

THE CORPORATION OF THE DISTRICT OF OAK BAY

BYLAW NO. 4912

A Bylaw to Authorize a Heritage Revitalization Agreement for 1558 Beach Drive.

The Municipal Council of The Corporation of the District of Oak Bay, in an open meeting assembled, enacts as follows:

AGREEMENT

1. The Corporation of the District of Oak Bay is authorized to enter into a Heritage Revitalization Agreement with R & M Miller Assets Ltd. for the property known as Lot "B", Section 69, Victoria District, Plan 7961, PID No. 001-964-844, substantially in the form attached to this Bylaw as Schedule A.
2. The Mayor and the Director of Corporate Services are authorized to do all things and acts necessary to execute the said Heritage Revitalization Agreement and to affix the seal of the District of Oak Bay thereto.

CITATION

This Bylaw may be known and cited for all purposes as "1558 Beach Drive Heritage Revitalization Agreement Authorization Bylaw No. 4912 2025"

READ A FIRST TIME the 9th day of June , 2025

READ A SECOND TIME the 9th day of June , 2025

AMENDED the 9th day of June , 2025

PUBLIC HEARING HELD the 8th day of October , 2025

READ A THIRD TIME the 27th day of October , 2025

ADOPTED the 27th day of October , 2025

Mayor

Corporate Officer

SCHEDULE 'A'

To 1558 Beach Drive Heritage Revitalization Agreement Authorization Bylaw No. 4912, 2025

HERITAGE REVITALIZATION AGREEMENT
(Pursuant to section 610 of the *Local Government Act*)
1558 Beach Drive

THIS AGREEMENT made the _____ day of _____, 2025.

BETWEEN: R & M MILLER ASSETS LTD.
301-1106 Cook St.
Victoria, BC V8V 3Z9

(the "**Owner**")

OF THE FIRST PART

AND: The Corporation of the District of Oak Bay
2167 Oak Bay Avenue
Victoria, BC V8R 1G2

(the "**District**")

OF THE SECOND PART

WHEREAS:

- A. a local government may, by bylaw, enter into a heritage revitalization agreement with the owner of heritage property pursuant to section 610 of the *Local Government Act* (British Columbia) (the "**Local Government Act**");
- B. the Owner is the registered owner of that parcel of land, lying and being in the District of Oak Bay, in the Province of British Columbia, and more particularly known and described as:

Legal Description: LOT "B", SECTION 69, VICTORIA DISTRICT, PLAN 7961
Parcel Identifier: 001-964-844
Civic Address: 1558 Beach Drive, Victoria, BC, V8R 6H8

(the "**Lands**");
- C. the Lands are situated within a heritage conservation area designated by the District's Official Community Plan under section 614 of the *Local Government Act* and in Zone R-5 under the District's Zoning Bylaw, 1986.
- D. situated on the Lands is a single-family home constructed in or about 1912, known as the J.W. Morris House (the "**Heritage Building**");

- E. the Owner and the District agree that the Heritage Building on the Lands have heritage value or heritage character sufficient to justify its conservation and desire to conserve the heritage value and heritage character of the Heritage Building and the Lands;
- F. the Owner wishes to subdivide the Lands into four parcels (the “**Subdivision**”), labelled as Lot A (“**Lot A**”), Lot B (“**Lot B**”), Lot C (“**Lot C**”), and Lot D (“**Lot D**”) on a plan of proposed subdivision prepared by V.I. Powell & Associates, a reduced copy of which is attached as Schedule 1 hereto (the “**Subdivision Plan**”);
- G. the Heritage Building will be situated on Lot B;
- H. the Owner wishes to make certain alterations to the Heritage Building, convert the Heritage Building into a 10-unit apartment building, renew the landscaping on the Lands, convert an existing accessory building on Lot A into a single-family residential dwelling on Lot A, construct a new single-family dwelling containing a secondary suite on Lot C, and construct a new single-family dwelling containing a secondary suite on Lot D;
- I. section 610 of the *Local Government Act* authorizes a local government to enter into a heritage revitalization agreement with the owner of heritage property, and, *inter alia*, to allow variations of and supplements to the provisions of bylaws or heritage alteration permits under Part 15 of the *Local Government Act* and land use regulation bylaws and land use permits under Part 14 of the *Local Government Act*;
- J. the District's Official Community Plan states that the District may consider the use of a Heritage Revitalization Agreement "to protect and conserve heritage property";
- K. for the purpose of conservation of the heritage value and heritage character of the Heritage Building on the Lands, the Owner and the District have agreed to enter into this Agreement, setting out the terms and conditions of continuing preservation, rehabilitation, restoration, and maintenance of the heritage value and heritage character of the Heritage Building on the Lands;
- L. the Owner has voluntarily agreed to enter into this Agreement setting out the terms and conditions by which the heritage value and heritage character of the Heritage Building on the Lands is to be preserved and protected, in return for specified variances to District bylaws as set out in this Agreement; and
- M. within thirty (30) days after entering into, or amending, a heritage revitalization agreement the local government must file a notice in the Land Title Office in accordance with s. 594 of the *Local Government Act* and give notice to the Minister responsible for the *Heritage Conservation Act* in accordance with s. 595 of the *Local Government Act*.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual promises exchanged in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which both parties acknowledge), the Owner and the District each covenant with the other pursuant to section 610 of the *Local Government Act* and agree as follows:

1.0 DEFINITIONS

1.1 In this Agreement, the following words have the following meanings:

- a) **“Agreement”** means this heritage revitalization agreement including any schedules attached hereto and any amendments hereof;
- b) **“Conservation Plan”** means the Heritage Conservation Plan prepared by Cummer Heritage Consulting attached hereto as Schedule 2;
- c) **“Director”** means the individual appointed to the position of Director of Community Building and Planning for the District, or any successor or individual acting in that capacity, including any individual or entity appointed to perform the duties of the Director of Community Building and Planning in the event of reorganization or restructuring of the District;
- d) **“District”** has the meaning set out on page 1;
- e) **“enactment”** has the same meaning as in the *Interpretation Act* (British Columbia);
- f) **“Heritage Building”** has the meaning set out in Recital D;
- g) **“Lands”** means the parcel of land described in Recital B and includes any other parcels of lands into which the Lands or such other parcels may be subdivided into, including Lot A, Lot B, Lot C, and Lot D;
- h) **“Local Government Act”** has the meaning set out in Recital A;
- i) **“Lot A”, “Lot B”, “Lot C”, and “Lot D”** have the respective meanings set out in Recital F;
- j) **“Maintenance Work”** means the preservation, rehabilitation, restoration, maintenance, and other work required to carry out the maintenance plan contained in the Conservation Plan;
- k) **“Owner”** means the person(s) described on page 1 as the “Owner” and includes any person who acquires an interest in the Lands;
- l) **“preservation”, “rehabilitation”, “restoration”, and “maintenance”** have the meanings defined in the Standards and Guidelines;
- m) **“Registered Professional”** has the meaning set out in section 4.6;
- n) **“Repair/Reconstruction Approval”** has the meaning set out in section 10.1;
- o) **“Security Deposit”** has the meaning set out in in section 12.1;

- p) **“Standards and Guidelines”** means the *Parks Canada Standards and Guidelines for the Conservation of Historic Places in Canada* (2010), as amended, revised, consolidated or replaced from time to time;
- q) **“Subdivision”** has the meaning set out in Recital F;
- r) **“Subdivision Plan”** has the meaning set out in Recital F; and
- s) **“Work”** means:
 - i) the work required to complete the items described in Recital H; and
 - ii) the preservation, rehabilitation, restoration, maintenance, and other work required to achieve the conservation objectives and conservation recommendations contained in the Conservation Plan; and
- t) **“Zoning Bylaw”** means the District’s Zoning Bylaw, 1986.

2.0 DEVELOPMENT OF THE LANDS

- 2.1 Subject to the approval of the Subdivision Plan by the District Approving Officer based on the variances set out herein, the Owner covenants and agrees with the District that it shall develop the Lands strictly in accordance with the terms of this Agreement, and as required under the terms of any permits or approvals issued by the District respecting the development of or construction upon the Lands.

3.0 NO INTERFERENCE WITH OR DEROGATION FROM AUTHORITY OF THE DISTRICT APPROVING OFFICER

- 3.1 This Agreement represents a step towards approval of the Subdivision and in no way fetters the exercise of the judgement or authority of the District Approving Officer under the *Land Title Act* (British Columbia), and in particular but without limiting the generality of the foregoing does not exempt the Owner in whole or in part from off-site servicing requirements and costs, or any other requirements imposed by the District Approving Officer or the District as part of the subdivision review and approval process.

4.0 THE WORK

- 4.1 The parties agree that the Heritage Building on the Lands, and a portion of the interior of the Heritage Building have heritage value deserving of protection and conservation.
- 4.2 The Owner specifically agrees that:
 - a) the Heritage Building, including a portion of the interior of the Heritage Building, shall not be demolished in whole or in part, moved or removed, structurally altered, altered as to its facade or any other exterior element, or added to; and
 - b) the Lands shall not be developed, except in accordance with the Conservation Plan.

- 4.3 The Owner covenants and agrees that it shall preserve, rehabilitate, restore and maintain the Heritage Building on the Lands in accordance with the Conservation Plan and this Agreement.
- 4.4 Prior to commencement of any of the Work or the Maintenance Work, the Owner shall obtain from the District or otherwise all necessary permits and licences, including where necessary, and without limitation, a heritage alteration permit. The District may, in its sole discretion, issue or refuse to issue building permits for any portion of the Work or the Maintenance Work until such permits and licenses have been obtained.
- 4.5 The Owner shall complete the Work and the Maintenance Work:
- a) at the Owner's sole expense;
 - b) in accordance with the Conservation Plan; and
 - c) in accordance with generally accepted engineering, architectural, and heritage conservation practices.
- 4.6 The Owner shall engage, at the Owner's sole expense, at all times during the Work and until the Certificate of Compliance is delivered to the Director in accordance with this section, a member of the British Columbia Association of Heritage Professionals with specialization in Building or Planning (the "**Registered Professional**") and will ensure that the Registered Professional:
- a) oversees the Work;
 - b) performs the duties of the Registered Professional as set out in this Agreement;
 - c) upon completion of the Work, provide to the District an executed and sealed Certification of Compliance in substantially the same form as that attached hereto as Schedule 3 as confirmation that the Heritage Building is in good repair and that the Work has been completed in accordance with the terms of this Agreement.
- 4.7 If the Registered Professional's engagement by the Owner is terminated for any reason, then the Owner shall notify the District of the same within five business days after such termination.
- 4.8 The Owner shall erect on the Lands and keep erected throughout the course of the Work a sign of sufficient size and visibility to effectively notify contractors and tradespersons entering on the Lands that the Work involves protected heritage property and is being carried out for heritage conservation purposes.
- 4.9 The Owner shall obtain the District's advance written approval for any changes to the Work or the Maintenance Work and obtain any amended permits that may be required for such changes to the Work or the Maintenance Work, including building permits and heritage alteration permits.

- 4.10 The Owner shall commence and complete all actions required for completion of the Work within 36 months following the date on which the Owner deposits the Subdivision Plan in the Land Title Office.
- 4.11 If any conflict or ambiguity arises in the interpretation of the Conservation Plan, the parties agree that the conflict or ambiguity shall be resolved in accordance with the Standards and Guidelines, if possible, and, if not, then the interpretation of the Director, acting reasonably, shall prevail.
- 4.12 The owner shall complete ongoing Maintenance Work on Lot B in general accordance with the Standards and Guidelines, and with generally accepted engineering, architectural and heritage conservation practices, including the removal, salvage, cleaning, repair, and installation of the improvements and features of the Heritage Building noted to have heritage value as outlined by the Conservation Plan, and the Owner will further ensure that Maintenance Work properly occurs pursuant to the Conservation Plan.
- 4.13 The Owner shall complete the Work in accordance with the plans attached hereto as Schedule 4 and Schedule 10 and the Conservation Plan to the satisfaction of the Director, acting reasonably, except that minor variations from such plans may be permitted if approved in writing by the District and provided that, in the opinion of the Director, such variations are generally in accordance with the form and character of the designs approved by this Agreement.

5.0 CONFORMITY WITH DISTRICT BYLAWS

- 5.1 Except with respect to a provision of a bylaw that is expressly varied by this Agreement, and only to the extent of the authorized variance(s), nothing contained or implied herein shall prejudice or affect the rights and powers of the District in the exercise of its functions under any public or private statutes, bylaws, orders, or regulations, all of which may be fully and effectively exercised in relation to the Heritage Building and the Lands as if this Agreement had not been executed and delivered by the parties.

6.0 APPLICATION OF THIS AGREEMENT

- 6.1 Unless otherwise stated, the terms and conditions of this Agreement respecting the preservation, rehabilitation, restoration, and maintenance of the Heritage Building apply only to the structure and exterior of the Heritage Building, including, without limitation, the foundation, walls, roof, and all exterior doors, windows and architectural ornamentation.
- 6.2 This Agreement shall be applicable to the Lands and the improvements thereon, including the Heritage Building, commencing on the execution of this Agreement.
- 6.3 This Agreement shall apply to any future lots into which the Lands are subdivided, including, without limitation, Lot A, Lot B, Lot C, and Lot D.

- 6.4 Notwithstanding anything herein to the contrary, this Agreement shall only apply to Lot A, Lot C, and Lot D for a period of 25 years from the execution of this Agreement.
- 6.5 Upon registration of the Subdivision Plan and issuance of occupancy permits for the dwellings to be constructed on Lots A, C, and D then the only provisions of this Agreement that will continue to apply to Lots A, C, and D will be the Bylaw Variances noted below in section 7.1.
- 6.6 This Agreement will be binding on all persons who acquire an interest in the Lands.

7.0 BYLAW VARIANCES

- 7.1 The Zoning Bylaw is varied to the extent as specified in Schedules 5, 6, 7, and 8 and all of the definitions and regulations set out in the Zoning Bylaw shall apply to the Lands except to the extent that they are specifically varied as set out in Schedules 5, 6, 7, and 8.
- 7.2 Amenity Cost Charges Bylaw No. 4892, 2024 and Development Cost Charge Bylaw No. 4891, 2024 are varied such that the Amenity Cost Charges and Development Cost Charges that would otherwise be payable in relation to the Work are reduced by 100% in accordance with the provisions of this Agreement.

8.0 AGREEMENT TERMINATES IF SUBDIVISION NOT APPROVED

- 8.1 This Agreement shall immediately terminate and cease to have any force or effect if the Subdivision has not been approved under the *Land Title Act* within two (2) years after the execution of this Agreement.

9.0 MAINTENANCE STANDARDS

- 9.1 At all times and pursuant to the Conservation Plan with regard to the Lands, the Owner shall:
- a) maintain the exterior of the Heritage Building so as to prevent deterioration due to weather, rot, or insects;
 - b) keep the exterior of the Heritage Building free from loose, rotted, or broken materials and objects;
 - c) keep all siding, window frames, railings, decks, stairs, and other wood or metal materials on the exterior of the Heritage Building neatly finished and effectively protected from the elements by paint or stain;
 - d) maintain all cornices, belt courses, corbels, trim, wall facings, and similar architectural features of the Heritage Building in good repair and safe condition;
 - e) maintain all roofs, including fascia boards, soffits, cornices, and flashings, of the Heritage Building in a watertight condition;

- f) maintain retaining walls in good repair and in sound structural condition;
- g) maintain that portion of the interior as referred to in the Conservation Plan; and
- h) perform the Maintenance Work.

10.0 DAMAGE OR DESTRUCTION BY FIRE OR OTHER PERILS

- 10.1 In the event that the Heritage Building is damaged or destroyed to the extent of less than or equal to 75% of its value above its foundations, as determined by the Director, the Owner shall, unless otherwise permitted in writing by the District, repair or reconstruct the Heritage Building in a manner consistent with the Conservation Plan, and the Standards and Guidelines, subject to the issuance by the District of a heritage alteration permit or other lawful instrument of approval for buildings protected by way of a heritage revitalization agreement (the **"Repair/Reconstruction Approval"**), following which the Owner shall forthwith commence the repairs or reconstruction.
- 10.2 Where section 10.1 applies, the Owner shall apply for the Repair/Reconstruction Approval within a reasonable period of time after the occurrence of the damage or destruction and shall complete the repairs and reconstruction of the Heritage Building within three years of the District's issuance of the Repair/Reconstruction Approval.
- 10.3 The District shall act reasonably with respect to a request from the Owner not to repair or reconstruct in the circumstances described in section 10.1. In the event that the District grants permission not to repair or reconstruct, all use, density of use, and development of Lot B shall thenceforth be in accordance with the Zoning Bylaw and all other applicable bylaws of the District.
- 10.4 In the event that the Heritage Building is damaged or destroyed to the extent of more than 75% of its value above its foundations, as determined by the Director, the Owner may elect not to reconstruct the Heritage Building, in which case all use, density of use, and development of Lot B shall thenceforth be in accordance with the Zoning Bylaw and all other applicable bylaws of the District. If the Owner does elect to reconstruct the Heritage Building, the reconstruction shall be subject to the issuance by the District of a heritage alteration permit or other lawful instrument of approval for buildings protected by way of a heritage revitalization agreement, following which the Owner shall forthwith commence the reconstruction and complete the same within three years from the date of approval.
- 10.5 Where the owner disagrees with a determination by the Director under sections 10.1 or 10.4:
 - a) the Owner may, at the Owner's cost and within thirty (30) days of receipt of written notice of such determination, submit to the District a written appraisal of the extent of damage above the foundation prepared by an insurance adjuster retained by the carrier of the current property insurance policy for the Heritage

Building and licensed to practice in British Columbia under the *Financial Institutions Act* (British Columbia);

- b) the District shall, within thirty (30) days of receipt of the appraisal prepared by the said insurance adjuster, notify the Owner in writing as to whether or not it accepts the findings of the appraisal; and
- c) in the event that the District notifies the Owner that it does not accept the findings of the appraisal, the matter of the extent of the damage above the foundation wall shall be determined by a single arbitrator under the *Arbitration Act* (British Columbia), the determination made by that arbitrator shall be final and binding upon the parties and the respective successors and assigns, and the Owner shall be responsible for paying all fees and expenses of the arbitrator.

11.0 AGREEMENT TO RESTRICT DEVELOPMENT OF LOT B

- 11.1 Lot B shall not be built upon or excavated except in accordance with this Agreement.
- 11.2 Following completion of the Work in accordance with this Agreement, the Owner shall not alter the heritage character or the exterior appearance of the Heritage Building, except as permitted by a heritage alteration permit issued by the District.

12.0 SECURITY DEPOSIT

- 12.1 The Owner shall deposit with the District a landscape security to the satisfaction of the Director equal to 110% of the estimated cost of the landscape works as described in the Landscape Cost Estimate prepared by MDI Landscape Architects attached as Schedule 9 (the "**Security Deposit**"), before receiving a building permit for Lot A, Lot C, or Lot D.
- 12.2 The Owner will, without notice from the District, renew any Security Deposit prior to the expiration of its term. If the Owner fails or neglects to renew any security one month prior to the expiration of its term, the District may make demand upon such Security Deposit and hold the proceeds so obtained in place of the Security Deposit.
- 12.3 The District may, at the cost of the Owner, draw upon the Security Deposit and may satisfy all or part of the Owner's obligations related to the landscape works described herein and may deduct from the Security Deposit the cost the City incurs in taking such action, and the balance of the Security Deposit shall, subject to any claims of the District and completion of such landscape work to the satisfaction of the Director, be returned to the Owner upon the Owner's written request for same.

13.0 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE

- 13.1 Notice of this Agreement will be registered in the Land Title Office by the District at the cost of the Owner in accordance with the Local Government Act, and this Agreement is binding on the parties to this Agreement as well as all persons who acquire an interest in

the Lands, including any lots into which the Lands may be subdivided into, after registration of this Notice.

14.0 DEFAULT

14.1 In the event that the Owner fails to fulfill or perform any of the Owner's covenants, obligations, terms, conditions, or agreements under this Agreement, the District may deliver notice of such failure by:

- a) registered mail; or
- b) hand delivery,

to the address of the Owner as shown on the most recent revised assessment roll within the meaning of the *Assessment Act* (British Columbia), and the Owner shall remedy the same within thirty (30) days of the date of receipt of such notice, or within such longer time as the District may in its discretion specify in such notice or in writing upon subsequent application by the Owner. If the Owner fails or neglects to remedy such failure, then the Owner shall be in default of this Agreement.

14.2 If the Owner is in default of this Agreement, then, without derogating from the ability of the District to seek and obtain from a court an order for specific performance, or from any other contract enforcement option, the District may by bylaw cancel this Agreement and the Owner shall for all purposes, including the satisfaction of any requirement set out in the *Local Government Act*, be deemed to have consented to such cancellation and shall ensure that all use and density of use of the Lands and the Heritage Building shall thenceforth be in accordance with the Zoning Bylaw and all other applicable bylaws of the District.

14.3 A notice under section 14.1 shall be deemed to have been received by the Owner seventy-two (72) hours after the time of mailing or, if hand delivered, upon the date of delivery.

15.0 PROPERTY INSURANCE

15.1 The Owner agrees to make best efforts to obtain and, if obtained, maintain at all times for the Heritage Building, at full replacement value, insurance against all risks of physical loss or damage from all insurable perils including but not limited to fire, earthquake, water escape and flooding.

16.0 NO WAIVER UNLESS EXPRESSLY AGREED

16.1 Except as specifically agreed in writing, no action or failure to act by the District shall constitute a waiver of any right or duty afforded it under this Agreement, nor shall any such action or failure to act constitute an approval, waiver or acquiescence in or of any breach or default hereunder.

17.0 ENFORCEMENT BY DISTRICT

- 17.1 The parties agree that the enforcement of this Agreement shall be entirely within the discretion of the District and that the execution and registration of this Agreement shall not be interpreted as creating any duty on the part of the District to the Owner or to any other person to enforce any provision or any default of this Agreement.
- 17.2 The Owner acknowledges that it is an offence under Section 621(1)(c) of the *Local Government Act* to alter the Lands or the Heritage Building in contravention of this Agreement, enforceable by all applicable remedies under the *Local Government Act*.
- 17.3 The Owner acknowledges that it is an offence under Section 621(1)(b) of the *Local Government Act* to fail to comply with the requirements and conditions of any heritage alteration permit issued to the Owner pursuant to this Agreement and Section 617 of the *Local Government Act*, punishable in the manner described in the preceding section.
- 17.4 The Owner acknowledges that, if the Owner alters the Lands or the Heritage Building in contravention of this Agreement, the District may apply to the BC Supreme Court for:
- a) an order that the Owner restore the Lands or the Heritage Building to their condition before the contravention;
 - b) an order that the Owner undertake compensatory conservation work on the Lands or the Heritage Building;
 - c) an order requiring the Owner to take other measures specified by the Court to ameliorate the effects of the contravention; and
 - d) an order authorizing the District to perform any and all such work at the expense of the Owner.

18.0 INDEMNIFICATION AND RELEASE

- 18.1 The Owner hereby releases, absolves and forever discharges the District and its elected and appointed officials, employees, and agents from any and all claims, causes of action, actions, suits, proceedings, and demands of any nature whatsoever which the Owner has or may have for any loss, damage, death, injury, cost, or debt whatsoever sustained by the Owner, arising directly or indirectly out of this Agreement.
- 18.2 The Owner shall indemnify and save harmless the District and its elected and appointed officials, employees, and agents from and against any and all claims, causes of action, actions, suits, proceedings, demands, losses, damages, costs, or debts, for loss, damage, death, injury, or otherwise, of any nature whatsoever, and by whomever made, brought, prosecuted, or threatened, directly or indirectly arising out of or related to, occasioned by or attributed to: this Agreement; the Owner's default under this Agreement; the Owner's failure to perform any term or provision of this Agreement; or any work or actions of the

Owner or the Owner's employees, agents, or anyone for whom the Owner is in law responsible in furtherance of this Agreement.

- 18.3 The release and indemnity contained in this section 18.0 shall survive the expiration, termination, or discharge of this Agreement.

19.0 NO PARTNERSHIP OR JOINT VENTURE

- 19.1 The parties agree that nothing contained herein creates a relation between the parties of partnership, joint venture or agency.

20.0 PERSONAL LIABILITY LIMITED TO PERIOD OF OWNERSHIP

- 20.1 The Owner covenants and agrees that for the Owner, and the Owner's heirs, administrators, executors, successors and assigns, that they will at all times perform and observe the requirements and restrictions hereinbefore set out and that they shall be binding on the Owner as personal covenants only during the period of the Owner's ownership of any interest in the Lands.

21.0 PRIORITY

- 21.1 The Owner shall, after execution of this Agreement by it, at the expense of the Owner and to the satisfaction of the Director, do or cause to be done all acts necessary to grant priority to this Agreement over all charges and encumbrances which may have been registered against the title to the Lands save and except those specifically approved in writing by the District or in favour of the District.

22.0 GENERAL

- 22.1 Where the District is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination, or give its consent, the Owner agrees that the District is under no public law duty of fairness or natural justice in that regard and agrees that the District may do any of those things in the same manner as if it were a private party and not a public body.
- 22.2 Time shall be of the essence of this Agreement.
- 22.3 The Owner shall execute and deliver or cause to be executed and delivered all such further agreements, documents and instruments and to do and perform or cause to be done and performed all such acts and things as may be required in the opinion of the District, acting reasonably, to give full effect to the intent of this Agreement.
- 22.4 This Agreement shall enure to the benefit of and be binding upon the District and its successors, trustees and assigns, and this Agreement shall enure to the benefit of and be binding upon the Owner and successors, trustees and permitted assigns and all parties claiming through them, and this Agreement shall enure to the benefit of and be binding upon all persons who acquire an interest in the Lands and their respective heirs, executors, administrators, trustees and successors and all parties claiming through them.

- 22.5 It is mutually understood and agreed between the parties that neither the Owner nor the District has made any representations, covenants, warranties, promises or agreements expressed or implied, other than those expressly contained in this Agreement.
- 22.6 If any portion of this Agreement is declared invalid by a court of competent jurisdiction, the remainder, provided the invalid portion is not found by the court to be an integral part thereof, shall continue in full force and effect and be construed as if the Agreement had been executed without the invalid portion.
- 22.7 Wherever the expressions "Owner" and "District", and the masculine gender, are used herein, the same shall be construed to mean the plural, feminine or body corporate or politic where the context or the parties so require, and the rest of the sentence shall be construed as if the grammatical and terminological changes thereby rendered necessary had been made.
- 22.8 If the Owner is composed of more than one person, firm, or body corporate, then the covenants, agreements, and obligations of the Owner shall be joint and several.
- 22.9 Any bylaw or statute referred to herein is a reference to a bylaw or statute of the District or the Province of British Columbia, respectively, as amended, revised, consolidated or replaced from time to time.
- 22.10 The paragraph or section headings contained in this Agreement are for convenience only and do not purport to define, limit, or extend the scope or intent of the language of the paragraphs to which they pertain.
- 22.11 This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.
- 22.12 No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.
- 22.13 Each of the parties will do, execute, and deliver, or cause to be done, executed, and delivered all such further acts, documents and things as may be reasonably required from time to time to give effect to this Agreement.
- 22.14 This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- 22.15 This Agreement may be amended from time to time upon terms and conditions mutually acceptable to the District and the Owner only if the amendments are in writing and executed by the parties hereto, and only if the amendments are authorized by bylaw of the District.
- 22.16 Despite any provision of this Agreement, the Owner shall comply with all laws, including bylaws of the District and all regulations and orders of any authority having jurisdiction.

22.17 Without limiting the District's power of inspection conferred by statute and in addition thereto, the District shall be entitled at all reasonable times and from time to time to enter onto the Lands for the purpose of ensuring that the Owner is fully observing and performing all of the restrictions and requirements in this Agreement to be observed and performed by the Owner.

22.18 In the event the Subdivision is not approved by the District then the parties agree that this Agreement will be terminated and released from title to the Lands.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day, month, and year first above written.

R & M MILLER ASSETS LTD.,
by its authorized signatory:

Michael Scott Miller

THE CORPORATION OF THE DISTRICT OF
OAK BAY, by its authorized signatories:

Mayor

Director, Corporate Services

CONSENT AND PRIORITY AGREEMENT

WHEREAS _____ (the "Chargeholder") is the holder of a Mortgage and Assignment of Rents (called the "Charges") encumbering the lands (the "Lands") described in Item 2 of the *Land Title Act* Form C attached hereto, which were registered in the Victoria Land Title Office under numbers CB_____ and CB_____ respectively.

THEREFORE THIS CONSENT AND PRIORITY AGREEMENT IS EVIDENCE THAT IN CONSIDERATION OF \$1.00 AND OTHER GOOD AND VALUABLE CONSIDERATION PAID BY THE TRANSFEREE TO THE CHARGEHOLDER:

1. The Chargeholder hereby consents to the granting and registration of the Section 219 Covenant attached hereto (the "Covenant") and the Chargeholder hereby agrees that the Covenant shall be binding upon its interest in and to the Lands.
2. The Chargeholder hereby grants to the Transferee described in Item 6 of the *Land Title Act* Form C attached hereto priority for the Covenant over the Chargeholder's right, title and interest in and to the Lands, and the Chargeholder does hereby postpone the Charges and all of its right, title and interest thereunder to the Covenant as if the Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Charges.

IN WITNESS WHEREOF, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing the *Land Title Act* Form C (Part 1) attached hereto and forms part of this Agreement.