be tenanted to an Eligible Tenant, who:
 - (i) at the time of entering into the tenancy, resides in Langford; and
 - (ii) at the time of entering into the tenancy, does not own any land as defined by the *Interpretation Act* (British Columbia).
- (c) the Owner, and/or any immediate family member (spouse, parent, sibling, child by blood, marriage, or adoption), will not reside in a Below-Market Rental Unit;
- (d) the Owner will enter into a minimum 1-year Tenancy Agreement for each of the Below-Market Rental Units which will convert to a month-to-month tenancy at the

end of the first-year term;

- (e) the Owner will not require the Tenant or any permitted occupant to pay any extra charges or fees for sanitary sewer, storm sewer, water or property or similar tax;
- (f) the Owner will attach a copy of this Agreement, or at a minimum Articles 2 and 3 of this Agreement, to every Tenancy Agreement;
- (g) the Owner will notify the City when a Tenancy Agreement terminates for any reason and will notify the City when the Owner enters into a Tenancy Agreement; and
- (h) the Owner will forthwith deliver a true copy of any Tenancy Agreement to the City upon demand.

3.2 Tenant Screening and Records – The Owner covenants and agrees as follows:

- (a) the Owner will review income of each prospective Tenant at the commencement of each tenancy to determine whether the prospective Tenant is an Eligible Tenant;
- (b) prior to entering to a Tenancy Agreement with a prospective Tenant, the Owner must confirm that the prospective Tenant is an Eligible Tenant and that they meet the requirements of clause 3.1(b); and
- (c) the Owner must maintain a system of records indicating the incomes of each past and current Tenant.

3.3 Rental Rates of Below-Market Rental Units – The Owner will not charge or set rental rates for Below-Market Rental Units at the start of a tenancy that exceed Affordable Rent. The Owner may increase rental rates during the term of a tenancy in accordance with the *Residential Tenancy Act*.

ARTICLE 4 MISCELLANEOUS

4.1 Housing Agreement – The Owner acknowledges and agrees that:

- (a) this Agreement includes a housing agreement entered into under section 483 of the *Local Government Act* and covenants under section 219 of the *Land Title Act*;
- (b) the City may file notice of, and register, this Agreement in the LTO pursuant to section 483(5) of the *Local Government Act* against the title to the Lands.

4.2 Modification – This Agreement may be modified or amended from time to time, by written consent of the Owner and a bylaw duly passed by the Council of the City and thereafter if it is signed by the City and the Owner.

4.3 Management – The Owner covenants and agrees with the City that:

- (a) the Owner will furnish good and efficient management of the Below-Market Rental

Units;

- (b) the Owner will permit representatives of the City to inspect the Below-Market Rental Units at any reasonable time, subject to the notice provisions of the *Residential Tenancy Act*;
- (c) the Owner will maintain the Below-Market Rental Units in a good state of repair and fit for habitation in accordance with the requirements of the *Residential Tenancy Act*, reasonable wear and tear excepted; and
- (d) without restricting the foregoing, the Owner will comply with all applicable provisions of the *Residential Tenancy Act* and any other provincial or municipal enactments imposing obligations on landlords in relation to residential tenancies.

4.4 Release and Indemnity – As an integral part of this Agreement, the Owner hereby releases, indemnifies and saves harmless the City, its elected or appointed officials, officers, employees or agents:

- (a) from and against any and all liability, actions, causes of action, claims, suits, proceedings, judgements, damages, expenses (including legal fees), demands, and losses at any time suffered or incurred by, or brought against, the City, or any of its elected or appointed officials, officers, employees or agents, arising from or in connection with the granting or existence of this Agreement, the performance of any of the Owner's obligations under this Agreement, the operation or existence of a Tenancy Agreement or other lease made pursuant to this Agreement, the issuance of any permit or approval by the City or any officers or employee of the City, or any breach of any provision under this Agreement; and
- (b) for all costs, fees and expenses, including legal fees, incurred by the City in the enforcement of this Agreement as a result of any breach of any provision of this Agreement by the covenantor.

4.5 Survival – The indemnity and release set out in this Agreement will survive termination or discharge of this Agreement.

4.6 Costs – The Owner agrees to reimburse the City for all legal costs reasonably incurred by the City for the preparation, execution and registration of this Agreement. The Owner will bear their own costs, legal or otherwise, connected with the preparation, execution or registration of this Agreement. The Owner further agrees that the Owner will perform its obligations under this Agreement at its own expense and without compensation from the City.

4.7 City's Powers Unaffected – This Agreement does not:

- (a) affect, fetter or limit the discretion, rights, duties or powers of the City under any enactment or at common law, including in relation to the use or subdivision of the Lands;
- (b) impose on the City any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;
- (c) affect or limit any enactment relating to the use or subdivision of the Lands; or

- (d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Lands.

4.8 Agreement for Benefit of City Only – The Owner and the City agree that:

- (a) this Agreement is entered into only for the benefit of the City;
- (b) this Agreement is not intended to protect the interests of the Owner, any Tenant, or any future Owner, lessee, occupier or user of the Lands or the building or any portion thereof, including any Below-Market Rental Units; and
- (c) the City may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.

4.9 No Public Law Duty – Where the City is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the City is under no public law duty of fairness or natural justice in that regard and agrees that the City may do any of those things in the same manner as if it were a private party and not a public body.

4.10 Notice – Any notice required to be served or given to a party herein pursuant to this Agreement will be sufficiently served or given if delivered,

- (a) to the postal address of the Owner set out in the records at the LTO, and
- (b) to the postal address of the City set out on the first page of the terms of this Agreement and to the attention of the Director of Planning and Subdivision:

or to the most recent postal address provided in a written notice given by each of the parties to the other. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery.

4.11 Enuring Effect – This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

4.12 Severability – If any provision of this Agreement is found to be invalid or unenforceable, such provision or any part thereof will be severed from this Agreement and the resultant remainder of this Agreement will remain in full force and effect.

4.13 Waiver – All remedies of the City will be cumulative and may be exercised by the City in any order or concurrently in case of any breach and each remedy may be exercised any number of times with respect to each breach. Waiver of or delay in the City exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.

4.14 Entire Agreement – This Agreement, and any documents signed by the Owner contemplated by this Agreement, represent the entire agreement between the City and the Owner respecting the use and occupation of the Below-Market Rental Units, and there are no warranties,

representations, conditions or collateral agreements made by the City except as set forth in or contemplated by this Agreement.

4.15 Further Assurances – Upon request by the City the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the City to give effect to this Agreement.

4.16 Governing Law- This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia, which will be deemed to be the proper law hereof.

4.17 Priority – The Owner must cause this Agreement to be registered in the applicable land title office against title to the Lands with priority over all financial liens, charges and encumbrances, and any leases and options to purchase, registered or pending registration at the time of application for registration of this Agreement, including by causing the holder of each such lien, charge, encumbrance, lease or option to purchase to execute an instrument in a form required by the City under which such holder postpones all of the holder's rights to those of the City under this Agreement in the same manner and to the same extent as if such lien, charge, encumbrance, lease or option to purchase had been registered immediately after the registration of this Agreement.

4.18 Limitation on Owner's Liability - The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Lands.

4.19 Agreement Runs with Lands – This Agreement burdens and runs with the Lands and every parcel into which it is Subdivided in perpetuity. All of the covenants and agreements contained in this Agreement are made by the Owner for itself, its personal administrators, successors and assigns, and all persons who after the date of this Agreement acquire an interest in the Lands.

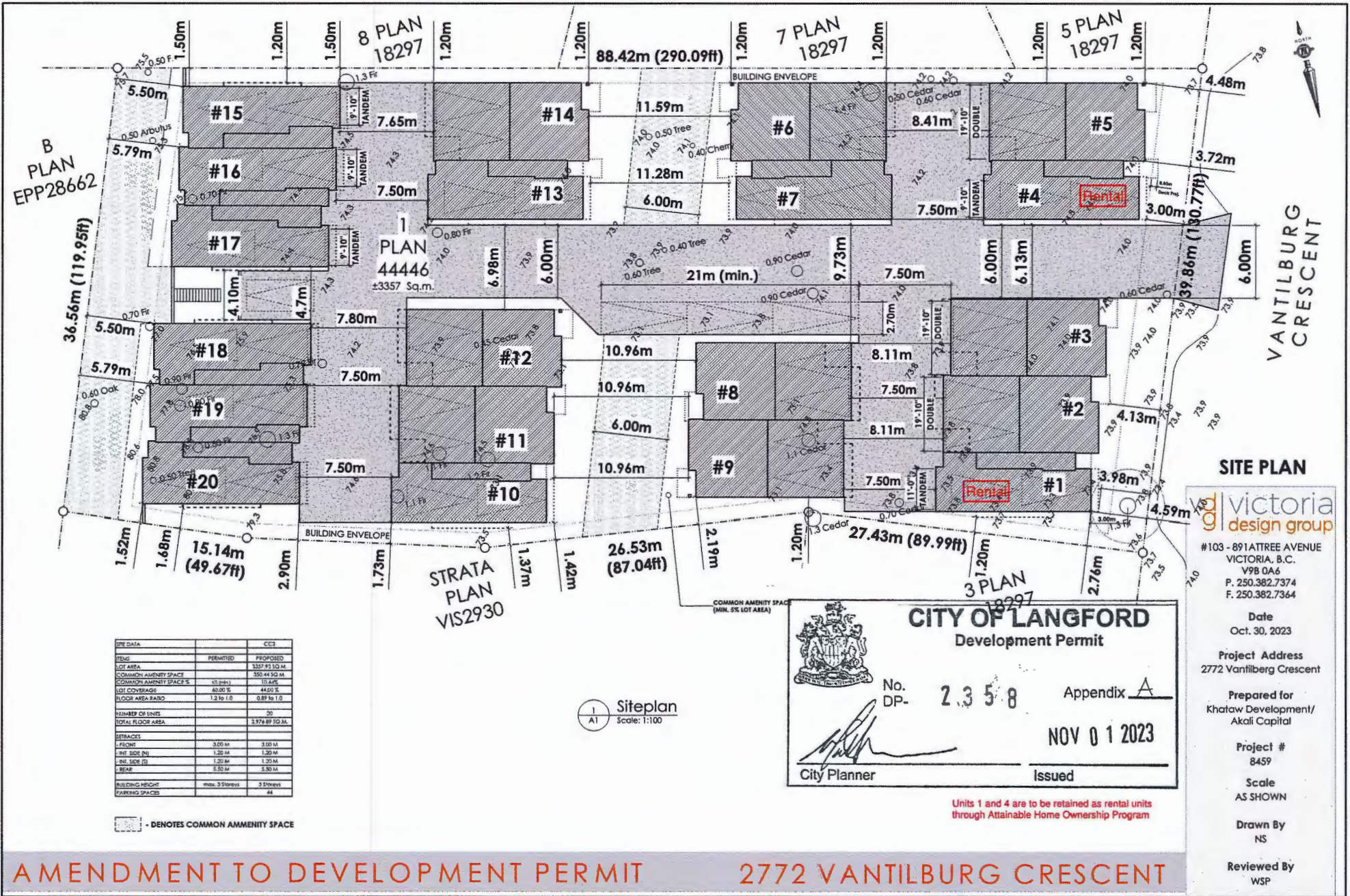
4.20 Equitable Remedies – The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for any breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement.

4.21 No Joint Venture – Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the City or give the Owner any authority to bind the City in any way.

4.22 Applicable Law – The laws of British Columbia (including, without limitation, the *Residential Tenancy Act*) will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the *Land Title Act* Form C which is attached to and forms part of this Agreement.

Schedule A to the Housing Agreement



SITE DATA		CC3
ITEM	PERMITTED	PROPOSED
LOT AREA		3357.93 SQ M
COMMON AMENITY SPACE		350.44 SQ M
COMMON AMENITY SPACE-%	13.12%	10.44%
LOT COVERAGE	40.00 %	44.00 %
FLOOR AREA RATIO	1.2 to 1.0	0.89 to 1.0
NUMBER OF UNITS		20
TOTAL FLOOR AREA		3,976.87 SQ M
SETBACKS		
- FRONT	3.00 M	3.00 M
- INT. SIDE (N)	1.20 M	1.20 M
- INT. SIDE (S)	1.20 M	1.20 M
- REAR	5.50 M	3.50 M
BUILDING HEIGHT	max. 3 Storeys	3 Storeys
PARKING SPACES		44

- DENOTES COMMON AMMENITY SPACE

Siteplan
Scale: 1:100

CITY OF LANGFORD
Development Permit

No. DP- 2,358 Appendix A

City Planner

NOV 01 2023

Issued

Units 1 and 4 are to be retained as rental units through Attainable Home Ownership Program

SITE PLAN

victoria design group

#103 - 891 TREE AVENUE
VICTORIA, B.C.
V9B 0A6
P. 250.382.7374
F. 250.382.7364

Date
Oct. 30, 2023

Project Address
2772 Vantilburg Crescent

Prepared for
Khatav Development/
Akali Capital

Project #
8459

Scale
AS SHOWN

Drawn By
NS

Reviewed By
WSP

AMENDMENT TO DEVELOPMENT PERMIT 2772 VANTILBURG CRESCENT

COPYRIGHT RESERVED. WRITTEN CONSENT IS REQUIRED FROM THE DESIGNER BEFORE ANY REPRODUCTION.

PRIORITY AGREEMENT

WHEREAS:

- A. **FIRST WEST CREDIT UNION INCORPORATION NO. FI-156** (the “**Chargeholder**”) is the holder of a mortgage and assignment of rents (collectively, the “**Financial Charge**”) encumbering the lands described in Item 2 of Part 1 of the Form C General Instrument to which this Priority Agreement is attached and which is registered in the Victoria Land Title Office as CA9245017 and CA9245018 respectively; and
- B. A covenant pursuant to section 219 of the *Land Title Act* is being granted pursuant to Part 2 of the Form C General Instrument to which this Priority Agreement is attached (the “**City’s Charge**”) which is or will be registered against title to the lands.

NOW THEREFORE for one dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder, the Chargeholder hereby grants to the City priority for the City’s Charges over all the Chargeholder’s right, title and interest in and to the lands as if the City’s Charges had been executed, delivered and registered prior to the execution and registration of the Financial Charge and prior to the advance of any monies pursuant to the Financial Charge. The grant of priority is irrevocable, unqualified and without reservation or limitation.

END OF DOCUMENT