

VICTORIA LAND TITLE OFFICE

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

Feb-17-2016 11:37:19.003

CA4990634 CA4990635

PAGE 1 OF 13 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.

Robert Gordon
Milne 8M1GL9

Digitally signed by Robert Gordon
Milne 8M1GL9
DN: c=CA, cn=Robert Gordon Milne
8M1GL9, o=Lawyer, ou=Verify ID at
www.juricert.com/LKUP.cfm?
id=8M1GL9
Date: 2016.02.17 10:31:03 -08'00'

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

JAWL BUNDON LLP

Barristers & Solicitors

4th Floor, 1007 Fort Street

Victoria

BC V8V 3K5

File No.: 32841 #715524

Telephone No. 250-385-5787

Document Fees: \$143.16

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

001-507-141

LOT 11, SUBURBAN LOT 17, VICTORIA CITY, PLAN 153

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)

Robert G. Milne

Barrister & Solicitor

4th Floor, 1007 Fort Street

Victoria, B.C., V8V 3K5

Execution Date

Y	M	D
15	12	09

Transferor(s) Signature(s)

ELLEN JANE BRADLEY

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 13 PAGES

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

Y	M	D
16	01	12

(AS TO PRIORITY)
CIBC MORTGAGES INC., by its
authorized signatory(ies):

Notary Public

Valerie Patricia Boon
100 University Avenue
Toronto, Ontario
M5J 2X4

Name: Janet Hanif-Ferouz
Authorized Signing Officer

Name:

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 3 of 13 PAGES

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

Notary Public

Valerie Patricia Boon
100 University Avenue
Toronto, Ontario
M5J 2X4

Y	M	D
16	01	12

(AS TO PRIORITY)
CANADIAN IMPERIAL BANK OF
COMMERCE, by its authorized
signatory(ies):

Name: Janet Hanif-Ferouz
Assistant General Manager

Name:

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.

#1 Centennial Square
Victoria, B.C., V8W 1P6

Execution Date

Y	M	D
16	02	03

THE CORPORATION OF THE CITY
OF VICTORIA, by its authorized
signatory(ies):

Name: Mayor Lisa Helps
#1 Centennial Square
Victoria, B.C., V8W 1P6

Name: _____

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 5 OF 13 PAGES

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Statutory Right of Way		over part shown as SRW Area 2 on Plan EPP55046 Entire document; except paragraphs 5.1 and 5.2, page 12
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Granting the Statutory Right of Way with one registration number less than this priority agreement priority over Mortgage CA2340774 and Mortgage CA2671483 Page 12, paragraphs 5.1 and 5.2
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION

**LAND TITLE ACT
FORM E**

SCHEDULE

PAGE 6 OF 13 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):

ELLEN JANE BRADLEY (AS TO STATUTORY RIGHT OF WAY)
CIBC MORTGAGES INC. (A33457) (AS TO PRIORITY AGREEMENT)
CANADIAN IMPERIAL BANK OF COMMERCE (AS TO PRIORITY AGREEMENT)

Statutory Right of Way - Highway

TERMS OF INSTRUMENT - PART 2

W H E R E A S:

- A. The Transferor is the registered owner in fee simple of the following land in the Province of British Columbia:

PID 001-507-141

Lot 11, Suburban Lot 17, Victoria City, Plan 153

(the "**Lands**")

- B. The Transferee is the Corporation of the City of Victoria;
- C. This Right of Way is necessary for the operation and maintenance of the Transferee's undertaking as described in Recital D;
- D. The Transferee 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; and
- E. To facilitate the construction and use by the Transferee and the public of a public highway, and to facilitate the installation and use of works that may be placed by the Transferee 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 Transferor has agreed to grant the Right of Way in this Agreement.

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

1.0 THE TRANSFEROR:

- 1.1 Pursuant to Section 218 of the Land Title Act, hereby grants, conveys, confirms and transfers, in perpetuity, to the Transferee, 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 as "**SRW Area 2**" on Explanatory Plan of Statutory Rights of Way Plan EPP55046 prepared by Brad Cunnin, BCLS, a reduced copy of which is attached hereto as Schedule "A" (the "**Right of Way**");

- 1.2 Covenants and agrees to and with the Transferee that in connection with the grant under Section 1.1 of this Agreement, the Transferee 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 Covenants and agrees to and with the Transferee that the Transferee shall:
- (a) for itself and its agents, workers, contractors and all other licensees of the Transferee;
 - (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 Transferee in relation to the Works;

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;

- 1.4 Transfers, assigns and conveys to the Transferee all right, title and interest in and to any Works that the Transferee, or the Transferor 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.

2.0 THE TRANSFEROR COVENANTS:

- 2.1 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;

- 2.2 Not to do anything or to permit any act or thing which in the opinion of the Transferee 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, provided that the construction and maintenance of a fence on the Right of Way will be deemed not to interfere with the Transferee's use of the Right of Way until such time as the Transferee wishes to carry out work on the Right of Way as part of the widening of Caledonia Avenue, at which time the Transferor shall remove the fence in accordance with section 2.6 of this Agreement;
- 2.3 To trim or, if the Transferee determines it is necessary, cut down any tree or other growth on the Lands which in the opinion of the Transferee, constitutes or may constitute a danger or obstruction to the Right of Way or the Works or those using same;
- 2.4 From time to time and at all times at the reasonable request and at the cost of the Transferee 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 Transferee of its rights under this Agreement;
- 2.5 To permit the Transferee to peaceably hold and enjoy the rights hereby granted; and
- 2.6 To remove, at the Transferor's own expense, any fence constructed or maintained on the Right of Way forthwith upon receipt of notice from the Transferee to do so and, in any event, not later than 30 days prior to the date the Transferee advises the Transferor that the Transferee wishes to carry out any work on the Right of Way. Failing such removal by the Transferor, the fence shall be deemed to be an obstruction within the Right of Way and the Transferor shall be deemed to be in breach of its covenants under sections 2.1 and 2.2 of this Agreement, and the Transferee may remove the fence without notice to the Transferor at the Transferor's cost, and without prejudice to any remedy under this Agreement or at law that may be available to the Transferee.

3.0 THE TRANSFEE COVENANTS:

- 3.1 As far as reasonably possible, to carry out all work in a proper and workmanlike manner so as to do as little injury to the Lands as possible; and
- 3.2 To make good at its own expense damage or disturbance which may be caused to the Lands in the exercise by the Transferee of its rights under this Agreement except as permitted under this Agreement.

4.0 THE PARTIES COVENANT TO AND AGREE WITH EACH OTHER, as follows:

- 4.1 The Transferor shall not diminish or increase the soil cover over any pipe installed in the Right of Way without the Transferee's prior written consent;
- 4.2 No right herein granted to or reserved by the Transferee shall require the Transferee to clear, repair or maintain the Works or the Right of Way unless the Transferee is expressly required herein to perform such cleaning, repairing or maintenance;
- 4.3 If the Transferor defaults in observance or performance of its obligations hereunder, the Transferee, after 10 days prior written notice to the Transferor specifying the default and at any time in case of emergency, may (but is not obligated to) rectify the default, and the Transferor shall pay to the Transferee, on demand, its reasonable costs in connection with so rectifying;
- 4.4 The Transferor shall, after execution hereof by it at the expense of the Transferor, 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 Transferee or have been granted in favour of the Transferee;
- 4.5 Waiver of any default by either party shall not be deemed to be a waiver of any subsequent default by that party;
- 4.6 Whenever this Agreement creates a power or obligation of the Transferee to make a decision or to exercise any contractual right or remedy, the Transferee 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;
- 4.7 Notwithstanding anything herein contained, the Transferee reserves all rights and powers of expropriation otherwise enjoyed by the Transferee;
- 4.8 Without limiting Section 4.7, nothing contained or implied in this Agreement will derogate from the obligations of the Transferor under any other agreement with the Transferee or prejudice or affect the Transferee'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 Transferor and the Transferee;
- 4.9 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 Transferee shall at all times remain the property of the Transferee, 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 Transferee;

- 4.10 No part of the title in fee simple to the Lands of the Transferor shall pass to or be vested in the Transferee under or by virtue of this Agreement, and the Transferor may fully use and enjoy all of the Lands of the Transferor subject only to the rights and restrictions in this Agreement;
- 4.11 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;
- 4.12 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;
- 4.13 The Transferor acknowledges that (a) these Covenants are enforceable against the Transferor and his successors in title, but (b) the Transferor is not personally liable for breach of these Covenants where such liability arises by reason of an act or omission occurring after the Transferor named herein or any future owner ceases to have a further interest in the Lands;
- 4.14 If at the date hereof the Transferor is not the sole registered owner of the Lands of the Transferor, this Agreement shall nevertheless bind the Transferor 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;
- 4.15 Where the expression "Transferor" includes more than one person, all covenants made by the Transferor shall be construed as being several as well as joint with respect to all persons constituting the Transferor;
- 4.16 This Agreement shall continue to benefit and be binding upon the Transferor and Transferee, and their respective heirs, administrators, executors, successors and permitted assigns, as the case may be;
- 4.17 Gender specific terms include both genders and corporations, and the singular and plural forms are interchangeable, according to the context;
- 4.18 This Agreement will be governed and construed according to the laws of the Province of British Columbia; and
- 4.19 Nothing contained or implied in this Agreement shall prejudice or affect the rights and powers of the Transferee 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.

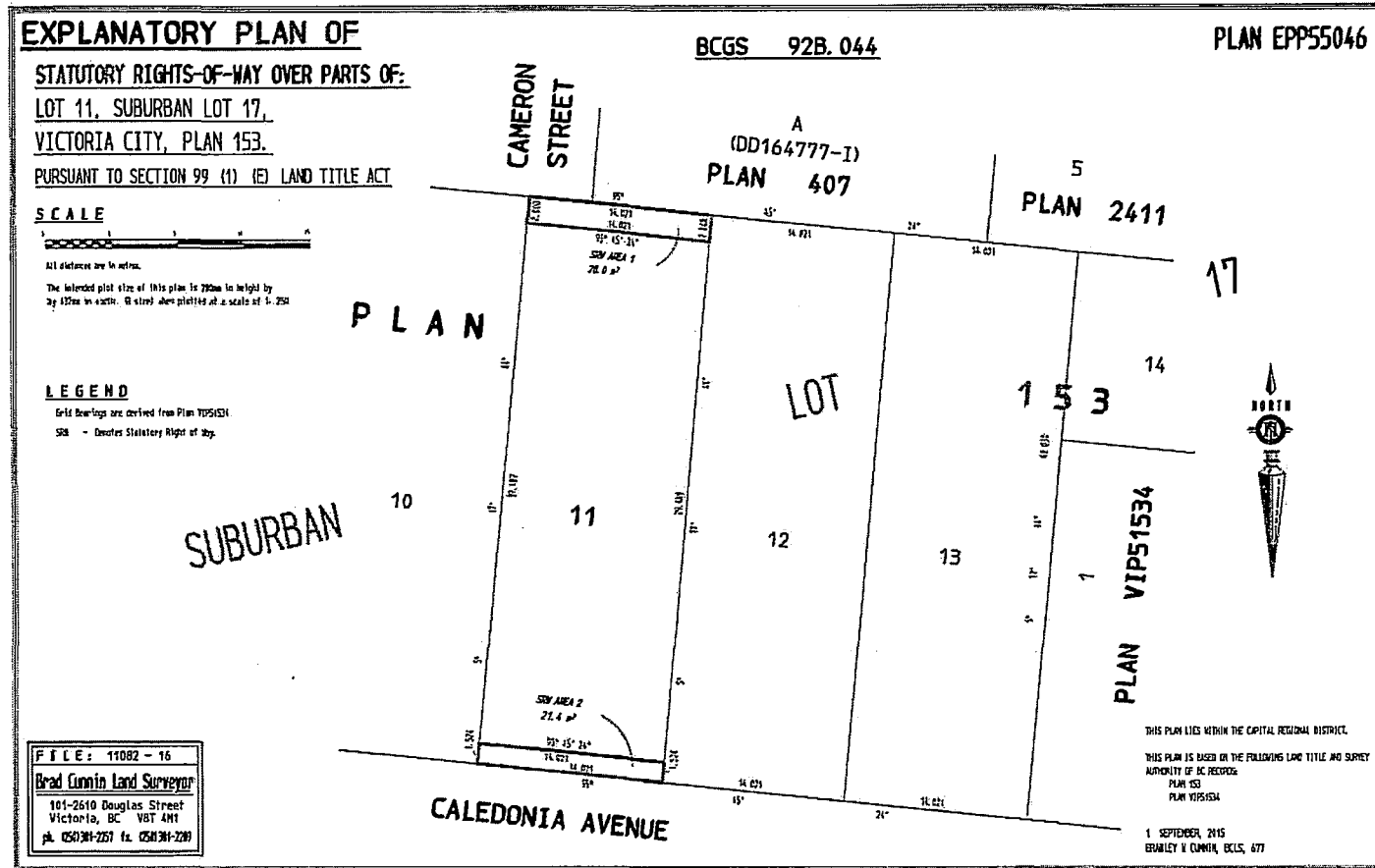
5.0 PRIORITY AGREEMENT

- 5.1 CIBC Mortgages Inc. (A33457), as the registered holder of a charge by way of Mortgage against the within described property, which said charge is registered in the Land Title Office at Victoria, British Columbia, under number CA2340774, for and in consideration of the sum of One Dollar (\$1.00) paid by the Transferee to the said Chargeholder (the receipt whereof is hereby acknowledged), agrees with the Transferee, its successors and assigns, that the within Right of Way shall be an encumbrance upon the within described property 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.
- 5.2 Canadian Imperial Bank of Commerce, as the registered holder of a charge by way of Mortgage against the within described property, which said charge is registered in the Land Title Office at Victoria, British Columbia, under number CA2671483, for and in consideration of the sum of One Dollar (\$1.00) paid by the Transferee to the said Chargeholder (the receipt whereof is hereby acknowledged), agrees with the Transferee, its successors and assigns, that the within Right of Way shall be an encumbrance upon the within described property 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.

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"

Plan EPP55046



VICTORIA LAND TITLE OFFICE

LAND TITLE ACT
FORM C (Section 233) CHARGE
GENERAL INSTRUMENT - PART 1

Feb-17-2016 11:37:19.004

CA4990636 CA4990637

PAGE 1 OF 12 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.

Robert Gordon
Milne 8M1GL9

Digitally signed by Robert Gordon
Milne 8M1GL9
DN: c=CA, cn=Robert Gordon Milne
8M1GL9, o=Lawyer, ou=Verify ID at
www.ltricare.com/VLKUP.cfm?
id=8M1GL9
Date: 2016.02.17 10:32:05 -08'00'

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

JAWL BUNDON LLP

Barristers & Solicitors

4th Floor, 1007 Fort Street

Victoria

BC V8V 3K5

Document Fees: \$143.16

File No.: 32841 #715525

Telephone No. 250-385-5787

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

001-507-141

LOT 11, SUBURBAN LOT 17, VICTORIA CITY, PLAN 153

STC? YES ☐

3. NATURE OF INTEREST

SEE SCHEDULE

CHARGE NO.

ADDITIONAL INFORMATION

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)

Robert G. Milne

Barrister & Solicitor

4th floor, 1007 Fort Street

Victoria, B.C., V8V 3K5

Execution Date

Y	M	D
15	12	09

Transferor(s) Signature(s)

ELLEN JANE BRADLEY

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 12 PAGES

Officer Signature(s)

Valerie Patricia Boon
Notary Public
100 University Avenue
Toronto, Ontario
M5J 2X4

Execution Date

Y	M	D
16	01	12

Transferor / Borrower / Party Signature(s)

(AS TO PRIORITY)
CIBC MORTGAGES INC., by its
authorized signatory(ies):

Name: Janet Hanif-Ferouz
Authorized Signing Officer

Name:

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 3 of 12 PAGES

Officer Signature(s)

Valerie Patricia Boon
Notary Public
100 University Avenue
Toronto, Ontario
M5J 2X4

Execution Date

Y	M	D
16	01	12

Transferor / Borrower / Party Signature(s)

(AS TO PRIORITY)
CANADIAN IMPERIAL BANK OF
COMMERCE, by its authorized
signatory(ies):

Name: Janet Hanif-Ferouz
Assistant General Manager

Name:

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 4 of 12 PAGES

Officer Signature(s)

Christopher D. Coates

Commissioner for Taking Affidavits in British Columbia

City Clerk
#1 Centennial Square
Victoria, B.C., V8W 1P6

Execution Date

Y	M	D
16	02	03

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, B., V8W 1P6

Name:

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 5 OF 12 PAGES

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Statutory Right of Way		over part shown as SRW Area 1 on Plan EPP55046 Entire document; except page 11, paragraphs 5.1 and 5.2

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Granting the Statutory Right of Way with one registration number less than this priority agreement priority over Mortgage CA2340774 and Mortgage CA2671483 Page 11, paragraphs 5.1 and 5.2

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
--------------------	------------	------------------------

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
--------------------	------------	------------------------

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
--------------------	------------	------------------------

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
--------------------	------------	------------------------

**LAND TITLE ACT
FORM E**

SCHEDULE

PAGE 6 OF 12 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):

ELLEN JANE BRADLEY (AS TO STATUTORY RIGHT OF WAY)
CIBC MORTGAGES INC. (A33457) (AS TO PRIORITY AGREEMENT)
CANADIAN IMPERIAL BANK OF COMMERCE (AS TO PRIORITY AGREEMENT)

Statutory Right of Way – Public Pathway

TERMS OF INSTRUMENT - PART 2

W H E R E A S:

- A. The Transferor is the registered owner in fee simple of the following land in the Province of British Columbia:

PID 001-507-141

Lot 11, Suburban Lot 17, Victoria City, Plan 153

(the "**Lands**")

- B. The Transferee is the Corporation of the City of Victoria;
- C. This Right of Way is necessary for the operation and maintenance of the Transferee's undertaking as described in Recital D;
- D. The Transferee wishes to be able to construct, operate and maintain a public pathway in perpetuity over a portion of the Lands; and
- E. To facilitate the construction and use by the Transferee and the public of a public pathway including any other works, facilities or appurtenants necessary for the use of the Right of Way as a public pathway (collectively the "**Works**"), the Transferor has agreed to grant the Right of Way in this Agreement.

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

1.0 THE TRANSFEROR:

- 1.1 Pursuant to Section 218 of the Land Title Act, hereby grants, conveys, confirms and transfers, in perpetuity, to the Transferee, 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 pathway, at all times by day or night, that portion of the Lands, shown as "**SRW Area 1**" on Explanatory Plan of Statutory Rights of Way Plan EPP55046 prepared by Brad Cunnin, BCLS, a reduced copy of which is attached hereto as Schedule "A" (the "**Right of Way**");;
- 1.2 Covenants and agrees to and with the Transferee that in connection with the

grant under Section 1.1 of this Agreement, the Transferee 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 Covenants and agrees to and with the Transferee that the Transferee shall:

- (a) for itself and its agents, workers, contractors and all other licensees of the Transferee;
- (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 Transferee in relation to the Works;

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;

1.4 Transfers, assigns and conveys to the Transferee all right, title and interest in and to any Works that the Transferee, or the Transferor 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.

2.0 THE TRANSFEROR COVENANTS:

- 2.1 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, patio, pipe, wire or other conduit, or to park any vehicles, on, over or under any portion of the Right of Way;
- 2.2 Not to do anything or to permit any act or thing which in the opinion of the Transferee 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;
- 2.3 To trim or, if the Transferee determines it is necessary, cut down any tree or

other growth on the Lands which in the opinion of the Transferee, constitutes or may constitute a danger or obstruction to the Right of Way or the Works or those using same;

- 2.4 From time to time and at all times at the reasonable request and at the cost of the Transferee 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 Transferee of its rights under this Agreement; and
- 2.5 To permit the Transferee to peaceably hold and enjoy the rights hereby granted.

3.0 THE TRANSFEE COVENANTS:

- 3.1 As far as reasonably possible, to carry out all work in a proper and workmanlike manner so as to do as little injury to the Lands as possible;
- 3.2 To make good at its own expense damage or disturbance which may be caused to the Lands in the exercise by the Transferee of its rights under this Agreement except as permitted under this Agreement; and
- 3.3 Not to remove the existing fence separating the Right of Way from the Transferee's adjoining lands known as King's Playlot until the Transferee constructs the public pathway on the Right of Way and the City portion of the pathway connecting the Right of Way to Caledonia Avenue is under construction.

4.0 THE PARTIES COVENANT TO AND AGREE WITH EACH OTHER, as follows:

- 4.1 If the Transferor defaults in observance or performance of its obligations hereunder, the Transferee, after 10 days prior written notice to the Transferor specifying the default and at any time in case of emergency, may (but is not obligated to) rectify the default, and the Transferor shall pay to the Transferee, on demand, its reasonable costs in connection with so rectifying;
- 4.2 The Transferor shall, after execution hereof by it at the expense of the Transferor, 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 Transferee or have been granted in favour of the Transferee;
- 4.3 Waiver of any default by either party shall not be deemed to be a waiver of any subsequent default by that party;
- 4.4 Whenever this Agreement creates a power or obligation of the Transferee to make a decision or to exercise any contractual right or remedy, the Transferee

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;

- 4.5 Notwithstanding anything herein contained, the Transferee reserves all rights and powers of expropriation otherwise enjoyed by the Transferee;
- 4.6 Without limiting Section 4.5, nothing contained or implied in this Agreement will derogate from the obligations of the Transferor under any other agreement with the Transferee or prejudice or affect the Transferee'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 Transferor and the Transferee;
- 4.7 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 Transferee shall at all times remain the property of the Transferee, 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 Transferee;
- 4.8 No part of the title in fee simple to the Lands of the Transferor shall pass to or be vested in the Transferee under or by virtue of this Agreement, and the Transferor may fully use and enjoy all of the Lands of the Transferor subject only to the rights and restrictions in this Agreement;
- 4.9 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;
- 4.10 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;
- 4.11 The Transferor acknowledges that (a) these Covenants are enforceable against the Transferor and his successors in title, but (b) the Transferor is not personally liable for breach of these Covenants where such liability arises by reason of an act or omission occurring after the Transferor named herein or any future owner ceases to have a further interest in the Lands;
- 4.12 If at the date hereof the Transferor is not the sole registered owner of the Lands of the Transferor, this Agreement shall nevertheless bind the Transferor 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;

- 4.13 Where the expression "Transferor" includes more than one person, all covenants made by the Transferor shall be construed as being several as well as joint with respect to all persons constituting the Transferor;
- 4.14 This Agreement shall continue to benefit and be binding upon the Transferor and Transferee, and their respective heirs, administrators, executors, successors and permitted assigns, as the case may be;
- 4.15 Gender specific terms include both genders and corporations, and the singular and plural forms are interchangeable, according to the context;
- 4.16 This Agreement will be governed and construed according to the laws of the Province of British Columbia; and
- 4.17 Nothing contained or implied in this Agreement shall prejudice or affect the rights and powers of the Transferee 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.

5.0 PRIORITY AGREEMENT

- 5.1 CIBC Mortgages Inc. (A33457), as the registered holder of a charge by way of Mortgage against the within described property, which said charge is registered in the Land Title Office at Victoria, British Columbia, under number CA2340774, for and in consideration of the sum of One Dollar (\$1.00) paid by the Transferee to the said Chargeholder (the receipt whereof is hereby acknowledged), agrees with the Transferee, its successors and assigns, that the within Right of Way shall be an encumbrance upon the within described property 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.
- 5.2 Canadian Imperial Bank of Commerce, as the registered holder of a charge by way of Mortgage against the within described property, which said charge is registered in the Land Title Office at Victoria, British Columbia, under number CA2671483, for and in consideration of the sum of One Dollar (\$1.00) paid by the Transferee to the said Chargeholder (the receipt whereof is hereby acknowledged), agrees with the Transferee, its successors and assigns, that the within Right of Way shall be an encumbrance upon the within described property 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.

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"

Plan EPP55046

