

**Cowichan Bay Investments [Pritchard/Caspian Townhouses] Agreement Bylaw
No. 366 - 2023**

COWICHAN BAY WATERWORKS DISTRICT

BYLAW NO. 366

*A bylaw to authorize the execution of an agreement regarding the townhouse development by
Cowichan Bay Investments at Caspian/Pritchard Rd, Cowichan Bay BC.*

The Trustees of Cowichan Bay Waterworks District ENACT AS FOLLOWS:

1. That Calvin Slade, Chair of the Trustees, and Cheryl Wirsz, District Administrator, are hereby authorized to execute on behalf of the District the following agreements with Cowichan Bay Investments regarding the twenty townhouse development at Caspian/Pritchard Road:
 - a. Statutory Right of Way/Covenant dated June 19, 2023
 - b. Memorandum of Agreement dated June 19, 2023
2. That Calvin Slade, Chair of the Trustees, and Cheryl Wirsz, District Administrator, are hereby authorized to execute on behalf of the District all necessary instruments to give effect to the said agreements.
3. This bylaw may be cited as "Cowichan Bay Investments [Pritchard/Caspian Townhouses] Agreement Bylaw 366"

INTRODUCED and given first reading by the Trustees on the 19th day of June, 2023.
RECONSIDERED and finally adopted by the Trustees on the 19th day of June, 2023.



Chair, Board of Trustees

This true copy of Bylaw 366 is hereby certified correct on this 19th day of June, 2023.



District Administrator

a.

TERMS OF INSTRUMENT – PART 2

STATUTORY RIGHT OF WAY AND COVENANT

This Agreement dated for reference the 19th day of June, 2023,

BETWEEN:

COWICHAN BAY INVESTMENTS LTD. (BC1242684), a British Columbia company, c/o P.O. Box #17, 2605 Timber Ridge Road, Shawnigan Lake, British Columbia V0R 2W0

(the “Owner”)

AND:

COWICHAN BAY WATERWORKS DISTRICT, an improvement district under the *Local Government Act* of British Columbia, c/o 1760 Pavenham Road Cowichan Bay, British Columbia V0R 1N1

(“CBWD”)

WHEREAS:

- A. Capitalized terms used in these Recitals and in this Agreement have the meanings ascribed to them in Section 1.1 of this Agreement;
- B. The Owner is the registered owner of those lands and premises known as:

PID: 005-490-383
Lot 3, Section 6, Range 4, Cowichan District, Plan 8219

(the “Lands”);
- C. The Lands are within the boundaries of CBWD;
- D. The Owner is applying to subdivide the Lands into twenty (20) strata lots in accordance with Strata Plan EPS9430 to create a twenty (20) strata lot townhouse development (the “Development”);
- E. Section 218 of the *Land Title Act*, RSBC 1996, c 250 enables the Owner to grant in favour of CBWD a statutory right of way over a part of the Lands to facilitate the installation, operation and maintenance of a system of waterworks including all pipes, valves, fittings, bends, conduits, hydrants, blow offs, wires, casings, fittings, lines, meters, appliances, attachments, devices and facilities in connection thereto;

- F. On February 26, 2021, CBWD was designated by the minister under section 219(3)(c) of the *Land Title Act*, RSBC 1996, c 250 to hold covenants of a positive and negative nature; and
- G. The statutory right of way and covenant are necessary for the operation and maintenance of CBWD's undertaking.

NOW THEREFORE in consideration of the premises contained in this agreement, \$1.00 paid by CBWD to the Owner, and other good and valuable consideration, the receipt and sufficiency of which are herein acknowledged by the parties, the parties agree as follows:

1.0 INTERPRETATION

1.1 Definitions

In this Agreement, the following terms have the following meanings:

- (a) "**Agreement**" means this agreement, including its recitals and schedules, as amended in writing from time to time;
- (b) "**Lands**" means that Lands as defined in recital B of this Agreement;
- (c) "**Owner**" means Cowichan Bay Investments Ltd., and includes any successor of the Owner in this Agreement, including the Strata Corporation created for the Development;
- (d) "**Statutory Right of Way**" means the portion of the Lands shown as a heavy dark line on Explanatory Plan EPP128168 as "Area 1" and "Area 2";
- (e) "**Works**" means a system of waterworks including all pipes, valves, fittings, bends, conduits, hydrants, blow offs, wires, casings, fittings, lines, meters, appliances, attachments, devices and any other facilities in connection thereto located on the Lands.

1.2 Interpretation

Whenever the singular or masculine is used in this Agreement, the same is deemed to include the plural or the feminine or the body politic or corporate wherever the context or parties hereto so require.

1.3 Headings

The inclusion of headings and clause titles is for convenience only and shall not affect the construction or interpretation of this Agreement.

1.4 No Contra Proferentem

The language in all parts of this Agreement shall in all cases be construed as a whole and neither strictly for nor strictly against any of the parties hereto.

2. GRANT OF STATUTORY RIGHT OF WAY

2.1 The Owner hereby grants and conveys in perpetuity and at all times to CBWD, its successors and assigns, all of its employees, agents, contractors, servants, licensees, and at all times the full, free and uninterrupted right, license, liberty, easement, privilege and right of way in common with the Owner to:

- (a) enter, labour, use, go, return, pass over, across, on, in and under that part of the Lands with or without vehicles, supplies or equipment (which portion is called the "Statutory Right of Way") which will be the portion of the Lands shown as a heavy dark line on Explanatory Plan EPP128168 as "Area 1" and "Area 2", attached hereto as Schedule "A", for the purposes of installing, operating, inspecting, maintaining, altering, removing, replacing, burying, cleansing and stringing the Works, and any other actions necessary for the proper operation of the Works;
- (b) conduct surveys and examinations thereon;
- (c) dig up the soil thereof and place fill, earth, sand and gravel thereon;
- (d) lay down, construct, erect, operate, maintain, inspect, clean, cover with soil, alter, extend, remove, replace, relocate, reconstruct and repair the Works, as necessary in connection with CBWD's provision of providing potable water to the Development;
- (e) bring on the Statutory Right of Way all materials and equipment CBWD requires or desires for the Works;
- (f) inspect and clear the Statutory Right of Way and keep it clear of anything which, in the opinion of CBWD, constitutes or may constitute a danger to, or obstruction of, the use of the Statutory Right of Way or the Works;
- (g) remove from the Statutory Right of Way any embankment or fill or such buildings, structures, improvements, fixtures, fences, gates, trees, shrubs and other obstructions as, in CBWD's opinion, is necessary for CBWD to exercise its right hereunder; and
- (h) do all other things on the Statutory Right of Way as may be required in connection with or incidental to the foregoing.

- 2.2 The Owner hereby grants, conveys, confirms, and transfers onto CBWD, and its servants, agents, workers, contractors, and all other licensees of CBWD with machinery, vehicles, equipment and materials, the right at all times to enter upon and to pass and repass over such of the Lands as may reasonably be required for the purpose of ingress to and egress from the Statutory Right of Way.
- 2.3 The Owner hereby transfers, assigns and conveys to CBWD all right, title and interest in and to any Works that CBWD or the Owner may have established or constructed or maintained or operated with the Statutory Right of Way prior to this Agreement or in relation to any similar Works previously constructed by any party whatsoever within the Statutory Right of Way. For greater certainty and without limiting the foregoing, subject to paragraph 4.5, CBWD will have all rights, title and interest in and to any additional Works constructed on the Statutory Right of Way now and in the future.

COVENANTS

- 3.1 The Owner will:
- a) not do or permit to be done any act or thing which in the opinion of CBWD might interfere with, injure, impair the efficiency of, or obstruct access to or the use of the Statutory Right of Way for the purposes set forth in this Agreement;
 - b) not, and not permit any person to, erect, place, install, or maintain any building, object, structure, or addition to a building or structure, including, without limiting the generality of the foregoing, any mobile home, concrete or asphalt driveway, patio, fish pond, waterfall, retaining wall, derelict vehicle, shed, pipe, wire or other conduit, on or over or under any portion of the Statutory Right of Way, without the written consent of CBWD, which consent will not be unreasonably withheld;
 - c) not, and not permit any person to, do anything that in any way interferes with, damages, prevents access to, or is likely to cause harm to the Works;
 - d) at the Owner's cost, execute all further documents and things for the better assurance to CBWD of the Statutory Right of Way granted herein;
 - e) comply with all terms and conditions in the agreement between the parties dated June 19, 2023, attached hereto as Schedule "B", such terms including but not limited to:
 - (i) being responsible for and bearing all costs for CBWD to maintain, operate, inspect, alter, remove, repair, replace, bury, cleanse, string, and otherwise ensure the proper operation of the Works (the "Works Costs");
 - (ii) paying any and all of the Works Costs within thirty (30) days of receiving an invoice from CBWD (the "Invoices"); and
 - (iii) paying interest at a rate to be prescribed by CBWD bylaw on any overdue amounts in the Invoices.

3.2 CBWD will:

- a) at the Owner's cost, use the Statutory Right of Way and carry out any construction and maintenance of the Works in a skilled and competent manner in order to cause no unnecessary damage or disturbance to the Owner, the Lands or any improvements on the Lands;
- b) at the Owner's cost, remove all rubbish or construction debris created in order to leave the Statutory Right of Way in a reasonably neat and clean condition; and
- c) exercise care not to damage the Lands or any improvement on the Lands and if CBWD should cause any such damage, restore such damaged Lands or improvements thereon to as close to their pre-damaged conditions as is as reasonably practicable with reasonable dispatch or where CBWD deems restoration be impracticable, reimburse the Owner for all reasonable damages CBWD has caused but not restored.
- d) Nothing will require CBWD to clean, repair or maintain the Statutory Right of Way unless CBWD is expressly required by this Agreement or by statute to perform such cleaning, repairing, or maintenance.

3.3 Should the Owner omit, fail or neglect to carry out one of its obligations contained in this Agreement or do some act contrary to the obligations contained herein, CBWD may give the Owner 14 days' written notice by registered mail requiring the default to be cured.

3.4 If the Owner fails to cure such default to the satisfaction of CBWD within the time specified, CBWD may enter on to the Lands and rectify such default to the extent considered necessary by it and the cost of doing so will be a debt due and owing to CBWD by the Owner.

3.5 If CBWD, at its sole discretion, determines that such default may cause imminent danger to the health or safety of the potable water supply, CBWD is not required to give the Owner 14 days' written notice requiring the default to be cured, and may enter on to the Lands immediately and rectify such default to the extent considered necessary by it and the cost of doing so will be a debt due and owing to CBWD by the Owner.

3.6 The Owner will at all times and does hereby indemnify, save harmless and forever discharge CBWD from and against all manner of costs, legal fees (on a solicitor and own client basis, expenses, actions, causes of actions, claims, debts, suits, damages, demands and promises at law or at equity, whether known or unknown, including without limitation to persons or property including death, of any person directly or indirectly arising or resulting from, or attributable to, any act, omission negligence or default of the Owner in connection with or in consequence of this Agreement, save and accept to the extent caused by the act, omission, negligence or default of CBWD, in which case CBWD will indemnify the Owner under section 3.7 of this Agreement.

3.7 CBWD will at all time and does hereby indemnify, save harmless and release and forever discharge the Owner from and against all matter of costs, actions causes of actions, claims,

debts, suits, damages, demands and promises, at law or in equity whether known or unknown, including without limitation to persons or property including death, of any person directly or indirectly arising or resulting from, or attributable to, any act, omission negligence or default of CBWD in connection with or in consequence of this Agreement, save and accept to the extent caused by the act, omission, negligence or default of the Owner, in which case the Owner will indemnify CBWD under section 3.6 of this Agreement.

GENERAL PROVISIONS

- 4.1 Notwithstanding any other term of this Agreement, if a strata plan is registered in the applicable Land Title Office in respect of all or a portion of the Lands, then the benefit and burden of the Covenant granted in this Agreement will enure to the benefit of and be binding upon the strata corporation(s) so created, and be a charge or appurtenance, as the case may be, upon the respective common property of such strata corporation.
- 4.2 Notwithstanding anything in this agreement CBWD reserve all right and powers of expropriation otherwise enjoyed by CBWD.
- 4.3 Waiver of any default by any party will not be deemed to be waiver of any subsequent defaults by that party.
- 4.4 Notwithstanding any rule of law or equity to the contrary, any and all of the Works shall at all times be and remain chattels and the separate property of CBWD, notwithstanding that the Works may be annexed or affixed to or buried within the Lands.
- 4.5 In the event that CBWD abandons the Works or any part of them, CBWD may, if it so elects, leave the whole or any part of the Works in place, and if so abandoned, the Works, or part thereof, will become the property of the Owner.
- 4.6 This Agreement runs with the Lands and these covenants are enforceable against the Owner and its successors in title, including the strata corporation created for the Development. However, the Owner is not personally liable for breaches of these covenants after the Owner has ceased to be the owner of the Lands.
- 4.7 Nothing contained or implied in this Agreement shall prejudice or affect the rights and powers of CBWD in the exercise of its functions under any public or private statutes, bylaws, orders and regulations or in equity, all of which rights, powers and remedies may be fully effectively exercised in relation to the Lands, the Statutory Right of Way and the Owner and CBWD as if this Agreement had not been executed and delivered by the parties.
- 4.8 The Owner and CBWD hereby agree that any costs incurred by CBWD, including legal costs on a solicitor-client, full indemnity basis, as a result of the breach by the Owner of this Agreement will be payable by the Owner to CBWD forthwith upon written demand.
- 4.9 The Owner will do or cause to be done at its expense all acts necessary for CBWD to gain priority for this Agreement over all liens, charges and encumbrances which are or may be

registered against the Lands, save and except those in favour of CBWD and those specifically approved in writing by CBWD.

- 4.10** Except as expressly provided in this Agreement, no amendment or waiver of it will be binding unless made in writing by the party to be bound by such amendment or waiver. Any amendments to this Agreement will, upon execution, be deposited in the appropriate Land Title and Survey Authority Office for registration. No waiver of any provision, or any portion of any provision, of this Agreement, will constitute a waiver of any other part of the provision or any other provision of this Agreement or a continuing waiver unless otherwise expressly provided.
- 4.11** This Agreement may be executed and delivered in any number of counterparts with the same effect as if all parties had all signed and delivered the same documents and all counterparts will be compiled together for registration and will constitute one and the same Agreement.
- 4.12** If any section or any part of this Agreement is found to be illegal or unenforceable, then such sections or parts shall be considered to be separate and severable from this Agreement and the remaining sections or parts of this Agreement, as the case may be, shall be unaffected thereby and shall remain and be enforceable to the fullest extent permitted by law as though the illegal or unenforceable parts or sections had never been included in this Agreement.
- 4.13** This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein.
- 4.14** This Agreement shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.
- 4.15** The Owner acknowledges and agrees that it has had the opportunity to seek and obtain independent legal advice prior to executing this Agreement and that it has obtained such advice or determined that it does not require such advice.

SCHEDULE "A"

Explanatory Plan EPP128168

(attached hereto)

**SURVEY PLAN CERTIFICATION
PROVINCE OF BRITISH COLUMBIA**

PAGE 1 OF 2 PAGES

Your electronic signature is a representation that you are a British Columbia land surveyor and a subscriber under section 168.6 of the *Land Title Act*, RSBC 1996 c.250. By electronically signing this document, you are also electronically signing the attached plan under section 168.3 of the act.

Jason Kozina Digitally signed by
NVVASM Jason Kozina NVVASM
Date: 2023.03.27
07:45:06 -07'00'

1. BC LAND SURVEYOR: (Name, address, phone number)

Jason C. Kozina
101-630 Goldstream Avenue

Apex Land Surveying Ltd.
jason@summitsurveying.ca
www.summitsurveying.ca

Victoria **BC V9B 2W8**

Surveyor General Certification [For Surveyor General Use Only]

2. PLAN IDENTIFICATION:

Control Number: **168-668-4889**

Plan Number: **EPP128168**

This original plan number assignment was done under Commission #: **787**

3. CERTIFICATION:

Form 9 Explanatory Plan Form 9A

I am a British Columbia land surveyor and certify that I was present at and personally superintended this survey and that the survey and plan are correct.

The field survey was completed on: **2023** **March** **22** (YYYY/Month/DD) The checklist was filed under ECR#: **269983**
The plan was completed and checked on: **2023** **March** **27** (YYYY/Month/DD)

None Strata Form S

None Strata Form U1 Strata Form U1/U2

Arterial Highway

Remainder Parcel (Airspace)

4. ALTERATION:

**STATUTORY RIGHT OF WAY PLAN OVER PART OF LOT 3,
SECTION 6, RANGE 4, COWICHAN DISTRICT, PLAN 8219,
PURSUANT TO SECTION 113 OF THE LAND TITLE ACT.**

PLAN EPP128168



BCGS 92B.072

The intended plot size of this plan is 432mm in width by 560mm in height (C Size) when plotted at a scale of 1:400.

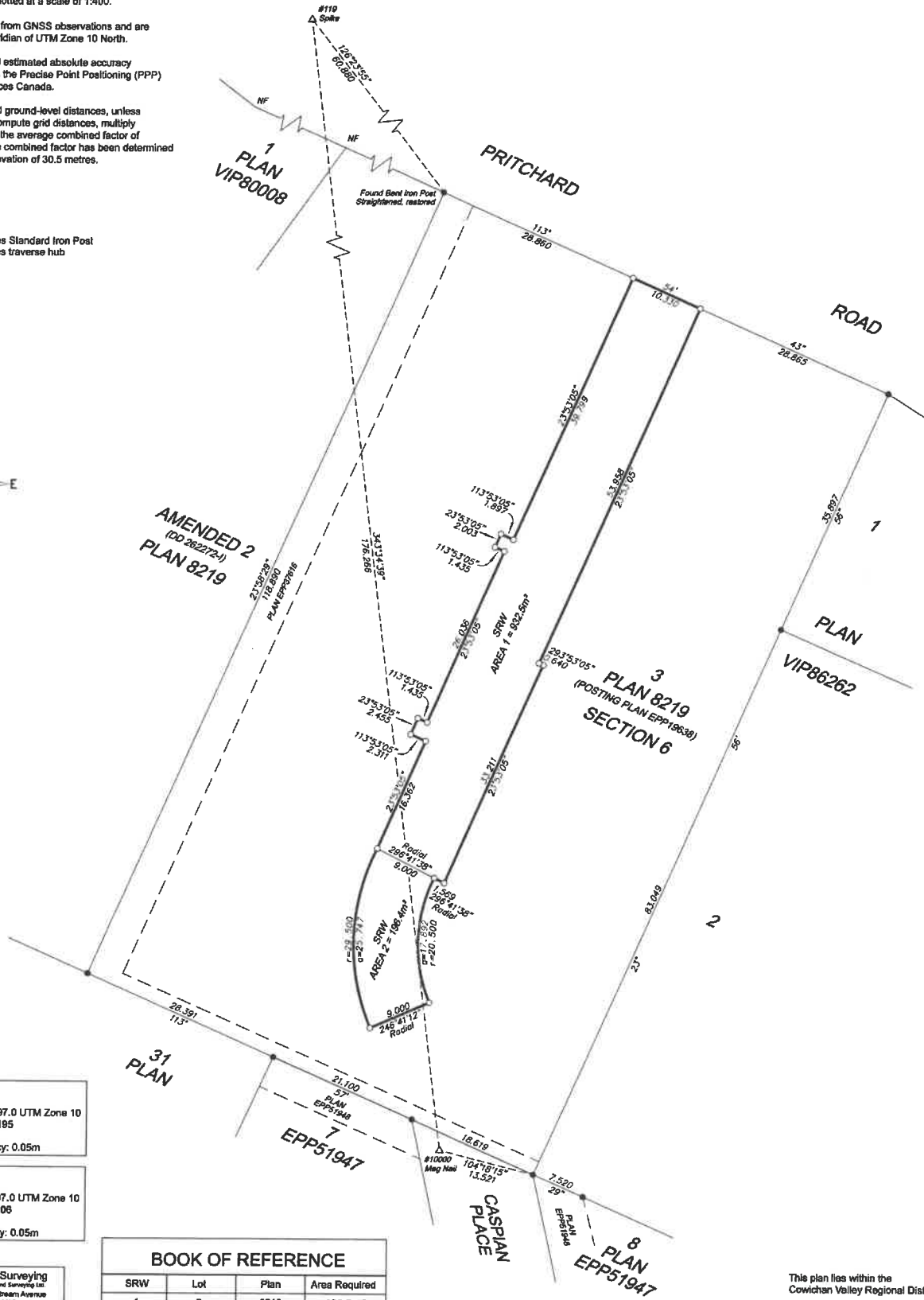
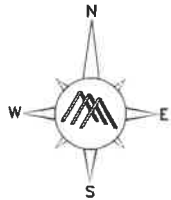
Grid bearings are derived from GNSS observations and are referred to the central meridian of UTM Zone 10 North.

The UTM coordinates and estimated absolute accuracy achieved are derived from the Precise Point Positioning (PPP) service of Natural Resources Canada.

This plan shows horizontal ground-level distances, unless otherwise specified. To compute grid distances, multiply ground-level distances by the average combined factor of 0.99982118. The average combined factor has been determined based on an ellipsoidal elevation of 30.5 metres.

LEGEND

- Found Placed
- ○ Denotes Standard Iron Post
 - △ Denotes traverse hub



Mag Nail #10000
 UTM Zone 10 Coordinates
 Datum: NAD83 (CSRS) 1997.0 UTM Zone 10
 UTM Northing: 5,398,583.195
 UTM Easting: 454,038.010
 Estimated absolute accuracy: 0.05m

Spike #119
 UTM Zone 10 Coordinates
 Datum: NAD83 (CSRS) 1997.0 UTM Zone 10
 UTM Northing: 5,398,762.208
 UTM Easting: 453,988.195
 Estimated absolute accuracy: 0.05m

Summit Land Surveying
 Surveyors & Land Surveyors Ltd.
 #101-530 Goldstream Avenue
 Victoria B.C. V9B 2V8
 Telephone 250.391.8708
 www.summitlandsurveying.ca
 File: 1120-JK-CD Archive: CD-PARTIDGE-RF

BOOK OF REFERENCE			
SRW	Lot	Plan	Area Required
1	3	8219	932.5 m ²
2	3	8219	198.4 m ²

This plan lies within the Cowichan Valley Regional District.
 The field survey represented by this plan was completed on the 22nd day of March, 2023
 Jason C. Kozina, BCLS 787

SCHEDULE "B"

**Agreement between the Owner and CBWD
dated for reference the 19th day of June, 2023**

(attached hereto)

THIS AGREEMENT made the 19th day of June, 2023

BETWEEN:

COWICHAN BAY INVESTMENTS LTD. (Inc. #BC1242684)
P.O. Box 17
2605 Timber Ridge Road
Shawnigan Lake, British Columbia V0R 2W0

(the "Developer")

OF THE FIRST PART

AND:

COWICHAN BAY WATERWORKS DISTRICT
an improvement district under the
Local Government Act of British Columbia
c/o 1760 Pavenham Road
Cowichan Bay, British Columbia V0R 1N1

(the "CBWD")

OF THE SECOND PART

WHEREAS:

- A. The Developer owns property located in Cowichan Bay, British Columbia legally described as:
- Parcel Identifier: 005-490-383
Lot 3, Section 6, Range 4, Cowichan District, Plan 8219
- (the "Property")
- B. The Property is within the service area of the CBWD.
- C. The Developer is applying to subdivide the Property into twenty (20) strata lots in accordance with Strata Plan EPS9430 attached hereto as Schedule "A" (the "Subdivision").
- D. The Subdivision of the Property is governed by, inter alia, CBWD Bylaw 323 (the "Subdivision Water Regulation Bylaw") and Bylaw 348 (the "Comprehensive Capital Expenditure Charge Bylaw").

- E. Pursuant to a Memorandum of Understanding (“the MOU”) dated July 14, 2022 between the Developer and the CBWD, and the Subdivision Water Regulation Bylaw and the Comprehensive Capital Expenditure Charge Bylaw, the Developer constructed and installed certain offsite and onsite infrastructure for the delivery of water to the Property (the “Offsite Works”), and distribution of water on the Property (the “Onsite Works”).
- F. The Offsite Works included a connection into the CBWD’s existing watermain on Pritchard Road and upgrades to the CBWD’s watermain at the corner of Wilmot Street and Pritchard Road, as shown in the design prepared by McElhanney and attached hereto as part of Schedule “B”. The total cost for the Offsite Works was \$30,047.86.
- G. The Onsite Works included the infrastructure for the delivery of water to the Subdivision strata lots on the Property, as shown in the design prepared by McElhanney and attached hereto as part of Schedule “B”. The total cost for the Onsite Works was \$111,173.00.
- H. The CBWD has the power under section 697(2)(a) of the *Local Government Act* to acquire, hold and dispose of land and other property.
- I. Pursuant to Section 10 of the Subdivision Water Regulation Bylaw, the Developer has agreed to transfer the Onsite Works and the Offsite Works to the CBWD on the terms and conditions in this Agreement.
- J. The Developer has agreed to grant a statutory right of way and covenant over the Property to allow for the effective operation of the Onsite Works on the terms and conditions attached hereto as Schedule “C” (the “SRW and Covenant”).

THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the terms and conditions hereinafter set forth, the parties agree as follows:

1. **Recitals**

- 1.1 The parties acknowledge that the facts set forth in the Recitals to this Agreement are correct.

2. **Transfer of Works**

- 2.1 For valuable consideration, including the approval of the Subdivision by the CBWD, the Developer hereby transfers to the CBWD, pursuant to Section 10 of the Subdivision Water Regulation Bylaw, all its rights, title and interest to all pipes, valves, fittings, bends, conduits, hydrants, blow offs, wires, casings, fittings, lines, meters, appliances, attachments, devices and any other facilities in connection thereto relating to the Onsite Works and the Offsite Works (collectively the “Works”).
- 2.2 The completion date for transferring the Works will be June 30, 2023 (the “Completion Date”), or such other date as the parties may mutually agree to.

- 2.3 Should the Works be encumbered by a lien under the *Builders Lien Act* or an encumbrance of any kind, the Developer shall forthwith discharge such lien and encumbrance at its own expense.

3. **Representations and Warranties**

- 3.1 The Developer represents and warrants to the CBWD as follows, with the intent that the CBWD shall rely on the representations and warranties in entering into this Agreement and in concluding the transfer of the Works:
- (a) The Developer has the power and capacity to own and dispose of the Works, and to grant and execute the SRW and Covenant, and to enter into this Agreement and carry out its terms to the full extent;
 - (b) The execution and delivery of this Agreement and the completion of the transaction contemplated by this Agreement has been duly and validly authorized by all necessary corporate action on the part of the Developer, and this Agreement constitutes a legal, valid and binding obligation of the Developer enforceable against the Developer in accordance with its terms;
 - (c) Neither the execution and delivery of this Agreement, nor the completion of the transfer contemplated by this Agreement will give any person the right to remove the Works, or any part thereof;
 - (d) The Developer owns and possesses and has a good marketable title to the Works free and clear of all mortgages, liens, charges, pledges, security interests, encumbrances or any other claims;
 - (e) The Developer has no indebtedness to any person, firm or corporation which might by operation of law or otherwise now or hereafter constitute a lien, charge or encumbrance upon any of the Works;
 - (f) There is no litigation or administrative or governmental proceeding or inquiry pending, or to the knowledge of the Developer, threatened against or relating to the Works, or any part thereof, nor does the Developer know of or have reasonable grounds that there is any basis for such action, proceeding or inquiry;
 - (g) All governmental licenses, permits and certificates required for the use to which the Works have been put have been obtained and are in good standing and such uses are not in breach of any statute, bylaw, regulation, covenant, restriction, plan or permit.

4. **Repair and Rectification of the Works**

4.1 In accordance with paragraph 10(2) of the Subdivision Water Regulation Bylaw, the Developer shall:

- (a) maintain the Works in complete repair for a period of one (1) year from the Completion Date (the "Warranty Period"), including promptly remedying any defects appearing within the Warranty Period, and to pay for any resulting damage to other work or property save and except for defects caused by reasonable wear and tear, negligence of the CBWD, its employees or agents, or acts of God.
- (b) deposit with the CBWD the sum of \$28,244.17 (the "Maintenance Security") on the Completion Date in lieu of an irrevocable standby letter of credit to be held for the Warranty Period, representing twenty (20%) percent of the cost of the Works as security for the performance of the Developer's obligations under subparagraph (a).

4.2 The CBWD will promptly give the Developer notice in writing of any observed defects and deficiencies with the Works that occur during the Warranty Period, and the CBWD will provide the Developer with 30 days to remedy such defect or deficiency before enforcing its rights under clause 4.3.

4.3 In the event the Developer fails to maintain the Works or remedy any defect or pay for any damages resulting therefrom, the CBWD may draw upon the Maintenance Security and may, in whole or in part, maintain the Works, remedy the defect or pay the damages at the cost of the Developer and may deduct the cost of maintaining the Works, remedying the defect or paying the damages from the Maintenance Security.

4.4 If the Maintenance Security is insufficient to cover the actual costs incurred by the CBWD, the shortfall is a debt owing by the Developer to the CBWD and is recoverable as a contract debt.

4.5 Upon the expiration of the Warranty Period, the CBWD will return the Maintenance Security, or any balance remaining, to the Developer upon receiving written request for same. For greater certainty, the Maintenance Security, or any balance remaining, on the expiration of the Warranty Period is the sole property of the Developer, and the strata corporation of the Subdivision has no rights, interest, or claim to the Maintenance Security.

5. **Statutory Right of Way and Covenant**

5.1 The Developer agrees to grant to the CBWD the SRW and Covenant, and to register the SRW and Covenant at the Victoria Land Title Office on or before the Completion Date.

- 5.2 For the effective operation and maintenance of the Onsite Works, the owner of the Property will:
- (a) be responsible for and bear all costs for the CBWD to maintain, operate, inspect, alter, remove, repair, replace, bury, cleanse, string, and otherwise ensure the proper operation of the Onsite Works (the "Works Costs");
 - (b) pay any and all of the Works Costs within thirty (30) days of receiving an invoice from the CBWD (the "Invoices"); and
 - (c) pay interest at a rate to be prescribed by the CBWD bylaw on any overdue amounts in the Invoices.
- 5.3 Immediately upon the establishment of the Subdivision's strata corporation (the "Strata Corporation"), and before the first conveyance of a strata lot to a purchaser, pursuant to section 8 of the *Strata Property Act*, the Developer will pass a resolution on behalf of the Strata Corporation agreeing to the positive covenants established in the SRW and Covenant, including but not limited to, those obligations listed in clause 5.2 of this Agreement.

6. Indemnity

- 6.1 The Developer covenants to save harmless and indemnify the CBWD from and against:
- (a) any indebtedness or liability arising before the Completion Date to any person, firm or corporation which might by operation of law or otherwise now or hereafter constitute a lien, charge, mortgage, security interest or encumbrance upon any of the Works; and
 - (b) any and all actions, suits, proceedings, demands, expenses, assessments, judgments, costs, legal fees (on a solicitor and own client basis), and any other loss arising out of or from its ownership or operation of the Works before the Completion Date, as well as any default of the Developer under the terms of this Agreement.

7. Capital Expenditure Charge

- 7.1 The parties acknowledge that pursuant to the Comprehensive Capital Expenditure Charge Bylaw, the Developer has paid the CBWD Fifty-Four Thousand Dollars (\$54,000) representing the Developer's responsibility for Capital Expenditure charges.

8. Condition Precedent

- 8.1 This Agreement is subject to:

- (a) Its approval as a Bylaw by the CBWD in accordance with the *Local Government Act* of British Columbia;
- (b) the registration of Strata Plan EPS9430 in the Victoria Land Title Office; and
- (c) the execution and registration of Statutory Right of Way Explanatory Plan EPP128168 against Lot 3, Section 6, Range 4, Cowichan District, Plan 8219.

9. **Survival of Warranties**

- 9.1 All representations, warranties, covenants and agreements made by the Developer in this Agreement or under this Agreement shall, unless otherwise expressly stated, survive closing for a period of two (2) years commencing on the Completion Date (the "Limitation Date"), and any investigation at any time made by or on behalf of the CBWD shall continue in full force and effect for the benefit of the CBWD.
- 9.2 No claim by the CBWD for damages or other relief in respect of misrepresentation, or breach of warranty, covenant or agreement by the Developer under this Agreement will be valid unless written notice of the claim is given by the CBWD to the Developer before the expiration of the Limitation Date.

10. **Dispute Resolution**

- 10.1 Any dispute arising out of this Agreement shall be resolved initially by consultation between the parties, failing that, by mediation and failing agreement by mediation or consultation, by arbitration pursuant to the *Arbitration Act* of British Columbia by a single arbitrator with such arbitration to take place in Duncan, British Columbia.

11. **Further Assurances**

- 11.1 The parties shall execute such further and other documents and do such further and other things as may be necessary to carry out and give effect to the intent of this Agreement.

12. **Headings**

- 12.1 The headings in this Agreement are inserted for convenience and reference only and in no way define, limit, or enlarge the scope or meaning of this Agreement or any provision of it.

13. **No Fettering**

- 13.1 Nothing in this Agreement shall fetter the discretion of the CBWD in relation to the exercise of any of its powers, duties or functions under the *Local Government Act*.

14. **Waiver**

14.1 The waiver by a party of any 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.

15. **Applicable Law**

15.1 This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

16. **Time**

16.1 Time is of the essence in this Agreement.

17. **Severability**

17.1 If any provision of this Agreement is prohibited, invalid or unenforceable, that provision will be ineffective to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining provisions of this Agreement.

18. **Entire Agreement**

18.1 The whole agreement between the parties is set forth in this Agreement and the SRW and Covenant. No representations, warranties, or conditions express or implied, have been made other than those expressed therein.

19. **Counterparts**

19.1 This Agreement may be executed in counterpart with the same effect as if all parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement. This Agreement may be delivered by electronic means.

20. **Binding Effect**

20.1 This Agreement is binding on the parties hereto and their respective successors and permitted assigns.

INTENTIONALLY LEFT BLANK

21. **Title**


21.1 This Agreement may be referred to as the "Cowichan Bay Investments Caspian Place Agreement" and the Bylaw approved pursuant to this Agreement may be cited as the "Cowichan Bay Investments Caspian Place Waterworks Bylaw".

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year set forth at the beginning of this Agreement by their duly authorized officers.


COWICHAN BAY INVESTMENTS LTD.
by its authorized signatory

Per. Craig Partridge

COWICHAN BAY WATERWORKS DISTRICT
by its authorized signatories



Per. Cheryl Wirszy, Dist Admin



Per. Calvin Slade, Chairperson

b.

THIS AGREEMENT made the 19th day of June, 2023

BETWEEN:

COWICHAN BAY INVESTMENTS LTD. (Inc. #BC1242684)
P.O. Box 17
2605 Timber Ridge Road
Shawnigan Lake, British Columbia V0R 2W0

(the "Developer")

OF THE FIRST PART

AND:

COWICHAN BAY WATERWORKS DISTRICT
an improvement district under the
Local Government Act of British Columbia
c/o 1760 Pavenham Road
Cowichan Bay, British Columbia V0R 1N1

(the "CBWD")

OF THE SECOND PART

WHEREAS:

- A. The Developer owns property located in Cowichan Bay, British Columbia legally described as:

Parcel Identifier: 005-490-383
Lot 3, Section 6, Range 4, Cowichan District, Plan 8219

(the "Property")

- B. The Property is within the service area of the CBWD.
- C. The Developer is applying to subdivide the Property into twenty (20) strata lots in accordance with Strata Plan EPS9430 attached hereto as Schedule "A" (the "Subdivision").
- D. The Subdivision of the Property is governed by, inter alia, CBWD Bylaw 323 (the "Subdivision Water Regulation Bylaw") and Bylaw 348 (the "Comprehensive Capital Expenditure Charge Bylaw").

- E. Pursuant to a Memorandum of Understanding (“the MOU”) dated July 14, 2022 between the Developer and the CBWD, and the Subdivision Water Regulation Bylaw and the Comprehensive Capital Expenditure Charge Bylaw, the Developer constructed and installed certain offsite and onsite infrastructure for the delivery of water to the Property (the “Offsite Works”), and distribution of water on the Property (the “Onsite Works”).
- F. The Offsite Works included a connection into the CBWD’s existing watermain on Pritchard Road and upgrades to the CBWD’s watermain at the corner of Wilmot Street and Pritchard Road, as shown in the design prepared by McElhanney and attached hereto as part of Schedule “B”. The total cost for the Offsite Works was \$30,047.86.
- G. The Onsite Works included the infrastructure for the delivery of water to the Subdivision strata lots on the Property, as shown in the design prepared by McElhanney and attached hereto as part of Schedule “B”. The total cost for the Onsite Works was \$111,173.00.
- H. The CBWD has the power under section 697(2)(a) of the *Local Government Act* to acquire, hold and dispose of land and other property.
- I. Pursuant to Section 10 of the Subdivision Water Regulation Bylaw, the Developer has agreed to transfer the Onsite Works and the Offsite Works to the CBWD on the terms and conditions in this Agreement.
- J. The Developer has agreed to grant a statutory right of way and covenant over the Property to allow for the effective operation of the Onsite Works on the terms and conditions attached hereto as Schedule “C” (the “SRW and Covenant”).

THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the terms and conditions hereinafter set forth, the parties agree as follows:

1. **Recitals**

- 1.1 The parties acknowledge that the facts set forth in the Recitals to this Agreement are correct.

2. **Transfer of Works**

- 2.1 For valuable consideration, including the approval of the Subdivision by the CBWD, the Developer hereby transfers to the CBWD, pursuant to Section 10 of the Subdivision Water Regulation Bylaw, all its rights, title and interest to all pipes, valves, fittings, bends, conduits, hydrants, blow offs, wires, casings, fittings, lines, meters, appliances, attachments, devices and any other facilities in connection thereto relating to the Onsite Works and the Offsite Works (collectively the “Works”).
- 2.2 The completion date for transferring the Works will be June 30, 2023 (the “Completion Date”), or such other date as the parties may mutually agree to.

- 2.3 Should the Works be encumbered by a lien under the *Builders Lien Act* or an encumbrance of any kind, the Developer shall forthwith discharge such lien and encumbrance at its own expense.

3. **Representations and Warranties**

- 3.1 The Developer represents and warrants to the CBWD as follows, with the intent that the CBWD shall rely on the representations and warranties in entering into this Agreement and in concluding the transfer of the Works:
- (a) The Developer has the power and capacity to own and dispose of the Works, and to grant and execute the SRW and Covenant, and to enter into this Agreement and carry out its terms to the full extent;
 - (b) The execution and delivery of this Agreement and the completion of the transaction contemplated by this Agreement has been duly and validly authorized by all necessary corporate action on the part of the Developer, and this Agreement constitutes a legal, valid and binding obligation of the Developer enforceable against the Developer in accordance with its terms;
 - (c) Neither the execution and delivery of this Agreement, nor the completion of the transfer contemplated by this Agreement will give any person the right to remove the Works, or any part thereof;
 - (d) The Developer owns and possesses and has a good marketable title to the Works free and clear of all mortgages, liens, charges, pledges, security interests, encumbrances or any other claims;
 - (e) The Developer has no indebtedness to any person, firm or corporation which might by operation of law or otherwise now or hereafter constitute a lien, charge or encumbrance upon any of the Works;
 - (f) There is no litigation or administrative or governmental proceeding or inquiry pending, or to the knowledge of the Developer, threatened against or relating to the Works, or any part thereof, nor does the Developer know of or have reasonable grounds that there is any basis for such action, proceeding or inquiry;
 - (g) All governmental licenses, permits and certificates required for the use to which the Works have been put have been obtained and are in good standing and such uses are not in breach of any statute, bylaw, regulation, covenant, restriction, plan or permit.

4. **Repair and Rectification of the Works**

4.1 In accordance with paragraph 10(2) of the Subdivision Water Regulation Bylaw, the Developer shall:

- (a) maintain the Works in complete repair for a period of one (1) year from the Completion Date (the "Warranty Period"), including promptly remedying any defects appearing within the Warranty Period, and to pay for any resulting damage to other work or property save and except for defects caused by reasonable wear and tear, negligence of the CBWD, its employees or agents, or acts of God.
- (b) deposit with the CBWD the sum of \$28,244.17 (the "Maintenance Security") on the Completion Date in lieu of an irrevocable standby letter of credit to be held for the Warranty Period, representing twenty (20%) percent of the cost of the Works as security for the performance of the Developer's obligations under subparagraph (a).

4.2 The CBWD will promptly give the Developer notice in writing of any observed defects and deficiencies with the Works that occur during the Warranty Period, and the CBWD will provide the Developer with 30 days to remedy such defect or deficiency before enforcing its rights under clause 4.3.

4.3 In the event the Developer fails to maintain the Works or remedy any defect or pay for any damages resulting therefrom, the CBWD may draw upon the Maintenance Security and may, in whole or in part, maintain the Works, remedy the defect or pay the damages at the cost of the Developer and may deduct the cost of maintaining the Works, remedying the defect or paying the damages from the Maintenance Security.

4.4 If the Maintenance Security is insufficient to cover the actual costs incurred by the CBWD, the shortfall is a debt owing by the Developer to the CBWD and is recoverable as a contract debt.

4.5 Upon the expiration of the Warranty Period, the CBWD will return the Maintenance Security, or any balance remaining, to the Developer upon receiving written request for same. For greater certainty, the Maintenance Security, or any balance remaining, on the expiration of the Warranty Period is the sole property of the Developer, and the strata corporation of the Subdivision has no rights, interest, or claim to the Maintenance Security.

5. **Statutory Right of Way and Covenant**

5.1 The Developer agrees to grant to the CBWD the SRW and Covenant, and to register the SRW and Covenant at the Victoria Land Title Office on or before the Completion Date.

- 5.2 For the effective operation and maintenance of the Onsite Works, the owner of the Property will:
- (a) be responsible for and bear all costs for the CBWD to maintain, operate, inspect, alter, remove, repair, replace, bury, cleanse, string, and otherwise ensure the proper operation of the Onsite Works (the "Works Costs");
 - (b) pay any and all of the Works Costs within thirty (30) days of receiving an invoice from the CBWD (the "Invoices"); and
 - (c) pay interest at a rate to be prescribed by the CBWD bylaw on any overdue amounts in the Invoices.
- 5.3 Immediately upon the establishment of the Subdivision's strata corporation (the "Strata Corporation"), and before the first conveyance of a strata lot to a purchaser, pursuant to section 8 of the *Strata Property Act*, the Developer will pass a resolution on behalf of the Strata Corporation agreeing to the positive covenants established in the SRW and Covenant, including but not limited to, those obligations listed in clause 5.2 of this Agreement.

6. **Indemnity**

- 6.1 The Developer covenants to save harmless and indemnify the CBWD from and against:
- (a) any indebtedness or liability arising before the Completion Date to any person, firm or corporation which might by operation of law or otherwise now or hereafter constitute a lien, charge, mortgage, security interest or encumbrance upon any of the Works; and
 - (b) any and all actions, suits, proceedings, demands, expenses, assessments, judgments, costs, legal fees (on a solicitor and own client basis), and any other loss arising out of or from its ownership or operation of the Works before the Completion Date, as well as any default of the Developer under the terms of this Agreement.

7. **Capital Expenditure Charge**

- 7.1 The parties acknowledge that pursuant to the Comprehensive Capital Expenditure Charge Bylaw, the Developer has paid the CBWD Fifty-Four Thousand Dollars (\$54,000) representing the Developer's responsibility for Capital Expenditure charges.

8. **Condition Precedent**

- 8.1 This Agreement is subject to:

- (a) Its approval as a Bylaw by the CBWD in accordance with the *Local Government Act* of British Columbia;
- (b) the registration of Strata Plan EPS9430 in the Victoria Land Title Office; and
- (c) the execution and registration of Statutory Right of Way Explanatory Plan EPP128168 against Lot 3, Section 6, Range 4, Cowichan District, Plan 8219.

9. **Survival of Warranties**

- 9.1 All representations, warranties, covenants and agreements made by the Developer in this Agreement or under this Agreement shall, unless otherwise expressly stated, survive closing for a period of two (2) years commencing on the Completion Date (the "Limitation Date"), and any investigation at any time made by or on behalf of the CBWD shall continue in full force and effect for the benefit of the CBWD.
- 9.2 No claim by the CBWD for damages or other relief in respect of misrepresentation, or breach of warranty, covenant or agreement by the Developer under this Agreement will be valid unless written notice of the claim is given by the CBWD to the Developer before the expiration of the Limitation Date.

10. **Dispute Resolution**

- 10.1 Any dispute arising out of this Agreement shall be resolved initially by consultation between the parties, failing that, by mediation and failing agreement by mediation or consultation, by arbitration pursuant to the *Arbitration Act* of British Columbia by a single arbitrator with such arbitration to take place in Duncan, British Columbia.

11. **Further Assurances**

- 11.1 The parties shall execute such further and other documents and do such further and other things as may be necessary to carry out and give effect to the intent of this Agreement.

12. **Headings**

- 12.1 The headings in this Agreement are inserted for convenience and reference only and in no way define, limit, or enlarge the scope or meaning of this Agreement or any provision of it.

13. **No Fettering**

- 13.1 Nothing in this Agreement shall fetter the discretion of the CBWD in relation to the exercise of any of its powers, duties or functions under the *Local Government Act*.

14. **Waiver**

14.1 The waiver by a party of any 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.

15. **Applicable Law**

15.1 This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

16. **Time**

16.1 Time is of the essence in this Agreement.

17. **Severability**

17.1 If any provision of this Agreement is prohibited, invalid or unenforceable, that provision will be ineffective to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining provisions of this Agreement.

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20. **Binding Effect**

20.1 This Agreement is binding on the parties hereto and their respective successors and permitted assigns.

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21. **Title**


21.1 This Agreement may be referred to as the "Cowichan Bay Investments Caspian Place Agreement" and the Bylaw approved pursuant to this Agreement may be cited as the "Cowichan Bay Investments Caspian Place Waterworks Bylaw".

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year set forth at the beginning of this Agreement by their duly authorized officers.


COWICHAN BAY INVESTMENTS LTD.
by its authorized signatory

Per. Craig Partridge

COWICHAN BAY WATERWORKS DISTRICT
by its authorized signatories



Per. Cheryl Wirsz, Dist Admin



Per. Calvin Slade
chairperson

Schedule "A"

Strata Plan EPS9430 for the Subdivision

(attached hereto)

**SURVEY PLAN CERTIFICATION
PROVINCE OF BRITISH COLUMBIA**

PAGE 1 OF 8 PAGES

Your electronic signature is a representation that you are a British Columbia land surveyor and a subscriber under section 168.6 of the *Land Title Act*, RSBC 1996 c.250. By electronically signing this document, you are also electronically signing the attached plan under section 168.3 of the act.

Jason Kozina Digitally signed by
NVVASM Jason Kozina NVVASM
Date: 2023.05.29
09:15:19 -07'00'

1. BC LAND SURVEYOR: (Name, address, phone number)

Jason C. Kozina
101-630 Goldstream Avenue

Apex Land Surveying Ltd.
jason@summitsurveying.ca
www.summitsurveying.ca

Victoria **BC V9B 2W8**

Surveyor General Certification [For Surveyor General Use Only]

2. PLAN IDENTIFICATION:

Control Number: **168-668-4170**

Plan Number: **EPS9430**

This original plan number assignment was done under Commission #: **787**

3. CERTIFICATION:

Form 9 Explanatory Plan Form 9A

I am a British Columbia land surveyor and certify that I was present at and personally superintended this survey and that the survey and plan are correct.

The field survey was completed on: **2023 May 11** (YYYY/Month/DD) The checklist was filed under ECR#: **271658**
The plan was completed and checked on: **2023 May 29** (YYYY/Month/DD)

I am a British Columbia land surveyor and certify that the buildings included in this strata plan have not been previously occupied as of **2023 May 11** (YYYY/Month/DD) None Strata Form S

None Strata Form U1 Strata Form U1/U2

I am a British Columbia land surveyor and certify that the buildings shown on this strata plan are within the external boundaries of the land that is the subject of the strata plan

Certification Date: **2023 May 11** (YYYY/Month/DD)

Arterial Highway

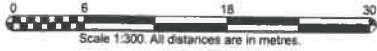
Remainder Parcel (Airspace)

4. ALTERATION:

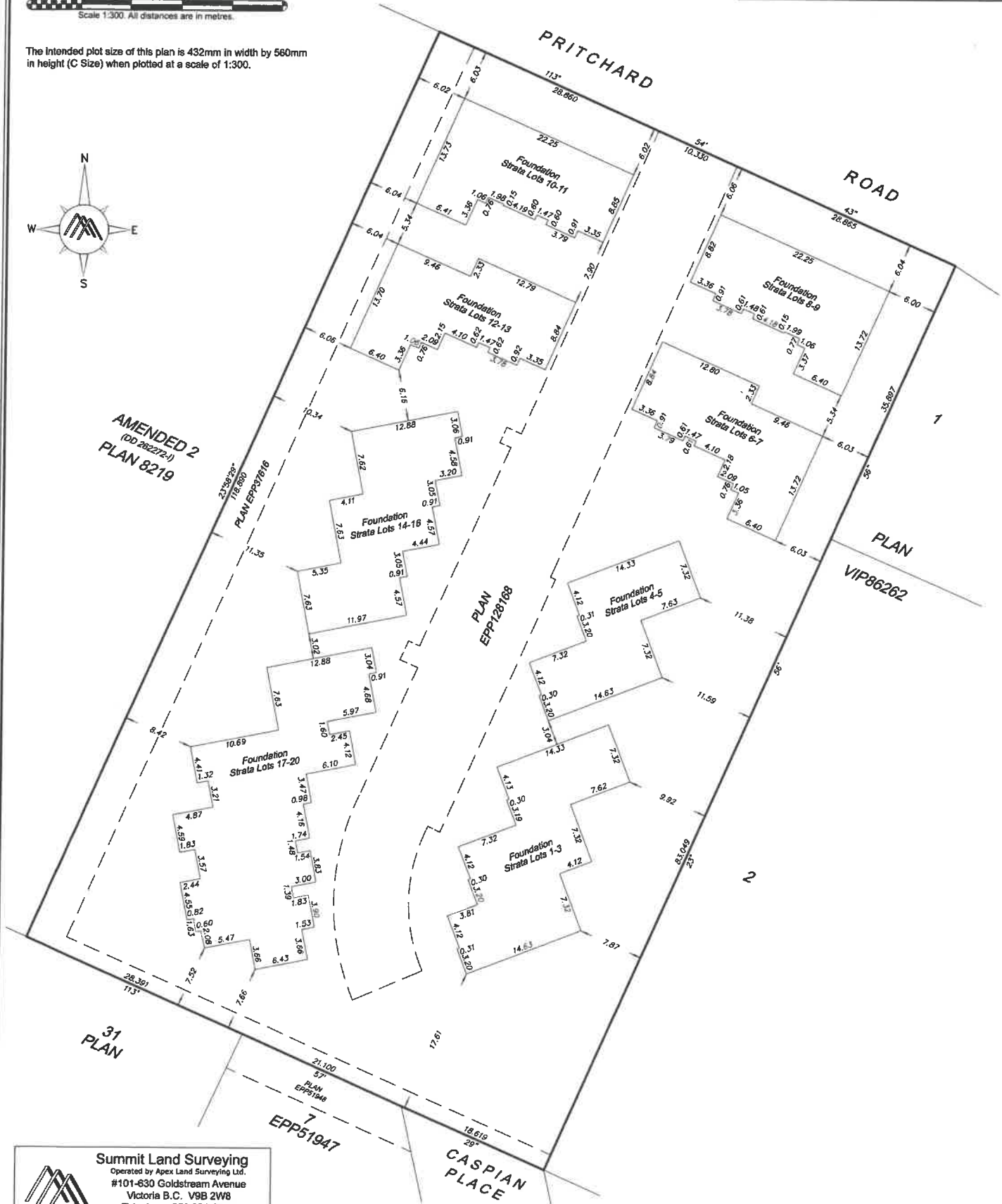
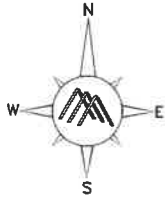
9a

FOUNDATION

SHEET 2 OF 7 SHEETS STRATA PLAN EPS9430



The intended plot size of this plan is 432mm in width by 560mm in height (C Size) when plotted at a scale of 1:300.



Summit Land Surveying
 Operated by Apex Land Surveying Ltd.
 #101-630 Goldstream Avenue
 Victoria B.C. V9B 2W8
 Telephone 250.391.6708
 www.summitsurveying.ca

File: 1129-JK-CD Archive: CD-PARTRIDGE-ST2

Jason C. Kazina, BCLS 787
 May 11th, 2023

9C

CRAWLSPACE



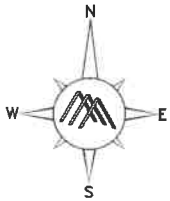
The intended plot size of this plan is 432mm in width by 580mm in height (C Size) when plotted at a scale of 1:300.

LEGEND
LCP Denotes "Limited Common Property, limited for the use of Strata Lot."

NOTE:
This sheet shows strata lot boundary dimensions to the midpoint of the structural portion of exterior walls and the midpoint between structural portions of party walls between strata lots.

Section arrows on this plan point in the direction of view.

Areas of Limited Common Property Crawlspace are defined as to height by the centre of the floor above.



AMENDED 2
(OD 202272-1)
PLAN 8219

PLAN EPP7018

PLAN EPP128188

PLAN VIP86262

31
PLAN

PLAN EPP51947

CASPIAN PLACE

PRITCHARD ROAD

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File: 1129-JK-CD Archive: CD-PARTRIDGE-ST3

(9D)

MAIN LEVEL

SHEET 4 OF 7 SHEETS STRATA PLAN EPS9430



The intended plot size of this plan is 432mm in width by 560mm in height (C Size) when plotted at a scale of 1:300.

LEGEND

- LCP Denotes "Limited Common Property, limited for the use of Strata Lot _"
- NH Denotes "Non-habitable"
- Pt. Denotes "Part Strata Lot"

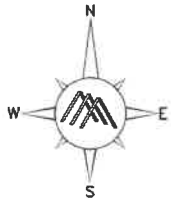
NOTE:

This sheet shows strata lot boundary dimensions to the midpoint of the structural portion of exterior walls and the midpoint between structural portions of party walls between strata lots.

Section arrows on this plan point in the direction of view.

Areas of Limited Common Property do not have a designated upper vertical extent.

All angles defect at multiples of 45 or 90 degrees unless otherwise indicated.



AMENDED 2
(00 282212-1)
PLAN 8219

PLAN EPP22818

PLAN EPP128188

PLAN
VIP86262

31
PLAN

PLAN EPP3194
7
EPP51947

CASPIAN PLACE

PRITCHARD ROAD

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Victoria B.C. V9B 2W8
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www.summitsurveying.ca

File: 1129-JK-CD Archive: CD-PARTRIDGE-ST3

Jason C. Kozina, BCLS 787
May 11th, 2023

9E

UPPER LEVEL

SHEET 5 OF 7 SHEETS STRATA PLAN EPS9430



The intended plot size of this plan is 432mm in width by 560mm in height (C Size) when plotted at a scale of 1:300.

LEGEND

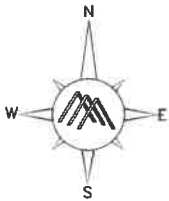
- LCP Denotes "Limited Common Property, limited for the use of Strata Lot _"
- Pl. Denotes "Part Strata Lot _"

NOTE:

This sheet shows strata lot boundary dimensions to the midpoint of the structural portion of exterior walls and the midpoint between structural portions of party walls between strata lots.

Section arrows on this plan point in the direction of view.

Areas of Limited Common Property do not have a designated upper vertical extent.



AMENDED 2
(CD 282272-1)
PLAN 8219

PLAN EPS9430

PLAN EPS128189

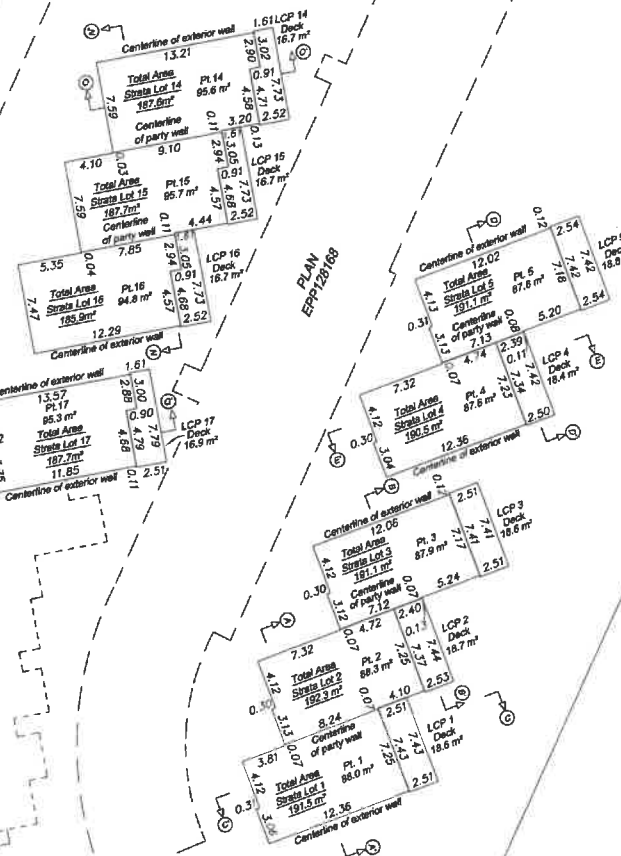
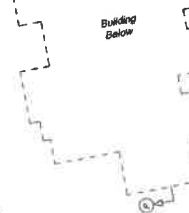
PLAN
VIP86262

31
PLAN

PLAN
EPP51947

CASPIAN PLACE

PRITCHARD ROAD



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File: 1129-JK-97 Archive: CD-PARTRIDGE-ST5

9F

CROSS SECTIONS STRATA LOTS 1 TO 9



The intended plot size of this plan is 432mm in width by 560mm in height (C Size) when plotted at a scale of 1:150.

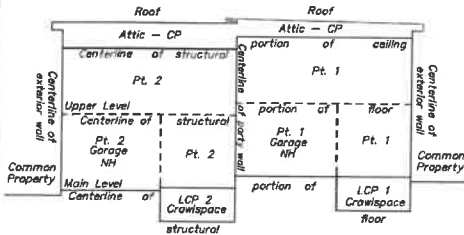
LEGEND

- PL Denotes "Part Strata Lot."
- LCP Denotes "Limited Common Property, limited for the use of Strata Lot."
- CP Denotes "Common Property."
- NH Denotes "Non-habitable."
- CPW Denotes "Centerline of Party Wall"

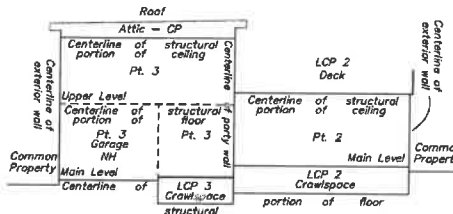
This sheet shows strata lot boundaries to the midpoint of the structural portion of exterior walls and the midpoint between structural portions of party walls between strata lots.

Areas of Limited Common Property do not have a designated upper vertical extent.

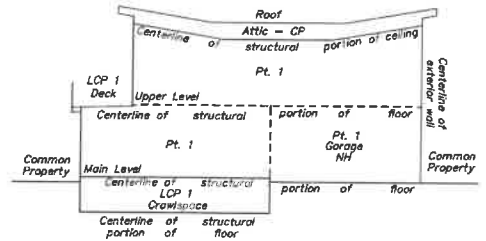
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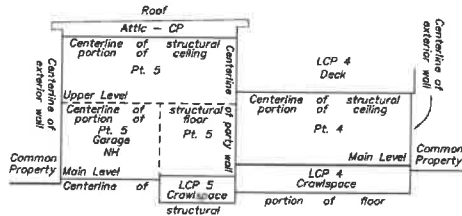
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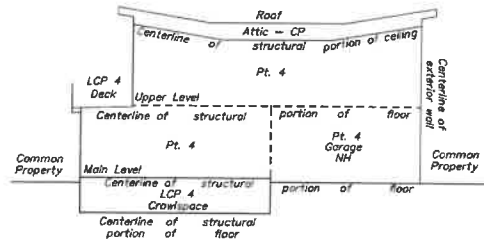
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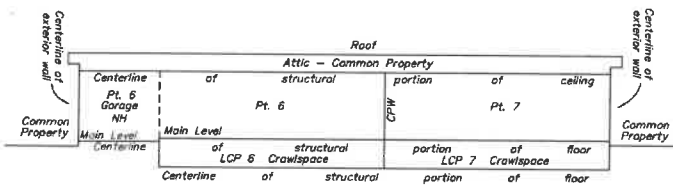
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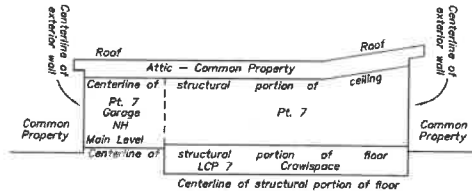
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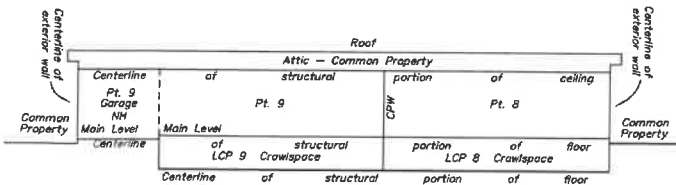
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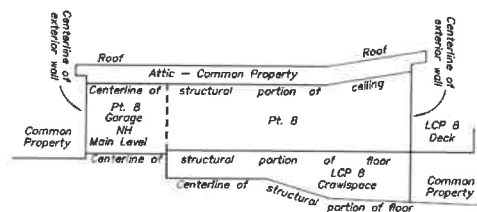
CROSS SECTION G - G'



CROSS SECTION H - H'



CROSS SECTION I - I'



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File: 1129-JK-87 CD-PARTRIDGE-ST8

96

CROSS SECTIONS STRATA LOTS 10 TO 20



The intended plot size of this plan is 432mm in width by 560mm in height (C Size) when plotted at a scale of 1:150.

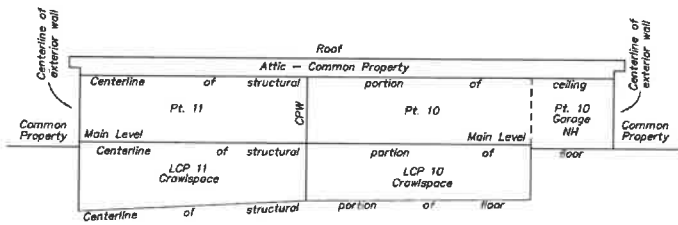
LEGEND

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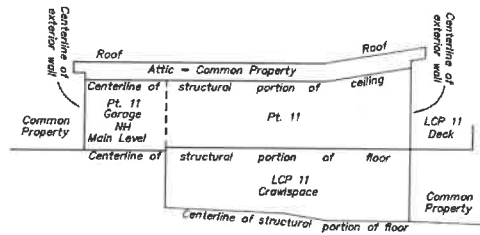
This sheet shows strata lot boundaries to the midpoint of the structural portion of exterior walls and the midpoint between structural portions of party walls between strata lots.

Areas of Limited Common Property do not have a designated upper vertical extent.

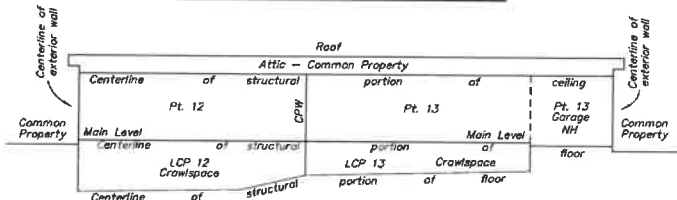
CROSS SECTION J - J'



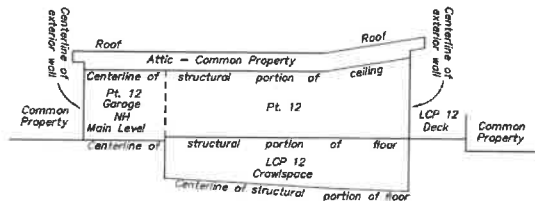
CROSS SECTION K - K'



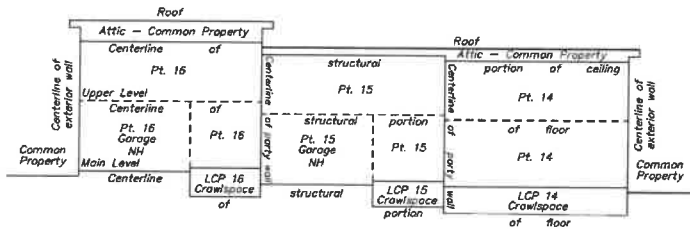
CROSS SECTION L - L'



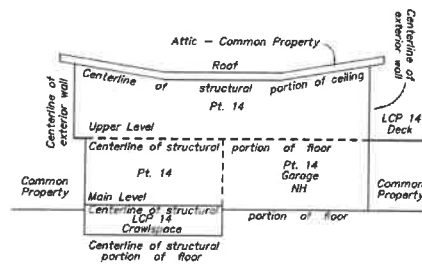
CROSS SECTION M - M'



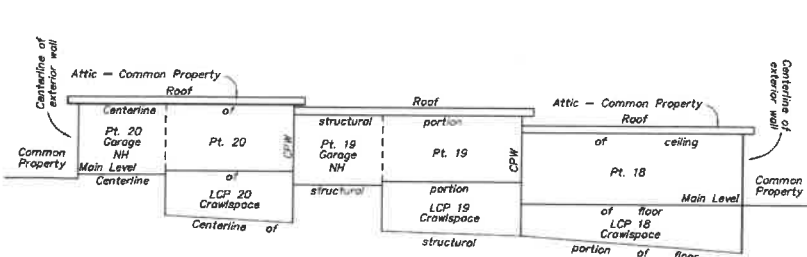
CROSS SECTION N - N'



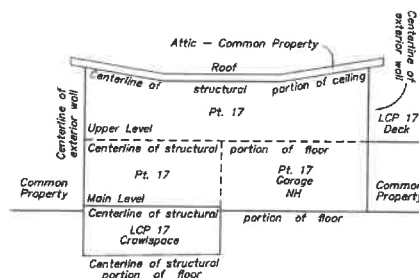
CROSS SECTION O - O'



CROSS SECTION P - P'



CROSS SECTION Q - Q'



Summit Land Surveying
 Operated by Apex Land Surveying Ltd.
 #101-830 Goldstream Avenue
 Victoria B.C. V8B 2W8
 Telephone 250.391.8708
 www.summitlandsurveying.ca

File: 1129-JK-97

CD-PARTRIDGE-ST8

(94)

Schedule "B"

**Design of Onsite Works and Offsite Works for the Subdivision
prepared by McElhanney**

(attached hereto)

COWICHAN BAY INVESTMENTS

CLIENT

ADDRESS / CONTACT INFO

PROJECT NAME

DESCRIPTION

McELHANEY PROJECT

STATUS



SITE PLAN
NOT TO SCALE

The final depiction of the underground on the site plan is for informational purposes only. It does not constitute a guarantee of the accuracy of the information. The engineer is not responsible for the accuracy of the information. The engineer is not responsible for the accuracy of the information. The engineer is not responsible for the accuracy of the information.

February 08, 2023
**RECORD
DRAWING**
AL-CONSTRUCTED INFORMATION COMPILED FROM
CONTRACTOR DRAWINGS AND FIELD SITE REVIEWS.

McElhanney

Suite 107
225 Canada Avenue
Duncan BC
Canada V9L 1T6
T 250 748 5335

PERMIT TO PRACTICE
Professional Engineer
McElhanney Inc.
Professional Engineers
British Columbia

SHEET #	DRAWING LIST			
	SHEET TITLE	0	1	2
000	COVER SHEET	X	X	X
001	NOTES, SPECIFICATIONS & LEGEND	X	X	X
002	SITE GRADING PLAN	X	X	X
003	SITE SERVICING PLAN	X	X	X
004	WILMOT ROAD WATERMAIN UPGRADE	X	X	X
005	ACCESS ROAD PROFILE & SECTION VIEWS	X	X	X
006	TYPICAL DETAILS & SECTIONS	X	X	X
007	BRENTWOOD STORM TANK DETAILS	X	X	X



10-FEB-2023

10A

Schedule "C"

**Terms of Instrument for the SRW and Covenant
To be Registered on Title to the Property**

(attached hereto)

TERMS OF INSTRUMENT – PART 2

STATUTORY RIGHT OF WAY AND COVENANT

This Agreement dated for reference the 19th day of June, 2023,

BETWEEN:

COWICHAN BAY INVESTMENTS LTD. (BC1242684), a British Columbia company, c/o P.O. Box #17, 2605 Timber Ridge Road, Shawnigan Lake, British Columbia V0R 2W0

(the “Owner”)

AND:

COWICHAN BAY WATERWORKS DISTRICT, an improvement district under the *Local Government Act* of British Columbia, c/o 1760 Pavenham Road Cowichan Bay, British Columbia V0R 1N1

(“CBWD”)

WHEREAS:

- A. Capitalized terms used in these Recitals and in this Agreement have the meanings ascribed to them in Section 1.1 of this Agreement;
- B. The Owner is the registered owner of those lands and premises known as:

PID: 005-490-383
Lot 3, Section 6, Range 4, Cowichan District, Plan 8219

(the “Lands”);
- C. The Lands are within the boundaries of CBWD;
- D. The Owner is applying to subdivide the Lands into twenty (20) strata lots in accordance with Strata Plan EPS9430 to create a twenty (20) strata lot townhouse development (the “Development”);
- E. Section 218 of the *Land Title Act*, RSBC 1996, c 250 enables the Owner to grant in favour of CBWD a statutory right of way over a part of the Lands to facilitate the installation, operation and maintenance of a system of waterworks including all pipes, valves, fittings, bends, conduits, hydrants, blow offs, wires, casings, fittings, lines, meters, appliances, attachments, devices and facilities in connection thereto;

11A

- F. On February 26, 2021, CBWD was designated by the minister under section 219(3)(c) of the *Land Title Act*, RSBC 1996, c 250 to hold covenants of a positive and negative nature; and
- G. The statutory right of way and covenant are necessary for the operation and maintenance of CBWD's undertaking.

NOW THEREFORE in consideration of the premises contained in this agreement, \$1.00 paid by CBWD to the Owner, and other good and valuable consideration, the receipt and sufficiency of which are herein acknowledged by the parties, the parties agree as follows:

1.0 INTERPRETATION

1.1 Definitions

In this Agreement, the following terms have the following meanings:

- (a) "**Agreement**" means this agreement, including its recitals and schedules, as amended in writing from time to time;
- (b) "**Lands**" means that Lands as defined in recital B of this Agreement;
- (c) "**Owner**" means Cowichan Bay Investments Ltd., and includes any successor of the Owner in this Agreement, including the Strata Corporation created for the Development;
- (d) "**Statutory Right of Way**" means the portion of the Lands shown as a heavy dark line on Explanatory Plan EPP128168 as "Area 1" and "Area 2";
- (e) "**Works**" means a system of waterworks including all pipes, valves, fittings, bends, conduits, hydrants, blow offs, wires, casings, fittings, lines, meters, appliances, attachments, devices and any other facilities in connection thereto located on the Lands.

1.2 Interpretation

Whenever the singular or masculine is used in this Agreement, the same is deemed to include the plural or the feminine or the body politic or corporate wherever the context or parties hereto so require.

1.3 Headings

The inclusion of headings and clause titles is for convenience only and shall not affect the construction or interpretation of this Agreement.

11 B

1.4 No Contra Proferentem

The language in all parts of this Agreement shall in all cases be construed as a whole and neither strictly for nor strictly against any of the parties hereto.

2. GRANT OF STATUTORY RIGHT OF WAY

2.1 The Owner hereby grants and conveys in perpetuity and at all times to CBWD, its successors and assigns, all of its employees, agents, contractors, servants, licensees, and at all times the full, free and uninterrupted right, license, liberty, easement, privilege and right of way in common with the Owner to:

- (a) enter, labour, use, go, return, pass over, across, on, in and under that part of the Lands with or without vehicles, supplies or equipment (which portion is called the "Statutory Right of Way") which will be the portion of the Lands shown as a heavy dark line on Explanatory Plan EPP128168 as "Area 1" and "Area 2", attached hereto as Schedule "A", for the purposes of installing, operating, inspecting, maintaining, altering, removing, replacing, burying, cleansing and stringing the Works, and any other actions necessary for the proper operation of the Works;
- (b) conduct surveys and examinations thereon;
- (c) dig up the soil thereof and place fill, earth, sand and gravel thereon;
- (d) lay down, construct, erect, operate, maintain, inspect, clean, cover with soil, alter, extend, remove, replace, relocate, reconstruct and repair the Works, as necessary in connection with CBWD's provision of providing potable water to the Development;
- (e) bring on the Statutory Right of Way all materials and equipment CBWD requires or desires for the Works;
- (f) inspect and clear the Statutory Right of Way and keep it clear of anything which, in the opinion of CBWD, constitutes or may constitute a danger to, or obstruction of, the use of the Statutory Right of Way or the Works;
- (g) remove from the Statutory Right of Way any embankment or fill or such buildings, structures, improvements, fixtures, fences, gates, trees, shrubs and other obstructions as, in CBWD's opinion, is necessary for CBWD to exercise its right hereunder; and
- (h) do all other things on the Statutory Right of Way as may be required in connection with or incidental to the foregoing.

11c

- 2.2 The Owner hereby grants, conveys, confirms, and transfers onto CBWD, and its servants, agents, workers, contractors, and all other licensees of CBWD with machinery, vehicles, equipment and materials, the right at all times to enter upon and to pass and repass over such of the Lands as may reasonably be required for the purpose of ingress to and egress from the Statutory Right of Way.
- 2.3 The Owner hereby transfers, assigns and conveys to CBWD all right, title and interest in and to any Works that CBWD or the Owner may have established or constructed or maintained or operated with the Statutory Right of Way prior to this Agreement or in relation to any similar Works previously constructed by any party whatsoever within the Statutory Right of Way. For greater certainty and without limiting the foregoing, subject to paragraph 4.5, CBWD will have all rights, title and interest in and to any additional Works constructed on the Statutory Right of Way now and in the future.

COVENANTS

3.1 The Owner will:

- a) not do or permit to be done any act or thing which in the opinion of CBWD might interfere with, injure, impair the efficiency of, or obstruct access to or the use of the Statutory Right of Way for the purposes set forth in this Agreement;
- b) not, and not permit any person to, erect, place, install, or maintain any building, object, structure, or addition to a building or structure, including, without limiting the generality of the foregoing, any mobile home, concrete or asphalt driveway, patio, fish pond, waterfall, retaining wall, derelict vehicle, shed, pipe, wire or other conduit, on or over or under any portion of the Statutory Right of Way, without the written consent of CBWD, which consent will not be unreasonably withheld;
- c) not, and not permit any person to, do anything that in any way interferes with, damages, prevents access to, or is likely to cause harm to the Works;
- d) at the Owner's cost, execute all further documents and things for the better assurance to CBWD of the Statutory Right of Way granted herein;
- e) comply with all terms and conditions in the agreement between the parties dated June 19, 2023, attached hereto as Schedule "B", such terms including but not limited to:
 - (i) being responsible for and bearing all costs for CBWD to maintain, operate, inspect, alter, remove, repair, replace, bury, cleanse, string, and otherwise ensure the proper operation of the Works (the "Works Costs");
 - (ii) paying any and all of the Works Costs within thirty (30) days of receiving an invoice from CBWD (the "Invoices"); and
 - (iii) paying interest at a rate to be prescribed by CBWD bylaw on any overdue amounts in the Invoices.

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3.2 CBWD will:

- a) at the Owner's cost, use the Statutory Right of Way and carry out any construction and maintenance of the Works in a skilled and competent manner in order to cause no unnecessary damage or disturbance to the Owner, the Lands or any improvements on the Lands;
- b) at the Owner's cost, remove all rubbish or construction debris created in order to leave the Statutory Right of Way in a reasonably neat and clean condition; and
- c) exercise care not to damage the Lands or any improvement on the Lands and if CBWD should cause any such damage, restore such damaged Lands or improvements thereon to as close to their pre-damaged conditions as is reasonably practicable with reasonable dispatch or where CBWD deems restoration to be impracticable, reimburse the Owner for all reasonable damages CBWD has caused but not restored.
- d) Nothing will require CBWD to clean, repair or maintain the Statutory Right of Way unless CBWD is expressly required by this Agreement or by statute to perform such cleaning, repairing, or maintenance.

3.3 Should the Owner omit, fail or neglect to carry out one of its obligations contained in this Agreement or do some act contrary to the obligations contained herein, CBWD may give the Owner 14 days' written notice by registered mail requiring the default to be cured.

3.4 If the Owner fails to cure such default to the satisfaction of CBWD within the time specified, CBWD may enter on to the Lands and rectify such default to the extent considered necessary by it and the cost of doing so will be a debt due and owing to CBWD by the Owner.

3.5 If CBWD, at its sole discretion, determines that such default may cause imminent danger to the health or safety of the potable water supply, CBWD is not required to give the Owner 14 days' written notice requiring the default to be cured, and may enter on to the Lands immediately and rectify such default to the extent considered necessary by it and the cost of doing so will be a debt due and owing to CBWD by the Owner.

3.6 The Owner will at all times and does hereby indemnify, save harmless and forever discharge CBWD from and against all manner of costs, legal fees (on a solicitor and own client basis, expenses, actions, causes of actions, claims, debts, suits, damages, demands and promises at law or at equity, whether known or unknown, including without limitation to persons or property including death, of any person directly or indirectly arising or resulting from, or attributable to, any act, omission negligence or default of the Owner in connection with or in consequence of this Agreement, save and accept to the extent caused by the act, omission, negligence or default of CBWD, in which case CBWD will indemnify the Owner under section 3.7 of this Agreement.

3.7 CBWD will at all time and does hereby indemnify, save harmless and release and forever discharge the Owner from and against all matter of costs, actions causes of actions, claims,

11E

debts, suits, damages, demands and promises, at law or in equity whether known or unknown, including without limitation to persons or property including death, of any person directly or indirectly arising or resulting from, or attributable to, any act, omission negligence or default of CBWD in connection with or in consequence of this Agreement, save and accept to the extent caused by the act, omission, negligence or default of the Owner, in which case the Owner will indemnify CBWD under section 3.6 of this Agreement.

GENERAL PROVISIONS

- 4.1 Notwithstanding any other term of this Agreement, if a strata plan is registered in the applicable Land Title Office in respect of all or a portion of the Lands, then the benefit and burden of the Covenant granted in this Agreement will enure to the benefit of and be binding upon the strata corporation(s) so created, and be a charge or appurtenance, as the case may be, upon the respective common property of such strata corporation.
- 4.2 Notwithstanding anything in this agreement CBWD reserve all right and powers of expropriation otherwise enjoyed by CBWD.
- 4.3 Waiver of any default by any party will not be deemed to be waiver of any subsequent defaults by that party.
- 4.4 Notwithstanding any rule of law or equity to the contrary, any and all of the Works shall at all times be and remain chattels and the separate property of CBWD, notwithstanding that the Works may be annexed or affixed to or buried within the Lands.
- 4.5 In the event that CBWD abandons the Works or any part of them, CBWD may, if it so elects, leave the whole or any part of the Works in place, and if so abandoned, the Works, or part thereof, will become the property of the Owner.
- 4.6 This Agreement runs with the Lands and these covenants are enforceable against the Owner and its successors in title, including the strata corporation created for the Development. However, the Owner is not personally liable for breaches of these covenants after the Owner has ceased to be the owner of the Lands.
- 4.7 Nothing contained or implied in this Agreement shall prejudice or affect the rights and powers of CBWD in the exercise of its functions under any public or private statutes, bylaws, orders and regulations or in equity, all of which rights, powers and remedies may be fully effectively exercised in relation to the Lands, the Statutory Right of Way and the Owner and CBWD as if this Agreement had not been executed and delivered by the parties.
- 4.8 The Owner and CBWD hereby agree that any costs incurred by CBWD, including legal costs on a solicitor-client, full indemnity basis, as a result of the breach by the Owner of this Agreement will be payable by the Owner to CBWD forthwith upon written demand.
- 4.9 The Owner will do or cause to be done at its expense all acts necessary for CBWD to gain priority for this Agreement over all liens, charges and encumbrances which are or may be

11F

registered against the Lands, save and except those in favour of CBWD and those specifically approved in writing by CBWD.

- 4.10** Except as expressly provided in this Agreement, no amendment or waiver of it will be binding unless made in writing by the party to be bound by such amendment or waiver. Any amendments to this Agreement will, upon execution, be deposited in the appropriate Land Title and Survey Authority Office for registration. No waiver of any provision, or any portion of any provision, of this Agreement, will constitute a waiver of any other part of the provision or any other provision of this Agreement or a continuing waiver unless otherwise expressly provided.
- 4.11** This Agreement may be executed and delivered in any number of counterparts with the same effect as if all parties had all signed and delivered the same documents and all counterparts will be compiled together for registration and will constitute one and the same Agreement.
- 4.12** If any section or any part of this Agreement is found to be illegal or unenforceable, then such sections or parts shall be considered to be separate and severable from this Agreement and the remaining sections or parts of this Agreement, as the case may be, shall be unaffected thereby and shall remain and be enforceable to the fullest extent permitted by law as though the illegal or unenforceable parts or sections had never been included in this Agreement.
- 4.13** This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein.
- 4.14** This Agreement shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.
- 4.15** The Owner acknowledges and agrees that it has had the opportunity to seek and obtain independent legal advice prior to executing this Agreement and that it has obtained such advice or determined that it does not require such advice.

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**SURVEY PLAN CERTIFICATION
PROVINCE OF BRITISH COLUMBIA**

PAGE 1 OF 2 PAGES

Your electronic signature is a representation that you are a British Columbia land surveyor and a subscriber under section 168.6 of the *Land Title Act*, RSBC 1996 c.250. By electronically signing this document, you are also electronically signing the attached plan under section 168.3 of the act.

**Jason Kozina
NVVASM**

Digitally signed by
Jason Kozina NVVASM
Date: 2023.03.27
07:45:06 -07'00'

1. BC LAND SURVEYOR: (Name, address, phone number)

Jason C. Kozina

101-630 Goldstream Avenue

Victoria

BC V9B 2W8

Surveyor General Certification [For Surveyor General Use Only]

Apex Land Surveying Ltd.
jason@summitsurveying.ca
www.summitsurveying.ca

2. PLAN IDENTIFICATION:

Control Number: **168-668-4889**

Plan Number: **EPP128168**

This original plan number assignment was done under Commission #: **787**

3. CERTIFICATION:

Form 9 Explanatory Plan Form 9A

I am a British Columbia land surveyor and certify that I was present at and personally superintended this survey and that the survey and plan are correct.

The field survey was completed on: 2023 March 22 (YYYY/Month/DD) The checklist was filed under ECR#:
The plan was completed and checked on: 2023 March 27 (YYYY/Month/DD) 269983

None Strata Form S

None Strata Form U1 Strata Form U1/U2

Arterial Highway

Remainder Parcel (Airspace)

4. ALTERATION:

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**STATUTORY RIGHT OF WAY PLAN OVER PART OF LOT 3,
SECTION 6, RANGE 4, COWICHAN DISTRICT, PLAN 8219,
PURSUANT TO SECTION 113 OF THE LAND TITLE ACT.**

PLAN EPP128168



BCGS 92B.072

The intended plot size of this plan is 432mm in width by 560mm in height (C Size) when plotted at a scale of 1:400.

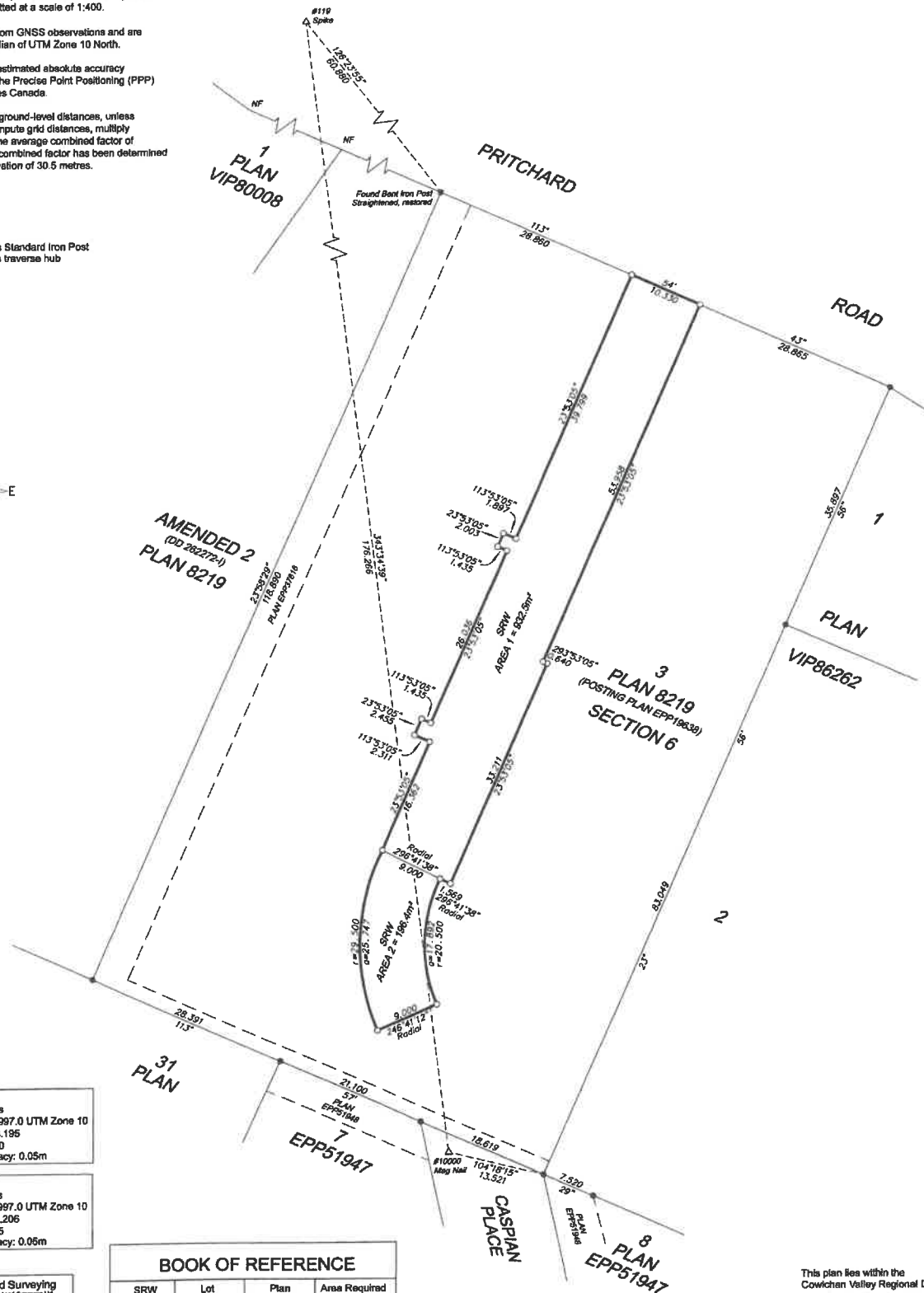
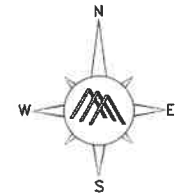
Grid bearings are derived from GNSS observations and are referred to the central meridian of UTM Zone 10 North.

The UTM coordinates and estimated absolute accuracy achieved are derived from the Precise Point Positioning (PPP) service of Natural Resources Canada.

This plan shows horizontal ground-level distances, unless otherwise specified. To compute grid distances, multiply ground-level distances by the average combined factor of 0.99962118. The average combined factor has been determined based on an ellipsoidal elevation of 30.5 metres.

LEGEND

- | | | |
|-------|--------|----------------------------|
| Found | Placed | |
| ● | ○ | Denotes Standard Iron Post |
| △ | △ | Denotes traverse hub |



Mag Nail #10000
UTM Zone 10 Coordinates
Datum: NAD83 (CSRS) 1997.0 UTM Zone 10
UTM Northing: 5,398,593.195
UTM Easting: 454,038.010
Estimated absolute accuracy: 0.05m

Spike #119
UTM Zone 10 Coordinates
Datum: NAD83 (CSRS) 1997.0 UTM Zone 10
UTM Northing: 5,398,762.206
UTM Easting: 453,988.195
Estimated absolute accuracy: 0.05m

BOOK OF REFERENCE			
SRW	Lot	Plan	Area Required
1	3	8219	932.5 m ²
2	3	8219	196.4 m ²

Summit Land Surveying
Incorporated by Special Act
#111-630 Colquhoun Avenue
Victoria B.C. V8B 2W8
Telephone 250.391.8728
www.summitlandsurveying.ca
File: 1120-JK-CD Archive: CD-PARTRIDGE-RP

This plan lies within the Cowichan Valley Regional District.

The field survey represented by this plan was completed on the 22nd day of March, 2023
Jason C. Kozina, BCLS 787

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