



Charge

1. Application

Lidstone & Company
1300 - 128 Pender Street West
Vancouver BC V6B 1R8
604-899-2269

File No: 10202-109
 Environmental Risks Covenant

2. Description of Land

| PID/Plan Number | Legal Description |
|--------------------|---|
| 023-265-337 | LOT C DISTRICT LOT 122 KAMLOOPS DIVISION YALE DISTRICT PLAN KAP55868 |

3. Nature of Interest

| Type | Number | Additional Information |
|-----------------|--------|-----------------------------------|
| COVENANT | | Section 219 Land Title Act |

4. Terms

Part 2 of this instrument consists of:

(b) Express Charge Terms Annexed as Part 2

5. Transferor(s)

DONALD MALCOLM MCLEOD

6. Transferee(s)

CITY OF MERRITT
 2185 VOGHT ST., BOX 189
 MERRITT BC V1K 1B8

7. Additional or Modified Terms



8. Execution(s)

This instrument creates, assigns, modifies, enlarges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

YYYY-MM-DD

Donald Malcolm McLeod

Officer Certification

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

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

YYYY-MM-DD

City of Merritt
By their Authorized Signatory

Name:

Name:

Officer Certification

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

Electronic Signature

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

TERMS OF INSTRUMENT - PART 2

Environmental Risks Covenant

WHEREAS:

- A. The Owner is the registered owner in fee simple of the Lands;
- B. The Lands have the Environmental Risks described herein and the Municipality may require the Owner to undertake and comply with reports prepared by Qualified Professionals before any Development of the Lands occurs;
- C. Section 219 of the *Land Title Act*, S.B.C., 1996 c. 250, as amended from time to time (the "Act"), provides that a covenant, whether of a negative or positive nature, in respect of the use of land or the use of a building on or to be erected on land, in favour of a municipality, regional district, or crown as transferee, may be registered as a charge against title to the land and is enforceable against the Owner and his successors in title even if the covenant is not annexed to land owned by the Municipality;

Now therefore this agreement witnesses that in consideration of the premises and the sum of ONE (\$1.00) Dollar of lawful money of Canada, paid by the Municipality to the Owner (the receipt whereof is hereby acknowledged), the parties hereto do hereby covenant and agree that the Lands shall be used in accordance with the terms of this Agreement, as follows:

1. **Definitions:** In this Agreement, words and phrases are defined as follows:
 - a. **"Claims"** means any liabilities loss, damage, costs, demands, actions, causes of action, fines, expenses, debts, accounts, or claims;
 - b. **"Development"** means any subdivision, alteration, or building, placement, or erection of any buildings or structures or utilities on or under the Lands;
 - c. **"Environmental Risks"** means the following risks in respect of the Lands:
 - i. the Lands are situated above an unconfined sand and gravel high vulnerability aquifer with little to no barrier between the surface of the Lands and what percolates through the sand and gravel to the ground water with the risk that contaminants could leak or spill into the groundwater in, on, under, or adjacent to the Lands;
 - ii. a former railway bed located on or adjacent to the Lands and utilized by the City as a dyke may be compromised and may have an elevation that is lower than the existing north boundary of the Lands;
 - iii. the entirety of the Lands is located within a floodplain, such that any development of the Land would require significant fill to be added to the

Lands so that bottom of joists or top of pad is at least 0.6 metres above the flood level, as per the City's Zoning Bylaw No. 2284, 2020; and

- iv. there are riparian areas located on the Lands and possibly two streams running from east to west and discharging into the Coldwater River;
 - d. "**Lands**" means the land described in Form C - Part 1, item 2 hereto;
 - e. "**Municipality**" means the party described as Transferee(s) in Form C - Part 1, item 6 hereto;
 - f. "**Owner**" means the party(ies) described as Transferor(s) in Form C - Part 1, item 5 hereto; and
 - g. "**Qualified Professionals**" means such professional engineers or a professional geoscientists retained by the Owner and reasonably acceptable to the Municipality having expertise with respect to the Environmental Risks and in good standing with their professional regulatory body in British Columbia.
2. **Acknowledgement of Environmental Risks:** The Owner is aware of and, on behalf of itself and its heirs, executors, administrators, successors and assigns, hereby acknowledges that there are potential dangers to development on the Lands attributable to the Environmental Risks.
3. **Owner Covenants:** The Owner covenants and agrees with the Municipality that:
- a. the Municipality may require the Owner to retain such Qualified Professionals as the Municipality considers reasonable and necessary to review and make recommendations with respect to any or all of the Environmental Risks before any Development of the Lands occurs;
 - b. the Owner shall not undertake any Development of the Lands unless such Development is fully in compliance with all applicable enactments and the reports and recommendations of the Qualified Professionals described in subsection 3a above; and
 - c. notwithstanding that the Owner may be otherwise entitled:
 - i. the Owner will not request (or permit to be requested) any permit for any Development on the Lands;
 - ii. the Municipality will have no obligation to carry out inspections or to issue a permit for any Development of the Lands;
- unless the proposed Development complies with this Agreement or unless otherwise approved in writing by the Municipality.

4. **Release:** The Owner does remise, release and forever discharge the Municipality and its elected officials, officers, employees, servants or agents from all Claims which the Owner or their heirs, executors, administrators, successors and assigns may have against the Municipality and its elected officials, officers, employees, servants or agents from and by reason of any loss or damage suffered personally or in connection with the Environmental Risks.
5. **Indemnity:** The Owner will indemnify and save harmless the Municipality and its elected officials, officers, employees, servants or agents from harmless against all Claims arising out of or in connection with any Environmental Risks.
6. **Enurement:** Pursuant to Section 219 of the *Land Title Act*, the covenants herein contained shall be covenants running with the Lands and shall enure to the benefit of and be binding upon the Owner and the Owner's heirs, executors, administrators, successors, assigns and successors in title.
7. **Powers Preserved:** The parties agree that nothing contained or implied herein shall in any way prejudice or affect the powers of the Municipality in the exercise of its functions under any statute, bylaw, order or regulation, all of which may be fully exercised in relation to the Lands as if this agreement had not been executed.
8. **Interpretation:** In this Agreement unless the context otherwise requires, the singular includes the plural and vice versa.
9. **Applicable Law:** This Agreement will be interpreted according to the laws of the Province of British Columbia.
10. **Provisions Severable:** If any part of this Agreement is found to be illegal or unenforceable, that part will be considered separate and severable and the remaining parts will not be affected thereby and will be enforceable to the fullest extent permitted by law.
11. **Further Assurances:** The Owner will do or cause to be done, all things and execute or cause to be executed, all documents and give such further and other assurances which may be reasonably necessary to give proper effect to the intent of this Agreement.
12. **No Modification or Discharge:** The provisions herein contained shall not be modified or discharged except in accordance with the provisions of Section 219 of the *Land Title Act*.
13. **Owner liability on cessation of ownership:** Notwithstanding anything else herein contained to the contrary, it is understood and agreed that the terms, covenants and agreements herein contained shall only be personal and binding upon the Owner with respect to the Lands, only for so long as the Owner is the owner of such Lands. For greater certainty, neither the Owner named in this Agreement, nor any future owner(s) from time to time of the Lands, shall be liable under any of the terms, covenants and

agreements contained in this Agreement with respect to such Lands, where such liability arises by reason of an act or omission occurring after the Owner named in this Agreement, or any future owner(s), ceases to have an ownership interest in such Lands.

14. **Priority:** The Owner agrees to do everything reasonably necessary, at the Owner's expense, to ensure that this agreement is registered against title to the Land with priority over all financial charges, liens and encumbrances registered, or the registration of which is pending, at the time of application for registration of this agreement.

As evidence of their agreement to be bound by the terms of this instrument, the parties each have executed and delivered this agreement by executing Part 1 of the *Land Title Act* Form C to which this agreement is attached and which forms part of this agreement.