

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.

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:  
[PID] [LEGAL DESCRIPTION]

STC? YES

3. NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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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):

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

7. ADDITIONAL OR MODIFIED TERMS:

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)

\_\_\_\_\_

Execution Date		
Y	M	D

Transferor(s) Signature(s)

### EXECUTIONS CONTINUED

**Execution Date**

Y	M	D
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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.

### EXECUTIONS CONTINUED

**Execution Date**

Y	M	D
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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	OF	PAGES
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2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND

STC for each PID listed below? YES

[PID]	[LEGAL DESCRIPTION – must fit in a single text line]
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LAND TITLE ACT  
FORM E

SCHEDULE		PAGE	OF	PAGES
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION		

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**TERMS OF INSTRUMENT - PART 2**  
**Public Realm Improvements Covenant**

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**WHEREAS:**

- A. Capitalized terms not otherwise or elsewhere defined in this Agreement will have the respective meanings ascribed to them in section 1.1;
- B. The transferor, Cook and Yates Holdings Ltd., (Inc. no. BC1133773) (as more particularly defined in section 1.0, the “**Owner**”), is the registered owner in fee-simple of those lands and premises located within the City of Victoria, in the Province of British Columbia with following civic addresses and legal descriptions:
- 1309 & 1315 Cook Street:  
PID: 001-714-244, The South 1/2 of the South 1/2 of Lot 1055, Victoria City
- 1100, 1102 & 1108 Yates Street:  
PID: 001-620-185, Lot 1, District Lots 1064 and 1065, Victoria City, Plan 28733
- 1120 Yates Street:  
PID: 003-531-023, Lot A, Lots 1051, 1052, 1053, 1061, 1062 and 1063, Victoria City, Plan 20267
- 1109 Johnson Street:  
PID: 001-917-731, Lot 1054, Victoria City
- 1115 Johnson Street:  
PID: 009-392-963, The Westerly 50 Feet of Lot 1053, Victoria City
- (collectively, and including any lands into which the same may be consolidated or subdivided, the “**Lands**”);
- C. The transferee, The Corporation of the City of Victoria (the “**City**”), is a municipality incorporated under the laws of the Province of British Columbia;
- D. The Owner has applied, pursuant to its rezoning application no. 00681 and development permit with variances application no. 00104, to redevelop the Lands, which redevelopment will include construction of a thirteen-storey mixed-use building, with commercial uses on the ground level, a day care and residential dwelling units on the second storey and residential uses above at the corner of Yates and Cook Streets; construction of a six-storey multi-unit residential building fronting on Johnson Street; and upgrades to the existing five-storey Victoria Professional Building fronting on Yates Street; together with underground parking and associated facilities and amenities;
- E. In order to address certain concerns about the potential impacts, both on City infrastructure and the surrounding neighbourhood of the Development, the Owner has agreed to provide certain off-site works and services that are in excess of the works and services required for development of the Lands under the City's Subdivision and Development Servicing Bylaw No. 12-042 (the “**Subdivision Bylaw**”);
- F. The Owner acknowledges that it is in the public interest that the use and development of

the Lands be restricted as set out in this Agreement; and

- G. Section 219 of the *Land Title Act* provides that a covenant, whether of negative or positive nature, in respect of the use of land or the use of a building on or to be erected on land, or that land is not to be built on or subdivided except in accordance with the covenant may be granted in favour of the City and may be registered as a charge against the title to the Lands.

NOW THEREFORE THIS AGREEMENT WITNESSES that under section 219 of the *Land Title Act*, and in consideration of the premises and the mutual covenants and agreements contained herein, and the sum of ONE (\$1.00) DOLLAR of lawful money of Canada now paid to the Owner by the City (the receipt and sufficiency of which is hereby acknowledged), and for other good and valuable consideration the parties covenant and agree each with the other as follows:

1. In this Agreement,

**"Development"** means the buildings and other developments on the Lands described in Recital D, contemplated by the Zoning Amendment Bylaw if it is enacted, and any development and building permits issued as a result of the DPV Application;

**"Director"** means the City's Director of Engineering and Public Works, and includes any person acting on the authority of that Director;

**"DPV Application"** means the development permit with variances application referred to in Recital D;

**"Owner"** means Cook and Yates Holdings Ltd., (Inc. no. BC1133773) and all of its assigns, successors and successors in title to the Lands or any part thereof and, if any part of the Lands are subdivided by way of a Strata Plan, then **"Owner"** includes, without limitation, any Strata Corporation(s) thereby created;

**"Subdivision Bylaw"** has the meaning ascribed to that term in Recital E;

**"Works"** means:

- (a) the works and services listed and otherwise depicted in Schedule "A" to this Agreement; and
- (b) any works and services not listed in Schedule "A" that are required for the development of the Lands under the Subdivision Bylaw;

but does not include any interim or temporary facilities for the management of pedestrian, personal mobility devices (including bicycles) and automobile traffic prior to and during construction of the Development which the City may choose to install; and

**"Zoning Amendment Bylaw"** means the bylaw enacted as a result of the rezoning application referred to in Recital D.

2. The Owner covenants and agrees with the City that the Owner shall not use or permit the use of the Lands or any building on the Lands, construct any building on the Lands, or subdivide the Lands except in strict accordance with this Agreement.

3. The Owner shall be solely responsible for all costs and expenditures required to fulfill its obligations under this Agreement, whether or not those costs and expenses are specifically referred to herein. For greater certainty, included among those costs will be any expenses related to traffic management and changes to the interim or temporary public realm works and facilities installed by the City that the Director may require, which are required as a result of the construction of the Development.
4. The Owner shall not construct any buildings on the Lands unless it first either:
  - (a) completes construction of all of the Works to the satisfaction of the Director, or
  - (b) provides security and enters into an agreement with the City for the construction of the Works, on the terms referred to in section 9 of this Agreement.
5. In addition to the requirements under section 4 of this Agreement, the Owner must not construct any buildings on the Lands unless it has paid to the City an amount reasonably estimated by the Owner's applicable third party consultant and approved by the Director to represent the costs the City will incur by adding to or modifying other City works for the purpose of accommodating or tying into the Works, including but not limited to signage, catch basins, paving and landscaping on City streets that adjoin the Lands.
6. Before commencing construction of the Works, the Owner must submit to the Director for approval a set of complete design drawings for the Works, prepared by a professional engineer, demonstrating that the design of the Works:
  - (a) complies with the Standards and Specifications referred to in section 11 of the Subdivision Bylaw, and
  - (b) is acceptable to the Director.
7. The Director may in writing, addressed to the Owner, approve revisions in the scope or design of the Works, where the Director is satisfied that the Works as revised are generally in accordance with the requirements of Schedule "A", and where the Director is also satisfied that the Works as revised will provide substantially the same level of service as the Works that are described in Schedule "A".
8. The Owner shall construct the Works in accordance with the design drawings approved by the Director under section 6, and with the requirements of the Subdivision Bylaw, whether or not the Works are "works and services" within the meaning of the Subdivision Bylaw, which requirements include but are not limited to the following:
  - (a) professional certification under section 12 of the Subdivision Bylaw;
  - (b) that the Owner enter into works and services agreement under section 13 of the Subdivision Bylaw, if section 9 of this Agreement applies; and
  - (c) that the Owner enter into a maintenance agreement with respect to the Works under section 14 of the Subdivision Bylaw.
9. In order to fulfill the requirement under section 4(b) of this Agreement (if section 4(a) does not apply), the Owner must provide security to the City (which security may be in the form of an irrevocable letter of credit on terms and conditions satisfactory to the Director) in an amount equal to 120% of the estimated cost to complete the Works as determined by the

Owner's applicable third party consultants acting reasonably and approved by the Director, and enter into a works and services agreement with the City with respect to the construction of the Works, all on the terms and conditions required under section 13 of the Subdivision Bylaw.

10. Nothing contained or implied within this Agreement shall prejudice or affect the duties, rights and powers of the City in the exercise of its functions under any public or private statutes, bylaws, orders or regulations, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered. Nothing in this Agreement shall relieve the Owner from any obligation or requirement arising under any applicable statute, bylaw or regulation in respect of the development of the Lands.
11. The Owner shall indemnify and save harmless the City from any and all claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees whatsoever which anyone has or may have against the City or which the City incurs as a result of any loss or damage or injury, including economic loss, arising out of or connected with this Agreement, including without limitation:
  - (a) the breach of any covenant in this Agreement;
  - (b) the use of the Lands contemplated under this Agreement; and
  - (c) restrictions or requirements under this Agreement.
12. The Owner hereby releases and forever discharges the City of and from any claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees whatsoever which the Owner can or may have against the City for any loss or damage or injury, including economic loss, that the Owner may sustain or suffer arising out of or connected with this Agreement, including without limitation:
  - (a) the breach of any covenant in this Agreement;
  - (b) the use of the Lands contemplated under this Agreement; and
  - (c) restrictions or requirements under this Agreement.
13. At the Owner's expense, the Owner 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 against the Lands over which the City requests priority.
14. Time is of the essence of this Agreement.
15. 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, but that they shall be binding upon the Owner as personal covenants only during the period of its ownership of any interest in the Lands.
16. It is mutually understood, acknowledged and agreed by the parties hereto that the City has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Owner with respect to the Works other than those contained in this Agreement.

17. 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 shall be effective unless it is in writing signed by both parties.
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.
19. No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or inequity.
20. The enforcement of this Agreement shall be entirely within the discretion of the City and the execution and registration of the Agreement against title to the Lands shall not be interpreted as creating any duty on the part of the City to the Owner or to any other person to enforce any provision or the breach of any provision of this Agreement.
21. The restrictions and covenants herein contained shall be covenants running with the Lands and shall be perpetual, and shall continue to bind any lands into which the Lands are subdivided or with which the Lands are consolidated.
22. The Owner agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
23. If any part of this Agreement is found to be illegal or unenforceable, that part will be considered separate and severable and the remaining parts will not be affected thereby and will be enforceable to the fullest extent permitted by law.
24. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia. Any reference to a statute or bylaw is to the statute or bylaw and its regulations in force on the date the Form C General Instrument - Part 1 attached hereto is fully executed and to subsequent amendments to or replacements of the statute, bylaw or regulations.
25. If sent as follows, notice under this Agreement is considered to be received:
  - (a) upon confirmation of delivery by Canada Post if sent by registered mail;
  - (b) on the next Business Day if sent by email and no notice of failure to deliver is received back by the sender; and
  - (c) on the date of delivery if hand-delivered,

if addressed to the City, at:  
City of Victoria  
#1 Centennial Square  
Victoria, BC V8W 1P6

Attention: Director of Sustainable Planning and Community Development  
Email: [khoese@victoria.ca](mailto:khoese@victoria.ca)

if addressed to the Owner, at:  
Cook and Yates Holdings Ltd.

500 – 509 Richards Street  
Vancouver, BC V6B 2Z7

Attention: President  
Email: [BCHard@charddevelopment.com](mailto:BCHard@charddevelopment.com)

If a party identifies alternate contact information in writing to another party, notice is to be given to that alternate address.

If normal mail service or email service is interrupted by strike, work slowdown, force majeure, or other cause, notice sent by the impaired service is considered to be received on the date of delivery, and the sending party must use its best efforts to ensure prompt receipt of a notice by using other uninterrupted services, or by hand-delivering the notice.

26. The Canadian Imperial Bank of Commerce (the “**Existing Chargeholder**”) is the holder of mortgages and assignments of rents which are registered against title to the Lands in the Land Title Office at Victoria, British Columbia, under numbers CA6242934, CA6242935, CA7943014 and CA7943015, respectively (the “**Existing Charges**”). In consideration of the sum of One (\$1.00) Dollar, the Existing Chargeholder (the receipt whereof is hereby acknowledged), agrees with the Owner and the City, that the within section 219 covenant shall be an encumbrance upon the Lands in priority to the Existing Charges in the same manner and to the same effect as if it had been dated and registered prior to the Existing Charges.

The Owner and City acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D (pages 1 and 2) attached hereto.

**SCHEDULE “A”**  
**Public Realm Improvements**

On each of Cook Street, Johnson Street and Yates Street:

Frontage improvements as required under:

The Subdivision Bylaw, including:

Curb, gutter, sidewalk, street lighting, traffic signals (other than at the intersection of Cook and Johnson Streets where no such signal improvements will be required), drainage and asphalt to applicable City standards

Downtown Public Realm Plan and Streetscape Standards, including:

Sidewalk, garbage, bollard, pedestrian lighting, and street furnishing to applicable City standards; and

Street trees in grates, and rain garden as per City selection to applicable City standards

In Addition:

On Cook Street:

Construction of a traffic bulb on the northeast corner of Cook and Yates Street to applicable City standards.

On Johnson Street:

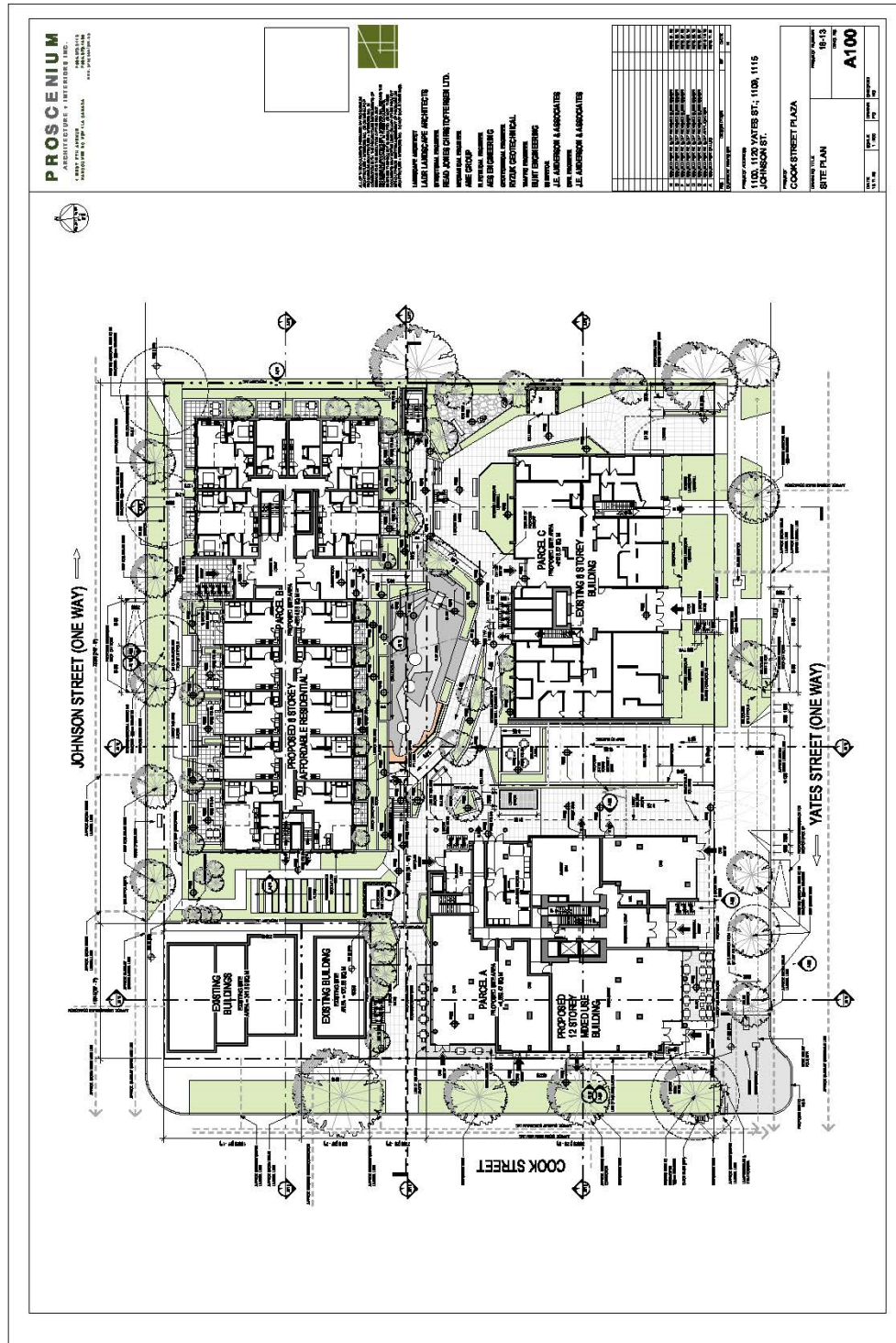
Construction of a bus shelter on Johnson Street to applicable BC Transit and City standards.

On Yates Street:

Undergrounding of BC Hydro lines and associated infrastructure along the Yates Street frontage under BC Hydro's Beautification Program to applicable BC Hydro and City standards. The Owner will cover its portion and the City's portion of the cost.

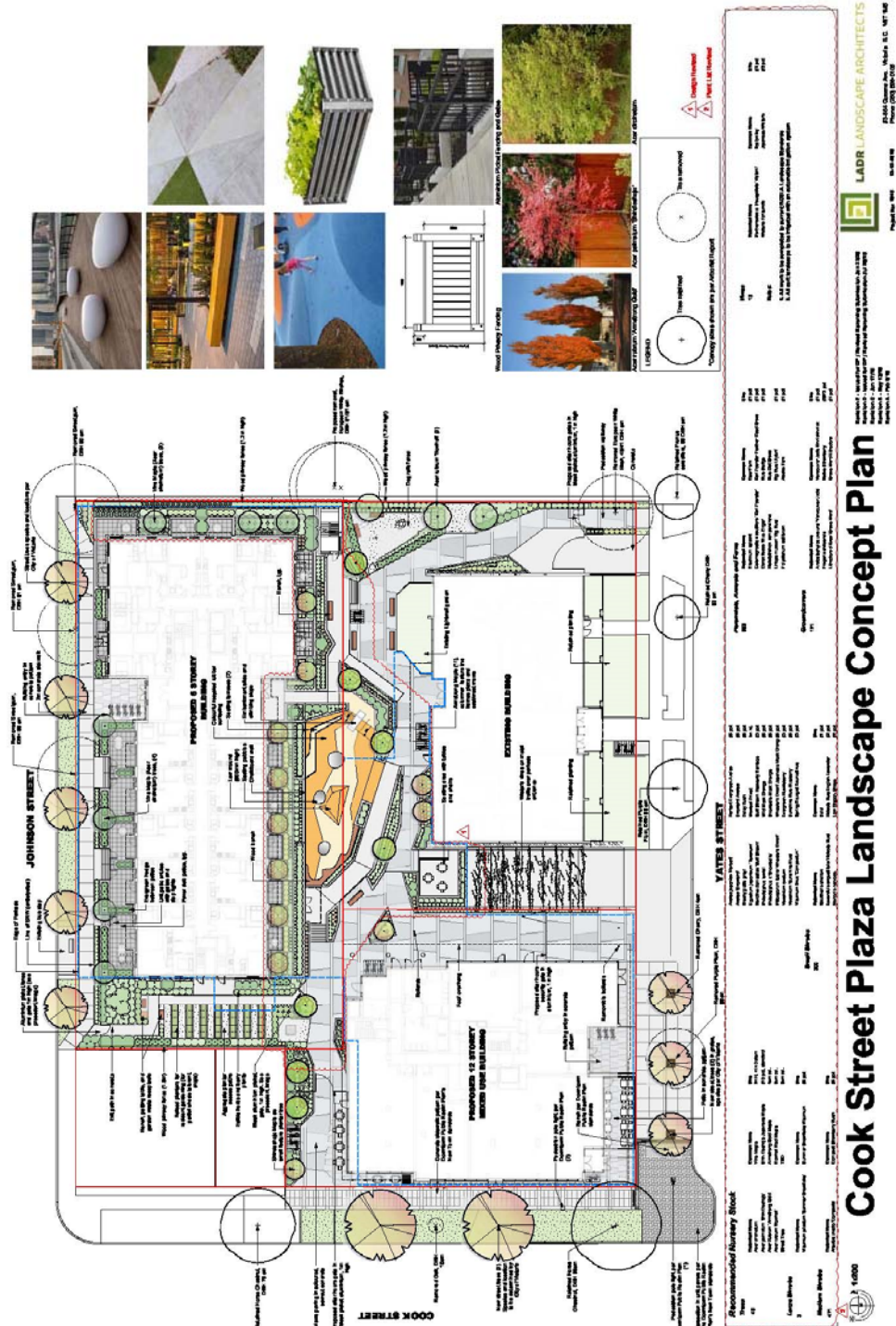
## SCHEDULE "B"

## Preliminary Site Servicing and Landscape Plan



## SCHEDULE "C"

## Preliminary Site Servicing and Landscape Plan



END OF DOCUMENT