

AUG 01 2018

Amended pursuant to Rule 16-1(19)(b)(i)

No. S-177029
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER

PETITIONER

AND:

ATTORNEY GENERAL OF BRITISH COLUMBIA

RESPONDENT

AMENDED PETITION TO THE COURT

(original filed July 26, 2017)

ON NOTICE TO:

Attorney General of British Columbia
PO Box 9290 StnProvGovt
Victoria BC V8W 9J7

This proceeding is brought for the relief set out in Part 1 below by

[x] the person(s) named as petitioner(s) in the style of proceedings above

If you intend to respond to this petition, you or your lawyer must

(a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and

(b) serve on the petitioner(s)

(i) 2 copies of the filed response to petition, and

(ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner(s),

(a) if you were served with the petition anywhere in Canada, within 21 days after that service,

(b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the petition anywhere else, within 49 days after that service, or

(d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is: 800 Smithe Street, Vancouver, B.C. V6Z 2E1
(2)	The ADDRESS FOR SERVICE of the petitioner(s) is: c/o Lidstone & Company Barristers and Solicitors Suite 1300 – 128 Pender Street West Vancouver, B.C. V6B 1R8
(3)	The name and office address of the petitioner's lawyer is: Paul A. Hildebrand Lidstone & Company Barristers and Solicitors Suite 1300 – 128 Pender Street West Vancouver, B.C. V6B 1R8

Claim of the Petitioner

Part 1: ORDERS SOUGHT

1. An order varying the terms on which the Petitioner holds the lands legally known and described as:

PID: 011-645-326

Amended Lot 5 (Explanatory Plan 4235) Block 3A Eastern Part of District Lot 815 Plan 4327 except Plan EPP84767

PID: 011-645-342

Amended Lot 6 (Explanatory Plan 4235) Block 3A Eastern Part of District Lot 815 Plan 4327 except Plan EPP84767

Area dedicated as park on Plan EPP84767

(collectively the "Property")

and in particular permitting the Petitioner to dispose of an area comprising approximately 43% of the Property on the terms set out in the draft Order attached hereto.

(i) [deleted]

(ii) [deleted]

2. Such further Declarations, Orders or Directions as this Court deems to be appropriate.

Part 2: FACTUAL BASIS

1. The Petitioner, the Corporation of the District of West Vancouver (the "District") is a municipal corporation duly constituted pursuant to the laws of British Columbia, having its principal place of business at 750 17th Street, West Vancouver, B.C.
2. The Property is a 2.4 acre site in West Vancouver with civic addresses 2519 and 2539 Rosebery Avenue. The Property was previously the residence of Pearley Ransdell Brissenden and his wife Clara Norine Brissenden. The Property is approximately 2.4 acres in area, and has one single family residence on it, but is otherwise undeveloped. The Property is adjacent to the Upper Levels Highway, and in a predominantly residential area.
3. During their lifetimes, the Brissendens advised the District of their intention to bequeath the Property to the District for park purposes, and on September 11, 1989, the municipal council of the District resolved to accept the bequest, and that following transfer of the Property to the District, the Property would be known as Brissenden Park.
4. Mr. Brissenden predeceased his wife and Mrs. Brissenden passed away on or about June 5, 1990. By her will, Mrs. Brissenden bequeathed the Property to the District to be used and maintained by it for public park purposes.
5. By reason of the foregoing, the District holds the Property under a charitable purpose trust.
6. The Property is not well suited for use as a public park. The terrain is steep, and the Property is relatively difficult to access, as it is not on any public transit lines. The Property has no public amenities, facilities, or defined public parking, and has never been developed for park use. The Property has not been widely used as a park, and is unlikely ever to be widely used as a park in the future.

7. Over a number of years, the District has assembled several waterfront parcels of park land in the Ambleside area, and seeks to expand its park land in that area. To date, the District has acquired 30 of 32 formerly privately held properties in the area. The waterfront parks in Ambleside are among the most widely used in West Vancouver, and connect to the Centennial Seawalk, also a popular public amenity. Expansion of the Ambleside waterfront parks has required, and continues to require, substantial capital funding, as the properties being acquired are developed residential lots in desirable waterfront locations.
8. In January 2017, the municipal council of the District decided to initiate a public consultation process to investigate the suitability of disposing of some or all of the Property to raise funding for additional park land in the Ambleside area. The public consultation process included the following steps:
 - (a) Public information meetings held February 7 and 8, 2017;
 - (b) Meetings with residents of the local neighborhood on February 21, 22, 23 and March 13, 2017.
 - (c) A public survey, conducted both in hard copy and online.
 - (d) Review of correspondence submitted by residents.

The results of the public consultation process were generally in favor of disposing of some or all of the Property in order to acquire additional park land in the Ambleside area.

9. Following the public consultation described above, the municipal council of the District resolved to pursue the following course of action, subject to obtaining court approval:
 - (a) Dispose of (by sale or lease) approximately 50% of the Property to raise funds to purchase additional park land in the Ambleside area.
 - (b) Retain the balance of the Property as a local park.

With respect to point (a), although the two parcels comprising the Property are east and west of each other, District staff have determined that it would be more appropriate to divide the property north-south for purposes of disposition. [Deleted].

9A. By resolution dated June 19, 2017, the municipal council of the District further resolved that the terms of the trust pursuant to which the Property is held are no longer in the best interests of the District.

10. The municipal council of the District has directed staff to take steps to acquire the remaining two Ambleside properties (located at 1444 and 1448 Argyle Avenue) when an appropriate opportunity arises. Accordingly, the District may acquire one or both of those properties prior to completing the disposition of Brissenden Park, in which case the District seeks to use the proceeds to repay any borrowing incurred to fund the purchase of

such property, for the reimbursement of funds used for the cost of such acquisition from a reserve fund of the District or other source.

10A. Subsequent to the filing of the Petition herein, the District has developed a more specific Action Plan which will both reduce the amount of land to be disposed of and enhance the utility of the remaining park land. The principal features of the Action Plan are as follows:

- (a) The amount of land to be disposed of has been reduced from approximately 50% to approximately 43% of the present area of Brissenden Park, representing approximately 44,712 square feet. The land to be disposed of will consist of three subdivided parcels, two of which will be 93.8 feet in width with the third being 127.2 feet in width. All of the lots will be 144 feet in depth. The size and siting of the lots will be consistent with the lots on the other side of Rosebery Avenue, to maintain consistency with the existing development in the neighborhood.
- (b) In addition, the District will retain a statutory covenant over an area approximately 20 feet wide at the eastern edge of the third lot, to maintain an entrance to Brissenden Park directly from the corner of 25th Street and Rosebery Avenue. This will effectively add another 2,880 square feet (approx.) to the remaining park land, and will be operated as part of "Brissenden Park". Upon disposition of the three new lots, the District will also register a tree protection covenant on all three titles, preventing the removal or unauthorized cutting of trees from the northern ten feet of each lot. The tree protection covenants will enhance the "look and feel" of the remaining park land by providing a transition from the treed parkland to the residential lots to the south.
- (c) Subject to obtaining the required approvals from the Provincial Government and completing the statutory road closure procedures, the District also plans to close a portion of the existing 25th Street road allowance, which lies at the eastern boundary of the Property, and add that to the park area. This portion of the 25th Street road allowance has never been developed as road, and remains in its natural, treed state. It is no longer required as a road allowance as, subsequent to the Upper Levels Highway, there is no road system to the north to which it can connect. This land will add another 5,800 square feet (approx.) to the park area.
- (d) Three walking trails will be constructed either in or near the park area. A walking trail running generally northwest to southeast will traverse the northern area of the Property, from approximately its western boundary to its eastern boundary. A second trail will run north south through the covenant area described in (b), above, connecting the first trail to Rosebery Avenue, and to other walking trails which lead south from Rosebery Avenue. The third trail will be constructed from the northwest corner of the Property, to connect to 26th Street and the existing pedestrian overpass over the Upper Levels Highway.

- (e) Following the acquisition of the two remaining properties at 1444 and 1448 Argyle Avenue, an area consisting of approximately 17,200 square feet (four lots at 1444, 1448, 1454, and the previous 1460 Argyle Avenue) will be named “Brissenden Waterfront Park” and will be added to the assets subject to the trust. The properties at 1454 and 1460 Argyle Avenue were previously acquired by the District, and the property at 1460 Argyle Avenue has since been dedicated as park by District bylaw. The District’s Ambleside Waterfront Concept Plan (endorsed by West Vancouver Council in 2016) proposes that a new community arts building will be built at approximately the location of the lots currently identified as 1444 and 1448 Argyle Avenue (i.e. the properties which the District proposes to acquire using the proceeds of disposition of part of the Property). However, on June 25, 2018, West Vancouver Council also approved the West Vancouver Arts & Culture Strategy (2018-2023), and directed that a sub-committee be established to complete a comprehensive arts and culture facilities plan for Council approval by March 2019. As a result, the proposed location for the new community arts building could change, either to a different position on the waterfront, or to a different location altogether. To accommodate the different planning possibilities which might apply in this area, and in order to preserve green space at the proposed Brissenden Waterfront Park, the District proposes that the Order herein maintain at least 50% of Brissenden Waterfront Park as public green space, but permit the District to build public buildings on up to 50% as well.

Taking into consideration the covenant area referred to in (b), above, and the additional land to be added to the park from the 25th Street road allowance, the total area of Brissenden Park will be reduced from approximately 104,397 square feet to approximately 67,441 square feet, or a reduction of approximately 35%. This calculation excludes the area of approximately 17,200 square feet which will become Brissenden Waterfront Park, as referred to in (e), above.

11. The course of action set out above is in the best interests of the District and its residents in that it meets the following objectives.
- (a) Substantial additional funding can be generated to expand the District’s park land along the Ambleside waterfront, which is one of the best utilized and most popular park areas in the District.
 - (b) The part of the Property which the District will retain will be sufficient to provide a walking trail within a smaller, local park.
 - (c) The course of action is also consistent with the District’s Parks Master Plan, which contemplates disposing of park land to enhance the District’s park inventory.

Part 3: LEGAL BASIS

1. The circumstances of the acquisition of the Property give rise to a charitable purpose trust: *The Sidney and North Saanich Memorial Park Society v. British Columbia (Attorney General)* 2016 BCSC 589; *Save the Heritage Simpson Covenant Society v.*

City of Kelowna, 2008 BCSC 1084; *O'Neill Community Ratepayers Assn. v. Oshawa (City)*, 1995 CanLii 7170 (ON SC); *Save the Waterfront Parks Society v. The City of Vancouver et al*, 2004 BCSC 430.


2. The court has jurisdiction to vary the terms of the trust under s. 184(2) of the *Community Charter*, S.B.C. 2003, c. 26.
3. *Trustee Act* R.S.B.C. 1996, c. 464, s. 86.
4. The inherent jurisdiction of the court.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Mark Chan;
2. Affidavit #1 of Anne Mooi;
3. Affidavit #1 of Loreen May Williams;
4. Affidavit #1 of John Elwick.
5. Affidavit #1 of Robin Phillips;
6. Affidavit #2 of Mark Chan;

The petitioner estimates that the hearing of the petition will take **30 minutes.**

Date: August 1, 2018



Signature of lawyer for the Petitioner

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this petition

with the following variations and additional terms:

.....
.....
.....

Date:[dd/mmm/yyyy].....

.....
Signature of Judge Master

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER

PETITIONER

AND:

ATTORNEY GENERAL OF BRITISH COLUMBIA

RESPONDENT

ORDER MADE AFTER APPLICATION

BEFORE } THE HONOURABLE }
 } • JUSTICE * }

THIS PETITION coming on for hearing at Vancouver, British Columbia on * 2018, AND ON HEARING *, counsel for the Petitioner, and *, counsel for the Attorney General of British Columbia:

THIS COURT ORDERS AND DECLARES that:

1. The terms of the charitable purpose trust (the "Trust") pursuant to which the Petitioner holds the following real property:

PID: 011-645-326

Amended Lot 5 (Explanatory Plan 4235) Block 3A Eastern Part of District Lot 815 Plan 4327 except Plan EPP84767

PID: 011-645-342

Amended Lot 6 (Explanatory Plan 4235) Block 3A Eastern Part of District Lot 815 Plan 4327 except Plan EPP84767

Area dedicated as park on Plan EPP84767

(collectively, the "Property")

/

are varied to permit the Petitioner to create by subdivision and dispose of, by sale or lease, three new parcels having a total area of approximately 45,336 square feet, on the following terms:

- (a) The development of the remainder of the Property will proceed generally in accordance with the Action Plan (the "Action Plan") attached hereto as Appendix "A";
- (b) To the extent not used to pay for improvements to the Property, the proceeds of disposition shall be used to acquire additional park land within the boundaries of the Petitioner, whether by payment of the acquisition cost of such additional park land, or repayment of funds borrowed for such acquisition, or reimbursement of funds used for the cost of such acquisition from a reserve fund of the Petitioner or other source; and
- (c) The following properties (the "Argyle Properties"), comprising approximately 17,200 square feet and to be named "Brissenden Waterfront Park" in accordance with the Action Plan, shall form part of the Trust:

Property #1 (upon acquisition by the Petitioner):

PID: 012-859-842

Legal: Lot 9, except part in Reference Plan 953, Block 24, DL 237 Plan 3459

Civic address: 1444 Argyle Avenue, West Vancouver, B.C.

Property #2 (upon acquisition by the Petitioner):

PID: 012-859-834

Legal: Lot 8, except part in Reference Plan 953, Block 24, DL 237 Plan 3459

Civic address: 1448 Argyle Avenue, West Vancouver, B.C.

Property #3 (previously acquired by the Petitioner):

PID: 012-859-818

Legal: Lot 7, except part in Reference Plan 953, Block 24, DL 237 Plan 3459

Civic address: 1454 Argyle Avenue, West Vancouver, B.C.

Property #4 (previously acquired by the Petitioner and dedicated as park)

Previous PID: 012-859-800

Previous Legal: Lot 6, except part in Reference Plan 953, Block 24, DL 237 Plan 3459

Previous Civic address: 1460 Argyle Avenue, West Vancouver, B.C.

Provided that:

- (i) The Petitioner may erect a public building on land comprising not more than 50% of the Argyle Properties; and

(ii) Not less than 50% of the Argyle Properties will remain free of buildings, and shall be preserved as public open green space, to be maintained and used in such state and manner as the Petitioner may determine according to its policies in place from time to time for the administration of park land under its control.

2. The Petitioner shall be entitled to apply on not less than seven days notice to the Attorney General of British Columbia for further directions concerning the subdivision and disposition of lands as authorized by this order, the use of any proceeds of disposition thereof, or the development and use of the Property.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of
 party lawyer for petitioner

Signature of
 party lawyer for the Attorney General of British Columbia

By the Court:

District Registrar

APPENDIX "A"

Brissenden Park – Action Plan

Set forth below are the steps in the Action Plan proposed for the land comprising Brissenden Park, further to the Council Resolution dated June 19, 2017 and BC Supreme Court Petition No. S-177029 ("the Court Application"). These steps are intended to improve the plan, and to provide additional detail, for the development of Brissenden Park. Some or all of this Action Plan may be incorporated into a revised Court Application or court order.

The principal elements of the Action Plan are as follows.

1. Demolition of the existing residence on the property and replanting

- The existing residence on the property will be demolished, as soon as practicable following issuance of the required permits. (Demolition procedures had to await the departure of the previous caretaker, who vacated the premises in mid-July, 2018).
- Following demolition, the area will be landscaped in a manner consistent with the natural state of the property, in accordance with the recommendations of Staff in the District's Parks Department.

2. Subdivision and disposition of residential lots

- Three new residential lots are proposed, fronting on Rosebery Avenue.
- The proposed three lots are approximately 93.8, 93.8 and 127.2 feet wide and 144 feet deep. This configuration is consistent with the neighborhood. The lots have the same general area and dimensions as the three lots on the other side of Rosebery Avenue, and align with the boundaries of those lots. A plan showing the proposed subdivision is attached as Schedule "A".
- Following subdivision, the District will retain a statutory covenant (as authorized by s. 219 of the *Land Title Act*) over a strip of land approximately 20 feet wide at the eastern boundary of the new lots. The covenant will allow the public to continue to use this area as park land, preserve the trees and green space, retain a visible face for Brissenden Park on Rosebery Avenue, and provide a sense of continuity to users of the existing 25th Street walking trail to the south. The proposed covenant area is shown in Schedule "A" and the proposed covenant is attached as Schedule "B".
- The three new lots will be available for disposition, with the proceeds to be used first for costs relating to this Action Plan, and the purchase of additional park land (see point 6, below). The remaining park land to the north has been formally dedicated as park, will continue to be called "Brissenden Park", and will continue to be subject to the terms of the trust. A copy of the filed reference plan effecting the park dedication is attached as Schedule "C".
- The District will obtain a geotechnical report to determine whether development on the three new lots will adversely affect the stability of the remaining park land to the north. As part of the creation of the three new lots, the District will also require appropriate fencing to separate the private land with the parkland to the north, with a type of fencing consistent with fencing used in other District parks, and recommended by the Parks Department.

3. Walking trails

- Three walking trails will be constructed by the District.
- One walking trail will run primarily east-west, through the northern portion of the present Brissenden Park as generally shown in Schedule "D".
- The second walking trail will pass through the covenant area described above, to connect the northern part of the Brissenden property (which has now been formally dedicated as parkland) to Rosebery Avenue to the south.
- The third walking trail will be constructed from the northwest corner of Brissenden Park, and run west to connect to 26th Street and the pedestrian overpass across the Upper Levels Highway. (It should be noted that creation of this walking trail will require approval from the Provincial Government, as that land adjacent to the Upper Levels Highway is owned by the Provincial Government (MOTI)).

4. Addition of 25th Street road allowance to Brissenden Park

- The current 25th Street road allowance runs along the eastern boundary of Brissenden Park, all the way from Rosebery Avenue to the area just south of the Upper Levels Highway. Only the southern part of the road allowance is open to vehicular traffic and used as road.
- The northern portion of the 25th Street road allowance remains in its natural treed state. In order to enlarge Brissenden Park following the creation of the three new lots, it is proposed that this road area be closed and added to Brissenden Park. The road area proposed to be closed is shown in Schedule "E", and is approximately 5,800 square feet. As there is a separate statutory process for the closure of roads, if the Court Application is approved, the District will initiate steps to effect the statutory road closure process. (It should be noted that Council's statutory discretion in this matter cannot be fettered. In addition, Provincial ministerial approval is required under s. 41(3) of the *Community Charter*, as this portion of 25th Street is within 800 metres of the Upper Levels Highway, which is an arterial highway).

5. Tree protection covenant

- This Action Plan, together with the District's existing Interim Tree Bylaw, will restrict the number of trees that can be removed, and preserve a significant portion of the present wooded area.
- For additional protection, the District proposes to register a tree protection covenant against the titles to the three new residential lots, prohibiting tree removal from (approximately) the northern 10 feet of each lot without District approval. The covenant will also create a buffer between the park and the development on the new lots, to enhance the natural feel of the park. The proposed covenant area is shown in Schedule "A". The proposed tree protection covenant is shown in Schedule "F".

6. Acquisition of new park land on Argyle Avenue

- The costs for this Action Plan will be funded first from the proceeds of disposition from the new lots. Costs incurred before disposition will be funded from the District's Land Reserve Fund with possible recovery from the proceeds of disposition (as directed by Council).
- The rest, which will represent the substantial majority of the proceeds, will be allocated for the purchase of additional park land on Argyle Avenue, where two privately held lots remain at 1444

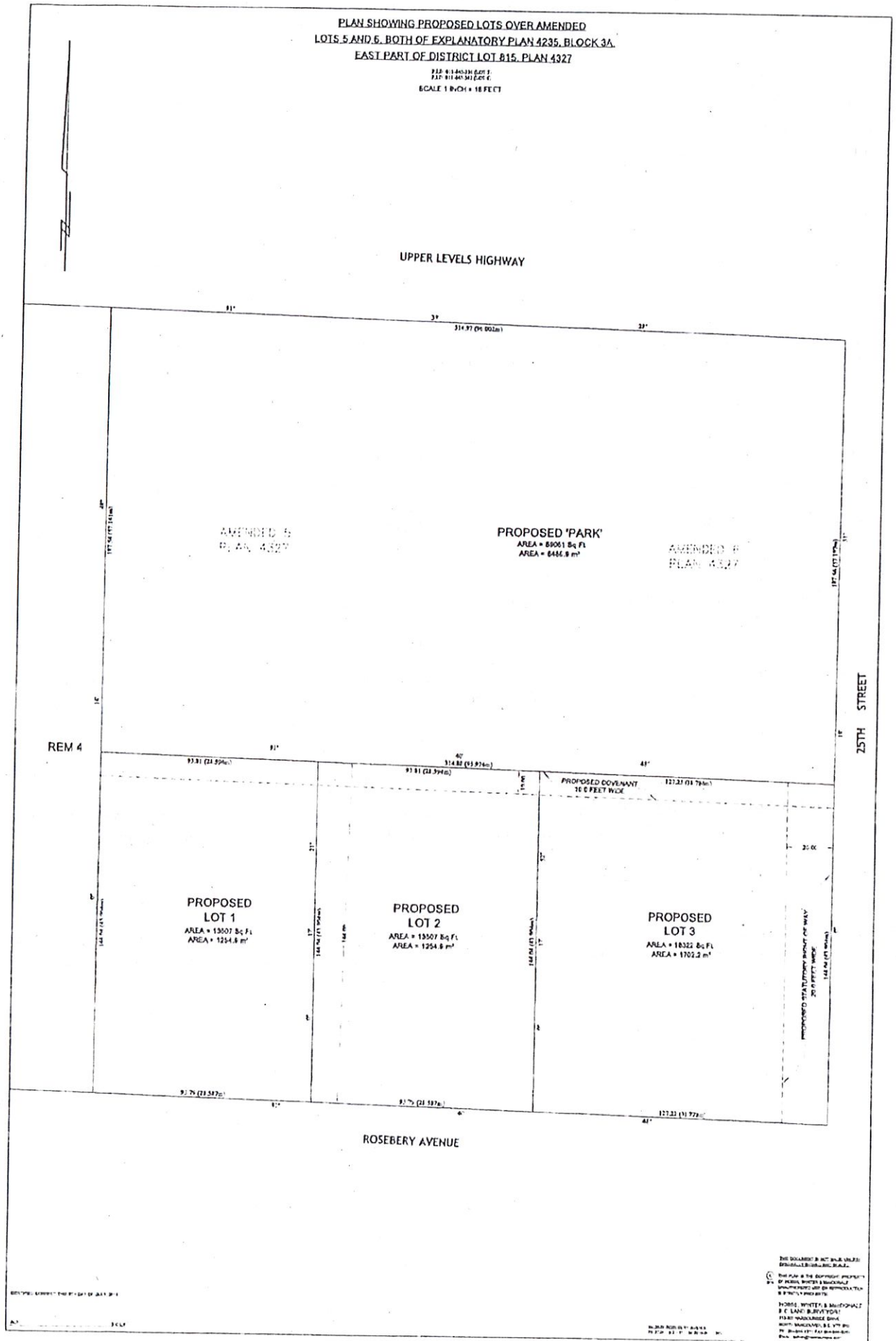
and 1448 Argyle Avenue. In order to address the reduction in size of Brissenden Park and the loss of parkland, the land to be acquired from the Brissenden proceeds and the adjoining lots at 1454 and former 1460 Argyle Avenue will be named "Brissenden Waterfront Park", to further acknowledge and recognize the substantial contribution of the Brissenden family. The court order sought in the Court Application will provide that the area designated as "Brissenden Waterfront Park" will also form part of the property of the trust which is the subject matter of the Court Application, subject to such terms and conditions as are set out in the court order. An aerial photograph showing the properties at 1444, 1448, and 1454 Argyle Avenue, the former 1460 Argyle Avenue, and the proposed "Brissenden Waterfront Park" is attached as Schedule "G". (The properties at 1454 and 1460 Argyle Avenue were acquired by the District previously, and the property at 1460 Argyle Avenue has since been dedicated as park by District bylaw.)

- To address the concern that a substantial portion of Brissenden Waterfront Park remain as green space consistent with the intent of the Brissenden trust, the District will include a term in the court order to the effect that at least 50% of Brissenden Waterfront Park will remain as green space with no buildings.
- Once the two remaining privately held lots on Argyle Avenue have been acquired, the District will also formally dedicate 1444, 1448, and 1454 Argyle Avenue as park, consistent with the approach already taken by the District with respect to the adjacent Ambleside waterfront park land.

SCHEDULE 'A'

PLAN SHOWING PROPOSED LOTS OVER AMENDED
 LOTS 5 AND 6, BOTH OF EXPLANATORY PLAN 4235, BLOCK 3A,
 EAST PART OF DISTRICT LOT 815, PLAN 4327

PLP 014403H 6/07/11
 PLP 011441 30/12/07
 SCALE 1 INCH = 10 FEET



THE DRAWING IS NOT TO BE USED FOR CONSTRUCTION OF PUBLIC WORKS OR STRUCTURES WITHOUT THE WRITTEN PERMISSION OF THE ENGINEER. THE ENGINEER'S LIABILITY IS LIMITED TO THE PROFESSIONAL SERVICES PROVIDED BY HIMSELF OR HIS FIRM.

HORNE, WINTER & MURPHY
 1100 WINDSOR DRIVE
 NORTH WILSONVILLE, OR 97138
 TEL: 503.261.1111 FAX: 503.261.1112
 WWW.HWMARCHITECTS.COM

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SCHEDULE "B"

LAND TITLE ACT

FORM C (Section 219)

Province of British Columbia

GENERAL INSTRUMENT - PART I (This area for Land Title Office use)

Page 1 of ___ pages

1. APPLICATION:

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
(PID) (LEGAL DESCRIPTION)

3. NATURE OF INTEREST:	Document Reference	Person Entitled to Interest
Description	(Page and Paragraph)	
Section 219 Covenant	Entire Agreement	Transferee

4. TERMS: Part 2 of this instrument consists of (select one only)

- (a) Filed Standard Charge Terms D. F. No.
- (b) Express Charge Terms Annexed as Part 2
- (c) Release There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S):

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER, a municipality incorporated pursuant to the Local Government Act and having its postal address at 750 17th Street, West Vancouver, British Columbia, V7V 3T3.

6. TRANSFEREE(S):

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER, a municipality incorporated pursuant to the Local Government Act and having its postal address at 750 17th Street, West Vancouver, British Columbia, V7V 3T3.

Cont'd

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**LAND TITLE ACT
FORM C Continued**

7. ADDITIONAL OR MODIFIED TERMS:

None

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the property 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)

(as to both signatures)

Y	M	D

THE CORPORATION OF THE
DISTRICT OF WEST VANCOUVER, 1
its authorized signatories

Mayor

Corporate Officer

Officer Signature(s)

(as to both signatures)

Y	M	D

THE CORPORATION OF THE
DISTRICT OF WEST VANCOUVER, 1
its authorized signatories

Mayor

Corporate Officer

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

TERMS OF INSTRUMENT – PART 2

SECTION 219 COVENANT

THIS AGREEMENT is dated for reference the ___ day of _____, 2018

BETWEEN:

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER, a municipality incorporated pursuant to the *Community Charter* and having its postal address at 750 17th Street, West Vancouver, British Columbia, V7V 3T3

(collectively the “Grantor”)

AND:

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER, a municipality incorporated pursuant to the *Community Charter* and having its postal address at 750 17th Street, West Vancouver, British Columbia, V7V 3T3

(the “Grantee”)

WHEREAS:

- A. The Grantor is the registered owner in fee simple of the lands and premises situate in the District of West Vancouver, British Columbia, and more particularly known and described as:

*

(the “Lands”);
- B. Section 219 of the *Land Title Act* provides, inter alia, that a covenant, whether of a negative or positive nature, may be registered as a charge against the title to land in favour of a Municipality or the Crown; and
- C. The Grantor wishes to grant to the Grantee the right in perpetuity to use the Easement Area for public park purposes;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the mutual covenants and agreements contained herein and the sum of \$1.00 paid by the Grantee to the Grantor (the receipt and sufficiency of which is acknowledged by the Grantor), the parties hereto covenant and agree with each other as follows:

- 1. In this Agreement the term “Easement Area” refers to that portion of the Lands shown outlined in bold on Plan _____.

2. The Grantor hereby grants to the Grantee in perpetuity the easement and right to occupy and use the Easement Area for public park purposes, and all uses and purposes reasonably incidental or related thereto, including without limitation the right to:
 - (a) permit members of the public to enter onto and to pass and repass over the Easement Area;
 - (b) construct, install, and maintain walking paths, seating areas, lighting, signage, and any other structures and facilities which in the opinion of the Grantee will enhance the utility of the Easement Area for public park purposes;
 - (c) landscape and decorate the Easement Area in a manner consistent with use as a public park, including without limitation planting trees, bushes, flowers, and other types of plants;
 - (d) install fencing to separate the Easement Area from the remainder of the Lands;
 - (e) enter onto the Easement Area for any purpose reasonably related to any of the foregoing; and
 - (f) any other activity reasonably related to any of the foregoing.
3. The Grantee will be responsible, at its own cost and expense, for the maintenance and upkeep of the Easement Area.
4. The Grantor will not:
 - (a) erect, place, or maintain any building, structure, driveway, or patio on any part of the Easement Area;
 - (b) make any alteration of any kind to the Easement Area; or
 - (c) do or knowingly permit to be done any act or thing which will interfere with use of the Easement Area as public park.

Without limiting the generality of the foregoing, the Grantor acknowledges that the Grantee shall be entitled to remove any building, structure, driveway, patio or thing which the Grantor shall erect, place, or maintain on any part of the Easement Area contrary to the terms of this Agreement.

5. Each party to this Agreement will indemnify and hold harmless the other party of and from any damages or liabilities resulting from such party's breach of this Agreement.
6. This Agreement does not:
 - (a) affect or limit the discretion, rights, duties or powers of the Grantee under any enactment or at common law, including in relation to the use, development, or servicing of the Lands;

- (b) affect or limit any enactment relating to the use, development, or servicing of the Lands; or
 - (c) relieve the Grantor from complying with any enactment, including in relation to the use, development, or servicing of the Lands.
7. All notices and other communications required or permitted to be given under this Agreement must be in writing and must be sent by registered mail or personally served as follows:

- (a) if to the Grantor, as follows:

District of West Vancouver
750 – 17th Street,
West Vancouver, B.C.
V7V 3T3

Attention: Corporate Officer

- (b) if to the another owner of the Lands, such owner's then current address as shown in the Land Title Office's records; and

- (c) if to the Grantor, as follows:

District of West Vancouver
750 – 17th Street,
West Vancouver, B.C.
V7V 3T3

Attention: Corporate Officer

Any notice or other communication that is sent by registered mail is considered to have been given five days after the day on which it is mailed at a Canada Post office. If there is an existing or threatened strike or labour disruption that has caused, or may cause, an interruption in the mail, any notice or other communication must be personally served until ordinary mail services is restored or assured. If a party changes its address it must immediately give notice of its new address to the other party as provided in this section.

8. No provision or breach of this Agreement, or any default, is to be considered to have been waived or acquiesced in by a party unless the waiver is express and is in writing by the party. The waiver by a party of any breach by the other party of any provision, or default, is not to be construed or constituted as a waiver of any further or other breach of the same or any other provision or default.
9. All rights and remedies of a party under or in respect of this Agreement (including its breach) are cumulative and are in addition to, and do not exclude, or limit any other right or remedy. All rights and remedies may be exercised concurrently.

10. Except as may be expressly provided in this Agreement, this Agreement is not to be interpreted to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty or obligation created by this Agreement.
11. Every provision of this Agreement and every obligation and covenant of the Grantor in this Agreement, constitutes a deed and a contractual obligation, and also a covenant granted by the Grantor to the Grantee in accordance with section 219 of the *Land Title Act*, and this Agreement burdens the Lands to the extent provided in this Agreement, and runs with it and binds the Grantor's successors in title. The Grantor acknowledges that the Grantor has entered into this Agreement voluntarily and has taken legal advice with regard to the entry of this Agreement and the development of the Lands.
12. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
13. This Agreement may be amended from time to time by agreement between the Grantor and the Grantee. Except as otherwise expressly provided in this Agreement, the amendment agreement must be by an instrument in writing duly executed by the Grantor and the Grantee.
14. In this Agreement:
 - (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
 - (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
 - (c) reference to the "Lands" or to any other parcel of land is a reference also to any parcel into which it is subdivided or consolidated by any means (including the removal of interior parcel boundaries) and to each parcel created by any such subdivision or consolidations;
 - (d) unless otherwise expressly provided, reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced;
 - (e) time is of the essence;
 - (f) all provisions are to be interpreted as always speaking;
 - (g) reference to a "party" is a reference to a party to this Agreement and to their respective heirs, executors, successors (including successors in title), trustees, administrators and receivers;
 - (h) reference to the Grantee is a reference also to its elected and appointed officials, officers, employees and agents;

- (i) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided;
- (j) where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including"; and
- (k) any act, decision, determination, consideration, opinion, consent or exercise of discretion by a party or person as provided in this Agreement must be performed, made, formed or exercised acting reasonably.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement by executing Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

This is the instrument creating the condition of covenant entered into under section 219 of the *Land Title Act* by the Grantor referred to herein.

Approving Officer of the Corporation of the District of West Vancouver

SCHEDULE C

REFERENCE PLAN OF PARTS OF:
(1) AMENDED LOT 5 (EXPLANATORY PLAN 4235); AND
(2) AMENDED LOT 6 (EXPLANATORY PLAN 4235);
BOTH OF BLOCK 3A, EAST PART OF DISTRICT LOT 815,
GROUP ONE, NEW WESTMINSTER DISTRICT, PLAN 4327

PLAN EPP84767

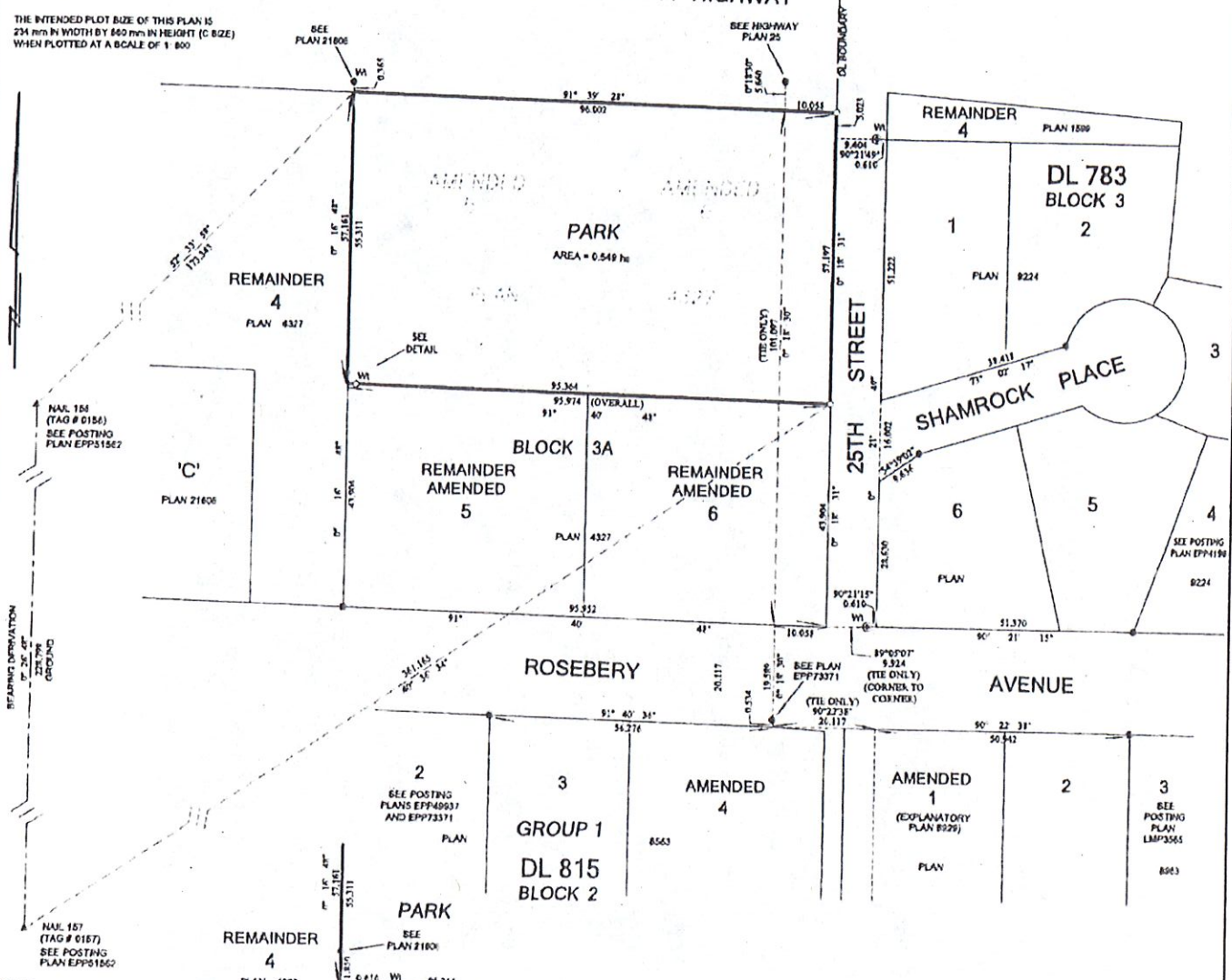
PURSUANT TO SECTION 107 OF THE LAND TITLE ACT
 FOR PARK DEDICATION

BCGS 92G035



THE INTENDED PLOT SIZE OF THIS PLAN IS
 234 mm IN WIDTH BY 862 mm IN HEIGHT (C SIZE)
 WHEN PLOTTED AT A SCALE OF 1:800

TRANS CANADA HIGHWAY



- LEGEND**
- A DENOTES GNSS TRAVERSE POINT FOUND
 - B DENOTES STANDARD IRON POST FOUND
 - C DENOTES STANDARD IRON POST PLACED
 - Q DENOTES NON-STANDARD POST FOUND (PIPE)
 - W DENOTES WITNESS

GRID BEARINGS ARE DERIVED FROM PLAN EPP51862
 AND ARE REFERRED TO THE CENTRAL MERIDIAN OF
 UTM ZONE 10 (123° WEST LONGITUDE)

THIS PLAN SHOWS HORIZONTAL GROUND-LEVEL DISTANCES
 UNLESS OTHERWISE SPECIFIED TO COMPUTE GRID DISTANCES
 MULTIPLY GROUND-LEVEL DISTANCES BY THE AVERAGE COMBINED
 FACTOR OF 0.9995846. THE AVERAGE COMBINED FACTOR HAS BEEN
 DETERMINED BASED ON A MEAN ELLIPSOIDAL ELEVATION OF 112 METRES

THE UTM COORDINATES AND ESTIMATED HORIZONTAL
 POSITIONAL ACCURACY ACHIEVED ARE DERIVED FROM
 THE TRAVERSE POINTS SET ON PLAN EPP51862

NOTE
 THIS PLAN SHOWS ONE OR MORE WITNESS POSTS
 WHICH ARE NOT SET ON THE TRUE CORNER(S)

THIS PLAN LIES WITHIN THE
 METRO VANCOUVER REGIONAL DISTRICT

THE FIELD SURVEY REPRESENTED BY THIS PLAN
 WAS COMPLETED ON THE 16TH DAY OF JULY, 2011
 ADAM LES-JE ARDUIN, BCLE 820

THIS PLAN LIES WITHIN THE JURISDICTION OF THE APPROVING
 OFFICER FOR THE DISTRICT OF WEST VANCOUVER

UTM COORDINATES				
DATUM NAD83(CSRS) 4.0 0.0 BC 1.0 VPRD, UTM ZONE 10				
MARKER	NORTHING	EASTING	HORIZONTAL POSITIONAL ACCURACY	COMBINED FACTOR
NAL 157	6465414.20	486532.43	0.05 METRES (ESTIMATED)	0.9095871
NAL 158	6465642.67	486554.21	0.05 METRES (ESTIMATED)	0.9095824

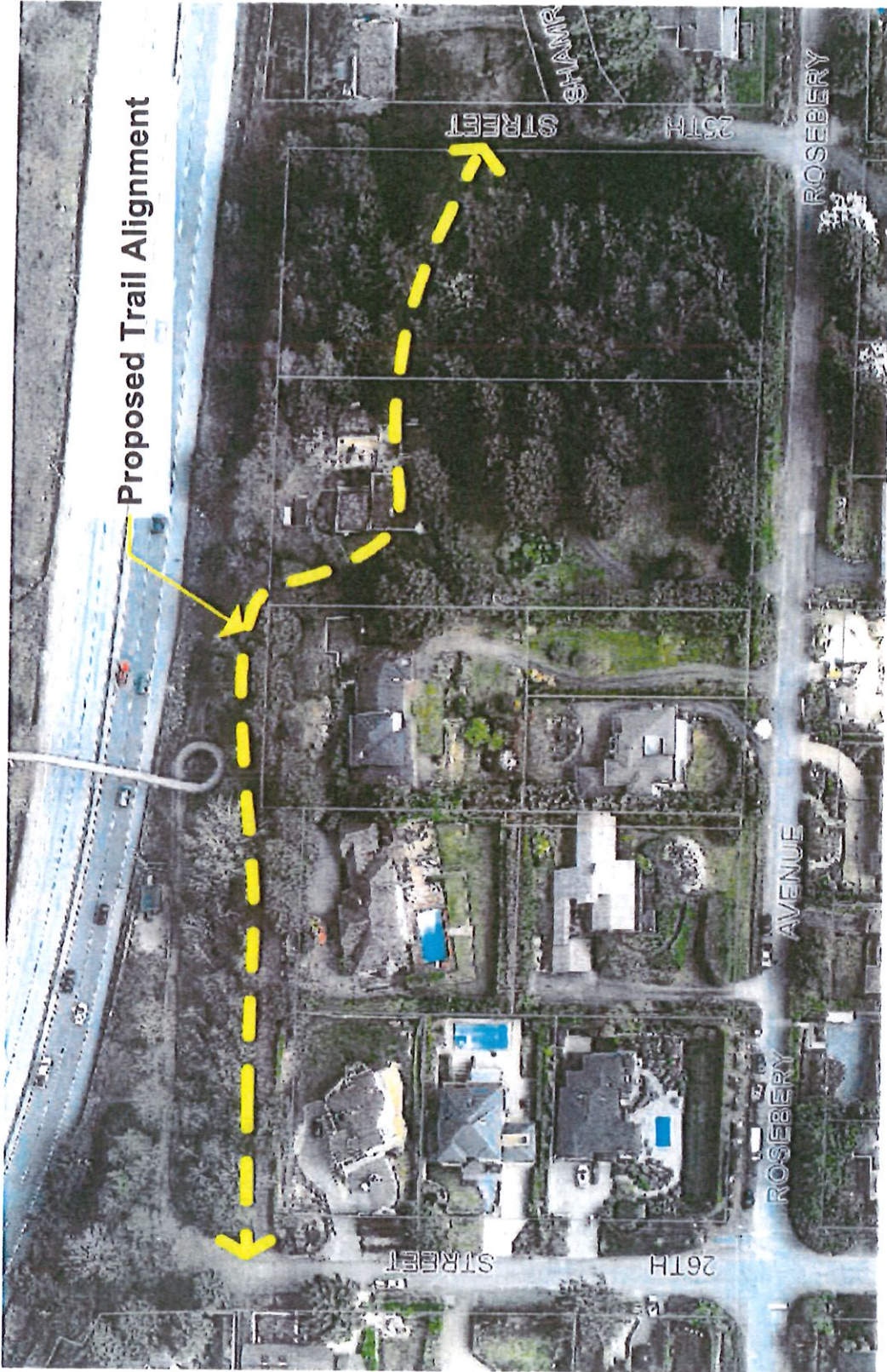
15

011-445-326 (AMG LOT 8)
 011-445-342 (AMG LOT 8)
 No.2530 ROSEBERY AVENUE
 FB.2728 P.2-22 M.3521-05 WY

HOBBS, WINTER & McDONALD,
 B.C. LAND SURVEYORS,
 113-821 HARBORFRONTS DRIVE
 NORTH VANCOUVER, B.C. V7P 3V6
 TEL 604-896-1271 FAX 604-896-4204
 EMAIL: admin@hobbswmc.com

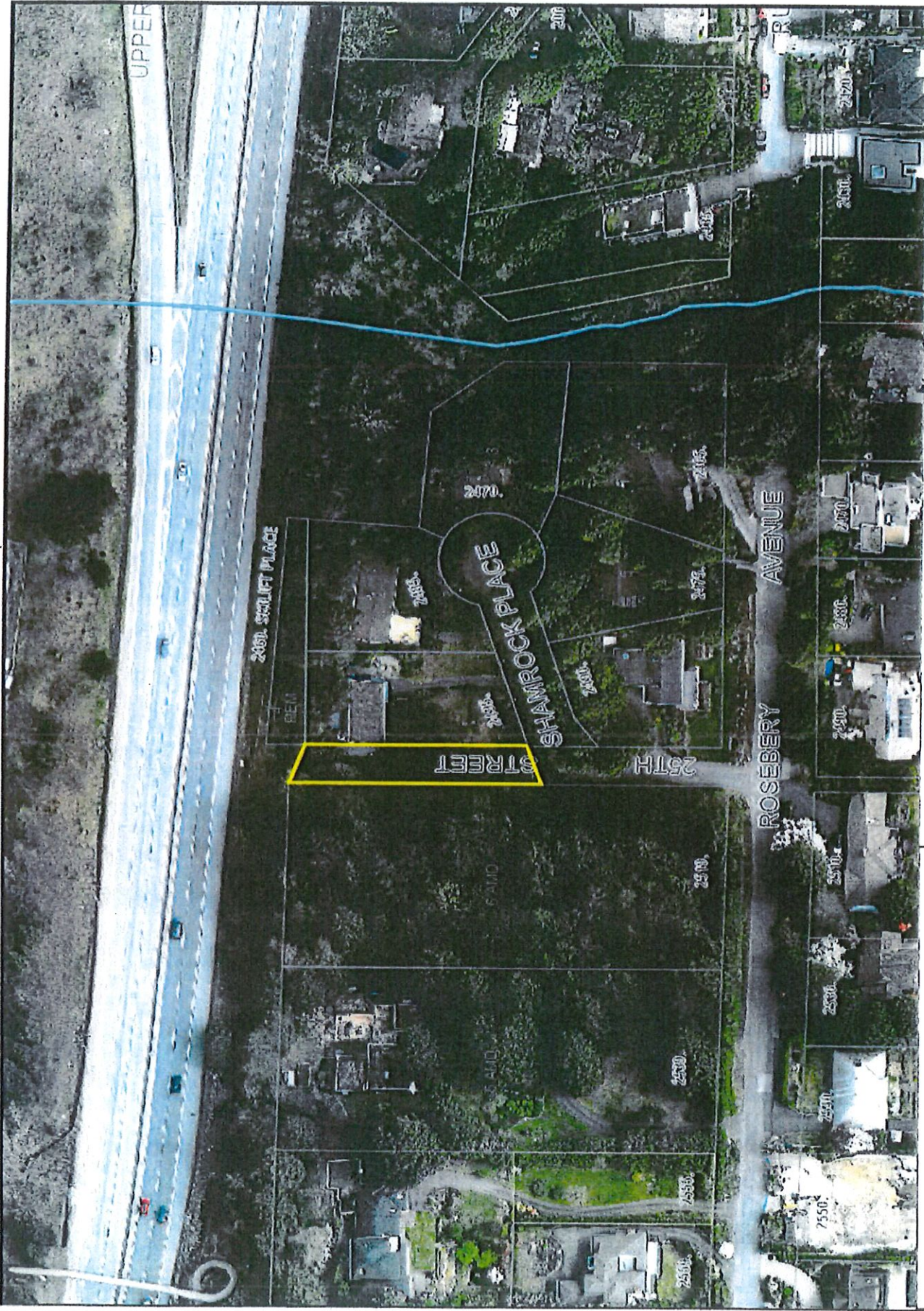
SCHEDULE "D"

Brissenden Park- Proposed Trail Alignment



NTS
March 7, 2018

SCHEDULE "E"



DATE:	REV:
FILE:	

TITLE: Approximate Road Area Proposed to be Closed

17 

aLAND TITLE ACT
FORM C (Section 219)
Province of British Columbia
GENERAL INSTRUMENT - PART I (This area for Land Title Office use)

1. APPLICATION:

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
(PID) (LEGAL DESCRIPTION)

3. NATURE OF INTEREST:	Document Reference	Person Entitled to Interest
Description	(Page and Paragraph)	
Section 219 Covenant	Entire Agreement	Transferee

4. TERMS: Part 2 of this instrument consists of (select one only)

- (a) Filed Standard Charge Terms D. F. No.
- (b) Express Charge Terms Annexed as Part 2
- (c) Release There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S):

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER, a municipality incorporated pursuant to the *Local Government Act* and having its postal address at 750 17th Street, West Vancouver, British Columbia, V7V 3T3.

6. TRANSFEREE(S):

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER, a municipality incorporated pursuant to the *Local Government Act* and having its postal address at 750 17th Street, West Vancouver, British Columbia, V7V 3T3.

Cont'd

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**LAND TITLE ACT
FORM C Continued**

7. ADDITIONAL OR MODIFIED TERMS:

None

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the property 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)

(as to both signatures)

Y	M	D

**THE CORPORATION OF THE
DISTRICT OF WEST VANCOUVER , t**
its authorized signatories

Mayor

Corporate Officer

Officer Signature(s)

(as to both signatures)

Y	M	D

**THE CORPORATION OF THE
DISTRICT OF WEST VANCOUVER , t**
its authorized signatories

Mayor

Corporate Officer

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.

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TERMS OF INSTRUMENT – PART 2

SECTION 219 COVENANT

THIS AGREEMENT is dated for reference the ___ day of _____, 2018

BETWEEN:

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER, a municipality incorporated pursuant to the *Community Charter* and having its postal address at 750 17th Street, West Vancouver, British Columbia, V7V 3T3

(collectively the “Grantor”)

AND:

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER, a municipality incorporated pursuant to the *Community Charter* and having its postal address at 750 17th Street, West Vancouver, British Columbia, V7V 3T3

(the “Grantee”)

WHEREAS:

A. The Grantor is the owner of the following real property:

*

(the “Lands”)

B. Section 219 of the *Land Title Act* provides, inter alia, that a covenant, whether of a negative or positive nature, may be registered as a charge against the title to land in favour of a Municipality or the Crown; and

C. For the purposes of protecting trees within the Tree Protection Zone, the Grantor desires to grant and the Grantee agrees to accept, this covenant in favour of the Grantee pursuant to Section 219 of the *Land Title Act*.

NOW THEREFORE THIS AGREEMENT WITNESSES that pursuant to Section 219 of the *Land Title Act*, and in consideration of the premises and the mutual covenants and agreements contained herein and the sum of One Dollar (\$1.00) now paid to the Grantor by the Grantee (the receipt and sufficiency of which is hereby acknowledged), the parties hereto covenant and agree each with the other as follows:

1. Wherever used in this Agreement, including the recitals, unless there is something in the subject-matter or context inconsistent therewith, the following terms shall have the meanings ascribed to them:

(a) "Director of Planning and Development Services" means the Grantee's Director of

Planning and Development Services, and includes any deputy director of the Grantee's Planning and Development Services division, and any other person authorized by the Director of Planning and Development Services or the Grantee's Municipal Council to act on behalf of the Director of Planning and Development Services or any deputy director of the Grantee's Planning and Development Services division;

(b) "Retained Trees" means all existing trees within the Tree Protection Zone; and

(c) "Tree Protection Zone" means the area shown outlined in bold on Plan _____

2. Within the Tree Protection Zone:

(a) none of the Retained Trees shall be cut down, limbed, dug up, pruned, topped, re-topped, removed or otherwise damaged or killed, including but not limited to damage inflicted upon the trunk, stem or root system by machinery, storage of materials, removal or compaction of soil or changing the natural grade above the root system or around the trunk and including encroachment on the branches by any part of a building or structure, unless:

(i) a written opinion prepared and executed by an arborist certified by The International Society of Arboriculture is submitted to the Grantee stating that the proposed cutting down, limbing, digging up, pruning, topping, re-topping, killing, or removing of the tree is necessary because the tree (A) has been damaged by natural causes to the extent that it is unusually vulnerable to disease or premature death, or (B) is hazardous, or (C) is causing damage to property (including roofs, retaining walls, or paved areas), but for these purposes the accumulation of leaves or needles does not constitute damage, or (D) is interfering with utility wires or other utility infrastructure or with access to such wires or infrastructure; and

(ii) prior approval in writing has been obtained from the Director of Planning and Development Services. Written approval may be withheld in the Director of Planning and Development Services' sole discretion, and the Director of Planning and Development Services may require, as a condition of his or her approval, either the replacement of the subject tree with up to two (2) trees of a type and size and in a location acceptable to the Director of Planning and Development Services or, at the Director of Planning and Development Services' option, the payment of an amount equal to the value of such tree as determined by an arborist according to the most recent edition of the Guide to Plant Appraisal prepared by The Council of Tree and Landscape Appraisers and The International Society of Arboriculture, or such other value as the parties may agree upon.

3. In the event that any of the Retained Trees are cut down, limbed, pruned, topped, re-topped, dug up, removed or otherwise damaged or killed in contravention of Section 2 above, the Grantor shall:

(a) immediately notify the Grantee of such cutting down, limbing, pruning, topping, re-topping, digging up, removal, damage, or killing;

(b) within fifteen (15) business days after receipt of written notice from the Grantee to do so, provide an evaluation of the affected Retained Trees as determined according

to the most recent edition of the Guide to Plant Appraisal prepared by The Council of Tree and Landscape Appraisers and The International Society of Arboriculture and prepared by an arborist certified by The International Society of Arboriculture;

- (c) within forty-five (45) business days after acceptance of the evaluation by the Director of Planning and Development Services, at the option of the Grantee, either pay to the Grantee \$5,000 per tree plus an amount equal to the accepted value of such tree or provide such other compensation as the parties may agree upon; and
- (d) upon request from the Director of Planning and Development Services, permit personnel or contractors of the Grantee to enter on the Lands for the purpose of replacing or maintaining the affected tree or trees.

Replacement trees or trees or other vegetation purchased by the Grantee with the funds provided by the Grantor shall be planted on the Lands or in such other location as the Grantee, in its sole discretion, may deem appropriate.

- 4. The Grantor further acknowledges, agrees, and covenants with the District that:
 - (a) damages will not be an adequate remedy for any breach by the Grantor of this Agreement, and the Grantee shall be entitled to seek interim, interlocutory, and permanent injunctive relief to prevent any breach by the Grantor of this Agreement, without the necessity of having to prove irreparable damage and without regard to the balance of convenience; and
 - (b) if the Grantor defaults in the observance or performance of any obligations set out in Section 3, above, and such default is not remedied within thirty (30) days after the Grantee has given notice to the Grantor specifying the default and requesting that it be cured, the Grantee may remedy the default and seek reimbursement from the Grantor for all of its costs incurred and, until paid, the costs shall form a charge against the Lands.
- 5. The Grantor further covenants and agrees with the Grantee to release the Grantee and its elected officials, officers, employees and agents from and to effectually indemnify and save the Grantee and its elected officials, officers, employees and agents harmless against all actions, causes of action, prosecutions, proceedings, judgments, orders, claims, fines, demands, damages, losses, expenses and costs which may be incurred by or made against the Grantee relating to or arising from:
 - (a) the retention of the Retained Trees; and
 - (b) any act or omission carried out by or not carried out by the Grantee, its elected officials, officers, servants, agents or employees in the exercise or purported exercise of any of the rights or compliance or attempted compliance with any obligations granted or imposed by this Agreement.
- 6. This Agreement does not:
 - (a) affect or limit the discretion, rights, duties or powers of the Grantee under any enactment or at common law, including in relation to the use, development, or servicing of the Lands;

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- (b) affect or limit any enactment relating to the use, development, or servicing of the Lands; or
- (c) relieve the Grantor from complying with any enactment, including in relation to the use, development, or servicing of the Lands, including without limitation the Grantee's Interim Tree Bylaw, No. 4892, 2016, or any similar or replacement bylaw of the Grantee.

7. All notices and other communications required or permitted to be given under this Agreement must be in writing and must be sent by registered mail or personally served as follows:

- (d) if to the Grantor, as follows:

District of West Vancouver, 750 – 17th Street, West Vancouver, B.C. V7V 3T3

Attention: Corporate Officer

- (e) if to another owner of the Lands, such owner's then current address as shown in the Land Title Office's records; and

- (f) if to the Grantor, as follows:

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Attention: Corporate Officer

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- 9. All rights and remedies of a party under or in respect of this Agreement (including its breach) are cumulative and are in addition to, and do not exclude, or limit any other right or remedy. All rights and remedies may be exercised concurrently.
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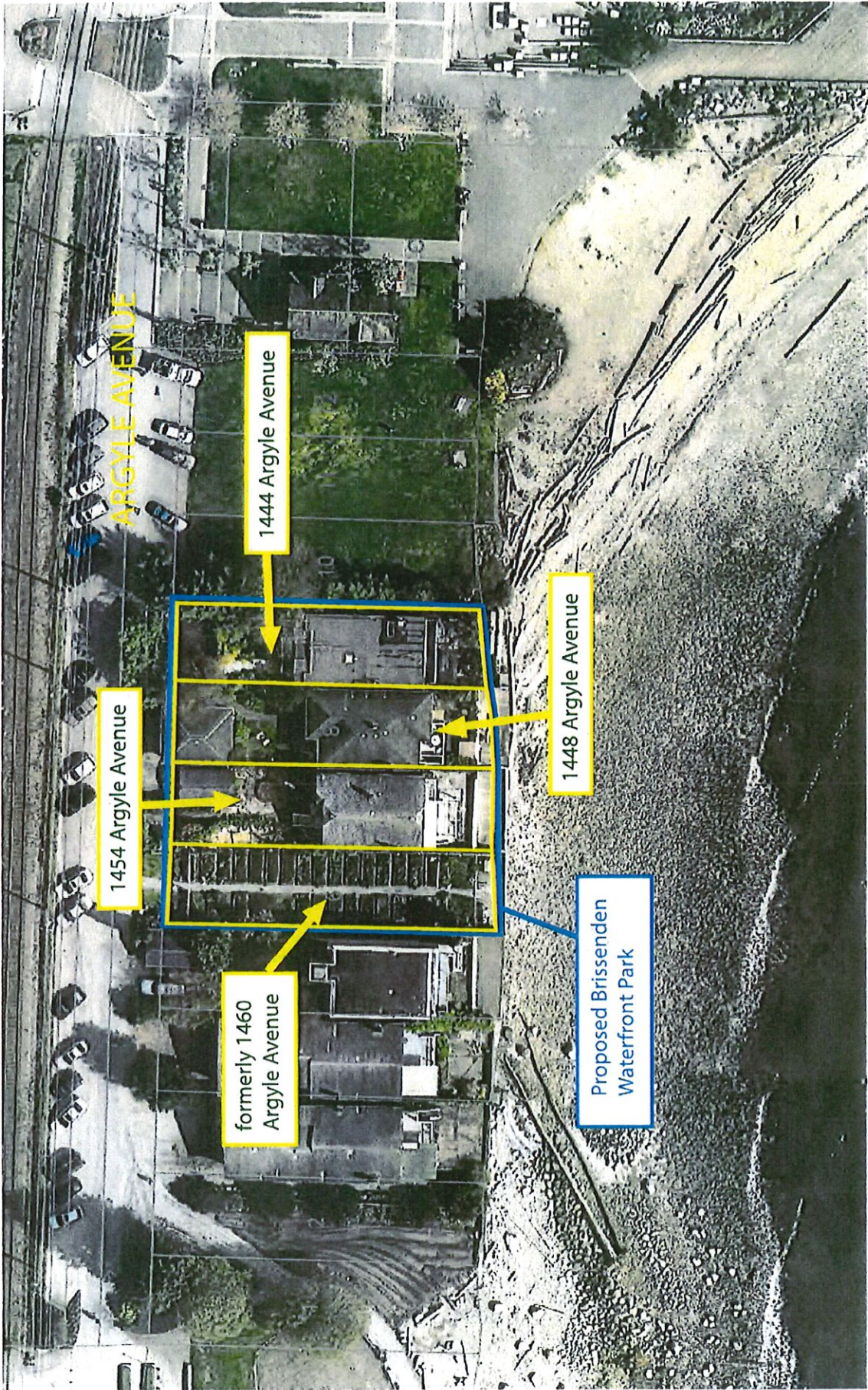
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12. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
13. This Agreement may be amended from time to time by agreement between the Grantor and the Grantee. Except as otherwise expressly provided in this Agreement, the amendment agreement must be by an instrument in writing duly executed by the Grantor and the Grantee.
14. In this Agreement:
 - (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
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 - (h) reference to the Grantee is a reference also to its elected and appointed officials, officers, employees and agents;
 - (i) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided;

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- (k) any act, decision, determination, consideration, opinion, consent or exercise of discretion by a party or person as provided in this Agreement must be performed, made, formed or exercised acting reasonably.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement by executing Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

This is the instrument creating the condition of covenant entered into under section 219 of the *Land Title Act* by the Grantor referred to herein.

Approving Officer of the Corporation of the District of West Vancouver



No. S-177029
Vancouver Registry

IN THE SUPREME COURT OF
BRITISH COLUMBIA

Between:

The Corporation of the District of West
Vancouver

Petitioner

And:

The Attorney General of British Columbia

Respondent

AMENDED PETITION

Lidstone & Company
Barristers & Solicitors
1300 – 128 W. Pender St.
Vancouver, B.C.
V6B 1R8

Tel: (604) 899-2269
Fax: (604) 899-2281

Attention: Paul Hildebrand