

<i>COUNCIL AGENDA</i>	
Date: <u>March 10, 2025</u>	Item: <u>14.4.</u>



14.4.

DISTRICT OF WEST VANCOUVER
750 17TH STREET, WEST VANCOUVER BC V7V 3T3

COUNCIL REPORT

Date:	February 13, 2025
From:	Erika Syvokas, Community Planner
Subject:	Proposed Covenant Amendment for 5051 Howe Sound Lane
File:	1010-20-24-105

RECOMMENDATION

THAT The Corporation of the District of West Vancouver be authorized to file in the Land Title Office modifications of Covenant CA6997985 (the “Existing Covenant”), which Existing Covenant is registered against title to that parcel in the District of West Vancouver identified by the legal description PID 029-871-701, Lot ‘A’ Block 5 District Lot 811 Plan EPP59040 (the “Lands”), to permit the permitted building envelope to be modified to enable subdivision of the subject parcel.

1.0 Purpose

To provide Council information regarding proposed covenant amendments for a development covenant registered on title of 5051 Howe Sound Lane to allow the property to be subdivided with modifications to the permitted building envelope.

2.0 Legislation/Bylaw/Policy

Not applicable.

3.0 Council Strategic Objective(s)/Official Community Plan

2024-2025 Council Strategic Plan

The “2024-2025 Council Strategic Plan” aims to “*expand opportunities for selective small scale infill developments in single-family residential zones*”.

Official Community Plan (OCP)

The OCP includes policies to enable the development of smaller houses on smaller lots in existing detached residential areas.

4.0 Financial Implications

Not applicable.

5.0 Background

On March 30, 2015, Council approved a development permit (DP 13-070) for sites with difficult terrain to allow 5051 Howe Sound Lane to be subdivided into two parcels, Lot ‘A’ (north lot - currently addressed 5051

Howe Sound Lane) and Lot 'B' (south lot - now 5039 Howe Sound Lane) under Plan EPP59040.

The approved development permit required registration of a development covenant to ensure the objectives of the development permit area were achieved. A development covenant for both Lot 'A' and Lot 'B' was registered August 14, 2018, under CA6997985 (**Appendix A**) to define the permitted building envelopes, restrict rock blasting and breaking, set energy performance requirements, and restrict the permitted floor area for both lots. The covenant also includes requirements for landscaping for Lot B'.

The permitted building envelopes for 'Lot A' and 'Lot B' were restricted to increase the rear yard setbacks (from 9.1 m to 24.4 m) to avoid construction on steep terrain for both lots. The front and side yards were set in accordance with the zoning bylaw requirements, with a combined side yard setback requirement of 25% of the site width. In accordance with standard practice for subdivisions, a larger side yard (resulting from the minimum combined side yard requirements) was allocated to the exterior side yard (in this case the northerly side yard).

The current owner of 5051 Howe Sound Lane is now proposing to further subdivide the property into two lots (see proposed subdivision plan attached as **Appendix B**). The new lots created through the proposed subdivision are proposed to comply with side yard and combined yard requirements in accordance with the applicable RS3 zone. The proposed subdivision plan maintains the required combined side yard setbacks for each of the proposed lots (Lots 1 and 2), resulting in total side yards of 10.38 m for proposed Lots 1 and 2 versus the total side yards of 10.27 m required for existing 'Lot A'. However, as the proposed building envelopes for the two new lots differ from the building envelope shown in Schedule A of the covenant, a Council resolution is requested to authorize amending the covenant to modify the permitted building envelope of the subject parcel to accommodate the proposed subdivision.

The amended covenant would also split the limits on maximum floor area (900 m²) and rock blasting and breaking (250 m³) specified for the existing lot to specify the amounts permitted for the two new lots created through subdivision. Further, minor modifications would be made to modernize the covenant, specifically with regards to requirements for green building performance.

6.0 Analysis

6.1 Discussion

The requested amendment to the development covenant will be limited in scope and will only allow for modification of the permitted building envelope of 5051 Howe Sound Lane. The remaining covenant requirements will be retained within the amended covenant and applied to

the new lots created through subdivision to ensure the interests of the District.

6.2 Climate Change & Sustainability

Not applicable.

6.3 Public Engagement and Outreach

Not applicable.

6.4 Other Communication, Consultation, and Research

Not applicable.

7.0 Options

7.1 Recommended Option

That Council authorize the District to amend the development covenant registered on title of 5051 Howe Sound Lane, to allow the permitted building envelope to be modified.

7.2 Considered Options

Council may:

- a) defer consideration of the proposal pending the receipt of additional information (to be specified) to assist in the consideration of the application; or
- b) reject the application.

8.0 Conclusion

The requested covenant amendment will ensure the interest of the District while allowing the property to be subdivided.

Author: 

Erika Syvokas, Community Planner

Concurrence: 

Michelle McGuire, Senior Manager of Current Planning and Urban Design

Appendices:

- A – Existing Covenant CA6997985
- B – Proposed Subdivision Plan for 5051 Howe Sound Lane

This page intentionally left blank

This page intentionally left blank

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.

APPENDIX A

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

Deduct LTSA Fees? Yes

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

STC? YES

3. NATURE OF INTEREST CHARGE NO. ADDITIONAL INFORMATION

4. TERMS: Part 2 of this instrument consists of (select one only)
(a) Filed Standard Charge Terms D.F. No. (b) Express Charge Terms Annexed as Part 2
A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

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

7. ADDITIONAL OR MODIFIED TERMS:

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

Execution Date

Transferor(s) Signature(s)

Y	M	D

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.

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

Y	M	D

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 OF PAGES

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

STC? YES

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

STC? YES

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

STC? YES

TERMS OF INSTRUMENT

SECTION 219 COVENANT - DEVELOPMENT

This document is dated for reference June 7, 2018.

BETWEEN:

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER, a municipality incorporated under the *Local Government Act*, RSBC 2015, c. 1 and having its office at 750 – 17th Street, West Vancouver, BC V7V 3T3

(the “**District**”)

AND:

TADEUSZ FRANCIS VAN WOLLEN and MONIKA VAN WOLLEN, as joint tenants of 5051 Howe Sound Lane, West Vancouver, BC V7W 1L3

(the “**Grantor**”)

WHEREAS:

A. The Grantor is the registered owner in fee simple of lands described in the District of West Vancouver, British Columbia legally described as follows:

029-871-701 Lot A Block 5 District Lot 811 GRP 1 NWD Plan EPP59040 (“**Lot A**”); and
029-871-719 Lot B Block 5 District Lot 811 GRP 1 NWD Plan EPP59040 (“**Lot B**”)

(together, the “**Land**”);

B. The parties agree that prior to Building Permit issuance, this Section 219 Covenant will be placed on the Land, as set out in Development Permit No.13-070.

C. Section 219 of the Land Title Act (R.S.B.C. 1996, c. 250) provides that there may be registered as a charge against the title to any land a covenant in favour of a municipality in respect of the use of land or the use of a building on or to be erected on land or that land is or is not to be built on or is not to be subdivided except in accordance with the covenant.

D. The Grantor desires to grant and the District agrees to accept this Covenant on the terms and conditions contained herein.

THIS AGREEMENT is evidence that, pursuant to s. 219 of the *Land Title Act*, and in consideration of \$10.00 paid by the District to the Grantor, and other good and valuable consideration (the receipt and sufficiency of which the Grantor acknowledges), the Grantor grants to and covenants with the District as follows:

1. The Land may not be used, occupied, developed, constructed on, built on, improved or altered except in strict accordance with this Agreement.

TERMS OF INSTRUMENT

2. The Land may not be used or further developed unless and until the following requirements have been complied with to the satisfaction of the Director of Planning and Development Services or his designate.
 - a) All buildings on the Land are to be sited within the building envelopes, except a garage on Lot B that must be located within the front yard in the area labelled as "Concept Garage" and a driveway generally in the location as shown on Schedule A.
 - b) Rock blasting and breaking is limited to:
 - (i) Lot A: 250 m³;
 - (ii) Lot B: 200 m³,unless a greater quantity is deemed necessary and approved in writing and in advance by the Director of Planning and Development Services or his designate, in order to allow adequate driveway access.
 - c) New houses on either Lot A or B, or a significant renovation of the existing house on Lot A consisting of replacement of more than 75% of the existing structure above foundation, must:
 - (i) achieve a minimum Energuide Rating of 90; and
 - (ii) include the installation of electrical conduit to allow for electric vehicle charging and roof mounted solar infrastructure.
 - d) The permitted floor area, inclusive of basement and vehicle parking areas, for each Lot will be:
 - (i) Lot A: 900 m²
 - (ii) Lot B: 500 m²
 - e) The Grantor must install and maintain non-invasive landscaping of at least 1.2 meters in height on the east elevation of a garage (between garage and Howe Sound Lane) located within the front yard of Lot B.
3. If any portion of this Agreement is held invalid by 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. Every obligation and covenant of the Grantor in this Agreement constitutes both a contractual obligation and a covenant granted under Section 219 of the *Land Title Act* in respect of the Land and this Agreement burdens the Land and runs with it and binds the successors in title to the Lands. This Agreement burdens and charges all of the Land and any parcel into which it is subdivided by any means and any parcel into which the Land is consolidated. The Grantor is only liable for breaches of this Agreement that occur while the Grantor is the registered owner of the Land.

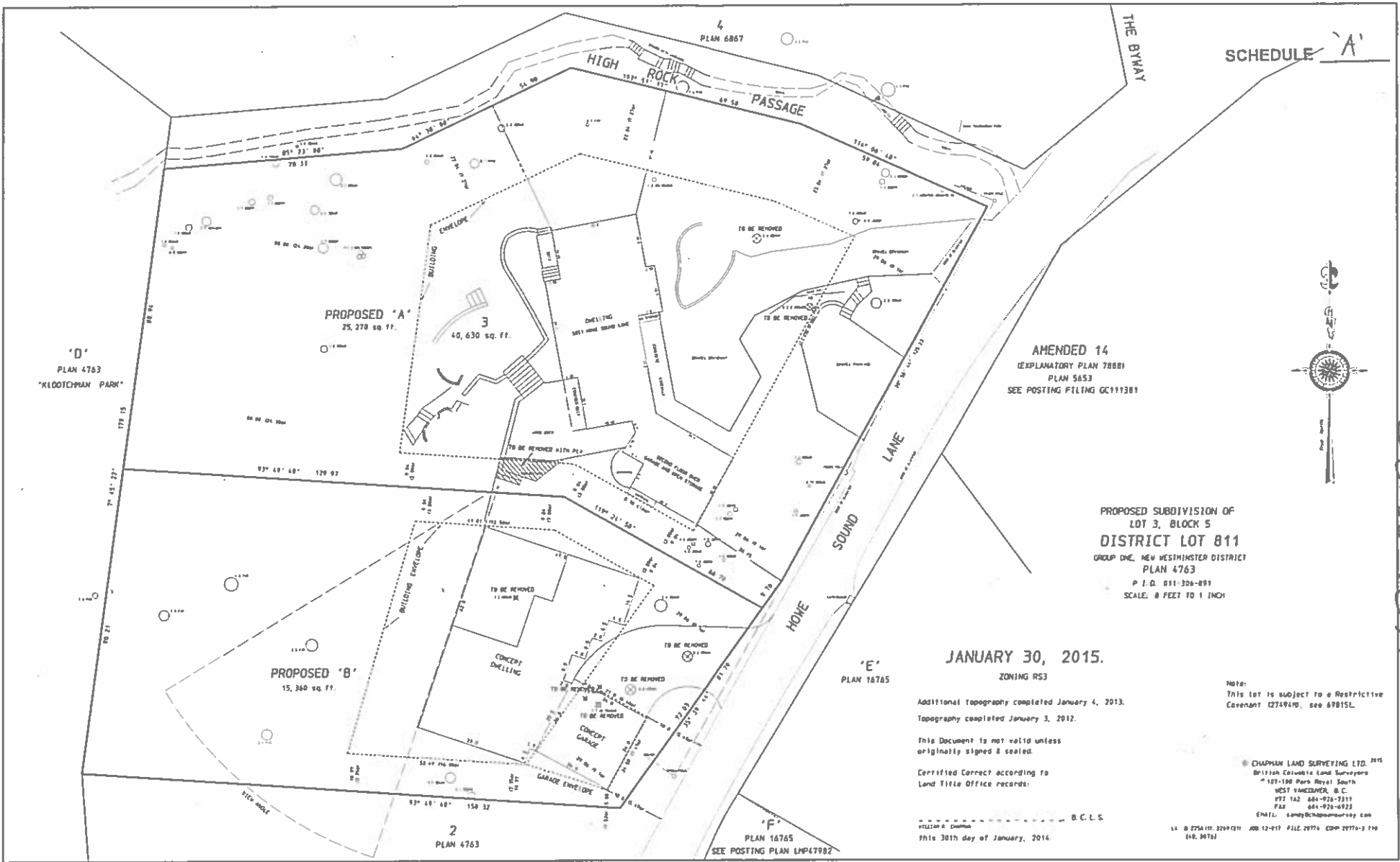
TERMS OF INSTRUMENT

5. The Grantor agrees to indemnify and save harmless the District, its elected and appointed officials, officers and employees (the "District Parties"), from and against all liabilities, claims, actions, suits, damages, losses, costs, debts, fines, penalties, taxes, demands and expenses, including legal fees and disbursements, whether arising from death, bodily injury, property damage, property loss, economic loss or any other loss or damage of any kind whatsoever, suffered or incurred by the District Parties arising directly or indirectly or in any way related to: (a) the granting or existence of this Agreement; (b) the performance by the Grantor of this Agreement; (c) any default by the Grantor under or in respect of this Agreement; and (d) any approval given or not given by the District under this Agreement.
6. Where the District is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Grantor agrees that the District is under no public law duty of fairness or natural justice in that regard and agrees that the District may do any of those things in the same manner as if it were a private party and not a public body.
7. The rights given to the District by this Agreement are permissive only and nothing in this Agreement imposes any legal duty of any kind on the District to the Grantor, occupiers or lessees from time to time of the Land or anyone else, and nothing in this Agreement obliges the District to enforce this Agreement, to perform any act or to incur any expense in respect of this Agreement.
8. This Agreement and the Grantor's contributions, obligations and agreements set out in this Agreement do not:
 - (a) affect or limit the discretion, rights or powers of the District under any enactment or at common law, including in relation to the use, development, servicing or subdivision of the Land;
 - (b) impose on the District any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;
 - (c) affect or limit any enactment relating to the use, development or subdivision of the land; or
 - (d) relieve the Grantor from complying with any enactment, including in relation to the use, development of the Land, and without limitation shall not confer directly or indirectly any exemption or right of set-off from development cost charges, connection charges, application fees, user fees or other rates, levies and charges payable under any bylaw of the District,and the Grantor covenants and agrees to comply with all such enactments with respect to the Land.
9. The Grantor agrees that, without affecting any other rights or remedies the District may have in respect of any breach of this Agreement, the District is entitled, in light of the public interest in securing strict performance of this Agreement, to seek and obtain from the British Columbia Supreme Court a mandatory or prohibitory injunction, or order for specific performance, in respect of the breach.

TERMS OF INSTRUMENT

10. This Agreement enures to the benefit of and is binding upon the parties and their respective heirs, executors, administrators, trustees, receivers and successors (including successors in title).
11. This Agreement is the entire agreement between the parties concerning its subject, and supersedes and terminates all other agreements, understandings or promises concerning its subject. The District has made no representations and gives no warranties to the Grantor regarding the subject of this Agreement or any related matter or proceeding.
12. A waiver of any breach of this Agreement is binding only if given in that instrument executed by the party giving the waiver, and only if the waiver is an express waiver of the breach in question. A waiver of the breach of this Agreement operates to waive only the breach in respect of which has expressly been given.
13. Nothing in this Agreement exempts the Grantor or the Land from any statutory requirement or from the ordinary jurisdiction of the District, its bylaws, permits, regulations and orders and, without limitation, this Agreement does not relieve the Grantor from complying with any enactment relating to the use of the Land.
14. This Agreement binds the parties hereto and their respective successors, heirs, executors and administrators.
15. All covenants made by the Grantor shall be construed as being several as well as joint with respect to all persons constituting the Grantor.

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



SCHEDULE 'A'

AMENDED 14
 (EXPLANATORY PLAN 7888)
 PLAN 5653
 SEE POSTING FILING GC111381

PROPOSED SUBDIVISION OF
 LOT 3, BLOCK 5
DISTRICT LOT 811
 GROUP ONE, NEW WESTMINSTER DISTRICT
 PLAN 4763
 P.I.D. 011-306-891
 SCALE: 8 FEET TO 1 INCH

JANUARY 30, 2015.
 ZONING RS3

Additional topography completed January 4, 2013.
 Topography completed January 3, 2012.

This Document is not valid unless
 originally signed & sealed.

Certified Correct according to
 Land Title Office records:

WILLIAM R. CHAPMAN
 B.C.L.S.
 This 30th day of January, 2015

Note:
 This lot is subject to a Restrictive
 Covenant (2749410), see 69815L.

CHAPMAN LAND SURVEYING LTD. 2015
 British Columbia Land Surveyors
 107-100 Park Royal South
 WEST VANCOUVER, B.C.
 V7T 1A2 604-926-7311
 FAX 604-926-6223
 EMAIL: sandy@chapmansurvey.com
 14 8 2754117 3264371 JAN 12-2015 FILE 20774 EDM 20774-1 110
 648 04761

Schedule A

Page 8

PROPOSED SUBDIVISION OF
LOT 'A', BLOCK 5
DISTRICT LOT 811
GROUP ONE, NEW WESTMINSTER DISTRICT
PLAN EPP59040
P.I.D. 029-871-701
SCALE: 8 FEET TO 1 INCH

4
PLAN 6867

THE BYWAY

HIGH ROCK PASSAGE

'D'
PLAN 4763
"KLOOTCHMAN PARK"

PROPOSED 1
12,636 sq.ft.
(1,173.9 m²)

PROPOSED 2
12,637 sq.ft.
(1,174.0 m²)

'B'
15,360 sq.ft.
(1,427.0 m²)

AMENDED 14
(EXPLANATORY PLAN 7888)
PLAN 5653
SEE POSTING FILING GC111381

TOTAL SIDE YARD LOT 'A': 10.27m
TOTAL SIDE YARD PROPOSED LOTS 1 AND 2: 10.38m



2
PLAN 4763

'F'
PLAN 16765
SEE POSTING
PLAN LMP47982

5051 HOME SOUND LANE
M3503-32 WV
CERTIFIED CORRECT THIS 17TH DAY OF JANUARY, 2025

THIS DOCUMENT IS NOT VALID UNLESS
ORIGINALLY SIGNED AND SEALED
© THIS PLAN IS THE COPYRIGHT PROPERTY
OF HOBBS, WINTER & MACDONALD
UNAUTHORIZED USE OR REPRODUCTION
IS STRICTLY PROHIBITED
HOBBS, WINTER & MACDONALD
B.C. LAND SURVEYORS
115-552 HARRBOURSIDE DRIVE
NORTH VANCOUVER, B.C. V7P 3R9
TEL: 604-985-1571 FAX: 604-985-0294
EMAIL: hwm@hwmfirm.com

This page intentionally left blank

This page intentionally left blank