

FORM_C_V27 (Charge)

VICTORIA LAND TITLE OFFICE

LAND TITLE ACT
FORM C (Section 233) CHARGE
GENERAL INSTRUMENT - PART 1 Province of British Columbia

May-28-2021 16:12:20.001

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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.

Lee Tod James
Fisher 2D5BNG

Digitally signed by Lee Tod
James Fisher 2D5BNG
Date: 2021.05.28 16:03:02
-07'00'

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)
Lee T.J. Fisher
Dawson Mullin Law
102 - 1497 Admirals Road
Victoria BC V9A 2P8
Document Fees: \$150.44
- Tel: 1-250-590-1154
File No.: 17272/hes
- Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]
000-385-336 LOT 14, SECTION 10, ESQUIMALT DISTRICT, PLAN 276

STC? YES ☐

3. NATURE OF INTEREST CHARGE NO. ADDITIONAL INFORMATION
Covenant S. 219 Land Title Act Covenant
Priority Agreement

4. TERMS: Part 2 of this instrument consists of (select one only)
(a) ☐ Filed Standard Charge Terms D.F. No. (b) ☒ Express Charge Terms Annexed as Part 2
A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):
JANOS FARKAS AND XENIYA VINS AND CANADIAN IMPERIAL BANK OF COMMERCE (AS TO PRIORITY)

6. TRANSFEREE(S): (including postal address(es) and postal code(s))
TOWNSHIP OF ESQUIMALT
1229 ESQUIMALT ROAD
VICTORIA BRITISH COLUMBIA
V9A 3P1 CANADA

7. ADDITIONAL OR MODIFIED TERMS:
N/A

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges 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.

Officer Signature(s)
Lee T. J. Fisher
Barrister & Solicitor
102 - 1497 Admirals Road
Victoria BC V9A 2P8
(as to both signatures)

Execution Date
Y M D
21 05 11

Transferor(s) Signature(s)
Janos Farkas
Xeniya Vins

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.

RCVD: 2021-05-28 RQST: 2021-06-11 10.44.21

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TERMS OF INSTRUMENT - PART 2
S.219 COVENANT

RECITALS:

- A. The Transferor ("**Owner**") is the registered owner in fee-simple of the following lands in the Township of Esquimalt in the Province of British Columbia:

PID: 000-385-336

Lot 14, Section 10, Esquimalt District, Plan 276 (the "**Lands**").

- B. The Transferee is the Township of Esquimalt ("**Transferee**" or "**Township**").
- C. The Owner has submitted an application to the Township to rezone the Lands to Comprehensive Development District No. 133 (842 Carrie Street) CD No. 133 further to ZONING BYLAW, 1992, NO. 2050, AMENDMENT BYLAW NO. 3006 (the "**Amendment Bylaw**") to authorize the construction of a new four bedroom single family residence and renovation of the existing single family residence on the parcel (the "**Development**").
- D. Acknowledging that the amenities contained herein are in the public interest, and that it is in the public interest that the subdivision, use, and development of the Lands be limited, in particular with respect that any lots created by subdivision from the Lands are to be linked, so that none of the lots created by subdivision from the Lands can be separately alienated from the other except in accordance with this Agreement, the Owner has offered and voluntarily provided this blanket covenant over the Lands to the Township, and the Township has accepted this blanket covenant and required its registration as a condition of the Amendment Bylaw (the "**Agreement**").
- E. Section 219 of the *Land Title Act* gives authority for a covenant and indemnity, whether of a negative or positive nature, to be registered against the Lands and granted in favour of the Township with provisions:
- in respect of the use of land or the use of a building on or to be erected on land;
 - that land is to be built on in accordance with the covenant;
 - that land is not to be built on or subdivided except in accordance with the covenant;
 - that land is not to be used, built on or subdivided;
 - that parcels of land designated in the covenant and registered under one or more indefeasible titles are not to be sold or otherwise transferred separately; and
 - that land or a specified amenity in relation to it be protected, preserved, conserved, maintained, enhanced, restored or kept in its natural or existing state in accordance with the covenant and to the extent provided in the covenant.

NOW THEREFORE in consideration of the payment of the sum of \$10.00 by the Township to the Owner (receipt and sufficiency acknowledged), the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the parties covenant and agree as to the following, including under Section 219 of the *Land Title Act*:

1. The Owner and Township agree that this Agreement shall be interpreted in accordance with the definitions in the Township's Zoning Bylaw, as amended from time to time.

Restrictions and Requirements – Subdivision

2. Notwithstanding broader or greater uses, density or other regulations in the Township's Zoning Bylaw, as amended from time to time, the Owner covenants and agrees that the Lands must not be subdivided (including under the *Strata Property Act*), except for two (2) single family residential fee simple lots, substantially in accordance with the lots outlined in bold and labelled as "LOT A" ("**Lot A**" or "**Site A**") and "LOT B" ("**Lot B**" or "**Site B**") on Subdivision Plan EPP109801, prepared by Explorer Land Surveying Inc. and date-stamped "Received" by the Township on March 16, 2021, a reduced copy of which is appended to this Agreement as Schedule "A" (the "**Subdivision Plan**").

Restrictions and Requirements – Linked Parcels

3. The Owner covenants and agrees that any lots created by subdivision from the Lands are to be linked in accordance with Section 219(2)(d) of the *Land Title Act*, and must not be sold or otherwise transferred separately unless and until the conditions, restrictions and requirements of sections 7, 9, 11, 15, 16, 17, and 18 of this Agreement, including those conditions related to the BC Energy Step Code, heating, parking and electric vehicle charging stations, have all been fulfilled and met to the satisfaction of the Township's Director of Development Services, in their sole discretion.

Conversion of Agreement to Specific Covenants

4. The Township and Owner covenant and agree that this Agreement is a covenant affecting the entirety of the Lands, despite references in the following provisions to a portion of the Lands, to Site A or B, or to Lot A or B. The Owner and Township acknowledge and agree that this Agreement is registered as a blanket covenant charge over all the Lands to facilitate development on the Lands, and the parties acknowledge and agree that the Owner may replace this Agreement with specific covenants, however, any uncertainty is to be resolved in favour of the Township given this blanket charge.
5. This Agreement may be converted by the Owner, at its sole cost, to specific covenants under Section 219 of the *Land Title Act*, in accordance with the terms of this Agreement but each respectively limited to one of the lots to be created by subdivision from the Lands, including registration by the Owner of the specific Lot A covenant and the specific Lot B covenant on the title of the Lands and a corresponding discharge of this Agreement to be provided by the Township to the Owner and to be registered concurrently at the Victoria Land Title Office. Only once subdivided or this Agreement converted, do the references to portions of Lands become relevant to determine the obligations of the two lots or two covenant areas.

Lot A Restrictions and Requirements

Maximum One Dwelling Unit and One Secondary Suite

6. Notwithstanding broader or greater uses, density or other regulations in the

Township's Zoning Bylaw, as amended from time to time, the Owner covenants and agrees that Lot A must not be:

- (a) built upon or used except for a maximum of one (1) single family residential dwelling unit; or
- (b) built upon, contain or be used for secondary suites, except for one (1) secondary suite within the existing single family residential dwelling unit which is identified as the "Existing Dwelling Building A" (the "**Existing Dwelling**") on the Site Plan prepared by Xquimalt Developments and date-stamped "Received" by the Township on February 19, 2020, a reduced copy of which is appended to this Agreement as Schedule "B" (the "**Site Plan**").

BC Energy Step Code, Step 3

- 7. The Owner covenants and agrees that Lot A must not be built upon, including renovations, repairs, or alterations, for which a permit is required pursuant to the Township's Building Regulation Bylaw, except with buildings, or renovations, repairs or alterations to existing buildings, that meet or exceed the standards and requirements of Step 3 of the BC Energy Step Code and the Township's Bylaws.
- 8. For greater certainty, the restrictions and requirements of Section 7 of this Agreement shall be implemented for the Existing Dwelling at the time of the renovation, repair or alteration of the Existing Dwelling.

Heating

- 9. The Owner covenants and agrees that Lot A must not be built upon, including renovations, repairs, or alterations, for which a permit is required pursuant to the Township's Building Regulation Bylaw, unless the Owner has provided, at its sole cost and without expectation of compensation from the Township, a heat pump for use as the primary heating source for the Existing Dwelling.
- 10. For greater certainty, the restrictions and requirements of Section 9 of this Agreement shall be implemented for the Existing Dwelling at the time of the renovation, repair or alteration of the Existing Dwelling.

Electric Vehicle Charging Station

- 11. The Owner covenants and agrees that Lot A must not be built upon, including renovations, repairs, or alterations, for which a permit is required pursuant to the Township's Building Regulation Bylaw, unless the Owner has provided (in addition to, and not in relief of, the Township's bylaws and development approvals), at its sole cost and without expectation of compensation from the Township, and continues to provide no fewer than one (1) vehicular parking space and facilities on Lot A that is wired for, and has installed, a Level 2 (240V, AC plug with a dedicated 40 amp circuit) electric vehicle charging station (or better).

12. The Owner further covenants and agrees that the Township's Director of Development Services, may, but is not obligated to, inspect the parking space and other features shown on Site A on the Site Plan and secured by this Agreement, and the Owner shall implement any reasonable measures identified by the Director of Development Services as a result of such inspection.
13. For greater certainty, the restrictions and requirements of Section 11 of this Agreement shall be implemented for the Existing Dwelling at the time of the renovation, repair or alteration of the Existing Dwelling.

Lot B Restrictions and Requirements

Maximum One Dwelling Unit

14. Notwithstanding broader or greater uses, density or other regulations in the Township's Zoning Bylaw, as amended from time to time, the Owner covenants and agrees that Lot B must not be:
 - (a) built upon or used except for a maximum of one (1) single family residential dwelling unit;
 - (b) built upon, contain or be used for secondary suites.

BC Energy Step Code, Step 3

15. The Owner covenants and agrees that Lot B must not be built upon except with buildings that meet or exceed the standards and requirements of Step 3 of the BC Energy Step Code and the Township's Bylaws.

Heating

16. The Owner covenants and agrees that Lot B must not be built upon, used or continue to be used, unless the Owner has provided, at its sole cost and without expectation of compensation from the Township, a heat pump for use as the primary heating source for any single family residential dwelling unit that is built on Lot B.
17. The Owner further covenants and agrees that no building constructed on the Lot B will have a gas connection or a primary heating source that uses fossil fuels.

Electric Vehicle Charging Station

18. The Owner covenants and agrees that Lot B must not be built upon, used or continue to be used, unless the Owner has provided (in addition to, and not in relief of, the Township's bylaws and development approvals), at its sole cost and without expectation of compensation from the Township, and continues to provide no fewer than one (1) vehicular parking space and facilities on Lot B that is wired for, and has installed, a Level 2 (240V, AC plug with a dedicated 40 amp circuit) electric vehicle charging station (or better).
19. The Owner further covenants and agrees that the Township's Director of Development Services, may, but is not obligated to, inspect the parking space and other features shown on Site B on the Site Plan and secured by this Agreement, and the Owner shall

implement any reasonable measures identified by the Director of Development Services as a result of such inspection.

Indemnity and Release

20. The Owner covenants and agrees to indemnify and save harmless the Township from any and all claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees (on a solicitor-client basis) whatsoever, in law or equity, which anyone has or may have against the Township or which the Township incurs as a result of any loss, damage, deprivation, enrichment or injury, including economic loss, arising out of or connected with the restrictions or requirements of this Agreement, the breach of any covenant in this Agreement, or the use of the Lands contemplated under this Agreement.
21. As a personal covenant between the parties, the Owner releases and forever discharges the Township of and from any claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees (on a solicitor-client basis) whatsoever, in law or equity, which the Owner can or may have against the Township for any loss, damage, deprivation, enrichment or injury, including economic loss, arising out of or connected with the restrictions or requirements of this Agreement, the breach of any covenant in this Agreement, or the use of the Lands contemplated under this Agreement.
22. Without limiting the above release and indemnity, the Owner acknowledges that this Agreement contains conditions, restrictions, requirements, benefits or gifts that may not be specifically identified or required by bylaw. The Owner hereby expresses its intention to be solely responsible for the costs resulting from satisfying the conditions of this Agreement, and to donate any contribution to the Township as a gift without any expectation of credit, payment or reward of any kind. As a personal covenant between the parties, the Owner further releases, waives and forever discharges the Township from and against any claims, actions, or causes of action, whether based in contract, tort or equity, for damages or losses, for the recovery of the contributions or costs incurred, including legal expenses, or for unjust enrichment, in connection with the provision of those contributions.
23. The releases and indemnities of this Agreement shall survive its termination.

Registration

24. The restrictions and requirements in this Agreement are covenants running with the Lands in favour of the Township and intended to be perpetual, and shall continue to bind all of the Lands when subdivided.
25. At the Owner's sole cost, the Owner must do everything necessary to secure priority of registration and interest for this Agreement over all encumbrances of a financial nature on the Lands.
26. The Owner agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement. However, the Township acknowledges that if the Amendment Bylaw is not adopted by the Township by June 30, 2021, and the related Development applications are abandoned, then this Agreement shall be discharged from the Lands.

27. The Owner, as a personal covenant between the parties, agrees to pay the reasonable legal fees and land title office costs of the Township in connection with the preparation and registration of this Agreement.

General

28. The Owner covenants and agrees for itself, its heirs, executors, successors and assigns, that it will at all times perform and observe the requirements and restrictions set out in this Agreement.
29. It is mutually understood, acknowledged and agreed by the parties that the Township has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Owner other than those contained in this Agreement.
30. Nothing contained or implied in this Agreement:
- (a) prejudices or affects the rights, powers or discretion of the Township in the exercise of its functions under any public or private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands as if the Agreement had not been executed and delivered by the Owner;
 - (b) imposes any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement or the breach of any provision in this Agreement; or
 - (c) imposes any public law duty, whether arising from the principles of procedural fairness or the rules of natural justice, on the Township with respect to its exercise of any right or remedy expressly provided in this Agreement or at law or in equity.
31. The Owner covenants and agrees that the Township may withhold development permits, building permits and other approvals related to the use, building or subdivision of land as necessary to ensure compliance with the covenants in this Agreement, and that the issuance of a permit or approval does not act as a representation or warranty by the Township that the covenants of this Agreement have been satisfied.
32. The Owner covenants and agrees that:
- (a) if the Township advises of a breach of this Agreement, as determined in its reasonable discretion, the Owner must promptly remedy that breach at its sole cost;
 - (b) if the Owner has not remedied the breach to the reasonable satisfaction of the Township within thirty (30) days of notice or other longer time period specified by the Township, the Township may, but is under no obligation to, remove or rectify the breach at the expense of the Owner without further notice; and
 - (c) any costs to the Township of such removal or rectification is a debt due from the Owner to the Township together with interest at a rate of 1% per annum in excess of the Prime Lending Rate of the Royal Bank of Canada in effect from time

to time, and:

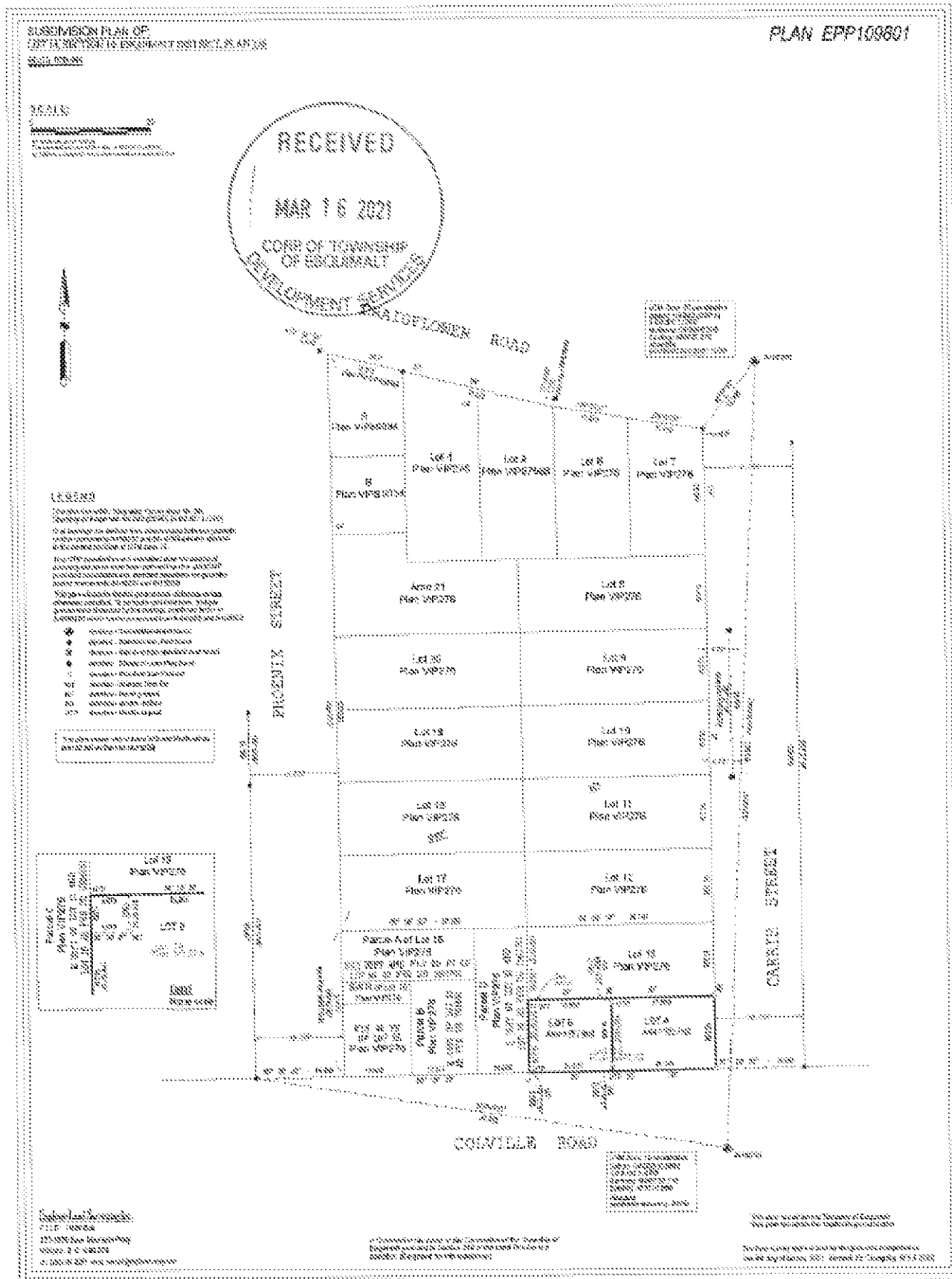
- (i) the Owner shall pay such costs and interest to the Township forthwith upon demand; and
 - (ii) failing payment, the Township may add such costs to property taxes for the Lands.
33. No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity. The Owner agrees that the Township is entitled to obtain an order for specific performance or a prohibitory or mandatory injunction in respect of any breach of this Agreement by the Owner.
34. The waiver by a party of any breach of this Agreement or 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, and no waiver is effective unless it is written and signed by both parties.
35. 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. However, where a provision that contains an agreement or covenant between the parties is found not to be authorized under section 219 of the *Land Title Act*, that provision shall be interpreted as a personal agreement and contractual obligation between the parties, the Owner acknowledging the receipt and sufficiency of consideration.
36. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

Priority Agreement

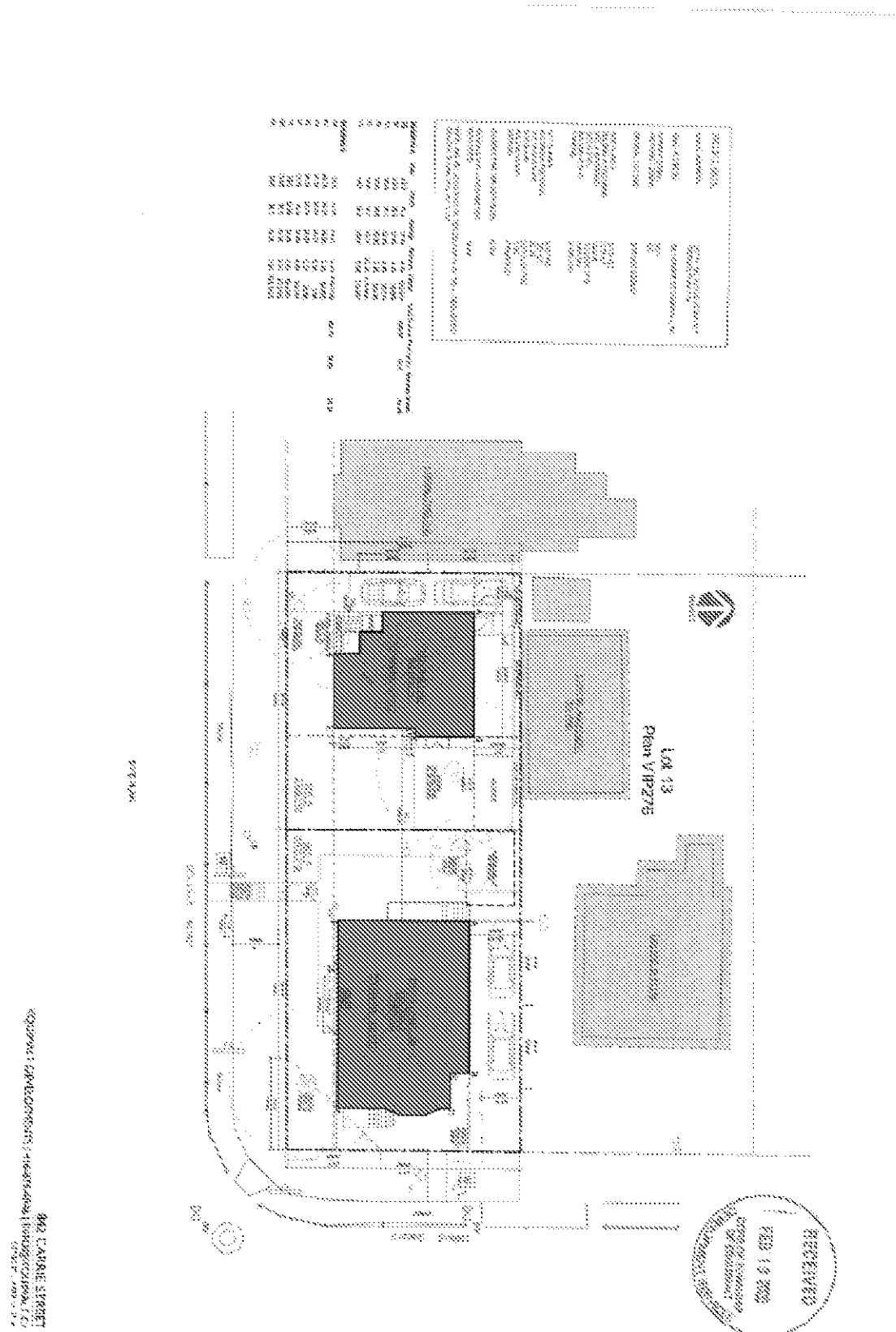
37. CANADIAN IMPERIAL BANK OF COMMERCE (the “**Chargeholder**”) the registered holder of a charge by way of MORTGAGE against the Lands, registered under No. CA7500091 (the “**Charge**”) agrees with the Township, in consideration of the sum of Ten Dollars (\$10.00) paid by the Township to the Chargeholder (receipt and sufficiency acknowledged), that the Agreement shall be an encumbrance upon the Lands in priority to the Charges in the same manner and to the same effect as if the Agreement had been dated and registered prior to the Charge.

The Owner and Township acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D attached.

Schedule A – Subdivision Plan EPP109801



Schedule B – Site Plan



PRIORITY AGREEMENT

WHEREAS Canadian Imperial Bank of Commerce (the “Chargeholder”) is the holder of a Mortgage (the “Charge”) encumbering the lands (the “Lands”) described in item 2 of the *Land Title Act* Form C attached hereto, which was registered in the Victoria Land Title Office under number CA7500091

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 the 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 Charge 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 Charge.

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

END OF DOCUMENT