

**Date:** October 7, 2014

**File No.:** SS-RZ-2013.3

**To:** Salt Spring Island Local Trust Committee for October 16, 2014 Meeting  
**From:** Stefan Cermak, Island Planner, Salt Spring Island Team

**Re:** **Application to Amend the Official Community Plan and Land Use Bylaw**

**Owner:** Sebring Homes Inc., Nikolaos Karvouniaris, Ashya Properties Ltd, Jamie J Colligan, 0952482 B C Ltd, 0946435 BC Ltd.

**Applicant:** Robyn Kelln

**Location:** 119-150 Ashya Road

**Legal:** Strata Lots 1-9, Section 4, Range 1, South Salt Spring Island, Cowichan District, Strata Plan VIS6778

**Preliminary Report:**

**Interim Report (#6):**

**Final Report:**

---

## THE PROPOSAL

The subject property is a 9 lot strata subdivision. The applicant proposes to amend the Official Community Plan designation and zoning on the subject properties in order to permit secondary suites in each principle dwelling unit. The purpose of this report is for the Salt Spring Island Local Trust Committee to consider third reading of Proposed Bylaw 476 and an amended Proposed Bylaw 477 (see appendices).

## BACKGROUND

This staff report supplements numerous previous staff reports.

At the August 28, 2014 meeting the Local Trust Committee (LTC) regular business meeting, the LTC passed the following resolutions:

SS-2014-168

It was MOVED and SECONDED that the Salt Spring Island Local Trust Committee give second reading to Proposed Bylaw No. 476, cited as "Salt Spring Island Official Community Plan, 2008, Amendment No. 1, 2014" (SS-RZ-2013.3, 119-150 Ashya Road).

CARRIED

SS-2014-169

It was MOVED and SECONDED that the Salt Spring Island Local Trust Committee

amend Proposed Bylaw No. 477, cited as "Salt Spring Island Land Use Bylaw, 1999, Amendment No. 1, 2014" (SS-RZ-2013.3, 119-150 Ashya Road) by removing clauses 1.2 and 1.3 in their entirety and by removing Plan No. 2 in its entirety.

CARRIED

SS-2014-170

It was MOVED and SECONDED that the Salt Spring Island Local Trust Committee give second reading to Proposed Bylaw No. 477 as amended, cited as "Salt Spring Island Land Use Bylaw, 1999, Amendment No. 1, 2014" (SS-RZ-2013.3, 119-150 Ashya Road).

CARRIED

SS-2014-171

It was MOVED and SECONDED that the Salt Spring Island Local Trust Committee direct staff to prepare a draft covenant for Strata Lots 1-9, Section 4, Range 1, South Salt Spring Island, Cowichan District, Strata Plan VIS6778 (SS-RZ-2013.3, 119-150 Ashya Road) in order to ensure energy and water efficient building design and to provide notice of the CRD Waste Management Facility, and that staff have the requested covenant prior to calling a Public Hearing.

CARRIED

SS-2014-172

It was MOVED and SECONDED that the Salt Spring Island Local Trust Committee that the Salt Spring Island Local Trust Committee direct staff to schedule a Public Hearing for Proposed Bylaw 476 and Proposed Bylaw 477 (SS-RZ-2013.3, 119-150 Ashya Road).

CARRIED

A Public Hearing is scheduled for October 15, 2014.

## RESULTS OF CIRCULATION

In accordance with standard procedures and the LTC Administrative Bylaw No. 304, staff notified the owners and occupiers of surrounding properties. At the time of publishing this report, staff has not received any written comment. Any further correspondence will be added to the Public Hearing record.

## STAFF COMMENTS

A draft covenant is attached for LTC consideration. The clauses relevant to energy efficiency, water efficiency, and disclosure of proximity to the Liquid Waste Facility are as follows:

### "Energy Efficiency

1. The design and construction of all dwelling units, seasonal cottages, and affordable housing units on the Land shall incorporate:
  - a. All major appliances (clothes washer, dishwasher, refrigerator, freezer, furnace, air-conditioner, water heater, heat-pump) will be Energy Star labeled or equivalent;
  - b. All windows, skylights, and doors be Energy Star labeled or equivalent;
  - c. Effective insulation of ceilings, walls, floors, and foundations will exceed the 2012 BC Building Code energy efficiency requirements by 20%;

- d. Wood burning stoves will be EPA (United States Environmental Protection Agency)-certified or equivalent.
- e. For certainty, dwelling units and seasonal cottages issued Building Permits on or before October 15, 2014 shall only incorporate energy efficiency features feasible post design and construction.

#### Water Efficiency

2. The design and construction of all dwelling units, seasonal cottages, and affordable housing units on the Land shall incorporate:
  - a. Installation of water efficient appliances and accessories including dishwashers, washing machines, faucets and shower heads;
  - b. Low flush, dual flush, or compost toilets;
  - c. Native, drought resistant landscaping;
  - d. Rainwater harvesting and grey water separation and treatment for irrigation or reuse is encouraged.
  - e. For certainty, dwelling units and seasonal cottages issued Building Permits on or before October 15, 2014 shall only incorporate water efficiency features feasible post design and construction.

#### Disclosure Statement

3. The property owner acknowledges that the lots are in close proximity to the Capital Regional District liquid waste disposal facility where all of the following impacts arising from liquid waste disposal practices may occur:
  - a. Noise from liquid waste disposal practices;
  - b. Smells from liquid waste disposal practices;
  - c. Noise, vibrations, smell, and dust from heavy truck use of possible right-of-way adjacent to northern boundary of the Lands.”

Staff recommend that resolutions accepting the covenant, designating a Trustee to sign the covenant, and a request for a legal undertaking commitment to register the covenant come at time of LTC consideration for adopting Proposed Bylaws 476 and 477.

#### **RECOMMENDATIONS**

As per the above discussion, staff recommends:

1. THAT the Salt Spring Island Local Trust Committee GIVE THIRD READING to Proposed Bylaw No. 476, cited as “Salt Spring Island Official Community Plan, 2008, Amendment No. 1, 2014” (SS-RZ-2013.3, 119-150 Ashya Road), and forward it to the Executive Committee for consideration of approval.
2. That the Salt Spring Island Local Trust Committee DIRECTS staff to forward Proposed Bylaw 476, cited as “Salt Spring Island Official Community Plan, 2008, Amendment No. 1, 2014” (SS-RZ-2013.3, 119-150 Ashya Road) to the Ministry of Community, Sport and Cultural Development for approval.

3. THAT the Salt Spring Island Local Trust Committee GIVES THIRD READING to Proposed Bylaw No. 477 as amended, cited as "Salt Spring Island Land Use Bylaw, 1999, Amendment No. 1, 2014" (SS-RZ-2013.3, 119-150 Ashya Road), and forward it to the Executive Committee for consideration of approval.

Prepared and Submitted by:

---

Stefan Cermak

---

Date

Concurred in by:

---

Leah Hartley

---

Date

## **APPENDICES**

Appendix 1: Proposed Bylaw 476

Appendix 2: Proposed Bylaw 477

Appendix 3: Draft Covenant (Energy Efficiency, Water Efficiency, Proximity Disclosure)

## SALT SPRING ISLAND LOCAL TRUST COMMITTEE BYLAW NO. 476

\*\*\*\*\*  
**A BYLAW TO AMEND “SALT SPRING ISLAND OFFICIAL COMMUNITY PLAN  
BYLAW NO. 434, 2008”**  
\*\*\*\*\*

The Salt Spring Island Local Trust Committee, being the Trust Committee having jurisdiction in respect of the Salt Spring Island Local Trust Area under the *Islands Trust Act*, enacts as follows:

1. Salt Spring Island Local Trust Committee Bylaw No. 434, cited as “Salt Spring Island Official Community Plan, 2008”, is amended as follows:
  - 1.1 By amending Schedule ‘A’ – Map 1 (Plan Area with Land and Shoreline Designations) of Volume 1, as shown on Plan 1 of this bylaw.
  
2. This Bylaw may be cited as “Salt Spring Island Official Community Plan, 2008, Amendment No. 1, 2014”.

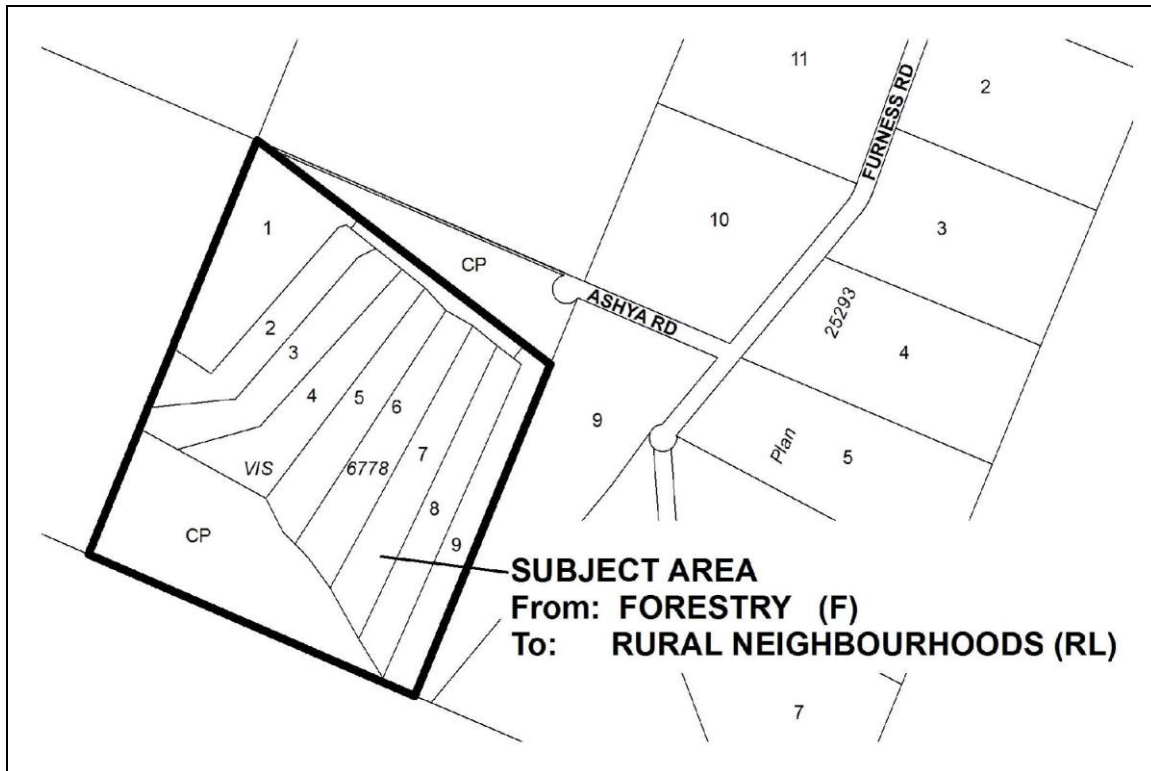
READ A FIRST TIME THIS	27th	DAY OF	February	, 2014
PUBLIC HEARING HELD THIS		DAY OF		, 20__
READ A SECOND TIME THIS	28th	DAY OF	August	, 2014
READ A THIRD TIME THIS		DAY OF		, 20__
APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST THIS		DAY OF		, 20__
APPROVED BY THE MINISTER OF COMMUNITY DEVELOPMENT THIS		DAY OF		, 20__
ADOPTED THIS		DAY OF		, 20__

\_\_\_\_\_  
CHAIR

\_\_\_\_\_  
SECRETARY

**SALT SPRING ISLAND LOCAL TRUST COMMITTEE  
BYLAW NO. 476**

**Plan No. 1**



# PROPOSED

## SALT SPRING ISLAND LOCAL TRUST COMMITTEE BYLAW NO. 477

\*\*\*\*\*

### A BYLAW TO AMEND “SALT SPRING ISLAND LAND USE BYLAW, 1999,” BEING BYLAW NO. 355

\*\*\*\*\*

The Salt Spring Island Local Trust Committee, being the Trust Committee having jurisdiction in respect of the Salt Spring Island Local Trust Area under the *Islands Trust Act*, enacts as follows:

1. Salt Spring Island Local Trust Committee Bylaw No. 355, cited as “Salt Spring Island Land Use Bylaw, 1999,” is amended as follows:
  - 1.1 Schedule “1” is amended to include Strata Lots 1 to 9 Section 4 Range 1 South Salt Spring Island Cowichan District, Strata Plan VIS6778, as shown in Plan No. 1.
2. This bylaw may be cited for all purposes as “Salt Spring Island Land Use Bylaw, 1999, Amendment No. 1, 2014”.

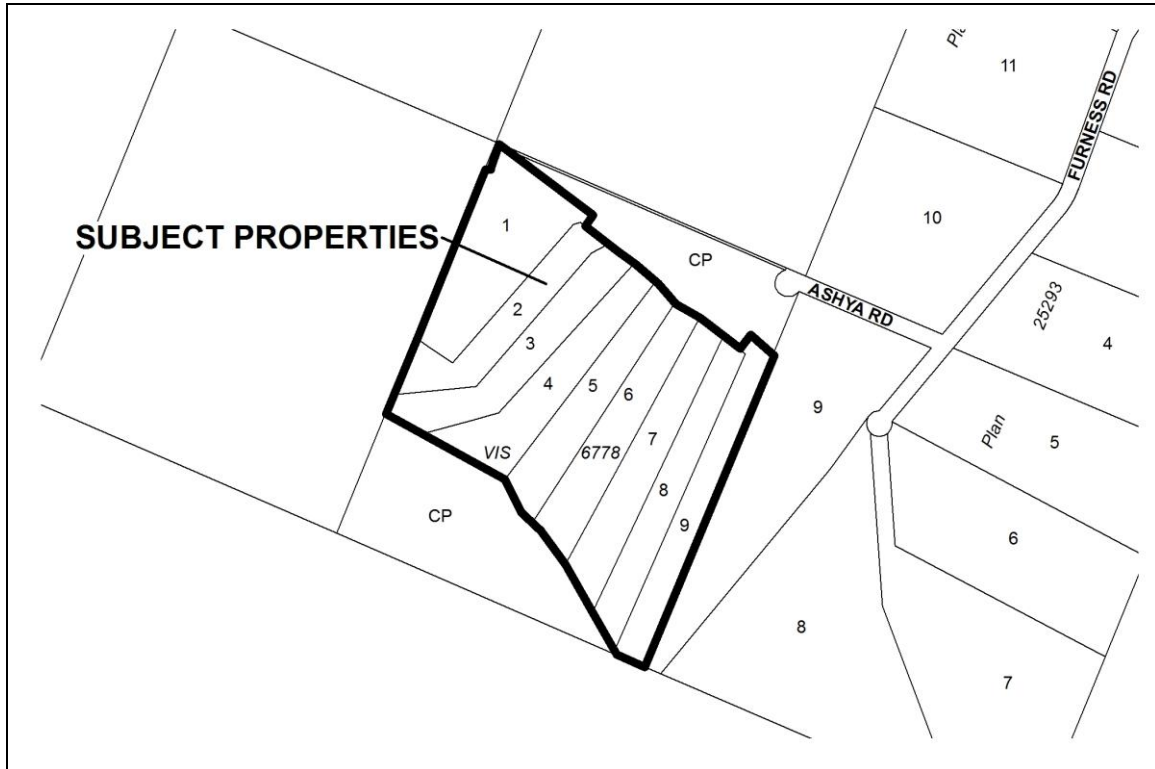
READ A FIRST TIME THIS	27th	DAY OF	February	2014
PUBLIC HEARING HELD THIS	_____	DAY OF	_____	20__
READ A SECOND TIME THIS	28th	DAY OF	August	2014
READ A THIRD TIME THIS	_____	DAY OF	_____	20__
APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST THIS	_____	DAY OF	_____	20__
ADOPTED THIS		DAY OF		20__

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Secretary

SALT SPRING ISLAND LOCAL TRUST COMMITTEE  
BYLAW NO. 477

Plan No. 1





**PART 2 – TERMS OF INSTRUMENT**

**SECTION 219 COVENANT**

This Agreement dated for reference the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ is

AMONG:

**THE OWNERS, STRATA PLAN VIS6778  
ASHYA PROPERTIES LTD.  
JAMIE COLLIGAN  
NICKOLAOS KARVOUNIARIS  
SEBRING HOMES INC.  
0952482 B.C. LTD.  
0946435 B.C. LTD.**

(collectively, the “Owners”)

AND:

**ISLAND LOCAL TRUST COMMITTEE**, a Corporation under the *Islands Trust Act*, R.S.B.C. 1996, c.239, with an office at Suite 200, 1627 Fort Street, Victoria, British Columbia, V8R 1H8

(the “Trust Committee”)

GIVEN THAT:

- A. The Owners are the registered owners of a bare land strata development on Salt Spring Island, British Columbia which is legally described as follows:

ASHYA PROPERTIES LTD.

Strata Lot 1, Plan VIS6778 together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on FORM V

JAMIE COLLIGAN

Strata Lot 2, Plan VIS6778 together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on FORM V

NICKOLAOS KARVOUNIARIS

Strata Lot 3, VIS6778 together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on FORM V; and

Strata Lot 4, Plan VIS6778 together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on FORM V

SEBRING HOMES INC.

Strata Lot 5, Plan VIS6778 together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on FORM V; and

Strata Lot 6, Plan VIS6778 together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on FORM V; and

Strata Lot 7, Plan VIS6778 together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on FORM V

0952482 B.C. LTD.

Strata Lot 8, Plan VIS6778 together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on FORM V

0946435 B.C. LTD.

Strata Lot 9, Plan VIS6778 together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on FORM V

(collectively, the "Lands")

- B. Section 219 of the *Land Title Act* (British Columbia) provides that there may be registered as a charge against the title to land a covenant, whether of a negative or positive nature, in respect of the use of land, the building on land, the subdivision of land and the preservation of land or a specified amenity on the land;
- C. The Owner wishes to grant and the Trust Committee wishes to accept this Covenant over the Land, restricting the building on Land and restricting the use of the Land in the manner specified;

This Agreement is evidence that in consideration of the premises and covenants herein contained, the payment of two dollars (\$2.00) by the Trust Committee to the Owner, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### Energy Efficiency

1. The design and construction of all dwelling units, seasonal cottages, and affordable housing units on the Land shall incorporate:
  - a. All major appliances (clothes washer, dishwasher, refrigerator, freezer, furnace, air-conditioner, water heater, heat-pump) will be Energy Star labeled or equivalent;
  - b. All windows, skylights, and doors be Energy Star labeled or equivalent;
  - c. Effective insulation of ceilings, walls, floors, and foundations will exceed the 2012 BC Building Code energy efficiency requirements by 20%;
  - d. Wood burning stoves will be EPA (United States Environmental Protection Agency)-certified or equivalent.
  - e. For certainty, dwelling units and seasonal cottages issued Building Permits on or before October 15, 2014 shall only incorporate energy efficiency features feasible post design and construction.

### Water Efficiency

2. The design and construction of all dwelling units, seasonal cottages, and affordable housing units on the Land shall incorporate:
  - a. Installation of water efficient appliances and accessories including dishwashers, washing machines, faucets and shower heads;
  - b. Low flush, dual flush, or compost toilets;
  - c. Native, drought resistant landscaping;
  - d. Rainwater harvesting and grey water separation and treatment for irrigation or reuse is encouraged.
  - e. For certainty, dwelling units and seasonal cottages issued Building Permits on or before October 15, 2014 shall only incorporate water efficiency features feasible post design and construction.

### Disclosure Statement

3. The property owner acknowledges that the lots are in close proximity to the Capital Regional District liquid waste disposal facility where all of the following impacts arising from liquid waste disposal practices may occur:
  - a. Noise from liquid waste disposal practices;
  - b. Smells from liquid waste disposal practices;
  - c. Noise, vibrations, smell, and dust from heavy truck use of possible right-of-way adjacent to northern boundary of the Lands.

#### No Effect On Laws or Powers

4. This Agreement does not
  - (a) affect or limit the discretion, rights, duties or powers of the Trust Committee or the Capital Regional District under any enactment or at common law, including in relation to the use or subdivision of the Land;
  - (b) impose on the Trust Committee or the Capital Regional District any duty of care or other legal duty of any kind to the Owner or to anyone else;
  - (c) oblige the Trust Committee to enforce this Agreement, which is a policy matter within the sole discretion of the Trust Committee;
  - (d) affect or limit any enactment relating to the use or subdivision of the Land;
  - (e) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.

#### Limitation on Obligations

5. The Owner is only liable for breaches of this Agreement caused or contributed to by the Owner or which the Owner permits or allows. The Owner is not liable for the consequences of the requirements of any enactments or law or any order, directive, ruling or government action thereunder. The Owner is liable only for breaches of this Agreement which occur while the Owner is the registered owner of any interest in the Land and then only to the extent of that interest.

#### Indemnity

6. The Owner hereby indemnifies and saves harmless the Trust Committee and its elected and appointed officials, officers, employees and agents, from and against all loss, damage, cost, actions, suits, debts, expenses and harm of any kind whatsoever which the Trust Committee may at any time suffer or incur arising out of or related to this Agreement or any breach of it.

#### No Liability in Tort

7. The parties agree that this Agreement creates only contractual obligations. The parties agree that no tort obligations or liabilities of any kind exist between the parties in connection with the performance of or any default under or in respect of this Agreement. The intent of this section is to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract.

#### Covenant Runs With the Land

8. Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted under section 219 of the *Land Title Act* (British Columbia) in respect of the Land. This Agreement burdens the Land and runs with it and binds the successors in title to the Land. This Agreement burdens and charges all of the Land and any parcel into which it is subdivided by any means and any parcel into which the Land is consolidated.

#### Registration

8. The Owner agrees to do everything 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 pending registration in the Land Title Office at the time of application for registration of this Agreement.

#### Waiver

9. An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach. A waiver by the Trust Committee of a breach of this Agreement by the Owner does not operate as a waiver of any other breach of this Agreement.

#### Severance

10. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this

Agreement remains in force unaffected by that holding or by the severance of that part.

No Other Agreements

11. This Agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other agreements and arrangements regarding its subject.

Binding of Successors

12. This Agreement binds the parties to it and their respective successors, heirs, executors and administrators.

Further Acts

13. The Owner must do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.

Deed and Contract

14. By executing and delivering this Agreement the Owner intends to create both a contract and a deed executed and delivered under seal.

As evidence of their agreement to be bound by the terms of this instrument, the parties each have executed the Land Title Office Form C which is attached hereto and which forms part of this Agreement.

## CONSENT AND PRIORITY AGREEMENT

WHEREAS:

- A. [Name of land owner(s)] (the "Owner") is the registered owner of [insert full legal description] (the "Land");
- B. The Owner granted [Name of chargeholder] (the "Prior Chargeholder") a [identify mortgage or other charge], which was registered against the title to the Land in the Victoria Land Title Office under number [insert registration number] (the "Prior Charge");
- C. The Owner granted to the Island Local Trust Committee (the "Subsequent Chargeholder") a Section 219 Covenant which is registered against the title to the Land under number [insert registration number] (the "Subsequent Charge"); and
- D. Section 207 of the *Land Title Act* permits the Prior Chargeholder to grant priority over a charge to a subsequent chargeholder.

THEREFORE THIS CONSENT AND PRIORITY AGREEMENT WITNESSES THAT IN CONSIDERATION OF \$1.00 AND OTHER GOOD AND VALUABLE CONSIDERATION RECEIVED BY THE PRIOR CHARGEHOLDER FROM THE SUBSEQUENT CHARGEHOLDER (THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED):

- 1. The Prior Chargeholder hereby consents to the granting and registration of the Subsequent Charge and the Prior Chargeholder hereby agrees that the Subsequent Charge shall be binding upon its interest in and to the Land.
- 2. The Prior Chargeholder hereby grants to the Subsequent Chargeholder priority for the Subsequent Charge over the Prior Chargeholder's right, title and interest in and to the Land, and the Prior Chargeholder does hereby postpone the Prior Charge and all of its right, title and interest thereunder to the Subsequent Charge as if the Subsequent Charge had been executed, delivered and registered prior to the execution, delivery and registration of the Prior Charge.

As evidence of its agreement to be bound by the above terms of this Consent and Priority Agreement, the Prior Chargeholder has executed and delivered Part 1 of *Land Title Act* Form C which is attached hereto and forms part of this Agreement.

**END OF DOCUMENT**