

## VICTORIA LAND TITLE OFFICE

LAND TITLE ACT  
FORM C (Section 233) CHARGE

Apr-09-2019 12:17:40.003

CA7437563 CA7437566

GENERAL INSTRUMENT - PART 1 Province of British Columbia

PAGE 1 OF 11 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

Paul Gareth  
Cowper Morgan  
M67WIW

Digitally signed by Paul  
Gareth Cowper Morgan  
M67WIW  
Date: 2019.04.09 10:01:14  
-07'00'

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

Wilson Marshall Law Corporation

200 - 911 Yates Street

Victoria

BC V8W 4X3

Document Fees: \$296.64

File: 20482

Phone: 250-385-8741

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

009-166-084

LOT 2 SECTION 61 SPRING RIDGE VICTORIA CITY PLAN 312

STC? YES ☐

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

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

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):

SEE SCHEDULE

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

THE CORPORATION OF THE CITY OF VICTORIA

1 CENTENNIAL SQUARE

VICTORIA

BRITISH COLUMBIA

V8W 1P6

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)

Paul G. Morgan

Barrister &amp; Solicitor

200 - 911 Yates Street

Victoria, BC V8V 4X3

Execution Date

Y	M	D
19	01	15

Transferor(s) Signature(s)

Jordan Anthony Milne

Gordon Lorne Courtney Milne

## 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 C (Section 233) CHARGE**  
**GENERAL INSTRUMENT - PART 1 Province of British Columbia**

PAGE 1 OF 11 PAGES

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Wilson Marshall Law Corporation

File: 20482

Phone: 250-385-8741

200 - 911 Yates Street

Victoria

BC V8W 4X3

Deduct LTSA Fees? Yes ☒

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

**009-166-084 LOT 2 SECTION 61 SPRING RIDGE VICTORIA CITY PLAN 312**

STC? YES ☐

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VICTORIA

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Officer Signature(s)

**PAUL G. MORGAN**  
 Barrister & Solicitor  
 200-911 Yates Street  
 Victoria, BC V8V 4X3

Execution Date

Y	M	D
19	01	15

Transferor(s) Signature(s)

Jordan Anthony Milne

Gordon Lorne Courtney Milne

**OFFICER CERTIFICATION:**

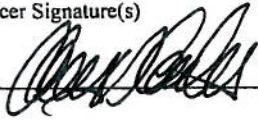
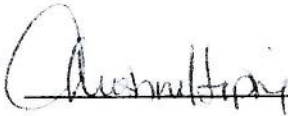
Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT  
FORM D

## EXECUTIONS CONTINUED

PAGE 2 of 11 PAGES

Officer Signature(s)

CHRISTOPHER D. COATES  
For taking Affidavits  
For British Columbia  
#1 Centennial Square  
Victoria BC V8W 1P6CHRISTOPHER D. COATES  
A Commissioner for taking Affidavits  
For British Columbia  
#1 Centennial Square  
Victoria BC V8W 1P6CHRISTINE M. HEPTING  
Barrister & Solicitor  
40 CAVAN STREET  
P.O. BOX 778  
NANAIMO, B.C. V9R 5M2  
(250) 753-6661

Execution Date

Y	M	D
19	03	19
19	02	21

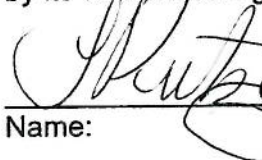
Transferor / Borrower / Party Signature(s)

The Corporation of the City of Victoria  
by its authorized signatory(ies):Name: MAYOR LISA HELPS  
#1 Centennial Square  
Victoria BC V8W 1P6

Name:

CITY OF VICTORIA
Approved for content by originating dept.
CM
APPROVED for legality by solicitor
SKK

AS TO PRIORITY:

Coastal Community Credit Union  
by its authorized signatory(ies):Tracy Putz  
Lending Clerk  
Central Operations

Name:

Tara Stevenson  
Lending Clerk  
Central Operations

Name:

## OFFICER CERTIFICATION:

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LAND TITLE ACT  
FORM E

## SCHEDULE

PAGE 3 OF 11 PAGES

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Statutory Right of Way		Over that part in Explanatory plan EPP87136 shown in heavy dark line thereon.  Paragraphs 1.1, 1.2, 1.3, 1.4 and 1.5 of the Terms of Instrument attached hereto.
Covenant		Terms of Instrument attached hereto except paragraphs 1.1, 1.2, 1.3, 1.4, 1.5 and 5.20 therein.  Section 219 Covenant
Priority Agreement		Granting Statutory Right of Way _____ priority over Mortgage CA5842310  Paragraph 5.20 of the Terms of Instrument attached hereto.
Priority Agreement		Granting Covenant _____ priority over Mortgage CA5842310  Paragraph 5.20 of the Terms of Instrument attached hereto.

**LAND TITLE ACT  
FORM E**

**SCHEDULE**

PAGE 4 OF 11 PAGES

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

**5. TRANSFEROR(S):**

As to Statutory Right of Way and Covenant:

GORDON LORNE COURTNEY MILNE and  
JORDAN ANTHONY MILNE.

As to priority:

Coastal Community Credit Union (Inc. No. FI 114)

**Statutory Right of Way (Highway) and Section 219 Covenant**

**TERMS OF INSTRUMENT - PART 2**

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THIS AGREEMENT is dated for reference January \_\_\_, 2019

BETWEEN:

**GORDON LORNE COURTNEY MILNE**  
JORDAN ANTHONY MILNE  
1276 – 1278 Gladstone Avenue  
Victoria, BC V8T 1G6

(collectively the "Owner")

AND:

**THE CORPORATION OF THE CITY OF VICTORIA**  
1 Centennial Square  
Victoria, BC V8W 1P6

(the "City")

AND:

**COASTAL COMMUNITY CREDIT UNION**  
1 – 13 Victoria Crescent  
Nanaimo, BC V9R 5B9

(the "Existing Chargeholder")

**WHEREAS:**

- A. 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, more particularly described as:

PID: 009-166-084

LOT 2 SECTION 61 SPRING RIDGE VICTORIA CITY PLAN 312

(the "Lands")

- B. This right of way is necessary for the operation and maintenance of the City's undertaking as described in Recital D;

- C. The City wishes to be able to construct, operate and maintain a public highway and other works including but not limited to a system of roadways, sidewalks and utility services in perpetuity over a portion of the Lands;
- D. To facilitate the construction and use by the City and the public of a public highway, and to facilitate the installation and use of works that may be placed by the City on, under or over the highway including pavements, sidewalks, boulevards, curbs, gutters, drains, sewers, utility poles, wires, fences, overhead and underground cables, traffic signals, transit shelters, and landscaping including but not limited to trees, shrubs, flowers and grass, and irrigation works required for the maintenance of that landscaping, and any other works, facilities or appurtenants necessary for the use of the right of way as a public highway (collectively the "**Works**"), the Owner has agreed to grant the right of way in this Agreement.
- E. Section 219 of the *Land Title Act* provides that a covenant, whether of negative or positive nature may be granted in favour of the City and may include one or more of the following provisions:
  - i. in respect of the use of land or the use of a building on or to be erected on land;
  - ii. that land is to be built on in accordance with the covenant;
  - iii. that land is not to be used, built on or subdivided;
  - iv. that land or specified amenities be protected, preserved, conserved, maintained, enhanced, restored or kept in their natural or existing state.

**NOW THEREFORE**, in consideration of the sum of One (\$1.00) Dollar of lawful money of Canada, now paid by the City to the Owner (the receipt and sufficiency of which is now acknowledged by the Owner), and in consideration of the covenants and conditions agreed to be observed and performed by the parties and for other valuable consideration:

## **1.0 STATUTORY RIGHT OF WAY**

- 1.1 Pursuant to section 218 of the *Land Title Act*, the Owner hereby grants, conveys, confirms and transfers, in perpetuity, to the City, its officers, employees, contractors, licensees and invitees, including without limitation the general public, the full, free and uninterrupted right, licence, liberty, privilege, permission and right of way to use as a public highway, including but not limited to the right to enter onto, use, go, return, pass over and across for highway purposes, that portion of the Lands, shown in heavy outline on the Explanatory Plan prepared by Kenneth Ka Chung Ng and filed in the Victoria Land Title Office under Plan No. EPP87136 a reduced copy of which is attached hereto as Schedule "A" (the "**Right of Way**").
- 1.2 The Owner covenants and agrees that in connection with the grant under section 1.1 of this Agreement, the City and its officers, employees, contractors, licensees and invitees shall have the full, free and uninterrupted right, licence, liberty, privilege, permission and right of way to lay down, install, construct, entrench, operate, maintain, inspect, alter, repair, remove, replace, bury, cleanse, string, and otherwise establish one or more



system of Works upon the Right of Way.

- 1.3 The Owner covenants and agrees that the City shall be entitled at all times to enter, use, pass and repass, labour, construct, erect, install, dig, carry away soil or other surface or subsurface materials, and clear of all trees, growth, buildings or obstructions now or hereafter in existence upon, over, under and across the Right of Way:
- (a) for itself and its agents, workers, contractors and all other licensees of the City;
  - (b) together with machinery, vehicles, equipment, and materials;
  - (c) upon, over, under and across the Right of Way;
  - (d) as may be necessary, useful, or convenient for the purposes in section 1.1 and section 1.2; and
  - (e) in connection with the operations of the City in relation to the Works.
- 1.4 The Owner transfers, assigns and conveys to the City all right, title and interest in and to any Works that the City, or the Owner have prior to this Agreement established or constructed or maintained or operated within the Right of Way or in relation to any similar Works previously constructed by any party whatsoever within the Right of Way.
- 1.5 The Owner grants, conveys, confirms and transfers unto the City for itself, and its employees, agents, workers, contractors and all other licensees of the City together with machinery, vehicles, equipment and materials, the right at all reasonable times to enter upon and to pass and repass over such of the Lands of the Owner as may reasonably be required for the purpose of ingress to and egress from the Right of Way.

## **2.0 OWNER'S COVENANTS**

### **2.1 The Owner covenants:**

- (a) not, and not to permit or allow any other person, to erect, place, install or maintain any building, structure, addition to a building or structure, mobile home, paved driveway or patio, pipe, wire or other conduit on, over or under any portion of the Right of Way apart from the maintenance of any building, structure, mobile home, paved driveway or patio, pipe, wire or other conduit situated within the Right of Way prior to the installation of the Works, all or any of which may be done subject to the City's prior written consent;
- (b) not to do anything or to permit any act or thing which in the opinion of the City in any way interferes with or damages or prevents access to or use of the Right of Way or is likely to cause harm to the Works installed in or upon the Right of Way;
- (c) from time to time and at all times at the reasonable request and at the cost of the City to do and execute or cause to be made, done or executed any further and other lawful acts, deeds, things, devices, conveyances and assurances in law required to ensure the City of its rights under this Agreement; and
- (d) to permit the City to peaceably hold and enjoy the rights hereby granted.



### **3.0 CITY'S COVENANTS**

- 3.1 As far as reasonably possible, the City shall carry out all work in a proper and workmanlike manner so as to do as little injury to the Lands as possible.
- 3.2 The City shall make good at its own expense damage or disturbance which may be caused to the Lands in the exercise by the City of its rights under this Agreement except as permitted under this Agreement.
- 3.3 The City shall not commence the Works until it has obtained all necessary rights of way, other interests in land and other approvals so as to permit the City to install the Works along that entire portion of Gladstone Avenue situate between Fernwood Road and Chambers Street.
- 3.4 The City shall make reasonable efforts not to install the Works on those portions of the Right of Way whereon there exists a building, structure, paved driveway, patio, pipe, wire or other conduit provided that said building, structure, paved driveway, patio, pipe, wire or other conduit was in existence and situate within the Right of Way as of the effective date of this Agreement.

### **4.0 SECTION 219 COVENANTS**

- 4.1 Under section 219 of the *Land Title Act* there may be registered as annexed to any land a condition or covenant in favour of the City, that the land, or any specified portion of it, is not to be built upon or is to be or is not to be used in a particular manner.
- 4.2 The Owner covenants, promises and agrees that, notwithstanding the uses permitted from time to time by the City's zoning bylaw, the Lands shall not be used except in strict accordance with this covenant.
- 4.3 The Owner covenants, at the sole cost of the City, to trim or, if the City determines it is necessary, cut down any tree or other growth on the Lands which in the opinion of the City, constitutes or may constitute a danger or obstruction to the Right of Way or the Works or those using same.

### **5.0 GENERAL**

- 5.1 The Owner shall not diminish or increase the soil cover over any pipe installed in the Right of Way without the City's prior written consent.
- 5.2 No right herein granted to or reserved by the City shall require the City to clear, repair or maintain the Works or the Right of Way unless the City is expressly required herein to perform such cleaning, repairing or maintenance.
- 5.3 If the Owner defaults in observance or performance of its obligations hereunder, the City, after 10 days prior written notice to the Owner specifying the default and at any time in case of emergency, may (but is not obligated to) rectify the default, and the Owner shall pay to the City, on demand, its reasonable costs in connection with so rectifying.
- 5.4 The Owner shall, after execution hereof by it at the expense of the Owner, do or cause

to be done all acts necessary to grant priority to this Agreement over all financial charges and encumbrances which are registered, or pending registration, against the Title to the Lands in the Land Title Office save and except those as have been specifically approved in writing by the City or have been granted in favour of the City.

- 5.5 Waiver of any default by either party shall not be deemed to be a waiver of any subsequent default by that party.
- 5.6 Whenever this Agreement creates a power or obligation of the City to make a decision or to exercise any contractual right or remedy, the City may do so in accordance with the provisions of this Agreement and no public law duty, whether arising from the principals of fairness or the rules of natural justice, shall have any application.
- 5.7 Notwithstanding anything herein contained, the City reserves all rights and powers of expropriation otherwise enjoyed by the City.
- 5.8 Without limiting section 5.7, nothing contained or implied in this Agreement will derogate from the obligations of the Owner under any other agreement with the City or prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions under all public and private statutes, by-laws, orders and regulations, which may be as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by Owner and the City.
- 5.9 In spite of any rule of law or equity to the contrary, the Works brought on to, set, constructed, laid, erected in, upon or under the Right of Way by the City shall at all times remain the property of the City, even if the Works are annexed or affixed to the freehold, and the Works shall at any time and from time to time be removable in whole or in part by the City.
- 5.10 No part of the title in fee simple to the Lands of the Owner shall pass to or be vested in the City under or by virtue of this Agreement, and the Owner may fully use and enjoy all of the Lands of the Owner subject only to the rights and restrictions in this Agreement.
- 5.11 If any section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of the Agreement.
- 5.12 This Agreement shall attach to and run with the Lands and each and every part to which the Lands may be divided or subdivided whether by subdivision plan, strata plan or otherwise howsoever.
- 5.13 The Owner acknowledges that (a) these Covenants are enforceable against the Owner and his successors in title, but (b) the Owner is not personally liable for breach of these Covenants where such liability arises by reason of an act or omission occurring after the Owner named herein or any future owner ceases to have a further interest in the Lands.
- 5.14 If at the date hereof the Owner is not the sole registered owner of the Lands of the Owner, this Agreement shall nevertheless bind the Owner to the full extent of his interest therein, and if he acquires a greater or the entire interest in fee simple, this Agreement shall likewise extend to such after-acquired interests.



- 5.15 Where the expression "Owner" includes more than one person, all covenants made by the Owner shall be construed as being several as well as joint with respect to all persons constituting the Owner.
- 5.16 This Agreement shall continue to benefit and be binding upon the Owner and City, and their respective heirs, administrators, executors, successors and permitted assigns, as the case may be.
- 5.17 Gender specific terms include both genders and corporations, and the singular and plural forms are interchangeable, according to the context.
- 5.18 This Agreement will be governed and construed according to the laws of the Province of British Columbia.
- 5.19 Nothing contained or implied in this Agreement shall prejudice or affect the rights and powers of the City in the exercise of its functions under any public or private statutes, bylaws, order and regulations, all of which may be fully and effectively exercised in relation to the Land as if this Agreement had not been executed and delivered by the parties.
- 5.20 The Existing Chargeholder is the registered holder of charges by way of a mortgage against the Lands, which is registered in the Land Title Office at Victoria, British Columbia, under number CA5842310 (the "**Existing Charge**"). 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 statutory right of way and section 219 covenant shall be an encumbrance upon the Lands in priority to the Existing Charge in the same manner and to the same effect as if it had been dated and registered prior to the Existing Charge.

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



Schedule "A"

