

**LAND TITLE ACT  
FORM C (Section 233) CHARGE**

**GENERAL INSTRUMENT - PART 1 Province of British Columbia**

PAGE OF 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)

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.

**LAND TITLE ACT  
FORM D**

**EXECUTIONS CONTINUED**

PAGE of pages

Officer Signature(s)

**Execution Date**

Transferor / Borrower / Party Signature(s)

Y	M	D
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TERMS OF INSTRUMENT – PART 2

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**TERMS OF INSTRUMENT - PART 2****SECTION 219 COVENANT  
(No Build Covenant)**

This agreement dated for reference the 15th day of May, 2014 is

BETWEEN:

**MINORU HASEGAWA, SHIZUE HASEGAWA and WANDA SHINOBU  
HASEGAWA** all of 825 Taylor Way, West Vancouver BC V7T 2J9

(collectively, the "Owner")

AND:

(the "Developer")

AND:

**THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER**, a municipality incorporated under the *Local Government Act*, R.S.B.C. 1996, c.323 and having its office at 750 – 175h Street, West Vancouver, BC V7V 3T3

WHEREAS:

- A. Minoru Hasegawa, Shizua Hasegawa and Wanda Shinobu Hasegawa are the registered owners in fee simple of all the land in the District of West Vancouver, legally described as:

PID: 007-947-526 Lot 1 South East ¼ of District Lot 1047 Plan 14144  
(the "Owner's Lands");

- B. The Developer has the right to purchase in fee simple the Owner's Lands and the land in the District of West Vancouver, legally described as:

PID: 007-947-534 Lot 3 Except Part in Plan VAP23118 South East ¼ of District Lot 1047 Plan 14144 (the "Other Lands");

- C. The District has rezoned the Lands, which rezoning facilitates the proposed development on the Lands;

- D. To ensure that the rezoning is in the public interest, the Owner agreed to enter into this Agreement restricting the use, development and subdivision of the Land and to provide the District with certain amenities which will mitigate the impact of the proposed development, all on the terms set out in this Agreement; and

TERMS OF INSTRUMENT – PART 2

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- E. Section 219 of the *Land Title Act* of British Columbia permits the registration of a covenant of a negative or positive nature in favour of a municipality, in respect of the use of the land, the building on land, the subdivision of land and the preservation of land or a specified amenity on the land.

THIS AGREEMENT is evidence that, pursuant to s. 219 of the *Land Title Act*, and in consideration (the receipt and sufficiency of which the Owner acknowledges), the Owner grants to and covenants with the District as follows:

1. **Definitions** – In this Agreement:

- (a) “*Consolidated Site*” means the site created by the consolidation of the Owner’s Lands and the Other Lands;
- (b) “*Council*” means the council of the District of West Vancouver;
- (c) “*Covenant*” means a covenant granted by the Owner to the District under section 219 of the *Land Title Act* in respect of any part of the Owner’s Land;
- (d) “*Develop*” or “*Developed*” means any one or more of construct on, build on, improve or alter and “*Development*” has the corresponding meaning but, unless specifically stipulated in this Agreement, does not include the issuance of a development permit;
- (e) “*District*” means the District of West Vancouver;
- (f) “*LTO*” means the Lower Mainland Land Title Office and any successor of that office;
- (g) “*Other Lands*” has the meaning given to it in Recital B;
- (h) “*Owner*” means the person or persons registered in the LTO as owner of the Owner’s Lands, or of any parcel into which the Owner’s Lands is consolidated or subdivided, whether in that person’s own right or in a representative capacity or otherwise;
- (i) “*Owner’s Lands*” has the meaning given to it in Recital A; and
- (j) “*Subdivision*” and “*Subdivided*” means the division of land into two or more parcels (including air space parcels) by any means, including by deposit of a subdivision, reference or other plan under the *Land Title Act*, lease, fractional interest, or deposit of a strata plan or bare land strata plan under the *Strata Property Act* (including deposit of any phase of a phased bare land strata plan);

2. **Schedules** – The schedules listed below form part of this Agreement:

- (a) Schedule “A” – Tree Preservation Covenant; and
- (b) Schedule “B” – Building Restriction Covenant.

TERMS OF INSTRUMENT – PART 2

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3. **Covenants regarding Use and Development** – Except in strict accordance with this Agreement:
  - (a) the Owner's Lands must not be used or Developed; and
  - (b) no development permit, building permit or occupancy permit may be applied for, or is required to be issued by the District in respect of any improvement on the Owner's Lands.
4. **No Build Covenant** – The Owner's Lands may not be used or Developed and no building permit is required to be issued by the District in respect of any improvement on the Owner's Lands unless and until:
  - (a) a consolidation plan is fully registered at the LTO consolidating the Owner's Lands and the Other Lands into one development parcel (the "Consolidated Site");
  - (b) a Covenant (the "Tree Preservation Covenant"), executed by the Owner and by the District is fully registered at the LTO in favour of the District against the Consolidated Site in priority to all financial charges. The Tree Preservation Covenant shall be in the form set out in Schedule "A" hereto provided that it may be modified by the Director in his or her sole discretion so as to better secure the Owner's tree preservation obligations in, on, over and under the Consolidated Site; and
  - (c) a Covenant (the "Building Restriction Covenant"), executed by the Owner and by the District is fully registered at the LTO in favour of the District against the Consolidated Site in priority to all financial charges. The Building Restriction Covenant shall be in the form set out in Schedule "B" hereto.
5. **Release of Covenant** – The District agrees that the Owner is entitled to give notice to the District requiring the District to execute and deliver to the Owner a discharge, in registrable form, of this Agreement, from title to the Consolidated Site if the District determines, in its sole discretion, as at the date on which the Owner gives notice to the District under this section, that all requirements of this Agreement have been performed and that there is no breach or default under this Agreement. The Developer is responsible for the preparation of the discharges under this section and for the cost of registration at the LTO.
6. **Discharge of this Agreement if No Rezoning** – The District agrees that if the District of West Vancouver Zoning Bylaw 4662, Amendment Bylaw 4784 is not adopted by the District's Council before July 7, 2014 the Owner is entitled to require the District to execute and deliver to the Owner a discharge, in registrable form, of this Agreement from title to the Owner's Lands, with the Developer being responsible for preparation of that discharge and the cost of its registration.
7. **Indemnity** – The Owner and the Developer each release and must indemnify and save harmless the District, its elected and appointed officials, officers, and employees (the "District Indemnitees"), from and against all liabilities, claims, actions, suits, damages, losses, costs, debts, fines, penalties, taxes, demands and expenses, including legal

TERMS OF INSTRUMENT – PART 2

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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 Indemnitees, or anyone else, arising directly or indirectly or in any way related to: (a) the granting or existence of this Agreement; (b) the performance by the Owner of this Agreement; or (c) default by the Owner under or in respect of this Agreement.

8. **Cost** – The Owner and the Developer shall comply with all requirements of this Agreement at its own cost and expense.
9. **District's Expenses** - The Developer shall pay the costs and expenses incurred and payments and expenditures made by the District, including without limitation, all survey, advertising, legal fees and disbursements and the District's costs in connection with:
  - (a) the process of rezoning the Lands;
  - (b) the negotiation and preparation of this Agreement and any amendments thereto; and
  - (c) the negotiation and preparation of all other covenants, agreements and statutory rights of way granted by the Owner or the Developer to the District or entered into between the Owner or the Developer and the District in respect of the Development contemplated in this Agreement and ancillary documents and any modifications of them from time to time.

The District may render an invoice for its costs and expenses at any time and the Developer would remit amounts owing to the District pursuant to this section 7 upon receipt of the invoice for same from the District. The covenant in this section 7 will survive the expiry or earlier termination of this Agreement.

10. **Priority** – This Agreement and all covenants, easements and statutory rights of way required to be registered against the Lands must be registered in priority to all financial charges and encumbrances and in priority to all leases, options to purchase and rights of first refusal.
11. **Plans** – Where a Covenant, right of way or other document required by this Agreement requires a survey or other plan, the Developer shall be solely responsible, at its own cost, for preparation of the document, including the survey and the plan, and for all costs of registration of such documents.
12. **No Liability in Tort** – The parties agree that this Agreement creates only contractual obligations and obligations arising out of the nature of this document as a covenant under seal. The intent of this section is to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract and under the law pertaining to covenants under seal.
13. **Bylaw to the Contrary** – This Agreement shall restrict use of the Owner's Lands in the manner provided herein notwithstanding any right or permission to the contrary contained in any bylaw of the District.

TERMS OF INSTRUMENT – PART 2

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14. **No Public Law Duty** – 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 Owner and the Developer agree 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.
15. **No Waiver** – 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 as or constituted a waiver of any further or other breach of the same or any other provision or default.
16. **Rights are Cumulative** – 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.
17. **Rights are Permissive Only** – 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 Owner or the Developer, any strata corporation formed upon the stratification of the Owner's Lands, the owners, occupiers or lessees from time to time of the Owner's Lands 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.
18. **No Effect on Laws or Powers** – This Agreement and the Owner's contributions, obligations and agreements set out in this Agreement do not:
- (a) affect or limit the discretion, rights, duties or powers of the District or the Approving Officer for the District under any enactment or at common law, including in relation to the use, development, servicing of the Owner's Lands;
  - (b) impose on the District or the Approving Officer 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 or development of the Owner's Lands; or
  - (d) relieve the Owner or the Developer from complying with any enactment, including in relation to the use or development of the Owner's Lands, and without limitation shall not confer directly or indirectly any exemption or right of set-off from development costs charges, connection charges, application fees, user fees or other rates, levies and charges payable under any bylaw of the District,

and the Owner covenants and agrees to comply with all such enactments with respect to the Owner's Lands.

TERMS OF INSTRUMENT – PART 2

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19. **Remedies for Breach** – The Owner and the Developer agree 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.
20. **Binding Effect** – 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).
21. **Covenant Runs with the Lands** – Every provision of this Agreement and every obligation and covenant of the Owner in this Agreement, is a covenant granted by the Owner to the District in accordance with section 219 of the *Land Title Act*, and this Agreement burdens the Owner's Lands to the extent provided in this Agreement, and runs with every parcel into which the Owner's Lands are or may be consolidated (including by the removal of interior parcel boundaries) or Subdivided by any means including by subdivision under the *Land Title Act* or by strata plan or bare land strata plan under the *Strata Property Act*.
22. **Voluntary Agreement** – The Owner and the Developer acknowledges that the Owner has entered into this Agreement voluntarily and has received legal advice with regard to the entry of this Agreement.
23. **Limitation on Owner's Obligations** – The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered Owner of the Owner's Lands. The Developer is only liable for breaches of this Agreement that occur while either the Owner or the Developer is the registered owner of the Owner's Lands.
24. **Further Acts** – The Owner and the Developer must do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.
25. **Joint Obligations of Owner** – If two or more persons should ever comprise the Owner or the Developer, the liability of each such person to observe and perform all of the Owner's or the Developer's obligations pursuant to this Agreement, will be deemed to be joint and several.
26. **Severance** – 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.
27. **No Joint Venture** – Nothing in this Agreement shall constitute the Owner or the Developer as the agent, joint venture or partner of the District or give the Owner or the Developer any authority or power to bind the District in any way.
28. **Notice** – 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 delivered by hand or facsimile transmission to the following addresses:



TERMS OF INSTRUMENT – PART 2

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

Minoru Hasegawa, Shizua Hasegawa and Wanda Shinobu Hasegawa  
825 Taylor Way  
West Vancouver BC V7T 2J9

Facsimile: 604

- (b) if to the Developer, as follows:

Milliken Development Corporation  
334 – 901 West 3<sup>rd</sup> Street  
North Vancouver BC V7P 3P9

Attention: Donald R. Milliken, President  
Facsimile: 604-925-4644  
Office: 604-925-4600

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

The Corporation of the District of West Vancouver  
750 – 17<sup>th</sup> Street  
West Vancouver BC V7V 3T3

Attention: Director, Engineering and Transportation  
Facsimile: (604) 925-5968

Any notice or other communication that is delivered by hand or via facsimile is considered to have been given on the next business day after it is dispatched for delivery. 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 delivered 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.

29. **Interpretation** – 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 a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
- (d) 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

TERMS OF INSTRUMENT – PART 2

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- removal of interior parcel boundaries) and to each parcel created by any such Subdivision or consolidations;
- (e) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
  - (f) reference to any enactment includes any regulations, orders, permits or directives made or issued under the authority of that enactment;
  - (g) unless otherwise expressly provided, reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced;
  - (h) time is of the essence;
  - (i) 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;
  - (j) reference to a "day", "month", "quarter or calendar year, as the case may be, unless otherwise expressly provided; and
  - (k) 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
  - (l) 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, except that any act, decision, determination, consideration, consent, opinion or exercise of discretion that is said to be within the "sole discretion" of a party or person may be performed, made, formed or exercised by that party or person in the sole, unfettered and absolute discretion of that party or person.
30. **Deed and Contract** – By executing and delivering this Agreement each of the parties intends to create both a contract and a deed of covenant executed and delivered.

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.

TERMS OF INSTRUMENT – PART 2

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**SCHEDULE “A”  
Tree Preservation Covenant**

**TERMS OF INSTRUMENT – PART 2**

**Tree Preservation Covenant,  
Statutory Right of Way and Rent Charge**

THIS AGREEMENT dated for reference this \_\_\_\_\_ day of \_\_\_\_\_, 2014, is

BETWEEN:

(the “Owner”)

AND:

**THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER**,  
a municipality incorporated under the *Local Government Act*, R.S.B.C. 1996,  
c.323 and having its office at 750 – 17<sup>th</sup> Street, West Vancouver, BC V7V 3T3

(the “District”)

WHEREAS:

- A. The Owner is the registered owner in fee simple of lands in the District of West Vancouver, British Columbia legally described in Item 2 of the Form C General Instrument Part 1 to which this Agreement is attached and which forms part of this Agreement (the “**Land**”);
- B. As a condition of the rezoning of the Land and in order to ensure that said rezoning is in the public interest the Owner has offered to enter into this Agreement on the terms and conditions set out in this Agreement;
- C. The Owner acknowledges that it is in the public interest to protect and preserve those trees (the “**Protected Trees**”) labelled as the trees to be retained on the Tree Retention Plan prepared by Radix Tree & Landscape Consulting and dated November 28, 2012, a copy of which is attached as Schedule “A” to this Agreement (the “**Protected Trees Plan**”) and has agreed to provide this Agreement to the District on the terms and conditions contained herein; and
- D. The Owner has also agreed to grant to the District a statutory right of way over the Land on the terms and conditions set forth in section 12 herein, which statutory right of way is necessary for the operation and maintenance of the undertaking of the District.

TERMS OF INSTRUMENT – PART 2

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NOW THEREFORE in consideration of the sum of \$10.00 now paid by the District to the Owner and other good and valuable consideration, the receipt and sufficiency of which the Owner hereby acknowledges, the parties covenant and agree pursuant to Sections 218 and 219 of the *Land Title Act* (British Columbia) as follows:

1. **Definitions** – In this Agreement:

- (a) *“Director”* means the District’s Director of Planning, Land Development and Permits or his or her designate;
- (b) *“District”* means the District of West Vancouver, a municipal corporation incorporated under the *Local Government Act* (British Columbia), and its elected and appointed officials, employees, agents and contractors;
- (c) *“Enactment”* has the meaning given in the *Interpretation Act* (British Columbia);
- (d) *“Land”* has the meaning given to it in recital A hereto;
- (e) *“Protected Trees”* has the meaning given to it in recital C; and.
- (f) *“Protected Trees Plan”* has the meaning given to it in recital C.

2. **Use of Land** – No building or structure on the Land shall be used for any purpose and the Owner shall not apply for any occupancy permit in respect of any building or structure on the Land unless the Owner is in full compliance with Owner’s obligations under this Agreement.

3. **Tree Preservation during Development** – No building or structure shall be constructed on the Land and the Owner shall not apply for a building permit in respect of a building or structure on the Land unless the Owner has installed tree protection barriers around the Protected Trees as shown on the Protected Trees Plan, and the Owner shall maintain the tree protection barriers until an occupancy permit is issued for all residential buildings on the Land. No building or structure on the Land shall be used for any purpose and the Owner shall not apply for any occupancy permit in respect of any building or structure on the Land unless the Protected Trees have been preserved in accordance with this Agreement.

4. **Protected Trees** – The Owner shall not cut, limb, trim, prune, remove, alter, damage, destroy or replace or permit the cutting, limbing, trimming, pruning, removal, alteration, destruction or replacement of all or any part of a Protected Tree (including, without limitation, any branches or roots of a Protected Tree) without the prior written consent of the Director pursuant to section 6. The Owner acknowledges and agrees that protection of said trees takes precedence over maintenance or enhancement of views.

5. **Trees Posing an Immediate Risk or Danger** – If a Protected Tree poses an immediate risk or danger to persons or property as a result of being diseased, dead or destroyed by fire or other act of God it may be removed by the Owner provided that the Owner shall notify the District of such removal without delay and provided further that the replacement requirements set out at section 8 shall apply to any Protected Tree that is removed pursuant to this provision.

**TERMS OF INSTRUMENT – PART 2**

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- 6. Director Approval** – The Owner shall obtain the prior written approval of the Director for the cutting, limbing, trimming, pruning, removal, alteration or replacement of a Protected Tree (except to the limited extent set out in section 5), which approval may be unreasonably refused if the purpose of the proposed cutting, limbing, trimming, pruning, removal, alteration or replacement of a Protected Tree is to maintain, protect or enhance a view, but will not otherwise be unreasonably refused provided that all of the following conditions are satisfied:
- (a) the proposed work involves no topping of any Protected Trees;
  - (b) the Owner provides a report prepared by a professional arborist which:
    - (i) identifies to the satisfaction of the Director the Protected Tree that the Owner wishes to cut, remove, alter or replace;
    - (ii) establishes to the satisfaction of the Director that the proposed cutting, removal, alteration or replacement is necessary to address a hazardous condition or is necessary because the Protected Tree is diseased or dying;
    - (iii) establishes to the satisfaction of the Director that the proposed cutting, removal, alteration or replacement is in accordance with standard professional arboricultural practice; and
    - (iv) provides a replacement plan that meets, to the satisfaction of the Director, the Owner's replacement obligation as set out in section 8 herein;
  - (c) the Owner pays the District's costs associated with reviewing the application for approval of proposed cutting, removal, alteration or replacement work and monitoring the work if approved; and
  - (d) the Owner provides cash or a letter of credit in an amount determined by the Director to be held by the District, on terms acceptable to the Director, as a deposit to secure the Owner's obligations under this Agreement in relation to the proposed cutting, removal or alteration work and required replacement work.
- 7. Conditional Approval** – The Director may impose reasonable terms and conditions on any consent given under section 6, and the Owner must comply with any such terms and conditions at the Owner's cost and expense.
- 8. Tree Replacement** – The Owner must, at the Owner's cost and expense, replace any Protected Tree that is removed or destroyed in contravention of this Agreement, and must, if required by the Director, replace any Protected Tree that is otherwise cut or altered. Each tree that is cut, removed, altered or destroyed must be replaced with three replacement trees of similar variety unless otherwise specified in writing by the District. Each tree will not be less than 1.5 meters in height measured from the natural grade, and the replacement work will be carried out in accordance with a replacement plan approved by the Director and in accordance with standard professional arboriculture practice. The replacement must be completed at the first available

TERMS OF INSTRUMENT – PART 2

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opportunity after the cutting, removal, alteration or destruction and in any event before the end of the next dormant season.

9. **Costs** – The Owner shall comply with all requirements in this Agreement at its own cost and expense.
10. **District may Perform Obligations of Owner** – If the Owner has breached its obligation under section 7 of this Agreement, the District may, but is not obliged to, enter the Land and rectify the breach or perform the obligations at the expense of the Owner. The cost to the District of performing the obligation is a debt due and owing by the Owner to the District, with interest accruing on that debt at the annual rate of interest that is equal to 3% above the annual prime rate of interest charged from time to time by the Canadian Imperial Bank of Commerce, being the annual rate of interest charged by it for Canadian dollar demand commercial loans extended to its most credit-worthy customers. The District may exercise its rights under this section 10 only if the Owner has not cured the breach in question within 45 days or before the next dormant season (if applicable) after notice to do so is given to the Owner by the District or as otherwise required under this Agreement. Exercise by the District of its rights under this section 10 does not limit nor prevent the District from enforcing any other remedy or right the District may have against the Owner, including, without limitation, bringing a trespass action or enforcing a bylaw by means of a Supreme Court injunction, a prosecution or issuance of a municipal ticket information or bylaw notice.
11. **District's Costs** – Without limiting section 10, the Owner must pay all of the costs and expenses that may be incurred by the District in enforcing the District's rights under this Agreement.
12. **Statutory Right of Way** – Pursuant to Section 218 of the *Land Title Act* (British Columbia) and in acknowledgement of the public interest in protecting and preserving the Covenant Area and the Protected Trees, the Owner hereby grants to the District, its servants, officers, employees, agents, contractors, assignees and successors, a statutory right of way over the Land to go on, over, upon and to pass and repass with or without vehicles for the purpose of performing the obligations of the Owner as permitted under section 10 herein. The Owner acknowledges and agrees that the District is not an occupier of the Land or any part thereof by virtue of the statutory right of way herein or by virtue of the District's exercise or employment of that statutory right of way. The Owner further acknowledges and agrees that nothing in this Agreement creates or imposes on the District any duty, obligation or liability (including any private or public law duty, obligation or liability) to any person to exercise or enforce this statutory right of way, all such matters being within the absolute and unfettered discretion of the District.
13. **Rent Charge** – The Owner hereby grants to the District a rent charge under Section 219 of the *Land Title Act* (British Columbia), and at common law, securing payment by the Owner to the District of any amount payable by the Owner pursuant to this Agreement. The Owner agrees that the District, at its option, may enforce payment of such outstanding amount in a court of competent jurisdiction as a contract debt, by an action for and order for sale, by proceedings for the appointment of a receiver, or in any other method available to the District in law or in equity.

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- 14. District's Right to Specific Relief** – The Owner agrees that the District is entitled to obtain an order for specific performance or a prohibitory or mandatory injunction in respect of any breach by the Owner of this Agreement. The Owner agrees that this section 14 is reasonable given the public interest in the need for effective protection of the Covenant Area and the Protected Trees.
- 15. Other Requirements** – Notwithstanding any other provision of this Agreement, the Owner must, in its activities on or with respect to the Land, observe and comply with all the District Bylaws, and policies regulating tree preservation in existence from time to time.
- 16. Inspection** – The District, its officers, employees, contractors and agents, will have reasonable access to the Land at all reasonable times as may be necessary to ascertain compliance with this Agreement.
- 17. Limitation on Owner's Obligations** – The Owner is liable only for breaches of this Agreement that occur while the Owner is the registered owner of the Land or any part thereof.
- 18. Release and Indemnity** – The Owner hereby releases the District, and indemnifies and saves the District harmless and its elected and appointed officials, officers, employees, agents and others of the District, from and against any and all actions, causes of actions, suits, claims (including claims for injurious affection), costs (including legal fees and disbursements), expenses, debts, demands, losses (including economic loss) and liabilities of whatsoever kind directly or indirectly arising out of or in any way due or relating to:
- (a) the Protected Trees or their preservation and maintenance;
  - (b) the granting or existence of this Agreement;
  - (c) the restrictions or obligations contained in this Agreement or the performance or non-performance by the Owner of this Agreement;
  - (d) the exercise by the District of any of its rights under this Agreement; or
  - (e) any approval given or not given by the District under this Agreement.
- 19. No Obligations on District** – The Owner acknowledges and agrees that the rights given to the District by this Agreement are permissive only and nothing in this Agreement imposes on the District any duty, obligation or liability of any kind (including any private or public law duty, obligation or liability) to any person to exercise or enforce this Agreement, or the statutory right of way granted in section 12 or obliges the District to perform any act or to incur any expense for any of the purposes set out in this Agreement all such matters being within the absolute and unfettered discretion of the District, except as otherwise set out herein. The District hereby expressly reserves the absolute and unfettered right and discretion at any time, without notice to the Owner or any other person, to discharge and relinquish the Section 219 Covenant and the statutory right of way hereby granted without compensation or liability to anyone.

TERMS OF INSTRUMENT – PART 2

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20. **No Effect on Laws or Powers** – This Agreement does 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 or subdivision of the Land and including in relation to the issuance of a development permit for the Land;
  - (b) affect or limit any enactment relating to the use or subdivision of the Land; or
  - (c) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.
21. **Covenant Runs With the Land** – Unless it is otherwise expressly provided in this Agreement, every obligation and covenant of the Owner in this Agreement constitutes a personal covenant and a covenant granted under Section 219 of the *Land Title Act* (British Columbia) in respect of the Land. This Agreement burdens the Land and runs with it and binds the successors in title to the Land. 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.
22. **No Tort Liability** – This Agreement creates only contractual obligations and obligations arising out of the nature of this document as a covenant under seal. No tort obligations or liabilities of any kind exist between the parties in connection with the performance of, or any default under or in respect of, this Agreement. The intent of this section 22 is to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract and under the law pertaining to covenants under seal.
23. **Remedies Non-Exclusive** – No remedy herein conferred on the District is intended to be exclusive. Each and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or in the future existing at law or in equity or by statute or otherwise. The exercise or commencement of exercise by the District of any one or more of such remedies shall not preclude the simultaneous or later exercise by the District of any or all other such remedies.
24. **Notice** – Any notice to be given pursuant to this Agreement must be in writing and must be delivered personally or sent by prepaid mail. The addresses of the parties for the purpose of notice are the addresses on the first page of this Agreement and in the case of any subsequent owner, the address will be the address shown on the title to the Land in the Land Title Office. If notice is delivered personally, it may be left at the relevant address in the same manner as ordinary mail is left by Canada Post and is to be deemed given when delivered. If notice is sent by mail, it is to be deemed given 5 days after mailing by deposit at a Canada Post mailing point or office. In the case of any strike or other event causing disruption of ordinary Canada Post operations, a party giving notice for the purposes of this Agreement must do so by delivery as provided in this section 24. Any party may at any time give notice in writing to the other of any change of address and from and after the receipt of notice the new address is deemed to be the address of such party for giving notice.
25. **Discretion** – Wherever in this Agreement the approval of the District is required, some act or thing is to be done to the District's satisfaction, the District is entitled to form an opinion, or the District is given a sole discretion:



TERMS OF INSTRUMENT – PART 2

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- (a) the relevant provision is not deemed to have been fulfilled or waived unless the approval, opinion or expression of satisfaction is in writing signed by the Director; and
  - (b) any discretion of the District is deemed to be the sole, absolute and unfettered discretion of the District.
26. **No Public Law Duty** – Where the District is required or permitted by this Agreement to form an opinion, exercise its discretion, express satisfaction, make a determination or give its consent, the District is under no public law duty of fairness or natural justice in that regard and the District may do any of those things in the same manner as if it were a private party and not a public body.
27. **Modification, Discharge or Abandonment** – The Owner agrees that this Agreement is intended to be perpetual in order to protect the Land as set out in this Agreement. In view of the importance of protecting the Land for ecological and other reasons, the Owner agrees not to seek a court order modifying, discharging or extinguishing this Agreement under the *Property Law Act* (British Columbia), any successor to that enactment, any other enactment or the common law.
28. **Registration** – The Owner agrees to do everything necessary at the Owner's expense to ensure that this Agreement is registered against title to the Land with priority over all financial charges, liens and encumbrances registered or pending at the time of application for registration of this Agreement.
29. **Waiver** – An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.
30. **Severance** – 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.
31. **No Other Agreements** – This Agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other agreements and arrangements regarding its subject.
32. **Enurement** – This Agreement binds the parties to it and their respective successors, heirs, executors and administrators.
33. **Deed and Contract** – By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

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.

TERMS OF INSTRUMENT – PART 2

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**GRANT OF PRIORITY**

## RECITALS:

- A. The Owner (as defined in the attached covenant agreement) (the "**Covenant Agreement**") is the registered owner of the lands described in Item 2 of Part 1 of the General Instrument attached hereto ("**Land**");
- B. The Owner granted to ▼ **[INSERT LENDER NAME]** (the "**Prior Chargeholder**") a mortgage and an assignment of rents which are registered against the title to the Land in the Lower Mainland Land Title Office under numbers \_\_\_\_\_ and \_\_\_\_\_ (together, the "**Prior Charges**");
- C. By the Covenant Agreement, the Owner granted to the District (as defined in the Covenant Agreement) (the "**Subsequent Chargeholder**") the Section 219 Covenant and the Section 218 Statutory Right of Way that are described in the Covenant Agreement (together, the "**Subsequent Charges**"); and
- D. Section 207 of the *Land Title Act* (British Columbia) permits the Prior Chargeholder to grant priority over a charge to a subsequent chargeholder.

**PRIORITY AGREEMENT**

This Priority Agreement is evidence that in consideration of \$2.00 paid by the Subsequent Chargeholder to the Prior Chargeholder (the receipt and sufficiency of which is hereby acknowledged) the Prior Chargeholder grants to the Subsequent Chargeholder priority over the Prior Charges and the Prior Chargeholder covenants and agrees to subordinate and postpone all its right, title and interest in and to the Land with the intent and with the effect that the interests of the Subsequent Chargeholder in and under the Subsequent Charges are the same as if the Subsequent Charges had been executed, delivered and registered against the title to the Land before registration of the Prior Charges.

As evidence of their agreement to be bound by the above terms of this Priority Agreement, the party described in this Priority Agreement as the Prior Chargeholder has executed and delivered Part 1 of the *Land Title Act* Form C to which this Priority Agreement is attached and which forms part of this Priority Agreement.

# SCHEDULE "A"

## Plan of Covenant Area



### RADIX TREE & LANDSCAPE CONSULTING

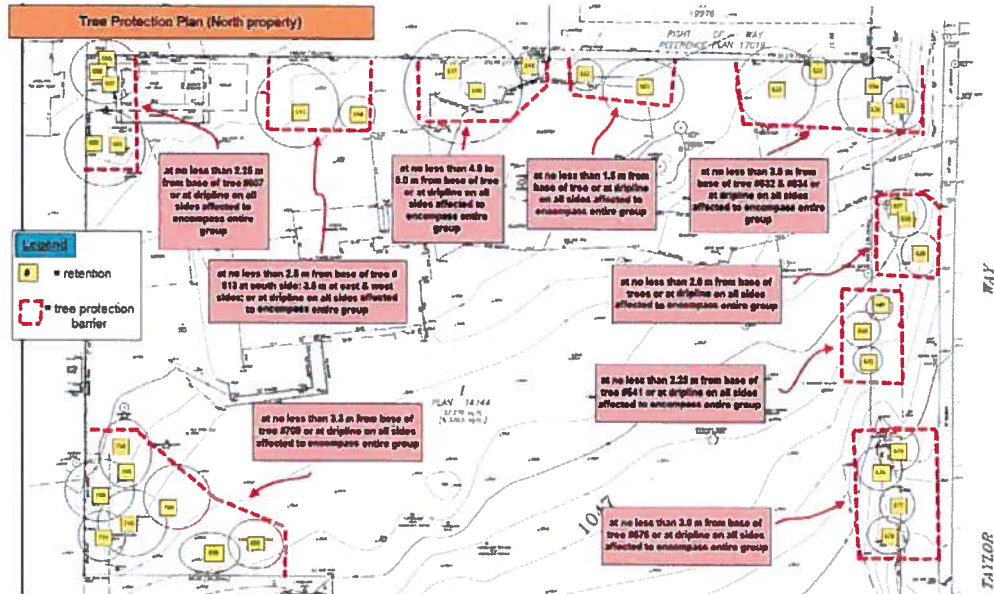


Figure 3. Tree Protection Plan – North Property

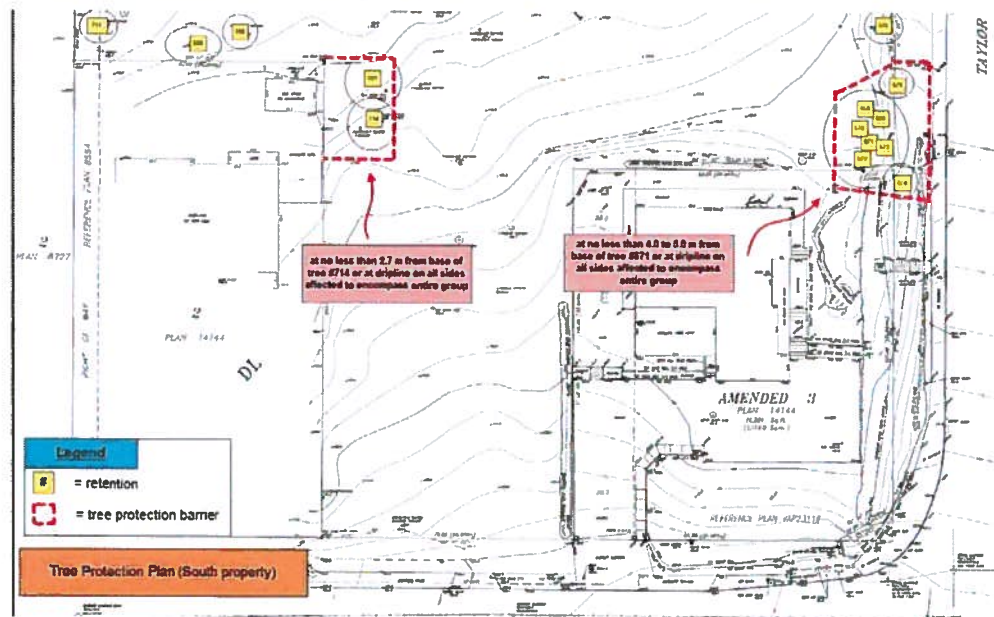


Figure 4. Tree Protection Plan – South Property

Suite #264, 718-333 Brooksbank Ave, North Vancouver, BC V7J 3V8  
PH: 778.319.6164 Fax: 778.262.0140

TERMS OF INSTRUMENT – PART 2

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**Schedule "B"**  
**Building Restriction Covenant**

TERMS OF INSTRUMENT - PART 2

**SECTION 219 COVENANT – BUILDING RESTRICTION**

## WHEREAS:

- A. This document is dated for reference purposes the \_\_\_\_ day of \_\_\_\_\_, 2014.
- B. In these terms of instrument:
- (a) **THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER** is referred to as the "Municipality".
- (b) \_\_\_\_\_ is referred to as the "Grantor".
- C. The Grantor is the registered owner of the lands described in Item 2 of Part 1 to this General Instrument (hereinafter called the "Lands").
- D. 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.
- E. The Grantor desires to grant and the Municipality agrees to accept this Covenant on the terms and conditions contained herein.

WITNESSETH THAT in consideration of the premises and the sum of One Dollar (\$1.00) (the receipt and sufficiency of which the Grantor hereby acknowledges), and pursuant to the provisions of Section 219 of the Land Title Act, the Grantor covenants with the Municipality as follows:

1. No part of the Lands may be used or built upon and no buildings or structures on or to be built upon the Lands shall be used unless the Grantor is in full compliance with its obligations under this Agreement.
2. The Grantor will ensure that window blinds are installed and maintained at all times in all windows along the north elevation of any building on the Lands, and that said window blinds will be drawn from 8:00 p.m. each day until 6:00 a.m. the next day.
3. The Grantor acknowledges and agrees that the rights given to the District by this Agreement are permissive only and nothing in this Agreement imposes on the District any duty, obligation or liability of any kind (including any private or public

TERMS OF INSTRUMENT – PART 2

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- law duty, obligation or liability) to any person to exercise or enforce this Agreement, or obliges the District to perform any act or to incur any expense for any of the purposes set out in this Agreement all such matters being within the absolute and unfettered discretion of the District. The District hereby expressly reserves the absolute and unfettered right and discretion at any time, without notice to the Owner or any other person, to discharge and relinquish the Section 219 Covenant hereby granted without compensation or liability to anyone.
4. Nothing contained or implied herein shall prejudice or affect the rights and powers of the Municipality in the exercise of its functions, rights and powers pursuant to any public or private statute, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands or any and all improvements on the Lands as if this Agreement had not been executed and delivered by the Grantor.
  5. The Grantor agrees that the Municipality is entitled to obtain an order for specific performance or a prohibitory or mandatory injunction in respect of any breach by the Grantor of this Agreement. The Grantor agrees that this section is reasonable given the public interest in the need for the land use restriction contained herein.
  6. The Grantor agrees to do everything necessary to ensure that this Agreement is registered against the title to the Land with priority over all financial charges, liens and encumbrances registered, or the registration of which is pending, at the time of application for registration of this Agreement, including all options to purchase, rights of first refusal, mortgages and assignments.
  7. 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.
  8. 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.
  9. The Grantor hereby releases, indemnifies and saves harmless the Municipality, its elected officials, officers, employees, agents and others from and against any and all matter of actions, causes of action, claims, costs, expenses (including actual legal fees), losses, damages, debts, demands and harm, by whomsoever brought, of whatsoever kind and howsoever arising out of or in any way due to or relating to the granting or existence of this Agreement.

TERMS OF INSTRUMENT – PART 2

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10. 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 Municipality has made no representations and gives no warranties to the Grantor regarding the subject of this Agreement or any related matter or proceeding.
11. 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.
12. Nothing in this Agreement exempts the Grantor or the Land from any statutory requirement or from the ordinary jurisdiction of the Municipality, 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.
13. The rights given to the Municipality by this Agreement are permissive only and nothing in this Agreement imposes any legal duty of any kind on the Municipality to anyone, or obliges the Municipality to enforce this Agreement, to perform any act or to incur any expense in respect of this Agreement.
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.

TERMS OF INSTRUMENT – PART 2

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PRIORITY AGREEMENT

BETWEEN:

**THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER**  
(the "Subsequent Chargee")

AND:

**LENDER**  
(the "Prior Chargee")

WHEREAS:

- A. [NAME] and [NAME] (the "Owner") are the owners of that parcel of land and premises located in the Municipality of West Vancouver and legally described as Parcel Identifier: \_\_\_\_\_ the "Land");
- B. The Owner (or his predecessor in title) granted the Prior Chargee a mortgage which is registered against the title to the Land in the Lower Mainland Land Title Office under number \_\_\_\_\_ (the "Prior Charge");
- C. On the \_\_\_\_ day of \_\_\_\_\_, 2014 the Owner granted the Subsequent Chargee a Section 219 Covenant which is registered against the title to the Land in the Lower Mainland Land Title Office under number \_\_\_\_\_ or which will be registered concurrently with this Agreement (the "Subsequent Charge");

NOW THEREFORE in consideration of the sum of One (\$1.00) Dollar now paid by the Subsequent Chargee to the Prior Chargee, the receipt and sufficiency of which are hereby acknowledged, the Prior Chargee does hereby grant to the Subsequent Chargee priority over the Prior Charge and the Prior Chargee hereby covenants and agrees to subordinate and postpone all its right, title and interest in and to the Land with the intent and with the effect that the interest of the Subsequent Chargee shall rank ahead of the Prior Charge as though the Subsequent Charge had been executed, delivered and registered in time prior to the registration of the Prior Charge.

As evidence of its agreement to be bound by the terms of this instrument, the Prior Chargee hereto has executed the Land Title Office Form C which is attached hereto and forms part of this Agreement.

**END OF DOCUMENT**