



Council Report

For the Meeting of August 27, 2015

To: Council **Date:** August 13, 2015

From: Jonathan Tinney, Director, Sustainable Planning and Community Development

Subject: **Update on Rezoning Application No. 00404 and Development Permit Application No. 000323 for 2636, 2638 and 2642 Shelbourne Street – Bylaw ready to proceed to adoption**

RECOMMENDATION

Staff recommend that Council consider providing final reading and adoption for Rezoning Application No. 00404 for the property located at 2636-2642 Shelbourne Street and, if the Bylaw is adopted, that Council authorize the issuance of Development Permit Application No. 000323 in accordance with:

“That Council authorize the issuance of Development Permit Application No. 00323 for 2636, 2638 and 2642 Shelbourne Street in accordance with:

- a. Plans date stamped March 12, 2014, as amended February 26, 2015;
- b. Development meeting all *Zoning Regulation Bylaw* requirements, except for:
 - i) Part 2.138.6.c - rear yard setback reduced from 4.0m to 3.66m
 - ii) Part 2.138.6.d - side yard setbacks (north and south) reduced from 4.0m to 2.5m
 - iii) Part 2.138.6.f - separation space between buildings reduced from 5.0m to 3.02m
 - iv) Schedule C - total number of stalls reduced from 18 to 15 stalls;
- c. Landscaping refinements to the rear yard and the addition of permeable paving for the main drive aisle, to the satisfaction of staff;
- d. Final improvements in the public Right-of-Way (sidewalk and boulevard) to the satisfaction of staff;
- e. Final plans to be generally consistent with the plans identified above, to the satisfaction of staff.

Executive Summary

At the Council meeting of February 26, 2015, the Zoning Regulation Bylaw No. 14-077 was given third reading. This Bylaw will rezone the properties commonly referred to as 2636-2642 Shelbourne Street from the Single Family Dwelling District to a new proposed zone standard, Traditional Residential Attached Dwelling District, to permit a 12-townhouse unit development.

This Bylaw was held at third reading pending lot consolidation and execution and registration of the following legal agreements:

- Statutory Right of Way
- Easement Agreement and associated Section 219 Covenant.

These agreements have now been registered (copies attached) and the Bylaw can now proceed to adoption.

After adoption of this Bylaw, a resolution to issue the Development Permit is required. At the Public Hearing of February 26, 2015, the applicant indicated that the height restriction in the new standard zone would be satisfied and, therefore, a height variance is not required. The motion to issue the Development Permit should, therefore, be amended as follows:

"That Council authorize the issuance of Development Permit Application No. 00323 for 2636, 2638 and 2642 Shelbourne Street in accordance with:

- a. Plans date stamped March 12, 2014 (Note: revised reference to plans for height verification);
- b. Development meeting all *Zoning Regulation Bylaw* requirements, except for:
 - i) ~~Part 2.138.4.a – Building height increased from 10.5m to 12.3m~~
 - ii) Part 2.138.6.c - Rear yard setback reduced from 4.0m to 3.66m,
 - iii) Part 2.138.6.d – Side yard setbacks (north and south) reduced from 4.0m to 2.5m
 - iv) Part 2.138.6.f – Separation space between buildings reduced from 5.0m to 3.02m
 - v) Schedule C – Total number of stalls reduced from 18 to 15 stalls;
- c. Landscaping refinements to the rear yard and the addition of permeable paving for the main drive aisle, to the satisfaction of staff;
- d. Final improvements in the public right-of-way (sidewalk and boulevard) to the satisfaction of staff;
- e. Final plans to be generally consistent with the plans identified above, to the satisfaction of staff.

Respectfully submitted,



Lucina Baryluk, Senior
Process Planner,
Development Services
Division



Alison Meyer, Assistant
Director, Development
Services Division



Jonathan Tinney, Director,
Sustainable Planning and
Community Development

Report accepted and recommended by the City Manager: _____



Jason Johnson

Date: _____

August 20, 2015

Attachments

- Statutory Right-of-Way Agreement
- Easement Agreement.

VICTORIA LAND TITLE OFFICE

LAND TITLE ACT
FORM C (Section 233) CHARGE

Aug-10-2015 17:35:45.007

CA4596544 CA4596545

GENERAL INSTRUMENT - PART 1 Province of British Columbia

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.

John Dawson
Mullin 87JXTV

Digitally signed by John Dawson
Mullin 87JXTV
DN: cn=CA, cn=John Dawson Mullin
87JXTV, o=Lawyer, ou=Verify ID at
www.juricourt.com/LXUP.cdm?
id=87JXTV
Date: 2015.08.10 17:07:05 -0700

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

MULLIN DEMEO

Barristers and Solicitors

1626 Garnet Road

Victoria

BC V8P 3C8

Telephone: (250) 477-3327

File: Shelbourne/66203/JDM

(Statutory Right of Way)

Document Fees: \$156.20

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

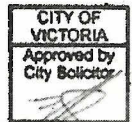
[PID]

[LEGAL DESCRIPTION]

NO PID NMBR LOT A, SECTION 8A, VICTORIA DISTRICT, PLAN EPP43957

STC? YES

Related Plan Number: EPP43957



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)

JOHN D. MULLIN

Barrister & Solicitor

Mullin DeMeo

1626 Garnet Road

Victoria, BC V8P 3C8

Execution Date		
Y	M	D
14	11	27

Transferor(s) Signature(s)

SHELBOURNE STREET
HOLDINGS LTD. by its authorized
signatory:

Name: Michael Miller

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
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PAGE 1 OF 12 PAGES

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1626 Garnet Road

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BC V8P 3C8

Telephone: (250) 477-3327

File: Shelbourne/66203/JDM

(Statutory Right of Way)

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[PID]

[LEGAL DESCRIPTION]

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STC? YES

Related Plan Number: EPP43957

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1 CENTENNIAL SQUARE

VICTORIA

BRITISH COLUMBIA

V8W 1P6

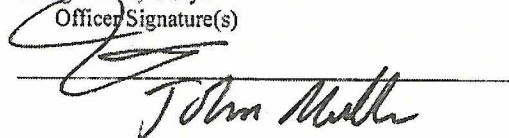
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Officer Signature(s)



Barrister & Solicitor

Mullin DeMeo

1626 Garnet Road

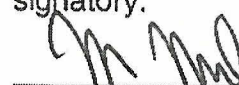
Victoria, BC V8P 3C8

Execution Date

Y	M	D
14	11	27

Transferor(s) Signature(s)

SHELBOURNE STREET
 HOLDINGS LTD. by its authorized
 signatory:



Name: Michael Miller

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)

Execution Date

Transferor / Borrower / Party Signature(s)

KERRI CHRISTENSEN

Y	M	D
15	07	24

COAST CAPITAL SAVINGS CREDIT
UNION by its authorized signatory(ies):

Commissioner for Taking Affidavits in BC

15117 - 101 Avenue
Surrey, BC V3R 8P7
Expires March 31, 2018Name: Jay Kuster
Director, Commercial CreditName: Bill Sharma
Director, Credit Solutions

(as to both signatures)

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)



ROBERT G. WOODLAND

Commissioner for Taking Affidavits in BC

1 Centennial Square
Victoria, BC V8W 1P6

Execution Date

Y M D

14

Transferor / Borrower / Party Signature(s)

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



Name: Lisa Helps, Mayor

MAYOR LISA HELPS
#1 Centennial Square
Victoria BC V8W 1P6



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 OF 12 PAGES

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Statutory Right of Way

Document Reference: Entire Document
Person Entitled to Interest: Transferee

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Priority Agreement

Priority Agreement granting the Statutory Right of
Way herein priority over Mortgage CA _____
and Assignment of Rents CA _____
Document Reference: Page 11
Person Entitled to Interest: Transferee

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 5 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):

SHELBOURNE STREET HOLDINGS LTD., INC. NO. BC0935190 (as to Statutory Right of Way)

NAME OF MORTGAGEE TO BE DETERMINED (as to Priority Agreement)

TERMS OF INSTRUMENT - PART 2

Statutory Right of Way - Highway

BETWEEN:

SHELBOURNE STREET HOLDINGS LTD., INC. NO. BC0935190
1976 Oak Bay Avenue, Victoria, BC, V8R 1E2

(hereinafter called the "Transferor")

OF THE FIRST PART

AND:

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

(hereinafter called the "Transferee")

OF THE SECOND PART

WHEREAS:

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

NO PID NMBR
Lot A, Section 8A, Victoria District, Plan EPP43957

(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 in heavy outline and identified as SRW Area on the Right of Way Plan prepared by James Worton, B.C.L.S. and filed in the Victoria Land Title Office under Plan No. EPP43958 a 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 Grants, conveys, confirms and transfers unto the Transferee for itself, and its employees, agents, workers, contractors and all other licensees of the Transferee together with machinery, vehicles, equipment and materials, the right at all times to enter upon and to pass and repass over such of the Lands of the Transferor as may reasonably be required for the purpose of ingress to and egress from the Right of Way;

1.5 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;

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; 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 _____, as the registered holder of a charge by way of Mortgage and Assignment of Rents against the within described property, which said charge is registered in the Land Title Office at Victoria, British Columbia, under number CA_____ and CA_____, 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.

Explanatory Plan of part of
Lot A, Section 8A, Victoria
District, Plan EPP43957

PLAN EPP43958

For Statutory Right of Way Purposes
Pursuant to Section 99(1)(e) of the Land Title Act.

BCGS 92B.044

SCALE 1 : 3 0 0



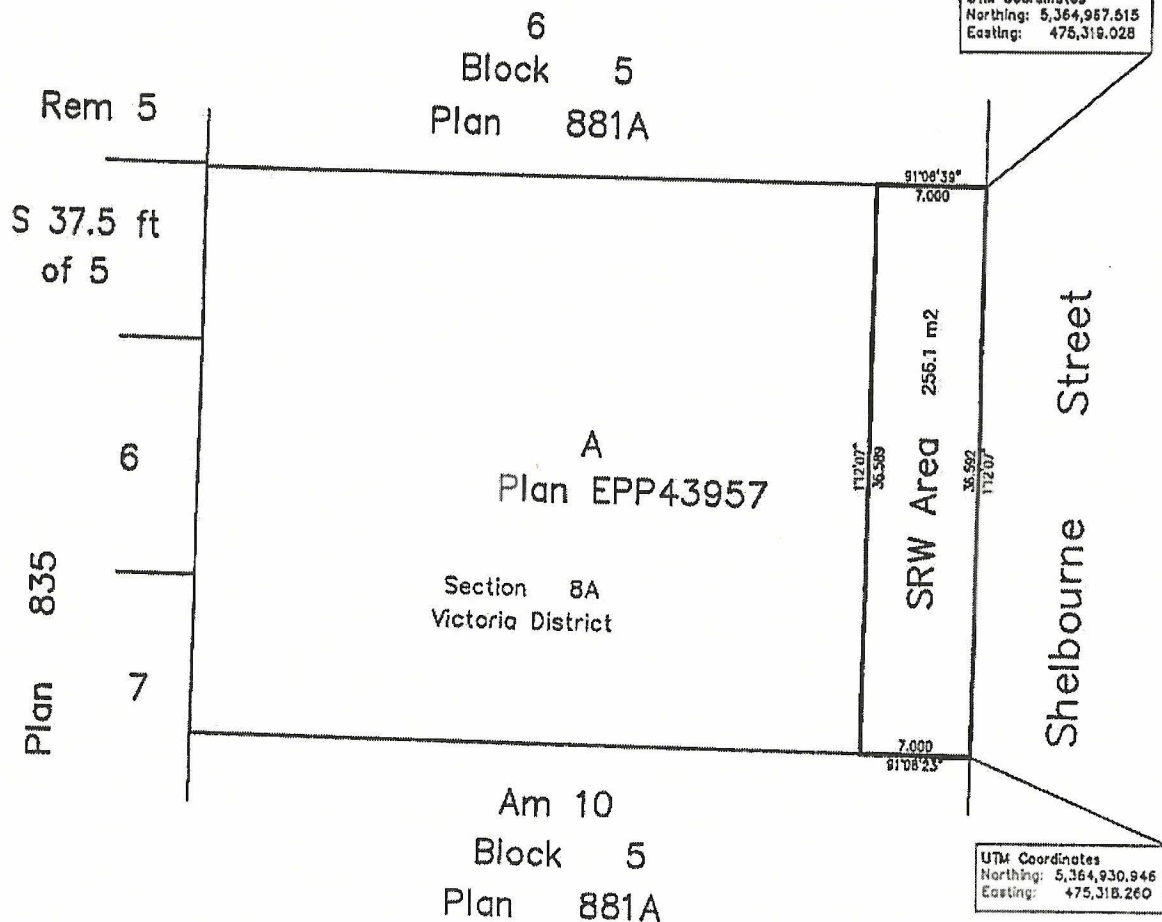
All distances are shown in metres.

The intended plot size of this plan
is 280mm in width by 432mm in height
(B size) when plotted at a scale of 1:300.

LEGEND

Grid Bearings are derived from previously Integrated Cadastral Survey
Plan EPP43957, Integrated Survey Area No. 17, The City of Victoria,

This plan shows ground level measured distances. Prior to computation
of UTM coordinates distances, multiply by combined factor 0.9996075.



This plan lies within the
Capital Regional District.

File : 11337 EXP SRW 01

POWELL & ASSOCIATES

B C Land Surveyors
250-2950 Douglas Street
Victoria, BC V8T 4N4
phone (250) 382-8355

This plan is based on the following Land
Title and Survey Authority of BC records:

- Plan EPP43957

James Worton, BCLS 757

19th day of November, 2014

LAND TITLE ACT
FORM C (Section 233) CHARGE
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Aug-10-2015 17:35:45.008

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PAGE 1 OF 10 PAGES

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John Dawson
Mullin 87JXTV

Digitally signed by John Dawson
Mullin 87JXTV
DN: c=CA, cn=John Dawson Mullin
87JXTV, o=Lawyer, ou=Verify ID at
www.juricart.com/LKUP.cfm?
id=87JXTV
Date: 2015.08.10 17:07:20 -0700

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

MULLIN DEMEO

Barristers and Solicitors

1626 Garnet Road

Victoria

BC V8P 3C8

Telephone: (250) 477-3327

File: Shelbourne/66203/JDM

(Easement & Section 219 Covenant)

Document Fees: \$312.40

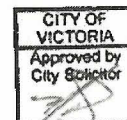
Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

NO PID NMBR LOT A, SECTION 8A, VICTORIA DISTRICT, PLAN EPP43957



STC? YES

Related Plan Number: EPP43957

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Officer Signature(s)

JOHN D. MULLIN

Barrister & Solicitor

Mullin DeMeo

1626 Garnet Road

Victoria, BC V8P 3C8

Execution Date

Y	M	D
14	11	27

Transferor(s) Signature(s)

SHELBOURNE STREET
HOLDINGS LTD. by its authorized
signatory:

Name: Michael Miller

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 10 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.



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

MULLIN DEMEO

Barristers and Solicitors

1626 Garnet Road

Victoria

BC V8P 3C8

Telephone: (250) 477-3327

File: Shelbourne/66203/JDM

(Easement & Section 219 Covenant)

Deduct LTSA Fees? Yes ☒

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

NO PID NMBR LOT A, SECTION 8A, VICTORIA DISTRICT, PLAN EPP43957

STC? YES

Related Plan Number: **EPP43957**

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

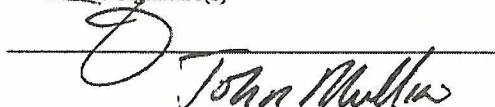
6. TRANSFEREE(S): (including postal address(es) and postal code(s))

SEE SCHEDULE

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)


John Mullin
 Barrister & Solicitor
 Mullin DeMeo
 1626 Garnet Road
 Victoria, BC V8P 3C8

Execution Date		
Y	M	D
14	11	27

Transferor(s) Signature(s)

**SHELBOURNE STREET
 HOLDINGS LTD. by its authorized
 signatory:**


 Name: Michael Miller

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 10 pages

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

 KERRI CHRISTENSEN

Y	M	D
15	07	24

 COAST CAPITAL SAVINGS CREDIT
UNION by its authorized signatory(ies)

Commissioner for Taking Affidavits in BC

 15117 - 101 Avenue
 Surrey, BC V3R 8P7
 Expires March 31, 2018

 Name: Jay Kuster
 Director, Commercial Credit

 Name: Bill Sharma
 Director, Credit Solutions

 (as to both signatures)

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.

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 OF 10 PAGES

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Easement		Easement over part shown in heavy outline and identified as Easement Area on Reference Plan EPP43959 Document Reference: Entire Document Person Entitled to Interest: Registered owner of Lot 6, Block 5, Section 8A, Victoria District, Plan 881A
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Section 219 Covenant Document Reference: Page 8 Person Entitled to Interest: The Corporation of the City of Victoria
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Priority Agreement granting the Easement herein priority over Mortgage CA_____ and Assignment of Rents CA_____ Document Reference: Page 9 Person Entitled to Interest: Registered Owner of Lot 6, Block 5, Section 8A, Victoria District, Plan 881A
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Priority Agreement granting the Covenant herein priority over Mortgage CA_____ and Assignment of Rents CA_____ Document Reference: Page 9 Person Entitled to Interest: The Corporation of the City of Victoria
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION

LAND TITLE ACT
FORM E

SCHEDULE

PAGE 5 OF 10 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):

SHELBOURNE STREET HOLDINGS LTD., INC. NO. BC0935190 (as to Easement/Section 219 Covenant)

NAME OF MORTGAGEE TO BE DETERMINED (as to Priority Agreement)

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

GARY PAUL ROBBINS, Mechanic
SHERRY LEE ROBBINS, Housewife
2646 Shelbourne Street, Victoria, BC, V8R 4L9
as Joint Tenants
(as to Easement)

THE CORPORATION OF THE CITY OF VICTORIA
1 Centennial Square
Victoria, BC, V8W 1P6
(as to Section 219 Covenant)

PART 2 – TERMS OF INSTRUMENT
EASEMENT

WHEREAS:

- A. The Transferor is the registered owner of lands and premises in the City of Victoria, Province of British Columbia, legally described as:

NO PID NMBR

Lot A, Section 8A, Victoria District, Plan EPP43957

(the “Servient Tenement”).

- B. The Transferee is the registered owner of lands and premises in the City of Victoria, Province of British Columbia, legally described as:

008-202-818

Lot 6, Block 5, Section 8A, Victoria District, Plan 881A

(the “Dominant Tenement”).

- C. Section 219 of the *Land Title Act* provides that a covenant, whether negative or positive in nature, may be registered against the title to land in respect of the use of land and that the land not be built on except in accordance with the covenant.
- D. The Corporation of the City of Victoria (the “City”) is a municipality for the purposes of section 219(1) of the *Land Title Act*.
- E. The Transferor has agreed to provide an access easement upon the terms as specified herein and to grant a covenant in favour of the City pursuant to Section 219 of the *Land Title Act* and the City is agreeable to accepting the covenant on the terms and conditions contained herein.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency whereof is hereby acknowledged) the parties hereto agree as follows:

1. The Transferor, subject to the conditions in paragraph 2, hereby grants in perpetuity to the Transferee, its servants, agents, invitees and licensees, in common with the Transferor, the right and easement (the “Easement”) at all times and from time to time:

- (a) to pass and repass as pedestrians or with vehicles, together with machinery, equipment and materials, for the purpose of ingress and egress to and from the Dominant Tenement over that part of the Servient Tenement shown in heavy outline and identified as Easement Area on Reference Plan prepared by James Worton, B.C.L.S., having Land Title Office number EPP43959, a copy of which is attached hereto as Schedule "A" (the "Easement Area").
- 2. The easement rights herein granted are conditional upon the Transferor and Transferee redeveloping each of the Servient Tenement and the Dominant Tenement for any purpose other than detached single family dwellings. For certainty, if the Transferor redevelops the Servient Tenement for any purpose other than detached single family dwellings, then such development shall ensure the easement rights herein granted are preserved and protected, notwithstanding that the Dominant Tenement has not been redeveloped.
- 3. It is mutually agreed by and between the parties that, upon the condition in clause 2 above being satisfied:
 - (a) if the Transferee elects to use the Easement Area, the Transferor or the Servient Tenement Strata Corporation shall determine the Transferee's fair and equitable portion of the costs associated with the Easement Area, which cost shall be allocated between the Dominant Tenement and Servient Tenement approximately in proportion to their respective lot areas, and which costs shall include the repair, maintenance and upkeep of the Easement Area, and the Transferee shall pay such amounts when due;
 - (b) the cost of completing the remainder of road within the Easement Area required to allow access to the Dominant Tenement shall be the responsibility of the Transferee;
 - (c) no impediments shall be left so as to restrict the free flow of ingress and egress over the Easement Area;
 - (d) no vehicles shall be allowed to park, providing this shall not prevent the Transferor using a portion of the Easement Area for parking prior to the condition in Clause 2 being satisfied, or stop unnecessarily upon or in the Easement Area; and
 - (e) the parties agree that the Transferor's buildings and improvements shall be permitted to encroach into the Easement Area provided they do not interfere with the Easement Rights of the Transferee.

**COVENANT IN FAVOUR OF THE CITY UNDER SECTION 219 OF THE
LAND TITLE ACT, R.S.B.C. 1996, c. 250**

5. The Transferor, for itself and its successors and assigns covenants and agrees with the City under s. 219 of the *Land Title Act* (being the intention of the parties that this covenant will be annexed to the Servient Tenement) that the Servient Tenement shall only be used in compliance with the Easement and without limiting the foregoing, that the Transferor will not use any portion of the Easement Area or allow the Servient Tenement to be used for any purpose which would detract from or interfere with the enjoyment and purpose of the Easement.
6. The rights given to the City by this agreement are permissive only and nothing in this agreement imposes any legal duty of any kind on the City to anyone, or obliges the City to enforce this agreement, to perform any act or to incur any expense in respect of this agreement.
7. Under no circumstances whatsoever shall the easement hereunder be suspended, interrupted or terminated except with the written consent of the City.
8. This agreement does not
 - (a) affect or limit the discretion, rights or powers of the City under any enactment (as defined in the *Interpretation Act*, R.S.B.C. 1996, c. 238, on the reference date of this Agreement) or at common law, including in relation to the use or subdivision of the Servient Tenement;
 - (b) affect or limit any enactment relating to the use or subdivision of the Servient Tenement, or
 - (c) relieve the Transferor from complying with any enactment, including in relation to the use or subdivision of the Servient Tenement.
9. This agreement shall be construed as running with the land, and no part of the fee shall pass to or be vested in the Transferee under or by these presents.
10. The expressions "Transferee" and "Transferor" herein contained shall be deemed to include the executors, administrators, successors and assigns of such parties wherever the context so admits.
11. Wherever the singular or masculine are used in this agreement, they shall be construed as meaning the plural or feminine or the body politic and vice versa where the context or the parties so require.

IN WITNESS WHEREOF the parties signing the Form C General Instrument attached hereto agree to be bound by the terms of this Agreement.

CONSENT AND PRIORITY AGREEMENT

WHEREAS _____ (the "Chargeholder") is the holder of a Mortgage and Assignment of Rents (called the "Charges") encumbering the lands (the "Lands") described in Item 2 of the Land Title Act Form C attached hereto, which were registered in the Victoria Land Title Office under numbers CA _____ and CA _____ respectively.

THEREFORE THIS CONSENT AND PRIORITY AGREEMENT IS EVIDENCE THAT IN CONSIDERATION OF \$1.00 AND OTHER GOOD AND VALUABLE CONSIDERATION PAID BY THE TRANSFEREE TO THE CHARGEHOLDER:

1. The Chargeholder hereby consents to the granting and registration of the Easement and Section 219 Covenant attached hereto (the "Easement and Covenant") and the Chargeholder hereby agrees that the Easement and Covenant shall be binding upon its interest in and to the Lands.
2. The Chargeholder hereby grants to the Transferee described in Item 6 of the *Land Title Act* Form C attached hereto priority for the Easement and Covenant over the Chargeholder's right, title and interest in and to the Lands, and the Chargeholder does hereby postpone the Charges and all of its right, title and interest thereunder to the Easement and Covenant as if the Easement and Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Charges.

IN WITNESS WHEREOF, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing the *Land Title Act* Form C above which is attached hereto and forms part of this Agreement.

Reference Plan of part of
Lot A, Section 8A, Victoria
District, Plan EPP43957

For Easement Purposes

Pursuant to Section 99(1)(e) of the Land Title Act,
BCGS 92B.044

SCALE 1 : 200



All distances are shown in metres.

The intended plot size of this plan
is 432mm in width by 560mm in height
(C size) when plotted at a scale of 1:200.

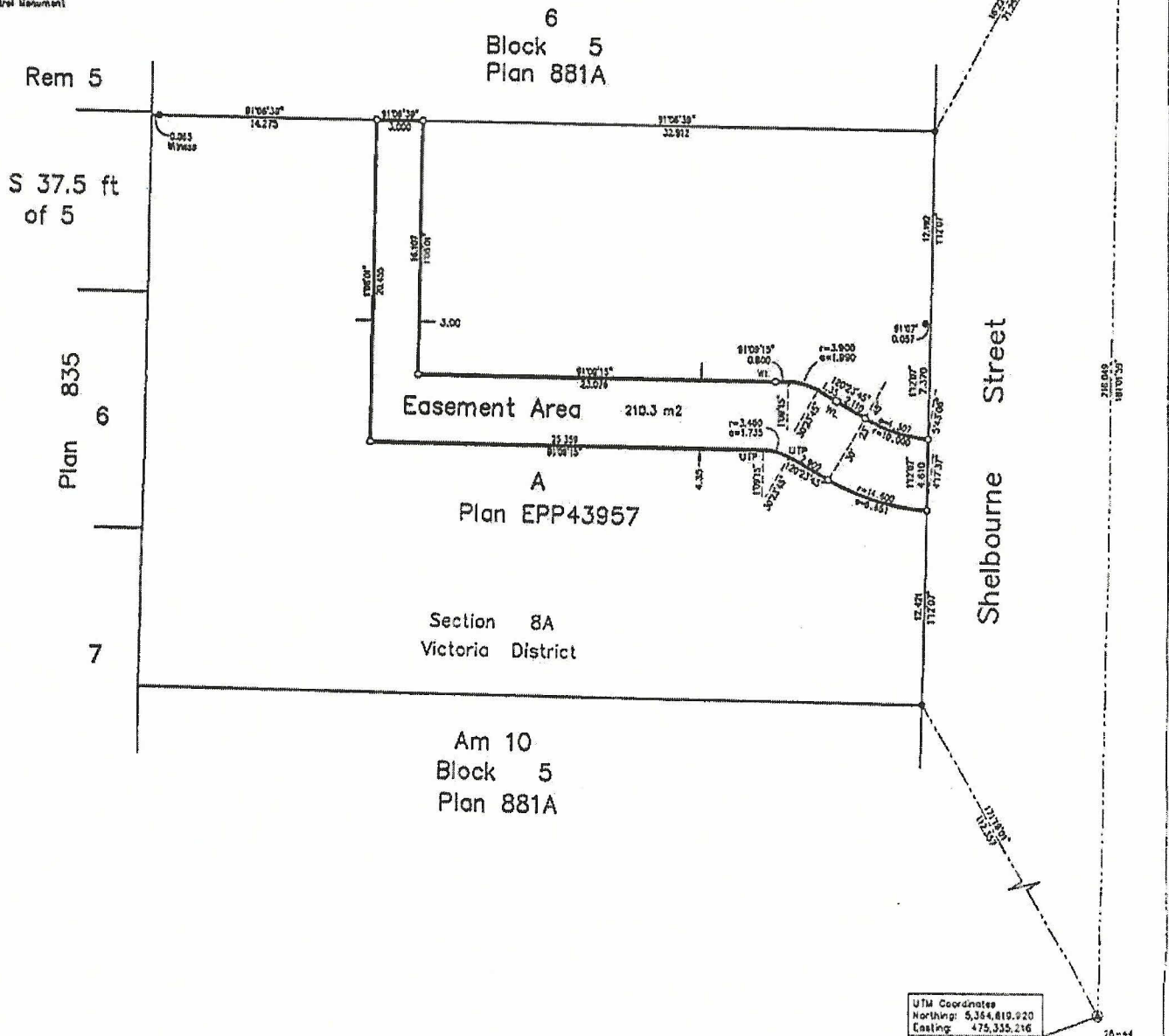
LEGEND

Integrated Survey Area No. 17, City of Victoria, NAD83(CRS)[3.0.0.BC1.CRD]

Grid bearings are derived from observations between geodetic
control monuments 26-32 and 26-44.

This plan shows horizontal ground-level distances except where
otherwise noted. To compute grid distances, multiply ground-level
distances by combined factor of 0.9998075 which has been derived
from control monuments 26-32 and 26-44.

Found	Set	Denotes
•	○	Standard Iron Post
□	□	Standard Lead Plug
⊙	⊙	Control Monument



File: 11337-26 EASEMENT.D1
POWELL & ASSOCIATES
B C Land Surveyors
250-2950 Douglas Street
Victoria, BC V8T 4N6
phone (250) 382-8855

This plan lies within the Capital
Regional District.

The field survey represented by this plan was
completed on the 18th day of November, 2014
James Worton, BCLS 757