

DATE OF MEETING April 3, 2017

AUTHORED BY TAMERA ROGERS, PLANNER, CURRENT PLANNING AND SUBDIVISION

SUBJECT COVENANT AMENDMENT APPLICATION NO. CA5 – 4951 JORDAN AVENUE

## **OVERVIEW**

### **Purpose of Report**

To present Council with an application to amend the Section 219 covenant registered on the title of 4951 Jordan Avenue in order to remove use restrictions and requirements for lot consolidation and landscaping.

### **Recommendation**

That Council direct Staff to proceed with a Public Hearing for Covenant Amendment Application No. CA5 at 4951 Jordan Avenue.

## **BACKGROUND**

The City has received a covenant amendment application, CA5, for 4951 Jordan Avenue from Maureen Pilcher & Associates Inc., on behalf of C.J.A.D. Holdings Ltd., to amend the covenant (EX026297) to remove use restrictions as well as sections regarding lot consolidation and landscaping requirements.

The covenant was registered on title in 2005 as a condition of RA52, an application to rezone the parent properties from RS-1 (Single Family Residential) to I-2 (Light Industrial) to permit a light industrial development. The covenant includes use restrictions, a community contribution and requirements for landscaping and lot consolidation.

At the time of the original rezoning application, the subject properties were designated Service Industrial Enterprise Area in Plan Nanaimo (1996). This future land use designation did not support some of the uses in the proposed I-2 zone; therefore, the covenant was required to limit the uses permitted on the properties to better align with the Official Community Plan (OCP) of the day. Landscaping requirements were also included in the covenant as per the attached plan (Schedule A of the covenant) to be completed prior to the issuance of an occupancy certificate. Additionally, to minimize the number of accesses along Jordan Avenue, covenant conditions were included to prohibit development until lot consolidation or a mutual access easement was registered between the subject properties. The lots have now been consolidated.

### **Subject Property**

|                                |   |
|--------------------------------|---|
| <i>Zoning</i>                  | I2 – Light Industrial   |
| <i>Location</i>                | The subject property is located at the southeast corner of the Jordan Avenue/Mostar Road intersection   |
| <i>Total Area</i>              | 6,630m <sup>2</sup>   |
| <i>Official Community Plan</i> | Map 1 – Future Land Use Plans – Light Industrial<br>Map 3 – Development Permit Area No. 4 – Nanaimo Parkway Design; Development Permit Area No. 9 – Commercial, Industrial, Institutional, Multiple Family and Mixed Commercial/Residential Development |

The subject property is a vacant lot bordered by light industrial uses to the north and south (Slegg Building Materials and Boban Industrial Park), parkland to the east, and a single family neighbourhood to the west.

### **DISCUSSION**

The applicant is proposing to amend the covenant (EX026297) by registering a modification to the covenant to remove the following conditions:

- Permitted Uses – Sections 1 and 2
- Lot Consolidation – Section 3
- Landscaping – Section 4, 5 and Schedule A

Since the subject property was rezoned, the City has adopted a new Official Community Plan (planNanaimo, 2008) and a new Zoning Bylaw (City of Nanaimo Zoning Bylaw 2011 No. 4500). The OCP now designates the subject property as Light Industrial, which aligns with the uses anticipated in the existing property zoning, the Light Industrial (I2) zone. As such, the permitted uses conditions (Section 1 and 2) of the covenant are no longer necessary.

As lot consolidation has been completed, the lot consolidation condition (Section 3) of the covenant has been satisfied and can also be removed.

Additionally, the provision of landscaping is a requirement of any form and character development as per Part 17 – Landscaping of the Zoning Bylaw, so it is not necessary to include landscaping requirements in the covenant unless there were features not required by Part 17. For example, the Zoning Bylaw requires, at minimum, a 1.8m wide landscape buffer with trees spaced on average every 6m along Jordan Avenue and Mostar Road, which is comparable to the landscape concept shown in Schedule A of the covenant. Therefore, the landscaping conditions (Sections 4, 5 and Schedule A) of the covenant will have no effect on the future ability to obtain adequate landscaping along Jordan Avenue and Mostar Road.

The \$8,000 community amenity contribution, intended for park improvements, will remain secured by the covenant. The owner has elected not to pay it at this time, so the covenant would remain on the property title to secure this condition.

Council's Covenant Amendment Process Policy requires that any application to amend covenant conditions, secured through rezoning, must follow the same public process as a rezoning application. Staff supports the proposed amendments given that the conditions of the

covenant, which are proposed to be removed, have been addressed and a covenant will remain on title to secure the community contribution. Staff requests Council direction to proceed with public notification and a Public Hearing for this application.

### **SUMMARY POINTS**

- A covenant amendment application (CA5) was received to amend the covenant conditions including the removal of use restrictions as well as lot consolidation and landscaping requirements.
- The covenant was registered on the subject property during the original rezoning application in 2005 (RA52), which rezoned the property from RS-1 to I-2.
- The existing covenant would remain on the property title to secure the outstanding condition to provide a community contribution in the amount of \$8,000.

### **ATTACHMENTS**

ATTACHMENT A: Location Plan  
ATTACHMENT B: Registered Covenant (EX026297)  
ATTACHMENT C: Aerial Photo

#### **Submitted by:**



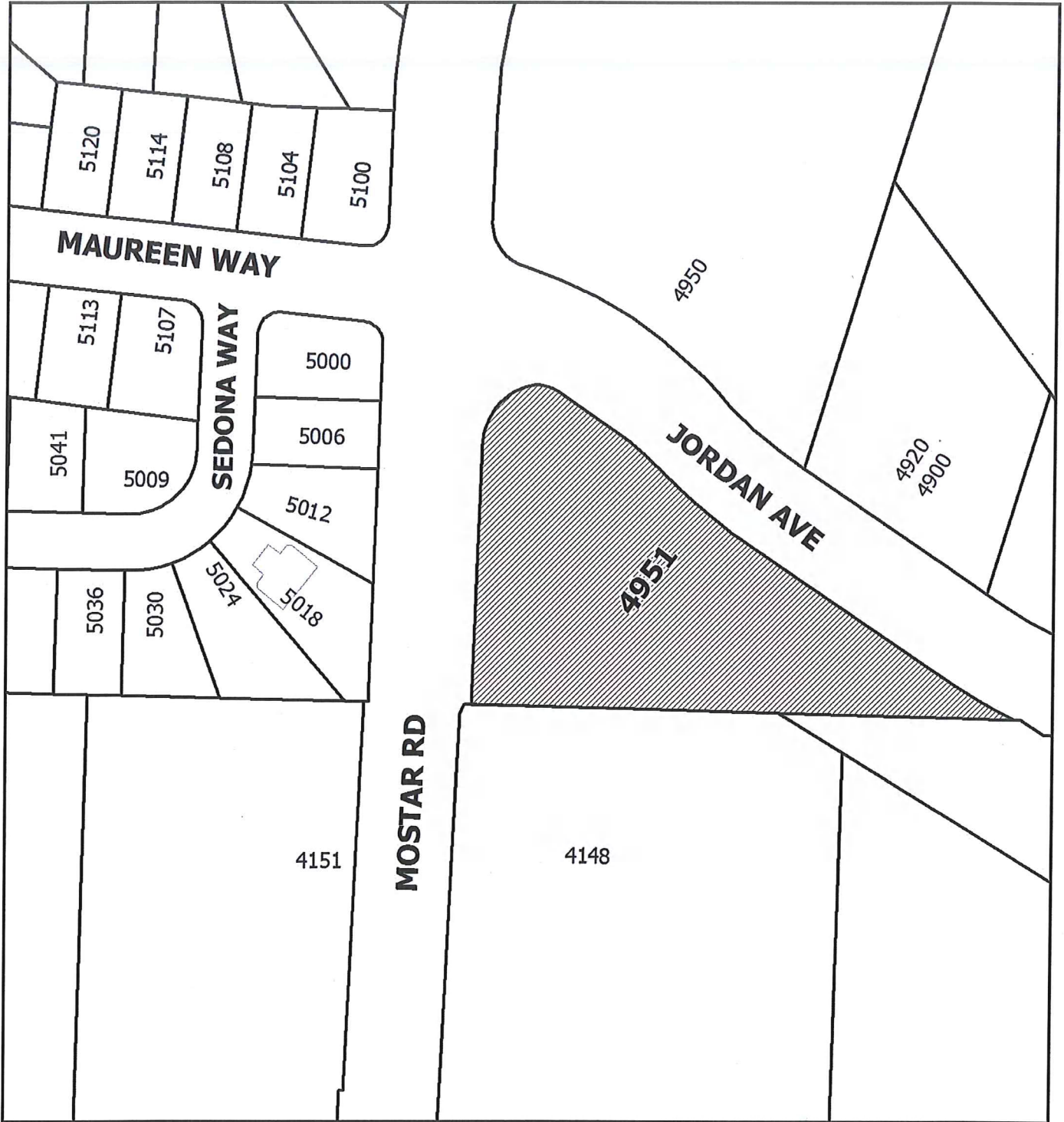
L. Rowett  
Manager, Current Planning and Subdivision

#### **Concurrence by:**



D. Lindsay  
Director, Community Development

ATTACHMENT A  
LOCATION PLAN



COVENANT AMENDMENT NO. CA00005



**LOCATION PLAN**

 **Subject Property**

Civic: 4951 Jordan Avenue  
Lot A, Section 5, Wellington District,  
Plan EPP69857

ATTACHMENT B  
REGISTERED COVENANT (EX026297)

EX026299 11 MAR 2005 13 45

EX026297

LAND TITLE ACT  
Form C (Section 233)  
Province of  
British Columbia

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office Use)

Page 1 of 10 pages

1. Application: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)  
**STAPLES McDANNOLD STEWART**  
2<sup>nd</sup> Floor, 837 Burdett Avenue  
Victoria, B.C. V8W 1B3 Tel: (250)380-7744  
File No. 194 767/LC/am  
**BURNS SERVICES**  
Authorized Signatory 10303

RA000052

*JAC*

2. Parcel Identifier(s) and Legal Description(s) of Land:  
(PID) (Legal Description)  
023-524-065 Lot 1, Section 5, Wellington District, Plan VIP63925  
003-654-788 Lot 3, Section 5, Wellington District, Plan 18955 Except that Part in Plan VIP62808

3. Nature of Interest\*  
Description Document Reference (page & paragraph) Person Entitled to Interest  
**SEE SCHEDULE**

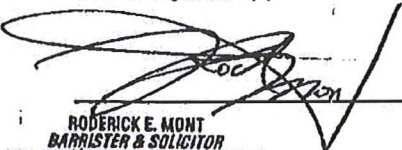
4. Terms: Part 2 of this instrument consists of (select one only)  
(a) Filed Standard Charge Terms  D.F. No.  
(b) Express Charge Terms  Annexed as Part 2  
(c) Release  There is no Part 2 of this instrument  
A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged on the Land described in Item 2.

5. Transferor(s)(Grantor(s)):  
**CHARLTON WEST HOLDINGS LTD. (INC. NO. 418588)**  
**SCOTIA MORTGAGE CORPORATION (as to Priority for Lot 1)**  
**WILLIAM HIGH and WALLEEN ESTHER HIGH (as to Priority for Lot 3)**  
02 05/03/11 13:46:06 02 VI 622346  
CHARGE \$194,25

6. Transferee(s)(Grantee(s)): (including postal address(es) and postal code(s))  
**CITY OF NANAIMO, 455 Wallace Street, Nanaimo, B.C. V9R 5J6**

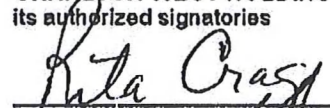
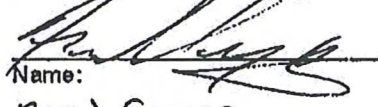
7. Additional or Modified Terms: N/A

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)  
  
RODERICK E. MONT  
BARRISTER & SOLICITOR  
605-495 DUNSMUIR ST., P.O. BOX 10  
NANAIMO, BC V9R 5K4  
PHONE: 753-6435  
AS TO ALL SIGNATURES

Execution Date

| Y    | M  | D  |
|------|----|----|
| 2004 | 02 | 21 |

Party(ies) Signature(s)  
**CHARLTON WEST HOLDINGS LTD. by its authorized signatories**  
  
Name: Rita Cragg  
  
Name: Fred Cragg

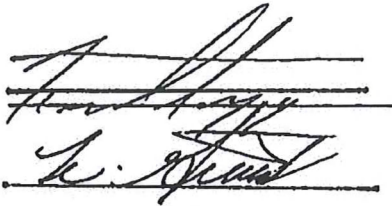
Officer Certification:  
Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996 c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.  
\* If space insufficient, enter "SEE SCHEDULE" and attached in Form E  
\*\* If space insufficient, enter "SEE SCHEDULE" and attach in Form D.

**LAND TITLE ACT  
Form D**

EXECUTIONS CONTINUED

Page 2

Officer Signature(s)




**RICK GRANT**  
AS TO ALL SIGNATURES  
Commissioner for taking  
Affidavits for British Columbia  
455 Wallace Street  
Nanaimo, BC V9R 5J6

Execution Date

| Y  | M  | D  |
|----|----|----|
| 05 | 03 | 09 |

Party(ies) Signature(s)  
CITY OF NANAIMO by its authorized signatories

  
Name: **Gary Korpan**  
Mayor  
Name: **Karen Busley**  
Deputy Senior Manager of Corporate Administration.

Officer Signature(s)



AS TO ALL SIGNATURES  
**Cynthia Prymak, Notary Public**  
10 Wright Blvd., P.O. Box 1122  
Stratford, Ontario N5A 7X9  
519-272-0191, ext: 8495

Execution Date

| Y  | M  | D  |
|----|----|----|
| 05 | 01 | 17 |

Party(ies) Signature(s)  
SCOTIA MORTGAGE CORPORATION  
by its authorized signatories

  
Name: **Carol Schmidt**  
Manager  
Name: **SHARON INNES**  
BR. OPERATIONS OFFICER



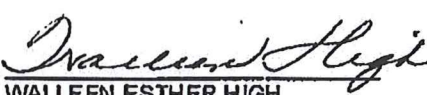
**Officer Certification:**

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**LAND TITLE ACT  
Form D**

EXECUTIONS CONTINUED

Page 3

| Officer Signature(s)   | Execution Date |    |    | Party(ies) Signature(s)   |
|--|----------------|----|----|---|
|  | Y              | M  | D  |   |
| <br>RODERICK E. MONT<br>BARRISTER & SOLICITOR<br>505-495 DUNSMUIR ST., P.O. BOX 10<br>NANAIMO, BC V9R 5K4<br>PHONE: 763-8435<br><br>AS TO BOTH SIGNATURES | 2005           | 02 | 28 | <br>WILLIAM HIGH<br><br><br>WALLEEN ESTHER HIGH |

**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.

**LAND TITLE ACT  
Form E  
SCHEDULE**

Page 4

Enter the Required Information in the Same Order as the Information Must Appear on the Freehold Transfer Form, Mortgage Form or General Document Form.

**3. Nature of Interest\***

| Description  | Document Reference (page & paragraph) | Person Entitled to Interest |
|--|---------------------------------------|-----------------------------|
| Section 218 Covenant   | Pages 5-8, paragraphs 1-19            | Grantee                     |
| Priority Agreement granting Covenant No. _____ priority over Mortgage EK142218 and Assignment of Rents EK142219; and | Page 6, Paragraph 20                  | Grantee                     |
| Priority Agreement granting Covenant No. _____ priority over Mortgage EP49907  | Page 9, Paragraph 21                  | Grantee                     |

**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.



**TERMS OF INSTRUMENT - PART 2**

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**WHEREAS:**

A. The Grantor is the registered owner in fee simple of:

Parcel Identifier: 023-524-065  
Lot 1, Section 5, Wellington District, Plan VIP 63925  
("Lot 1"); and

Parcel Identifier: 003-654-788  
Lot 3, Section 5, Wellington District, Plan 18955 Except that Part in Plan  
VIP62808  
("Lot 3")

(together the "Lands");

- B. The Grantee is the City of Nanaimo;
- C. The Grantor has applied to the Grantee for rezoning of the Lands;
- D. As a condition of rezoning, the Grantor has agreed to enter into this Agreement to restrict the use and occupation of the Lands until certain matters are attended to;
- E. The Grantee has requested that the Grantor enter into the covenant hereinafter contained pursuant to section 219 of the *Land Title Act* and the Grantor has agreed;
- F. Section 219 of the *Lands Title Act*, provides inter alia, that a covenant, whether negative or positive, in respect of the use of the Lands or the use of a building on or to be erected on land, may be given to provide that the Lands are to be built on or used in accordance with the covenant or are not to be used or built on except in accordance with the covenant and that the covenant in favour of a municipality or the Crown may be registered as a charge against the title to that land.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the payment of \$10.00 of lawful money of Canada now paid by the Grantee to the Grantor, and the premises and covenants herein contained and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree with the other as follows:

**Permitted Uses**

TO BE  
DELETED

- 1. Subject to section 3 of this Agreement, the Grantor covenants and agrees with the Grantee that the use of the Lands will be limited to the following:

- (a) auctions;
- (b) automotive repair shop;
- (c) caretaker's dwelling unit;
- (d) commercial schools;
- (e) custom workshops;
- (f) food and beverage processing;
- (g) fuelling installations;
- (h) indoor mini storage;
- (i) injury management centre;
- (j) light industry;
- (k) pet daycare;
- (l) printing and publishing facilities;
- (m) prefabricated home sales;
- (n) production studio;
- (o) recreational facilities;
- (p) recycling depots;
- (q) repair shops;
- (r) retail of auto accessories and parts;
- (s) service industry;
- (t) storage yards;
- (u) tool and equipment rentals and service;
- (v) tow truck dispatch and storage yard;
- (w) truck, trailer and heavy equipment sales, service and rentals;

notwithstanding any provision in any zoning bylaw of the Grantee applicable to the Lands which would permit uses other than those enumerated herein.

TO BE  
DELETED



2. The Grantor and Grantee agree that the definitions in the Grantee's zoning bylaw shall apply to the interpretation of the terms used in this Agreement.

#### Lot Consolidation

TO BE  
DELETED



3. Notwithstanding section 1 of this Agreement, the Grantor covenants and agrees with the Grantee that the Grantor shall only use Lot 1 for the uses permitted in section 1(c) and 1(t) of this Agreement following adoption of the rezoning bylaw, and the Grantor shall not use, occupy or commence any preparatory work on Lot 3 with regard to any development, until either:

- (a) Lot 1 and Lot 3 have been consolidated by way of a plan of consolidation filed in the Land Title Office; or
- (b) a mutual access easement in a form satisfactory to the Grantee and its solicitors has been registered against title to Lot 1 and Lot 3.

### Landscaping

TO BE  
DELETED

- 4. The Grantor covenants and agrees with the Grantee that prior to the issuance of an occupancy certificate for any new development of uses permitted under section 1 of this Agreement on Lot 1, and prior to the Grantor making any use of Lot 3, the Grantor shall install on the Lands the landscaping as generally depicted on Schedule "A" attached hereto and forming part of this Agreement. All landscaping shall be installed to the satisfaction of the General Manager of Development Services of the Grantee.

TO BE  
DELETED

- 5. The Grantor covenants and agrees that prior to the installation of the landscaping referred to in section 4, it shall provide the Grantee with a detailed landscape plan, prepared by a registered landscape architect, showing the details of all hard and soft landscaping to be provided, together with a list of proposed plantings, for the approval of the General Manager of Development Services of the Grantee. All landscaping installed by the Grantor pursuant to section 4 of this Agreement shall conform to that approved landscaping plan.

### Community Contribution

6. The Grantor has voluntarily offered to provide a cash contribution to the betterment of the community, for the purpose of park improvements, development and/or maintenance, and therefore acknowledges that the Grantee is not obligated to issue a building permit with respect to the Lands and covenants and agrees not to construct any structure or building on the Lands, notwithstanding any issuance of a building permit by the Grantee, until the Grantor has voluntarily provided a community contribution in the amount of EIGHT THOUSAND (\$8,000.00) DOLLARS in addition to and without expectation of credit towards other fees, charges, dedications and other requirements of the Grantee or other governmental authority.

### General Provisions

7. The Grantor and the Grantee agree that the enforcement of this Agreement shall be entirely within the discretion of the Grantee and that the execution and registration of this covenant against the title to the Lands shall not be interpreted as creating any duty on the part of the Grantee to the Grantor or to any other person to enforce any provision or the breach of any provision of this Agreement.
8. At the Grantor's expense, the Grantor must do everything necessary to secure priority of registration and interest for this Agreement and the Section 219 Covenant it creates over all registered and pending charges and encumbrances of a financial nature against the Lands.

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9. The Grantor hereby releases and forever discharges the Grantee of and from any claim, cause of action, suit, demand, expenses, costs and legal fees whatsoever which the Grantor can or may have against the said Grantee for any loss or damage or injury that the Grantor may sustain or suffer arising out of this Agreement or the use or non-use of the Lands as a result of this Agreement.
10. The Grantor covenants and agrees to indemnify and save harmless the Grantee from any and all claims, causes of action, suits, demands, expenses, costs and legal fees whatsoever that anyone might have as owner, occupier or user of the Lands, or by a person who has an interest in or comes onto the Lands, or by anyone who suffers loss of life or injury to his person or property, that arises out of this Agreement or the use or non-use of the Lands as a result of this Agreement.
11. The Grantor agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
12. The Grantor shall pay the legal fees of the Grantee in connection with the preparation and registration of this Agreement.
13. The Grantor covenants and agrees for itself, its heirs, executors, successors and assigns, that it will at all times perform and observe the requirements and restrictions hereinbefore set out and they shall be binding upon the Grantor as personal covenants only during the period of its respective ownership of any interest in the Lands.
14. Nothing contained or Implied herein shall prejudice or affect the rights and powers of the Grantee 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 Grantor.
15. Time is of the essence of this Agreement.
16. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, grantors, administrators, executors, successors, and permitted assigns.
17. The waiver by a party of any 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.
18. Wherever the singular, masculine and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.

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19. 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.
20. This Agreement shall be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
21. **SCOTIA MORTGAGE CORPORATION.**, the registered holder of charges by way of a mortgage and assignment of rents against Lot 1 which said charges are registered in the Land Title Office under numbers EK142218 and EK142219 respectively, for and in consideration of the sum of One Dollar (\$1.00) paid by the Grantee to the said Charge holder (the receipt whereof is hereby acknowledged), agrees with the Grantee, its successors and assigns, that the within Section 219 Covenant shall be an encumbrance upon the Lands in priority to the said charges in the same manner and to the same effect as if it had been dated and registered prior to the said charges.
22. **WILLIAM HIGH and WALLEEN ESTHER HIGH**, the registered holders of a charge by way of a mortgage against Lot 3 which said charge is registered in the Land Title Office under number EP49907, for and in consideration of the sum of One Dollar (\$1.00) paid by the Grantee to the said Charge holders (the receipt whereof is hereby acknowledged), agrees with the Grantee, its successors and assigns, that the within Section 219 Covenant shall be an encumbrance upon the Lands in priority to the said charge in the same manner and to the same effect as if it had been dated and registered prior to the said charge.

**IN WITNESS WHEREOF** the parties hereto hereby acknowledge that this Agreement has been duly executed and delivered by the parties executing Form C (pages 1 and 2) attached hereto.

PROPOSED  
MOSTAR INDUSTRIAL CENTRE

KEITH BROWN ASSOCIATES LTD  
Land Planning & Development Consultants  
4-3179 Barons Rd  
758-6033

**SITE STATISTICS**

ONE  
SINGLE  
ZONED LIGHT INDUSTRIAL 3  
USE LIGHT INDUSTRIAL BUILDINGS  
BUILDING A - Total of 100,000 sq. ft.  
BUILDING B - 100,000 sq. ft.  
TOTAL of 200,000 sq. ft. (see zoning)

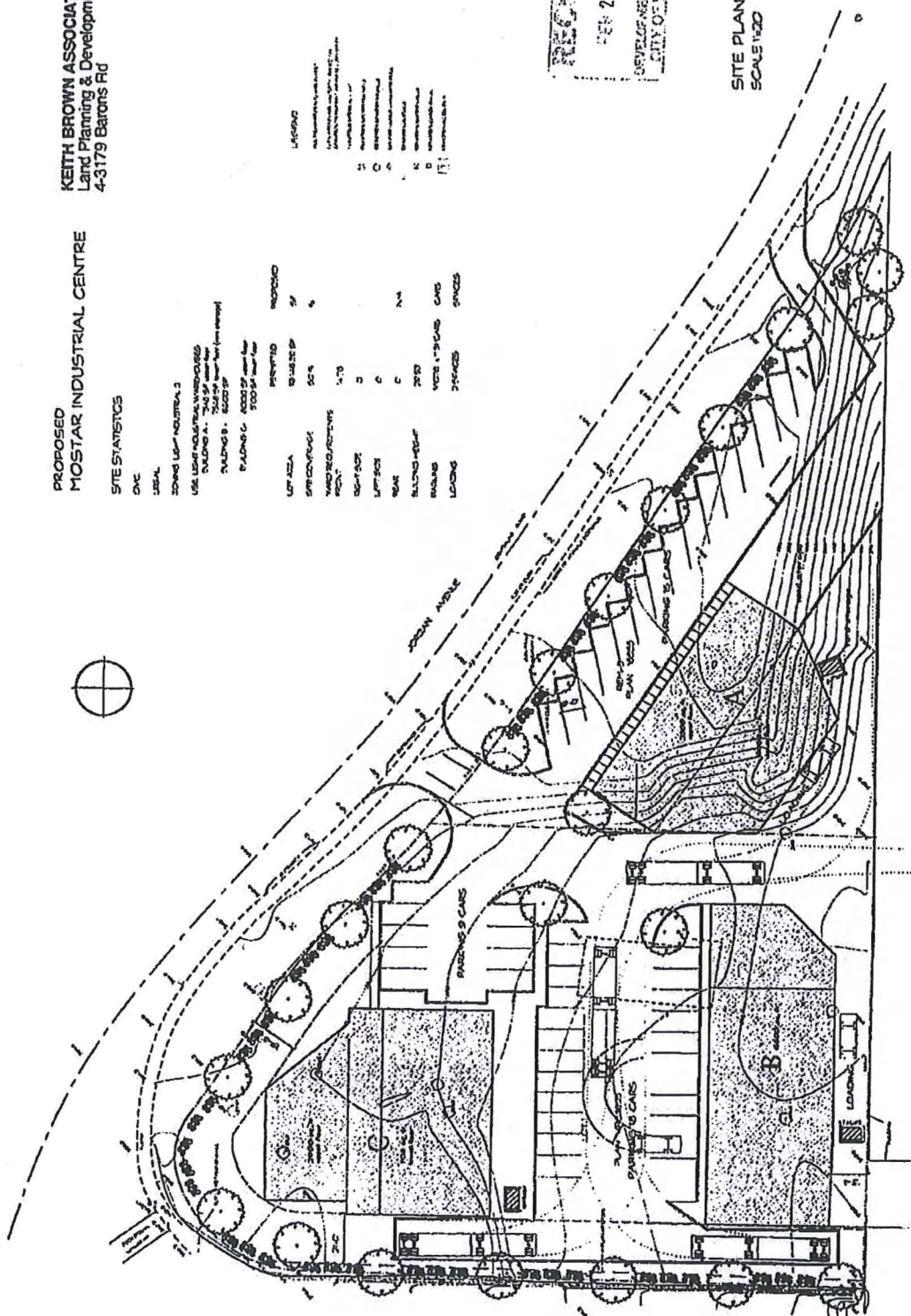
| LOT AREA | PERMITTED |    | PROPOSED |
|----------|-----------|----|----------|
|          | BUILDING  | SP |          |
| 14,100   | 15,000    | 2  | 17,500   |
| 14,100   | 15,000    | 2  | 17,500   |
| 14,100   | 15,000    | 2  | 17,500   |
| 14,100   | 15,000    | 2  | 17,500   |
| 14,100   | 15,000    | 2  | 17,500   |
| 14,100   | 15,000    | 2  | 17,500   |
| 14,100   | 15,000    | 2  | 17,500   |

TO BE DELETED →

**SCHEDULE A**

APR 26 2011  
 DEVELOPER SERVICES  
 CITY OF TORONTO

SITE PLAN  
SCALE 1:500



**END OF DOCUMENT**

ATTACHMENT C  
AERIAL PHOTO



COVENANT AMENDMENT NO. CA00005

