



1. Application

Document Fees: \$152.64

**Liezl Dreijer, McCarthy Tétrault LLP**  
**2400-745 Thurlow Street**  
**Vancouver BC V6E 0C5**  
**Tel: 604-643-7161**

File: 207515-544741 856-858 Esquimalt Road

2. Description of Land

PID/Plan Number	Legal Description
<b>002-925-966</b>	<b>LOT 2 SECTION 11 ESQUIMALT DISTRICT PLAN 23904</b>
<b>026-691-418</b>	<b>LOT A SECTION 11 ESQUIMALT DISTRICT PLAN VIP80973</b>

3. Nature of Interest

Type	Number	Additional Information
<b>COVENANT</b>		<b>Section 219 Covenant</b>
<b>PRIORITY AGREEMENT</b>		<b>Granting the above Covenant priority over Mortgage CA9153275 and Assignment of Rents CA9153276</b>

4. Terms

Part 2 of this instrument consists of:

**(b) Express Charge Terms Annexed as Part 2**

5. Transferor(s)

**852 AND 854 ESQUIMALT ROAD LTD., NO.BC1375435**  
**FIERA REAL ESTATE CORE FUND GP INC. (AS TO PRIORITY), NO.A105196**

6. Transferee(s)

**THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT**  
**1229 ESQUIMALT ROAD**  
**ESQUIMALT BC V9A 3P1**

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)

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**RYAN WESLEY BATES**  
**Commissioner for Taking Affidavits**  
**for British Columbia**  
880-1090 W Georgia Street  
Vancouver BC V6E 3V7

YYYY-MM-DD

**2022-09-09**

**852 AND 854 ESQUIMALT ROAD LTD.**  
By their Authorized Signatory

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**Print Name: J. Brent Sawchyn,**  
**Director**

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**Print Name: Shawn Smith, Director**

**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.

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Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

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**Niki Khatami**  
**Barrister & Solicitor**  
200 Bay Street, Suite 3800  
South Tower  
Toronto ON M5J 2J1

YYYY-MM-DD

**2022-09-12**

**FIERA REAL ESTATE CORE FUND GP**  
**INC.**  
By their Authorized Signatory

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**Print Name: William Secnik**

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**Print Name: Peter McFarlane**

**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.

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Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

\_\_\_\_\_  
**DEBRA HOPKINS**  
**Commissioner for Taking Affidavits**  
**for British Columbia**  
1229 Esquimalt Rd  
Esquimalt BC V9A 3P1

YYYY-MM-DD

**2022-09-16**

**THE CORPORATION OF THE**  
**TOWNSHIP OF ESQUIMALT**  
By their Authorized Signatory

\_\_\_\_\_  
**Print Name: Barbara Desjardins,**  
**Mayor**

\_\_\_\_\_  
**Print Name: Laurie Hurst, CAO**

**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.

**Lauren Nicole**  
**Muirhead 7S6KG6**

**Digitally signed by**  
**Lauren Nicole Muirhead**  
**7S6KG6**  
**Date: 2022-09-27**  
**09:38:47 -07:00**

## TERMS OF INSTRUMENT - PART 2

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**RECITALS:**

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- A. The Transferor (the “**Owner**”) is the registered owner in fee-simple of those lands with current civic addresses of 856 and 858 Esquimalt Road, more particularly described in Item #2 of the Form C to which this Terms of Instrument is attached, in the Township of Esquimalt in the Province of British Columbia, namely:

PID: 026-691-418

Lot A, Section 11, Esquimalt District, Plan VIP80973 (“**Lot A**”)

PID: 002-925-966

Lot 2, Section 11, Esquimalt District, Plan 23904 (“**Lot 2**”)

(collectively, the “**Lands**”).

- B. The Transferee is the Township of Esquimalt (“**Transferee**” or “**Township**”).
- C. The Owner has submitted an application to the Township for a development variance permit (the “**DVP**”) for the Lands to permit the development of one (1) six (6) storey commercial-residential mixed use building (the “**Mixed-Use Building**”) and one (1) residential building (the “**Residential Building**”) on the Lands, which buildings are planned to include commercial space and up to one hundred and ninety-eight (198) residential dwelling units on the Lands (the “**Dwelling Units**”), and an underground parking garage with at least nineteen (19) permanent visitor parking spaces and at least three (3) indoor storage rooms with at least two hundred and thirty-four (234) long-term bicycle parking stalls including electric charging infrastructure for electric bicycles and at least three (3) outdoor bike racks (the “**Development**”), and acknowledging that the amenities contained herein are in the public interest, the Owner has offered and voluntarily provided this covenant to the Township, and the Township has accepted this covenant and required its registration as a condition of issuance of the DVP (the “**Agreement**”).
- D. 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 – Consolidation**

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*), built upon, altered, or used for any use (other than continuation of the established and operating uses lawful at the time of this Agreement), until the Owner has, at its sole cost and without expectation of compensation from the Township, consolidated the two (2) parcels that comprise the Lands as one (the "**Consolidation**"), in general accordance with the Site Plan prepared by J.E. ANDERSON & ASSOCIATES, dated September 23, 2021 and revised December 23, 2021, a copy of which is attached to this Agreement as Schedule "A" (the "**Site Plan**").
3. The Owner further covenants and agrees that Lot A and Lot 2 must not be sold or otherwise transferred separately. This provision is only in effect until the Consolidation has occurred.

#### **Restrictions and Requirements – Maximum of 198 Residential Dwelling Units**

4. The Owner covenants and agrees that the Lands must not be built upon or used except for a development that contains not more than one hundred and ninety-eight (198) total residential dwelling units, which dwelling units are located within the Mixed-Use Building and the Residential Building as generally located and shown on the Site Plan.

#### **Restrictions and Requirements – BC Energy Step Code, Step Level 3**

5. The Owner covenants and agrees that Lands must not be built upon, except with buildings that, for residential portions of the buildings, meet or exceed the standards and requirements of Step 3 of the BC Energy Step Code and the Township's Bylaws.
6. For greater certainty, the restrictions and requirements of Section 5 of this Agreement are intended to supplement, not replace or override, Township Bylaws and Building Code requirements.

#### **Restrictions and Requirements – Stormwater Retention Tanks**

7. The Owner covenants and agrees that Lands must not be built upon, except with a development which includes stormwater retention tanks:
  - (a) with at least 26 StormTech SC-740 Chambers and a total volume of at least 50.18 m<sup>2</sup>, in accordance with the specifications and in the locations shown on the plan prepared by WESTBROOK Consulting Ltd., titled "PRELIMINARY SWM SCHEMATIC", and dated July 2021, a copy of which is attached to this Agreement as Schedule "B" (the "**SWM Schematic Plan**"), or

- (b) with alternative specifications or locations that are approved in writing and in advance of installation by the Township's Director or Manager of Engineering, or their designate.

### **Restrictions and Requirements – Underground Utility Lines**

- 8. The Lands must not be used for the Development, and the Development must not be occupied for residential purposes, unless and until the Owner has provided ducts or conduits suitable, in the Township's discretion, to enable and facilitate the future burying or undergrounding of the existing Telus and Shaw utility lines which run the length of the frontage of the Lands along Esquimalt Road (the "**Utility Line Duct Works**") in accordance with any plans and specifications prescribed by Telus and Shaw, and to the satisfaction of the Township's Director of Engineering and Public Works.
- 9. The parties acknowledge that the Township is under no obligation to agree to, pay for, commence or complete the Utility Line Duct Works, or otherwise facilitate the timing of such undergrounding works, and the Owner will undertake such works at its sole cost and without expectation of compensation from the Township.

### **Restrictions and Requirements – Median Removal, Restoration, and Compensation**

- 10. The Owner covenants and agrees that the Lands must not be used for the Development, and the Development must not be occupied for residential purposes, unless and until the Owner has, at the Owner's sole cost, restored and replaced the landscaped median island that is currently located on that portion of Esquimalt Road that is adjacent to the Lands, photographs of which median island are attached as Schedule "C" of this Agreement (the "**Median Island**"), which the Owner plans to temporarily remove to facilitate public and construction traffic for the Development.
- 11. The Owner agrees the replacement Median Island shall be approximately the same size, but the exact location and shape shall first be approved by the Township's Director of Engineering, in their sole discretion.
- 12. The Owner must restore or replace the following items on the Median Island in the same form and quality as they are depicted on Schedule C of this Agreement, all to the satisfaction of the Township's Director of Engineering:
  - (a) A medium sized fastigiate tree,
  - (b) Two road signs,
  - (c) Shrubs and groundcover,
  - (d) Concrete curbs (32.46 metres),
  - (e) Full coverage irrigation system, and
  - (f) Topsoil and leaf mulch for planting (approximately 44.18 square metres).
- 13. The Owner further covenants and agrees to pay to the Township Ten Thousand Dollars (\$10,000.00) as a contribution to compensate the Township for the Township's loss of the benefit of the Median Island during the period of construction of the Development, and

as an amenity for additional tree planting or other landscaping within the Township. The Owner agrees this is in addition to daily fees for Road Allowance Occupation Permit under Schedule A of the Township's Building Regulation Bylaw, 2017, No. 2899.

### Restrictions and Requirements – Car Share Memberships

14. The Owner further covenants and agrees:

- (a) in this section the following terms have the following meanings:
  - (i) **“Car Share Vehicle”** means the electric four (or more) seat four wheel automobile, van or pickup truck provided by the Owner for the Shared Vehicle Service pursuant to the Shared Vehicle Service Agreement;
  - (ii) **“Shared Vehicle Service Agreement”** means the agreement between the Owner and the Shared Vehicle Organization which sets out the terms by which the Shared Vehicle Organization will provide a Shared Vehicle Service to the occupants of the Development;
  - (iii) **“Shared Vehicle Organization”** means an entity whose principal business objective is to provide its members with a Shared Vehicle Service;
  - (iv) **“Shared Vehicle Service”** means the provision, for a fee, of a car-sharing service by which such members have self-serve access to a fleet of shared vehicles which they may reserve for use on an hourly or other basis;
- (b) at its expense, to enter into and maintain a Shared Vehicle Service Agreement with a Shared Vehicle Organization for the provision of a Shared Vehicle Service to each residential household in the Development;
- (c) to provide and maintain in safe and good working condition one new electric Car Share Vehicle;
- (d) in the event the Owner enters into a Shared Vehicle Service Agreement as set out in section 14(b) of this Agreement, the Owner further covenants and agrees to pay or cover the cost of memberships (each a **“Membership”**) with the Shared Vehicle Organization, in accordance with the following:
  - (i) only residents of the Dwelling Units will be entitled to a Membership, with a maximum of one Membership available to each Dwelling Unit;
  - (ii) the Owner will be required to pay or cover the cost of up to sixty-three (63) Memberships;
  - (iii) to provide a Membership to those occupants who desire to be part of the Shared Vehicle Organization within 30 days of the occupant's occupation of a Dwelling Unit, it being acknowledged by the parties that not every occupant of a Dwelling Unit in the Development may desire to be part of a Shared Vehicle Organization; and
  - (iv) the Membership may be in the form of:

1. an actual Membership with the Shared Vehicle Organization entered into by the Owner and assigned to the occupant; or
  2. a reimbursement equal to the cost of a Membership paid to the occupant by the Owner upon the Owner receiving evidence that the occupant has paid the cost of the Membership directly and has received the Membership directly from the Shared Vehicle Organization.
15. The Owner covenants and agrees to obtain the written approval of the Township's Director of Development Services, for:
- (a) any change in the Shared Vehicle Organization, and
  - (b) any Shared Vehicle Service agreement made between the Owner and any Shared Vehicle Organization.
16. The Owner covenants and agrees that the Lands must not be built upon, used or continue to be used unless the Owner has, at its sole cost and without expectation of compensation from the Township, provided and registered a Statutory Right of Way and Covenant under Sections 218 and 219 of the *Land Title Act*, including an indemnity and release, in favour of the Township, and in a form and with content that is at the reasonable discretion of the Township, over the Lands (or applicable portion) for the purpose of providing members of the public who have a membership with a shared vehicle organization which allows them to use a car share vehicle, with uninterrupted access to and from the Car Share Space. The Owner covenants and agrees that they will be solely responsible for the continued maintenance of the Car Share Space, including all related costs. The Township agrees not to rely on the SRW/Covenant for so long as the Owner maintains active use of the Car Share Space with a Shared Vehicle Organization.

### **Restrictions and Requirements – Parking and EV Spaces**

17. The Owner covenants and agrees that the Lands 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, and continues to provide in accordance with all of the following conditions (in addition to, and not in relief of, the Township's bylaws and development approvals):
- (a) An above-ground commercial parking area on the Lands that contains at least two (2) vehicular parking spaces and facilities that are available for use by the public and that are each wired for, and have installed, a Level 2 (240V, AC plug with a dedicated 40 amp circuit) electric vehicle charging station (or better) ("**the Public EV Parking Spaces**");
  - (b) in addition to the 2 Public EV Parking Spaces, one (1) below-grade publicly accessible vehicular parking space and facilities on the Lands that is, and remains, for the exclusive use of the Car Share Vehicle, and is signed or labelled accordingly, and 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) (the "**Car Share Space**");
  - (c) an underground parking garage on the Lands that contains a minimum of nineteen (19) vehicular parking spaces that are, and remain, exclusively for the use

of “Visitors”, and are signed or labelled accordingly (the “**Visitor Spaces**”); and

- (d) without limiting the above, the Owner must not divest or allocate the commercial parking spaces on the Lands, the Visitor Spaces, the Public EV Parking Spaces or the Car Share Spaces, in a manner that would allow them to be assigned or reserved for the exclusive use of the Dwelling Units, occupants or owners, or otherwise sold, leased, or licenced separately, the parties acknowledging that the commercial parking spaces may be used as additional visitor parking spaces each day between the hours of 9:00 p.m. and 8:00 a.m.. The Owner further acknowledges and agrees that these restrictions and requirements are also intended to prevent any lease or licence of a parking space where that lease or licence causes inconsistency with the terms of this Agreement.

- 18. The Owner further covenants and agrees, without limiting the above, that occupants of the Dwelling Units must only park on the Lands in parking stalls specifically designated for residents’ parking and not in the Visitor Spaces, the Public EV Parking Spaces, or the Car Share Space.

### **Restrictions and Requirements – Bicycle Parking**

- 19. The Owner covenants and agrees that the Lands must not be used or continue to be used unless the Owner has provided, at its sole cost and without expectation of compensation from the Township, and continues to provide in accordance with all of the following conditions:
  - (a) Three (3) indoor storage rooms with space for long-term secure storage of at least two hundred and thirty-four (234) bicycles including:
    - (i) electric charging infrastructure for electric bicycles in each of the 3 storage rooms,
    - (ii) below-grade, on Level 1 of the underground parking garage:
      - 1. at least one hundred and thirty-nine (139) horizontal bicycle stalls that are at least 2 feet x 6 feet in size, and
      - 2. at least twenty (20) vertical bicycle stalls that are at least 2 feet x 3 feet and 6 inches in size,
    - (iii) above-grade, on Level 1 of the Development:
      - 1. at least thirty (30) horizontal bicycle stalls that are at least 2 feet x 6 feet in size, and
      - 2. at least forty-five (45) vertical bicycle stalls that are at least 2 feet x 3 feet and 6 inches in size,
  - (b) At least six (6) above-ground short-term bicycle stalls on Level 1 of the Development; and
  - (c) At least three (3) outdoor racks for short-term bike storage by occupants and members of the public, including:

- (i) one (1) rack located within ten (10) feet of the front doors of the commercial unit located on the first floor of the Mixed-Use Building,
- (ii) one (1) rack located within ten (10) feet of the main entrance for the residential portion of the Mixed-Use Building, and
- (iii) one (1) rack located within ten (10) feet of the main entrance for the Residential Building.

### **Restrictions and Requirements – Play Space**

- 20. The Owner covenants and agrees that the Lands must not be used or continue to be used unless the Owner has provided, at its sole cost and without expectation of compensation from the Township, and continues to provide a children's play space on the Lands with installation or construction of permanent play structures that are worth at least twenty thousand dollars (\$20,000.00).

### **Restrictions and Requirements – Public Art**

- 21. The Owner covenants and agrees that the Lands must not be used or continue to be used unless the Owner has provided, at its sole cost and without expectation of compensation from the Township, and continues to provide public art (the "**Public Art**") on the Lands at a cost to the Owner of at least fifty thousand dollars (\$50,000.00) to pay for the materials, installation, design or consultant fees and other costs related to the permanent installation of the Public Art.
- 22. The Owner and the Township acknowledge that there is no requirement that the public art be designed or installed by local artists, but further acknowledge local artists will be preferred for design or installation of the Public Art.

### **Restrictions and Requirements – SRW and Sidewalk**

- 23. The Owner covenants and agrees that the Lands must not be built upon, used or continue to be used unless the Owner has, at its sole cost and without expectation of compensation from the Township, provided and registered a Statutory Right of Way and Covenant under Sections 218 and 219 of the *Land Title Act*, including an indemnity and release, in favour of the Township, and in a form and with content that is at the sole discretion of the Township, over that portion of the Lands within 3.5 metres of the lot line abutting Esquimalt Road (the "**Sidewalk SRW**") for the purpose of providing public paved sidewalks and uninterrupted access to the Township and the public for non-vehicular use over the Sidewalk SRW area.
- 24. The Owner covenants and agrees that they will be solely responsible for the continued maintenance of the Sidewalk SRW area, including all related costs.

### **Indemnity and Release**

- 25. 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 and death, arising

out of or connected with the restrictions or requirements of this Agreement, the breach of any covenant in this Agreement, the granting of any approvals or the use of the Lands contemplated under this Agreement.

26. 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 and anyone, including third parties, can or may have against the Township for any loss, damage, deprivation, enrichment or injury, including economic loss and death, arising out of or connected with the restrictions or requirements of this Agreement, the breach of any covenant in this Agreement, the granting of any approvals or the use of the Lands contemplated under this Agreement.
27. Without limiting the above release and indemnity, the Owner acknowledges that this Agreement may be interpreted to contain 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. 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.
28. The release and indemnity provisions of this Agreement survive its termination.

### **Registration**

29. The Owner further covenants and agrees that the Township's Director of Development Services, may, but is not obligated to, inspect the features shown 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.
30. 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. For greater certainty future owners of the Lands, or portions thereof, shall be considered the Owner under this Agreement; and
31. 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.
32. 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 DVP is not issued by the Township by December 31, 2022, and the related Development applications are abandoned, then this Agreement shall be discharged from the Lands.
33. The Owner agrees to pay the legal fees and land title office costs of the Township in connection with the preparation and registration of this Agreement.

## General

34. 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.
35. 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.
36. The Owner acknowledges that the Township does not represent to the Owner or to any other person that any future application for subdivision of the Lands by the owner will be approved.
37. 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.
38. The parties agree that this Agreement shall not be modified or discharged except in accordance with the provisions of section 219(9) of the *Land Title Act*.
39. 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.
40. 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 time longer 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:

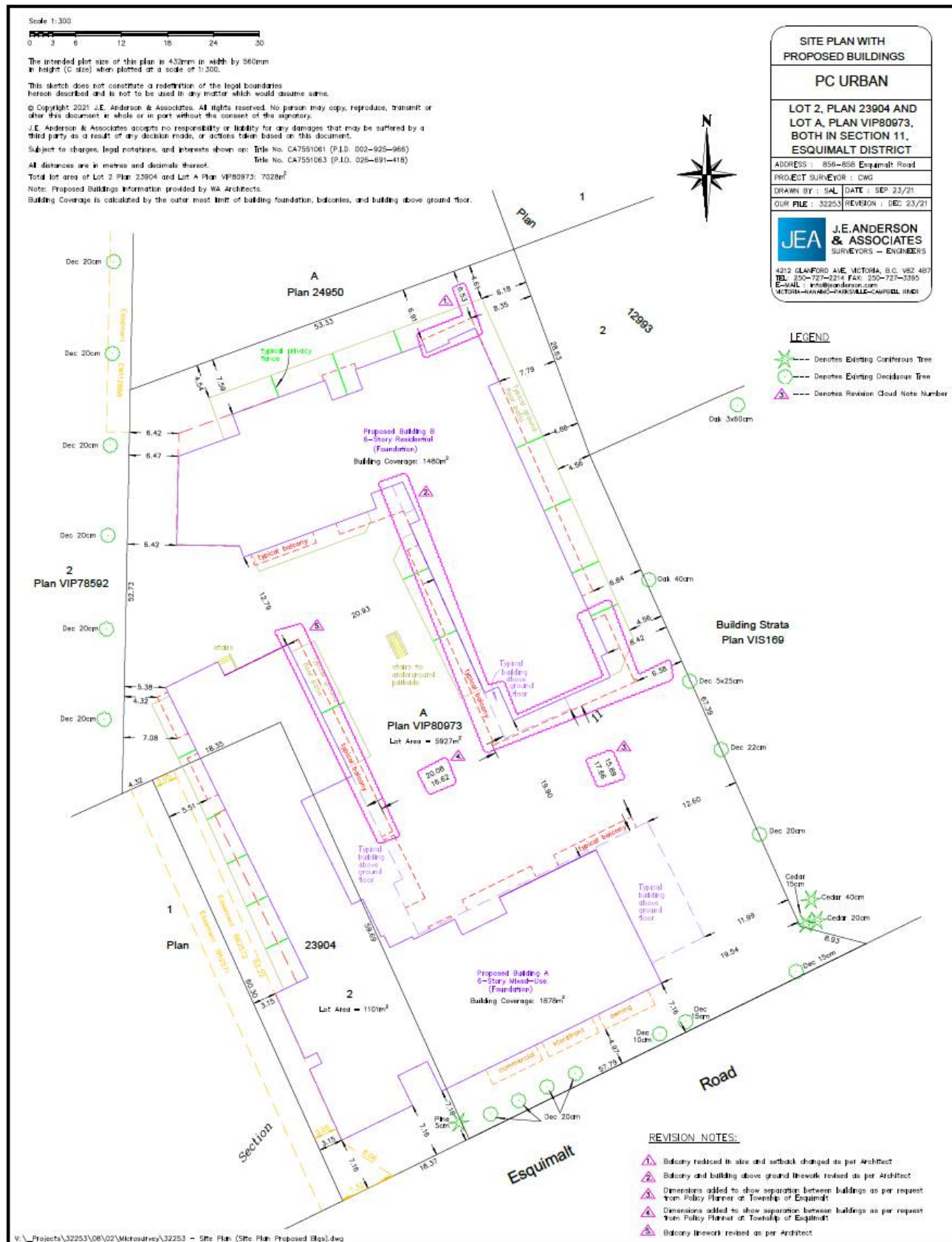
- (i) the Owner shall pay such costs and interest to the Township forthwith upon demand; and
  - (ii) failing payment, the Township may add such costs to property taxes for the Lands.
41. No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies 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.
  42. 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.
  43. 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.
  44. The Owner acknowledges having received legal advice prior to executing this Agreement, and the Owner agrees that it fully and completely understands this Agreement and its impact on the Lands.
  45. Whenever the plural, singular, masculine or neuter is used herein, the same shall be construed as including the plural, singular, feminine, body corporate or politic unless the context requires otherwise.
  46. Where there is a reference to an enactment of the Province of British Columbia in this Agreement, that reference shall include a reference to any subsequent enactment of the Province of British Columbia of like effect, and unless the context otherwise requires, all statutes referred to herein are enactments of the Province of British Columbia.
  47. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

### **Priority Agreements**

48. FIERA REAL ESTATE CORE FUND GP INC., Inc. No. A105196 ("**Fiera**"), the registered holder of charges by way of MORTGAGE and ASSIGNMENT OF RENTS against the Lands registered under No. CA9153275 and No. CA9153276, respectively (the "**Fiera Charges**"), agrees with the Township, in consideration of the sum of Ten Dollars (\$10.00) paid by the Township to Fiera (receipt and sufficiency acknowledged), that the Agreement shall be an encumbrance upon the Lands in priority to the Fiera Charges in the same manner and to the same effect as if the Agreement had been dated and registered prior to the Fiera Charges.

The Owner and Township acknowledge that this Agreement has been duly executed and delivered by the parties executing the Form C attached to, and forming part of, this Agreement.

## Schedule A – Site Plan





Schedule C – Esquimalt Road Median Island to be Replaced

