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

COUNCIL REPORT

Date: October 15, 2015
From: Lisa Berg, Senior Community Planner
Subject: Official Community Plan Amendment, Rezoning and Development Permit No. 12-053 for 370 and 380 Mathers Avenue (Residences on Mathers)

RECOMMENDED THAT:

1. Opportunities for consultation on the proposed Official Community Plan amendment, with persons, organizations, and authorities, as outlined in the report from the Senior Community Planner dated October 15, 2015, be endorsed as sufficient consultation for purposes of section 879 of the Local Government Act;


3. Proposed “Official Community Plan Bylaw No. 4360, 2004, Amendment Bylaw No. 4851, 2015” has been considered in conjunction with the District’s Financial Plan and Regional Waste Management Plan;

4. Proposed “Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 4852, 2015” be read a first time;

5. Proposed “Phased Development Agreement Authorization Bylaw No. 4853, 2015” be read a first time;

6. Proposed “Official Community Plan Bylaw No. 4360, 2004, Amendment Bylaw No. 4851, 2015”, proposed “Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 4852, 2015”, and proposed “Phased Development Agreement Authorization Bylaw No. 4853, 2015” be presented at a Public Hearing scheduled for November 30, 2015 at 6:00 p.m. in the Municipal Hall Council Chamber, and that the Municipal Clerk give statutory notice of the scheduled Public Hearing which shall include notice of the Public Hearing to the owners and any tenants in occupation of all parcels of land as shown on the proposed “Notification Area Map” attached as Appendix C to the report from the Senior Community Planner dated October 15, 2015 regarding the proposed development of 370 and 380 Mathers Avenue;
7. Proposed "Development Permit No. 12-053" be presented at a Public Meeting scheduled for November 30, 2015 at 6:00 p.m. in the Municipal Hall Council Chamber, to be held concurrently with the Public Hearing scheduled for November 30, 2015 at 6:00 p.m. in the Municipal Hall Council Chamber, and that the Municipal Clerk give notice of the scheduled Public Meeting; and

8. A proposed section 219 Covenant to allocate density and to protect certain trees attached as Appendix I to the report by the Senior Community Planner dated October 15, 2015, be presented as part of the development package.

Purpose

To provide Council with proposed bylaws serving to amend the Official Community Plan (OCP) and the Zoning Bylaw, authorize a Phased Development Agreement to secure the community benefit, a Development Permit to regulate the form and character of the proposed development, and a covenant to allocate density and protect trees, all which would facilitate the redevelopment of the site with 17 single and two-family residential dwellings.

Executive Summary

Darwin Construction has applied for an Official Community Plan amendment, a rezoning and a development permit at 370 and 380 Mathers Avenue, for a 17-unit strata development (see Appendix A - Context Map). The proposal consists of nine single family dwellings and four two-family buildings (eight two-family units). The proposal is to rezone the site to allow for the proposed 17 units with a Floor Area Ratio (FAR) of 0.38.

Redevelopment of the site is guided by OCP Policy H3 which recognizes that opportunities occur in limited site-specific situations where a housing need may be addressed in a manner that is consistent with the principles of the OCP. Further, the final report and recommendations of the Community Dialogue on Neighbourhood Character and Housing working group provides further direction for the review of this development application in terms of how new housing types "fit" with the established physical and social fabric of neighbourhoods.

On March 18, 2013, Council directed that community consultation take the form of consideration by the Design Review Committee (DRC) and a public meeting. At that time, the proposal was for a 19-unit strata development. A public meeting was held on April 24, 2013 and the DRC considered the proposal on May 30, 2013. Staff reported back to Council on these consultations and was directed to work with the applicant to revise the proposal in response to community concerns and DRC considerations. As a result, the proposal was revised by the applicant, showing a reduction in the number of dwelling units from 19 to 17. The revised proposal was re-submitted to the DRC at its September 25, 2014 meeting, where the Committee passed a recommendation of support, subject to minor modifications/detailing.
On November 25, 2014 the District hosted a second public meeting on the revised plans prior to reporting back to Council. Mixed reviews were received by the public in attendance at the meeting; while some support was expressed, localized concerns remain high.

If approved, the development would add 6,360 square feet over what is allowed under the current RS3 zoning, and would create smaller residential units in the community. This approach is aligned with the broader housing needs identified through the Community Dialogue.

Development controls would be put in place to preserve neighbourhood character, including: tree protection secured through a covenant, landscaping, site access, storm water management and control over the form and character (architecture and massing) of the homes constructed.

On February 16, 2015 Council considered the outcome of the community consultations held and directed staff to prepare draft amending bylaws, a development permit and a covenant for tree protection for consideration. The proposed amending bylaws would rezone the site and formalize the land use policy, while the development permit would control the form and character of the development. The covenant relates to allocating the proposed density (i.e. requiring lot consolidation) and protecting mature trees on the site as shown on the development plans.

A Community Amenity Contribution (CAC) report was commissioned to determine the 'uplift' resulting from the rezoning. Based on the District's target of securing 75% of the uplift, a voluntary CAC of $1,342,500 is recommended, and would be secured by a Phased Development Agreement Authorization bylaw.

Should Council support the recommendations outlined in this report, the bylaws would receive first reading and a Public Hearing and a Public Meeting would be scheduled for November 30, 2015. Prior to the Public Hearing, the applicant will be required to host a Development Application Information Meeting.
Background

1.1 Prior Resolutions

At the March 18, 2013 Council meeting Council passed the following motion:

1. Community consultation on Official Community Plan amendment, Rezoning and Development Permit Application No. 12-053 for 370 and 380 Mathers Avenue take the form of Design Review Committee consideration and a public meeting in April 2013 with direct notification of the public meeting provided to the properties shown on the map attached as Appendix E to the staff report dated March 7, 2013 for the Senior Community Planner and the Manager of Community Planning, and a notice of the public meeting be posted on the District website; and

2. Following the community consultation on the development proposal for the land at 370 and 380 Mathers Avenue, staff report back to Council on the results of consultation, and provide a complete review of the development proposal and recommended next steps.

At the September 23, 2013 Council meeting Council passed the following motion:

1. Official Community Plan Amendment, Rezoning and Development Permit application 1010-20-12-053 for 370 and 380 Mathers Avenue (Unitarian Church Site) be revised to address outstanding items identified during the Community Consultation Meeting held on April 24, 2013 and by the Design Review Committee on May 30, 2013 prior to advancing in the application review process, specifically:

   a. to reduce the size and/or number of units and modify unit layouts to reduce density;

   b. to provide for adequate visitor parking;

   c. to provide more contextual information (for re-submission to the Design Review Committee);

   d. to increase useable open space, provide private outdoor space for the units and provide landscape buffers between the neighbours;

   e. to ensure ease of vehicle turnaround within driveways;

   f. to introduce more variety, materiality and roof forms and consideration to the Elliott house; and

   g. to provide details about the proposed sustainability measures and landscape.

2. Staff report back to Council with a review of the revised development plans and recommended next steps on advancing the application once the outstanding items are addressed.
At the February 16, 2015 Council meeting Council passed the following motion:

1. Proposed Official Community Plan Amendment, Rezoning and Development Permit No. 12-053 for 370 and 380 Mathers Avenue known as the Residences on Mathers Project advance in the application review process;

2. Staff bring forward proposed bylaws to amend the Official Community Plan and Zoning Bylaw, and a proposed Development Permit for 370 and 380 Mathers Avenue for Council consideration;

3. Staff bring forward a draft covenant for tree protection as part of the development package; and

4. Staff bring forward a Phased Development Agreement to secure a Community Amenity Contribution.

1.2 History

A previous application for an OCP amendment, rezoning and development permit for this site (DP No. 08-014) was submitted in 2008. The initial proposal was for 48 townhouse units and a Floor Area Ratio (FAR) of 0.70, and was later reduced to 33 units and a FAR of 0.62.

Two public meetings were held on that application, one by the District in May 2009, and one by the applicant in October 2010. At the District-hosted consultation meeting in 2009, the issues identified were density, traffic, loss of trees, proposed uses for Hugo Ray Park¹ and associated traffic.

Despite the revisions made to the proposal in 2010 in response to neighbourhood comments, this application was ultimately abandoned by the applicant.

In August 2012, the current applicant submitted a proposal for 24 units consisting of single and two family dwellings. The application was reduced to 19 units and consultations with the DRC and the community began. The applicant then further reduced the number of units to 17, which has been further considered by the DRC, the community at a public meeting, and Council.

¹ At that time, Hugo Ray Park was being considered for alternative park development (i.e. artificial turf field development), but this was not pursued.
The following chart compares the proposals brought forward by two different applicants, and the reduction in density with each revision:

<table>
<thead>
<tr>
<th></th>
<th>Summer 2009 (No. 08.014) (Previous Applicant)</th>
<th>December 2010 (No. 08.014) (Previous Applicant)</th>
<th>August 2012 (No. 12.053) (Current Applicant)</th>
<th>February 2013 (No. 12.053)</th>
<th>Summer 2014 (No. 12.053) (Current Proposal)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Units</td>
<td>48</td>
<td>33</td>
<td>24</td>
<td>19</td>
<td>17</td>
</tr>
<tr>
<td>FAR</td>
<td>0.70</td>
<td>0.62</td>
<td>0.51</td>
<td>0.41</td>
<td>0.38</td>
</tr>
<tr>
<td>Average Unit Area</td>
<td>1,400 ft²</td>
<td>1,800 ft²</td>
<td>SFD: 2,121 ft²</td>
<td>TFD: 1,834 ft²</td>
<td>SFD: 2,211 ft² TFD: 1,945 ft²</td>
</tr>
<tr>
<td>Floor Area*</td>
<td>66,920 ft²</td>
<td>59,335 ft²</td>
<td>48,646 ft²</td>
<td>38,307 ft²</td>
<td>36,360 ft²</td>
</tr>
<tr>
<td>Site Coverage</td>
<td>52%</td>
<td>38%</td>
<td>37%</td>
<td>32%</td>
<td>28%</td>
</tr>
<tr>
<td>No. of Storeys</td>
<td>1 to 2</td>
<td>3</td>
<td>2 + bsmt</td>
<td>2 + bsmt</td>
<td>2 + bsmt max 24.6 ft</td>
</tr>
<tr>
<td>Building Height</td>
<td>25 ft</td>
<td>36 ft</td>
<td>23.6 ft</td>
<td>23.6 ft</td>
<td>2:1 + 5 visitor max 24.6 ft</td>
</tr>
<tr>
<td>Parking Ratio</td>
<td>2:1 + 6 visitor</td>
<td>2:7:1 + 10 visitor</td>
<td>2:1 + 5 visitor</td>
<td>2:1 + 6 visitor</td>
<td>2:1 + 5 visitor</td>
</tr>
<tr>
<td>Parking spaces**</td>
<td>102</td>
<td>99</td>
<td>53</td>
<td>44</td>
<td>39</td>
</tr>
</tbody>
</table>

*Excludes garages & basements
**Parking spaces are within private enclosed garages; driveways designed for additional parking.

In summary, the two applications have produced five different proposals, resulting in the density being reduced from 48 townhouses with an FAR of 0.7 to 17 single and two family dwellings with an FAR of 0.38.

See Appendix B for Process for Consideration flowchart.

### 2.0 Policy

#### 2.1 Official Community Plan

**Housing**

Redevelopment of the site is guided by OCP Policy H3 which recognizes that opportunities occur in limited site-specific situations where a housing need may be addressed in a manner that is consistent with the principles of the OCP.

This policy specifies that applications for such site specific zoning or OCP amendments within a single family area should apply in limited circumstances and be subject to Council’s Public Involvement Policy and defined criteria; namely that development would have minimal impact on established areas in terms of access, traffic, parking, and obstruction of views, and the site would provide a degree of physical separation (e.g. a road, green belt, alternate use, or change in natural grade) from the surrounding neighbourhood.
Community Dialogue

The final report and recommendations of the Community Dialogue on Neighbourhood Character and Housing Working Group (September 2008) provides further direction for the review of this development application; specifically, the proposed housing types and unit sizes, and how these could address community objectives for greater housing diversity in established neighbourhoods. Importantly, the discussion of neighbourhood character issues as part of the dialogue provided broader context for considering how new housing types “fit” with the established physical and social fabric of neighbourhoods.

Heritage

The proposed development site includes the Elliott House at 380 Mathers Avenue. This building is identified in the “West Vancouver Survey of Significant Architecture: 1945 – 1975” as a ‘primary’ heritage resource. This property was nominated to the West Vancouver Community Heritage Register in May 2008, but it has not been added. Applicable heritage policies in the OCP are as follows:

- Policy HE1: Encourage the preservation, retention and maintenance of buildings, sites and landscapes listed in the municipal heritage inventories.
- Policy HE2: Where retention is not possible or is not desired, cooperate with owners in documenting heritage features of buildings and sites for the Municipal archives.

The Elliott House suffers from design flaws that have resulted in its existing poor condition. It has no roof overhangs, poor building envelope performance, single glazing and jalousie windows and small clerestory lights set into routed groves that cannot be replaced with modern sealed units. It has also been modified over the years; windows have been enclosed and a carport has been added. As such, its retention is not proposed. A replacement house will be sited on this lot, incorporating key design elements from the original Elliott House.

2.2 Zoning Bylaw

Zoning Bylaw No. 4662, 2010 regulates land use and density in the District.

The site consists of two properties:

- 380 Mathers Avenue makes up the northwest frontage of the site and is zoned RS3 (Single family Residential Zone 3).
370 Mathers Avenue comprises the majority of the site and is split-zoned: RS3 along the frontage of Mathers Avenue, and PA2 – Public Assembly Zone 2 (Places of Worship) on the balance of the property.

PA2 (Places of Worship) zoning permits places of worship and single family dwellings as per the regulations of the RS3 (Single Family) zone. Based on the minimum lot size in the RS3 zone of 1,115 square metres, the subject site could be developed with six single family lots.

2.3 Legislation

The following sections of the Local Government Act apply:

- Section 879: consultation during the amendment of the Official Community Plan.
- Section 890: holding of a public hearing on the Official Community Plan amendment and rezoning;
- Section 892: statutory notification of the required public hearing; and
- Section 501.1: authorizes the municipality to enter into a Phased Development Agreement (to secure the community benefit).

3.0 Analysis

3.1 Discussion

Site Context and Features

The 8,881.5 square metre (2.2 acres) site is located within the British Properties. It is bounded by a townhouse development to the south (Esker Lane) with the Upper Levels Highway beyond, Mathers Avenue to the north and single family dwellings to the east and west (Mathers Mews). It has a north to south slope of approximately 16% with stands of mature coniferous trees throughout.

The Unitarian Church and child daycare are located at 370 Mathers Avenue. The church wishes to relocate to a new facility on the North Shore with a more accessible location, as there is no public transit in the neighbourhood. The existing daycare may choose to relocate with the church; they serve a similar geographic catchment as the congregation and provide care for North Shore families.

A vacant single family dwelling is located at 380 Mathers Avenue. This house is known as the "Elliott House," which is identified in the West Vancouver Survey of Significant Architecture: 1945 – 1975 as a primary heritage resource. Although nominated to West Vancouver's Heritage Register, it has not been added nor does it have any legal protection status. The Elliott House is not proposed for retention as part of the development plans.
The Proposal

The proposal is for a residential development comprising of 17 strata units (9 single family dwellings and 8 two-family dwelling units). It has been revised based on the outcome of consultations as outlined in this report. Key features of the proposal include:

- A Floor Area Ratio (FAR) of 0.38.
- Two-storeys plus basement units, with attached two-car garages and private driveways.
- A total of 39 parking spaces: 34 within private enclosed garages plus five visitor parking spaces distributed on the site.

Five different unit types and sizes are proposed: eight houses ranging from 206 to 218 square metres (2,214 to 2,343 square feet); one house fronting Mathers Avenue ("Elliott House" replacement) at 229 square metres (2,460 square feet); and eight two-family units with a floor area of 181 square metres (1,945 square feet) each.

Access

Access to the site is proposed to be from Mathers Avenue, through an "S" shaped driveway designed to preserve mature trees at the entrance. The replacement dwelling fronting onto Mathers Avenue, along with the preservation of mature trees along the frontage of the site, complement and preserve the existing street character.

To deal with a long narrow site, the dwellings are situated along a common access driveway which is visually broken up with a mid-site landscape feature. Storm water detention tanks occur throughout the site in conjunction with permeable paving, which terminate with a landscaped buffer between the adjacent townhouse development to the south (Esker Lane). The two single family dwellings along the eastern property line have been oriented in a north-south direction, in order to respond to adjacent neighbour's concerns about privacy, massing and siting.

Traffic

A traffic study has been submitted by the applicant, which concludes that the proposed 17-unit residential development would have a nominal traffic impact on weekdays, and significantly less traffic on Sundays than the existing uses on the site. Emergency vehicle and pedestrian access only is provided to Lawson Avenue to the east.

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3 The driveways are designed to accommodate additional off-street parking in addition to private garages and visitor parking.
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Landscape

The landscape plans see the retention of mature trees at the entrance and at the rear of the site. While the majority of the trees would be removed to accommodate the development, new trees and landscaping would be installed. The tree protection areas will be secured by a covenant, and the landscaping is subject to reviews in accordance with the Development Permit. The new landscaping, together with the preserved trees, would mature over time and blend in with the character of neighbourhood and add privacy.

See the Project Profile in Appendix D. The Development Application Proposal Booklet is attached as Schedule A to Development Permit No. 12-053 as Appendix J.

Assessment of the Project

Overall

The applicant has put forward a high quality proposal for the redevelopment of the site that would contribute to greater housing diversity within West Vancouver, which was identified as a strong desire through the Community Dialogue.

The applicant has revised the proposal in an attempt to respond to concerns raised by the adjacent neighbours and recommendations of the DRC, although the neighbours remain opposed to the proposal. Key revisions to the plans include:

- Reducing the number of units from 19 to 17, resulting in a proposed FAR of 0.38.
- Increasing the amount of green space on the property (through the reduction of units and increasing yards between the dwellings).
- Providing adequate visitor parking (i.e. signed visitor spaces in addition to parking available on private driveways and in private garages).
- Reflecting the architectural style of the Elliott House throughout the development coupled with varied architectural expression to provide choice, interest and to respond to neighbourhood context.

Housing Diversity

The Community Dialogue on Neighbourhood Character and Housing identified a strong desire for greater housing diversity. The Dialogue revealed that West Vancouver has evolved from a community of traditional family households (parents and children) to “empty nesters,” seniors, smaller households (fewer or no children), and conversely, households embracing extended families and multi-generations.
The Dialogue identified fundamental planning challenges, including:

- How to provide for improved housing choices and affordability;
- How to achieve more affordable housing in close proximity to existing community services and amenities;
- How to meet the changing needs of residents by providing new housing opportunities within their own neighbourhoods, while maintaining the character of those neighbourhoods;
- How to meet the challenges of “designing with nature” and encouraging both the rural, natural character of West Vancouver, and environmentally sustainable development within dramatically different areas of the community with different character attributes.

The 2008 Community Dialogue survey revealed that 84% of respondents believe that a greater variety of housing types is needed. While the notion of a detached house is still highly valued in the community, residents want to see more variations to the traditional housing form, such as smaller units, more manageable gardens, opportunities for one-level living, and flexible designs to accommodate changing household needs.

The proposed development generally aligns with these objectives as it would fill a housing gap by providing smaller single and two-family units (1,945 to 2,460 square feet), as opposed to 5,000 square foot houses that would result from traditional subdivision. The site presents a unique opportunity to “infill” underutilized land with a housing type that respects the surrounding neighbourhood while directly responding to a community need.

While the proposal calls for an increase in density (i.e. an additional 6,360 square feet in floor area), the proposed housing forms (single and two-family homes) would be compatible with the surrounding built form context.

**Neighbourhood Character**

The greatest threat to the established character of existing neighbourhoods is the development of new large homes and associated construction practices, such as complete lot clearing of all trees and vegetation, altering the existing grade lines and constructing retaining walls, lengthy construction timelines, parking during construction, and alteration of public boulevards.

The proposed development would see development controls put in place to deal with many of these construction practices. The design concept responds to and respects the established neighbourhood character via the following measures:

- Retention of the grove of mature trees at the entrance (protected by covenant);
- Single curving driveway access to buffer the development from the street;
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- Elliott House replacement of similar architecture, size and scale;
- Architecture, colour palette and finishing materials that express a ‘mid-century’ modern design;
- Installation of trees and hedging along the east and west property lines;
- Retention of trees at the rear of the site (protected by covenant);
- Construction of smaller dwellings;
- Closing of Lawson Avenue to emergency vehicles and pedestrians only; and
- Generous rear yard setback to allow for on-site storm water management, tree retention and additional landscaping.

These measures work together to maintain the street-front single family character while providing privacy to the adjacent neighbours. Development controls would be established through a Development Permit to implement the plan.

Public Opposition & Support of the Proposal

The neighbourhood, particularly the residents within close vicinity of the site, are opposed to the development. The residents have been clear that they are opposed to any development beyond that of single family residential development at an FAR of 0.35 on the site. The District has received letters, questionnaires (from the consultation meetings), emails and a petition voicing neighbourhood concerns and opposition to the proposal. Residents have expressed concerns focused on the threat to existing neighbourhood character, privacy for the adjacent homes, and traffic.

The District has also heard that there is support for the project. While support is limited, those that do support it acknowledged that the design brought with it development controls for landscaping, grading, and building form and character. It was felt that if the property were to be developed with six single family lots, the neighbourhood would lose any say in how the development was constructed. Recent home construction (in the neighbourhood and in other areas of the District) has seen the clearing of lots, consolidation of lots to make larger lots (and thus much larger houses than surrounding lots) and grade changes, all of which have been identified as character changing.

Common to these viewpoints is the need to define the site proposed for land use change, and to ‘contain’ the development. Establishing the site for the proposed residential development would generally meet the OCP’s H3 policy criteria for consideration of this development application, and would establish a defined boundary for the introduction of these single and two-family dwellings at this location.
Specifically, the OCP amendment would:

- Designate the site for single and two-family development;
- Limit the density to 0.38 FAR; and
- Designate the site as a Development Permit Area to regulate the form and character of the proposed dwellings and landscaping (to ensure what is proposed is what is actually built).

**Voluntary Community Amenity Contribution**

Consistent with District policy, an analysis was undertaken by an independent third party of the lift in land value resulting from the rezoning of the land for the proposed development. In summary, a lift in land value of $1,790,000 was estimated, resulting in a voluntary Community Amenity Contribution (CAC) of $1,342,500, consistent with District practise to secure 75% of the estimated lift in land value.

The summary report of the analysis is attached as Appendix E.

**Phased Development Agreement**

A Phased Development Agreement (PDA) in an emerging best practice to legally secure a voluntary Community Amenity Contribution. The agreement sets out the framework between the District and the applicant in terms of receipt of the CAC payment. The municipality may enter into a phased development agreement with a developer in accordance with the Local Government Act. Such an agreement may include additional terms and conditions related to a development, other than those specified within amending bylaws or a development permit.

The Phased Development Agreement principally achieves two things:

1. Secures the voluntary community benefit (i.e. the CAC); and
2. In exchange for a community benefit, provides zoning certainty to the land owner for a period of five years.

The proposed Phased Development Agreement Authorization Bylaw is attached as Appendix H.

**Implementing Bylaws**

The proposal would require an OCP amendment to formalize land use policy direction for the site and establish Development Permit Guidelines, and an amendment to the Zoning Bylaw to set the specific parameters of development.
Official Community Plan Amendment (Appendix F)

Proposed “Official Community Plan Bylaw No. 4360, 2004, Amendment Bylaw No. 4851, 2015” would establish the site as a comprehensive development area for single and two-family residential development, not exceeding a density of 0.38 Floor Area Ratio (FAR) through proposed Policy BF-B15. The OCP amendment would designate the site as a Development Permit Area, with corresponding built form guidelines, to regulate the form and character of the proposed development.

Zoning Bylaw Amendment (Appendix G)

The new Comprehensive Development zone (CD52 – 370 & 380 Mathers Avenue) would be a site-specific zone that would reflect the development proposal. The proposed CD52 zone would regulate the land use based on the proposal:

a. Permitted Uses: single and two-family dwellings, accessory buildings and structures and sundry uses including child care and home based businesses.
b. Maximum FAR of 0.38.
c. Maximum 28% site coverage.
d. Establishes the minimum setback requirements.
e. Sets a maximum building height of 7.62 metres and a maximum of two storeys plus a basement.
f. Requires a minimum of 39 parking spaces.

Density Allocation & Tree Protection Covenant (Appendix I)

A tree protection covenant is proposed as part of the development package. It has been deemed to be in the public interest to protect and preserve trees and vegetation on the site, in keeping with a tree retention plan. The covenant includes language for the retention and protection of trees, as well as how to deal with hazard trees and tree replacement. The covenant would also serve to allocate the density on the property in accordance with the plans.

4.0 The Process of Bylaw Consideration

4.1 Consultation on OCP Amendment

Section 879 of the Local Government Act requires that one or more opportunities be provided for appropriate consultation with persons, organizations and authorities. Council considers will be affected by an OCP amendment.
Community consultation regarding the proposal has included:

- **District-Organized Meetings:** As part of the consultation process established by the District, two community consultation meetings were held. The first meeting was held on April 24, 2013 at a meeting room inside the Unitarian Church. The second meeting was held on November 25, 2014 at the Hugo Ray Park Clubhouse. Notification to each meeting was by direct postal mailing to a defined area approved by Council, placement on the District website, and on the Community Calendar. Both consultation meetings were well attended.

- **Website:** The District has hosted information about the proposal on its website (under development applications).

- **Design Review Committee:** The DRC reviewed the project, and its successively refined versions, at two separate meetings on May 30, 2013 and September 25, 2014. The DRC recommended support for the proposal at its September 25, 2014 meeting.

- **Development Application Information Meeting:** Should Council give the proposed bylaws first reading and forward the proposal onto a Public Hearing, the applicant will be required to organize and publicize a Development Application Information Meeting to be held prior to the Public Hearing. The purpose of this meeting is to give residents an opportunity to learn about the proposal in advance of the hearing.

4.2 Consideration of OCP Amendment

The Act requires that, after first reading and before a Public Hearing of an OCP amendment, Council must consider the plan (or amendment to the plan) in conjunction with its financial plan and any waste management plan that is applicable in the municipality.

**Financial Implications**

The financial plan is both the long term capital plan and operating budget for the District. The proposal would provide increased property tax revenue over the current uses on the site (a single family dwelling and a church that benefits from certain tax exemptions). In addition, the proposed community amenity contribution of $1,342,500 will flow into the District’s amenity reserve account(s) to contribute to financial capacity for future amenity projects to be determined by Council.

The proposed OCP amendment to facilitate the redevelopment of the site for 17 single and two-family residential dwellings has been reviewed by the Acting Chief Financial Officer in conjunction with the District’s financial plan and the proposed is consistent with the plan.
Regional Waste Management Plans

The proposed OCP amendment to facilitate the redevelopment of the site for residential development has been reviewed by the Director of Engineering and Environment Services in conjunction with the Regional Waste Management Plan and the amendment is consistent with the plan.

4.3 Consideration of Bylaws and Development Permit

Following first reading of the bylaws and scheduling of the Public Hearing by Council, District staff will give notification (via direct mailing, newspaper advertisement, website placement, etc.) of the Public Hearing. Concurrently with the Public Hearing (at the same meeting) Council provides an opportunity for those who consider that they are affected by the proposed Development Permit to make written and/or oral representations to Council.

After the closure of the Public Hearing (on the same night or a different night) Council may give second and third readings to the bylaws. After second and third readings of the bylaws and at a subsequent Council meeting, Council may adopt the bylaws once District staff confirm any conditions precedent to adoption have been met (see section 4.4 below).

Once the implementing bylaws (inclusive of the Phased Development Agreement Authorization Bylaw) have been adopted, Council may authorize issuance of the Development Permit.

4.4 Conditions Precedent to Adoption

Prior to final adoption of the amending bylaws and approval of the Development Permit, legal documentation will be required to secure the allocation of density and tree protection via a covenant in favour of the District. The voluntary community amenity contribution is secured through the adoption of the Phased Development Agreement Authorization Bylaw. Additionally, Ministry approval will be required on the proposed rezoning bylaw.

4.5 Sustainability

The applicant has provided a sustainability strategy, which is set out in the development proposal that will form a part of the Development Permit. The strategy would target LEED for Homes Silver or Built Green Silver\(^4\). Key elements include:

- preservation of trees at the north end of the site (next to the entrance), through the site where possible, and along the south property line;

\(^4\) The applicant is comparing the rating systems of LEED and Built Green to determine the best sustainability option for the proposal. This comparison will be made available to Council prior to Council considering first reading of any amending bylaws.
- incorporation of native, non-invasive and drought tolerant landscaping for low irrigation demands;
- on-site storm water management strategies such as detention tanks and permeable pavement;
- incorporating Energy Star appliances and low flow plumbing fixtures;
- focus on designing for and sourcing materials that contain recycled content or are from local sources;
- inclusion of best practices for construction waste management;
- indoor air quality management, with product selections that do not contain VOCs; and
- maximizing natural lighting through design.

4.6 Consultation/Communication

The application has been presented at two Community Consultation Meetings and was considered by the Design Review Committee twice. Project updates, including information received through the consultation process, are posted to the District website.

Should Council choose to consider first readings of the bylaws and schedule a Public Hearing, District staff will make preparations for the Public Hearing and concurrent Public Meeting and provide notification via direct postal mailing (Appendix C), newspaper advertisement, email updates and placement on the District website. In addition, the applicant will be required to organize, publicize and facilitate a Development Application Information Meeting (Open House format, venue to be determined) after first reading but before the Public Hearing/Public Meeting so that residents can learn more about the proposal before the Public Hearing.

4.7 Conclusion

Staff recommends that Council give first reading to the amending bylaws and the proposed Phased Development Agreement Authorization Bylaw and set the date for a Public Hearing and concurrent Public Meeting given that:

a. The proposal aligns with the Community Dialogue in that it would fill a housing gap by providing smaller single and two-family units (1,945 to 2,460 square feet), as opposed to 5,000 square foot houses that would result from traditional subdivision;

b. The proposal will contribute $1,342,500 to a reserve fund to be used for amenity projects in the District determined by Council;
c. The site presents a unique opportunity to add modest density (FAR 0.38) within an existing neighbourhood (FAR 0.35) on underutilized land, in keeping with Policy H3 of the Official Community Plan;

d. The proposal has been revised by reducing the number of units in an attempt to respond to neighbourhood concerns over density and character, resulting in a proposed density that is more aligned with existing residential zoning in the area (single and multifamily); and

e. Development controls would be established to help preserve neighbourhood character, including tree retention, site planning and access, form and character of the development (i.e. architecture and massing), and site and boulevard landscaping.

5.0 Options

(as recommended by staff)

A. Give first readings to the implementing bylaws (Appendices F to H), consider the Development Permit (Appendix J) and the proposed covenant (Appendix I) concurrent with the bylaws, and set November 30, 2015 as the date for the Public Hearing and Public Meeting.

(or, alternatively)

B. Same as Option A, but set a different Public Hearing date; or

C. Provide different or modified direction (to be specified) and/or request additional information (to be specified); or

D. Reject the application.

Author:

Lisa Berg, Senior Community Planner

Concurrence

Chris Bishop, Manager of Development Planning
Appendices:

A. Context Map
B. Process for Consideration Flowchart
C. Notification Area
D. Project Profile
G. Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 4852, 2015
H. Phased Development Agreement Authorization Bylaw No. 4853, 2015
I. Proposed Covenant (to allocate density and for tree protection)
J. Development Permit No. 12-053 (with design booklet attached as Schedule A)
This page intentionally left blank
APPENDIX A – CONTEXT MAP

Subject Development Site

MAP

MATHERS AVENUE

CAPILANO VIEW CEMETERY

LAWSON AVENUE

ESKER LANE

HUGO RAY PARK

NEWLANDS PLACE

LEVELS

3RD STREET

983543v1
APPENDIX B – PROCESS FOR CONSIDERATION

RESIDENCES ON MATHERS – OFFICIAL COMMUNITY PLAN AMENDMENT, REZONING & DEVELOPMENT PERMIT NO. 12-053

PROCESS FOR CONSIDERATION

Application Submitted (August 2012, revised February 2013)

Staff Review

Council directed that community consultation take place (March 18, 2013)

District holds Community Consultation Meeting

Meeting Date: Wednesday, April 24, 2013
Time: 6:30 pm Open House Displays
7:00 pm Presentation & Discussion
Location: Unitarian Church, 370 Mathers Avenue in the Fireside Room

DRC Review (May 30, 2013)

Council considers outcome of consultation process (Sept 23, 2013)

Applicant submits revised plans to the District

DRC Review (September 25, 2014)

District holds Community Consultation Meeting

Meeting Date: Tuesday, November 25, 2014
Time: 6:00 to 8:30 p.m.
Location: Hugo Ray Park Clubhouse
1230 2nd Street, West Vancouver

Council considers outcome of revised development proposal, community consultation and recommended next steps (February 16, 2015)

Staff directed to prepare proposed amending bylaws and a draft Development Permit

We are here

OCP Amendment and Rezoning Bylaws and a Phased Development Agreement Authorization Bylaw are introduced for 1st reading and proposed draft Development Permit and tree protection covenant are presented (November 2, 2015)

Applicant Hosts a Development Application Information Meeting (typically held 7 to 10 days prior to the public hearing)
(Date, time & location to be determined)

Public Hearing
Date: November 30, 2015
Time: 6:00 pm
Location: Council Chamber, Municipal Hall
750 – 17th Street, West Vancouver

Council considers 2nd and 3rd readings of OCP Amendment, Rezoning and Phased Development Agreement Authorization Bylaws

Council considers adoption of OCP Amendment, Rezoning and Phased Development Agreement Authorization Bylaws and approves the Development Permit
This page intentionally left blank
APPENDIX C – NOTIFICATION AREA MAP

Proposed Notification Area

Subject Site
APPENDIX D – PROJECT PROFILE
at October 15, 2015

<table>
<thead>
<tr>
<th>Project:</th>
<th>Residences on Mathers (Unitarian Church Site)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application:</td>
<td>OCP/RZ/DP No. 12-053</td>
</tr>
<tr>
<td>Applicant:</td>
<td>Darwin Construction</td>
</tr>
<tr>
<td>Architect:</td>
<td>Matrix Architecture &amp; Planning</td>
</tr>
<tr>
<td>Address:</td>
<td>370 Mathers Avenue (Unitarian Church)</td>
</tr>
<tr>
<td><strong>Legal Description:</strong></td>
<td>The East ½ of the North West ¼ of District Lot 1074 Group 1 New Westminster District except part in Plan 10097</td>
</tr>
<tr>
<td><strong>PID:</strong></td>
<td>015-957-187</td>
</tr>
<tr>
<td>Address:</td>
<td>380 Mathers Avenue (Elliott House)</td>
</tr>
<tr>
<td><strong>Legal Description:</strong></td>
<td>Lot 1 District Lot 1074 Plan 10097</td>
</tr>
<tr>
<td><strong>PID:</strong></td>
<td>009-506-438</td>
</tr>
<tr>
<td>OCP Policy:</td>
<td>HE3</td>
</tr>
<tr>
<td>Zoning:</td>
<td>RS3 &amp; PA2</td>
</tr>
<tr>
<td>Previously Before Council:</td>
<td>February 16, 2015 (direction to prepare bylaws)</td>
</tr>
<tr>
<td>Proposal:</td>
<td>An Official Community Plan amendment, Rezoning and Development Permit to a Comprehensive Development (CD) zone for a 17-unit strata residential development.</td>
</tr>
</tbody>
</table>

Site Area: 95,600 ft² (8,881.5 m²)

<table>
<thead>
<tr>
<th>Bylaw</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Zoning</strong></td>
<td>RS3 &amp; PA2</td>
</tr>
<tr>
<td>Floor Area Ratio (FAR)</td>
<td>0.35</td>
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<tr>
<td>Building Area</td>
<td>n/a</td>
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<tr>
<td>Site Coverage</td>
<td>30%</td>
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<tr>
<td><strong>Setbacks</strong></td>
<td></td>
</tr>
<tr>
<td>Front (north, Mathers Ave)</td>
<td>9.1 m</td>
</tr>
<tr>
<td>Rear (south)</td>
<td>9.1 m</td>
</tr>
<tr>
<td>East</td>
<td>1.52 m</td>
</tr>
<tr>
<td>West</td>
<td>1.52 m</td>
</tr>
<tr>
<td><strong>Building Height</strong></td>
<td>7.62 m</td>
</tr>
<tr>
<td>No. of Storeys</td>
<td>2 plus basement</td>
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<tr>
<td>Parking</td>
<td>1:1</td>
</tr>
<tr>
<td><strong>Planning:</strong></td>
<td></td>
</tr>
<tr>
<td>LUC/DAA Area</td>
<td>No</td>
</tr>
<tr>
<td>DP Area</td>
<td>Proposed</td>
</tr>
<tr>
<td>Heritage</td>
<td>Elliott House (nominated but not registered)</td>
</tr>
<tr>
<td>ROW’s</td>
<td>Yes (utilities)</td>
</tr>
<tr>
<td>Covenants</td>
<td>No</td>
</tr>
<tr>
<td><strong>Engineering:</strong></td>
<td></td>
</tr>
<tr>
<td>Rock Removal</td>
<td>Unknown. Any rock removal to comply with Soil Removal Bylaw</td>
</tr>
<tr>
<td>Max Driveway Slope</td>
<td>20%</td>
</tr>
<tr>
<td>Roads</td>
<td>Traffic Mgmt Plan req’d at BP. Primary vehicle access from Mathers Avenue; Lawson Avenue emergency vehicle access only</td>
</tr>
<tr>
<td>Sanitary</td>
<td>Sanitary upgrades and connections as required</td>
</tr>
<tr>
<td>Storm</td>
<td>Storm Water Mgmt Plan req’d at BP, must comply with development plans</td>
</tr>
<tr>
<td>Water</td>
<td>Water line upgrades and connections as required</td>
</tr>
</tbody>
</table>
Executive Summary:
Proposed Single-Family & Duplex Project

Address:
370 & 380 Mathers Avenue
West Vancouver, B.C.

Effective Date:
April 1, 2015

Prepared:
April 14, 2015

Prepared For:
District of West Vancouver

2nd Floor, 602 West Hastings Street
Vancouver, B.C.
V6B 1P2

Phone: (604) 689-1233
Fax: (604) 689-0538

www.bcappraisers.com
## EXECUTIVE SUMMARY

<table>
<thead>
<tr>
<th>CIVIC ADDRESS:</th>
<th>370 &amp; 380 Mathers Avenue, West Vancouver, B.C.</th>
</tr>
</thead>
<tbody>
<tr>
<td>TYPE OF PROPERTY:</td>
<td>Development site located mid-block on the south side of Mathers Avenue, just north of the Upper Levels Highway and west of 3rd Street.</td>
</tr>
</tbody>
</table>
| LEGAL DESCRIPTION: | 370 Mathers Avenue  
East half of the Northwest quarter of District Lot 1074, Group 1, New Westminster District except part in Plan 10097.  
| | 380 Mathers Avenue  
Lot 1, District Lot 1074, Plan 10097.  
P.I.D. #009-506-438 |
| SITE AREA: | 95,600 sq.ft. – combined area. |
| CURRENT IMPROVEMENTS: | 370 Mathers Avenue is currently improved with an old church while 380 Mathers Avenue is improved with an older single-family home. |
| PROPOSED IMPROVEMENTS: | The developer has proposed a mix of nine single-family homes on compact bare land strata lots as well as four duplexes (eight units) indicating a total of 17 units. |
| HIGHEST AND BEST USE: | As described under the proposed improvements, maximizing height and density. |
| EXISTING ZONING CLASSIFICATION: | RS3 – 380 Mathers Avenue. |
| | RS3 and PA2 – 370 Mathers Avenue. |
| ANALYSIS UNDERTAKEN TO DETERMINE VALUE UNDER CURRENT ZONING: | Market Comparison Approach – Determining the value of the subject as six subdivided single-family lots each averaging 14,300 sq.ft. without rezoning potential. |
| ANALYSIS OF COMPATIBLE SALES: | In determining the value for the subject as subdivided single-family lots, we have surveyed the market for comparable lot sales in West Vancouver, primarily in the
British Properties. In instances where properties were sold improved with single-family homes, we confirmed that they were indeed purchased for redevelopment, as we reviewed their respective Building Permits. For some of the more recent sales without Building Permit applications in place, we confirmed that the lots were purchased for redevelopment, through discussions with the realtors involved in the transactions.

The sales comparables indicate a range of values from $1,037,000 to $1,515,000 prior to adjustments for factors such as views, time, site size, exposure and location. The sales at the lower end of the range smaller and are the most dated, having taken place from March to July, 2014. The market has improved since these sales took place.

The average lot value recognizes that some of lots within the subject lands would be impacted by the proximity to the Highway. An average value is determined for the typical lot on the subject lands, while realizing that higher and lower values will be achieved depending upon their specific location within the overall site.

**VALUE UNDER CURRENT ZONING:**

$1,400,000 per lot.

**TOTAL VALUE AS SUBDIVIDED SINGLE-FAMILY LOTS UNDER THE CURRENT ZONING:**

$1,400,000 per lot x six = $8,400,000.
PROPOSED REZONING
CLASSIFICATION:

CD, Comprehensive Development.

ANALYSIS UNDERTAKEN TO
DETERMINE VALUE UNDER
PROPOSED ZONING:

The value of the subject as rezoned consists of the value for a) nine compact single family lots plus b) the value of the duplex land parcels slated for eight half-duplexes. Hence, in determining values for these types of land, we have reviewed sales of smaller lots in West Vancouver as well as duplex land comparables.

Market Comparison Approach – In determining the value of the nine compact single-family lots we have considered comparable sales in West Vancouver. According to the developer, a schedule of specific lot areas is not available. We have been provided with a schedule of unit areas for each of the five proposed unit types that will be built. From this schedule, we have assumed floor area ratios consistent with the existing zoning at 0.35, in order to determine approximate lot areas. On this basis, an average lot size of 6,600 sq.ft. is noted. There is a dearth of similarly sized land sales comparables to draw from. However, with values determined for more standard sized lots from the above analysis, we can look to the relationship in values between large and small lots and apply a discount to the values determined earlier for the larger lots as per the current zoning. A discount of 50% was observed in reviewing paired sales, which is applied to the value adopted earlier for the larger single-family lots averaging 14,300 sq.ft.

In determining the value for the duplex portion of the subject the price per sq.ft. of buildable area is the unit of measure. A total F.A.R. area of 15,560 sq.ft. is proposed. We have not been provided with lot areas for the duplexes but have assumed that density will likely be less than 0.5.

ANALYSIS OF COMPARABLE
SALES:

For the compact single-family lots, a discount of 50% is applied to the values set for the single-family lots discussed in the valuation under the current zoning. On this basis, the average value of a compact lot in the subject is $700,000.

Duplex land sales comparables from Horseshoe Bay indicate values from $233 to $272 per sq.ft. buildable, with comparables at the upper end of the range offering attractive exposure and level topography. Despite the more peripheral location, the comparables are unaffected by highway noise and have the appeal of being in a waterfront setting; the comparables are also at a lower price point. A comparable from North Vancouver was sold at $202 per
sq.ft. buildable but is featured on a busy arterial and is a much higher density site at 1.2 FAR. Overall, a value more in line with the sales at Horseshoe Bay is adopted at $250 per sq.ft. buildable.

VALUE OF SUBJECT AS REZONED:

Compact Single-Family Lots: nine lots x $700,000 per lot = $6,300,000
Duplex Land Value: $250 per sq.ft. buildable x 15,560 sq.ft. (FAR area) = $3,890,000

Total Value as Rezoned:

<p>| | |</p>
<table>
<thead>
<tr>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Value of Compact</td>
<td>$6,300,000</td>
</tr>
<tr>
<td>Single-Family Lots</td>
<td></td>
</tr>
<tr>
<td>Value of Duplex</td>
<td>$3,890,000</td>
</tr>
<tr>
<td>Land</td>
<td></td>
</tr>
<tr>
<td>Total Value as Rezoned</td>
<td>$10,190,000</td>
</tr>
</tbody>
</table>

CONCLUSION OF LAND LIFT DUE TO REZONING:

As per the above discussion, the lift in value in rezoning from single-family to compact single-family and duplex is shown below. As per the District of West Vancouver, 75% of the lift in value is collected as a Community Amenity Contribution. These calculations are shown below:

| Total Value as Rezoned      | $10,190,000 |
| As is Value                 | $8,400,000  |
| Lift in Value               | $1,790,000  |
| CAC @ 75%                   |             |
| Total CAC                   | $1,342,500  |

DATE OF VALUE: April 14, 2015.
Official Community Plan Bylaw No. 4360, 2004,
Amendment Bylaw No. 4851, 2015,
(370 & 380 Mathers Avenue)

Effective Date:
District of West Vancouver


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Part 3 Amends Policy Section 4 [Built Form and Neighbourhood Character . 1
Part 4 Adds Development Permit Guidelines ..................................................... 2
   Schedule A – Development Permit Area Designation BF-B15 ................. 4
   Schedule B – Built Form Guidelines BF-B15 ............................................. 5
District of West Vancouver


A bylaw to consider real property at 370 and 380 Mathers Avenue for rezoning for single family and two-family residential use.

Previous amendments: Amendment bylaws 4433, 4492, 4534, 4543, 4567, 4541, 4612, 4625, 4643, 4676, 4619, 4694, 4724, 4756, 4768, 4783, 4771, and 4797.

WHEREAS the Council of The Corporation of the District of West Vancouver deems it expedient to provide for an amendment to the Official Community Plan to allow for the appropriate redevelopment of the lands located at 370 and 380 Mathers Avenue;

NOW THEREFORE, the Council of The Corporation of the District of West Vancouver enacts as follows:

Part 1 Citation

1.1 This bylaw may be cited as Official Community Plan Bylaw No. 4360 2014, Amendment Bylaw No. 4851 2015.

Part 2 Severability

2.1 If a portion of this bylaw is held invalid by a Court of competent jurisdiction, then the invalid portion must be severed and the remainder of this bylaw is deemed to have been adopted without the severed section, subsection, paragraph, subparagraph, clause or phrase.

Part 3 Amends Policy Section 4 [Built Form and Neighbourhood Character]

3.1 Schedule A to Official Community Plan Bylaw No. 4360, 2004 is amended as follows:

3.1.1 By amending the Key Map of Residential Area Designations by adding “370 & 380 Mathers Avenue Development Permit Area” in the map legend, and identifying the location of the Development Permit Area on the map.
3.1.2 By adding “Policy BF-B15” as follows:

“Ensure that the single family and two-family residential development integrates within the existing neighbourhood and meets a high quality of building and landscape design in keeping with the site and neighbourhood context.”

3.1.3 By adding “Policy BF-B15.1” as follows:

“The Lands located at 370 and 380 Mathers Avenue (as shown on map BF-B15) may be considered for rezoning to enable the development of single family and two-family residential development, not exceeding a density of 0.38 Floor Area Ratio (FAR).

3.1.4 By adding “Development Permit Area Designation BF-B15” as described in Schedule A to this bylaw.

Part 4 Adds Development Permit Guidelines

4.1 Schedule A to Official Community Plan Bylaw No. 4360, 2004 is further amended as follows:

4.1.1 By adding “Guidelines BF-B15” for single family and two-family residential development at 370 and 380 Mathers Avenue, as described in Schedule B to this bylaw.

Schedules

Schedule A – Development Permit Area Designation BF-B15
Schedule B – Built Form Guidelines BF-B15
READ A FIRST TIME on
PUBLICATION OF NOTICE OF PUBLIC HEARING on
PUBLIC HEARING HELD on
READ A SECOND TIME on
READ A THIRD TIME on
2/3 MAJORITY VOTE OF COUNCIL on
ADOPTED by the Council on

__________________________
Mayor

__________________________
Municipal Clerk
Schedule A – Development Permit Area Designation BF-B15

<table>
<thead>
<tr>
<th>Category:</th>
<th>Local Government Act s. 919.1(1)(f), (h), (i) and (j).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conditions:</td>
<td>The Development Permit Area designation is warranted to provide for the compatibility of single family and two-family residential development within an established neighbourhood.</td>
</tr>
</tbody>
</table>
| Objectives: |  - To integrate single family and two-family residential development with existing site features, and the built form and landscape character of the surrounding area;  
  - To promote a high standard of design, construction and landscaping;  
  - To promote energy and water conservation and the reduction of green house gas emissions. |
| Guidelines Schedule: | Guidelines BF-B15 shall apply. |
| Exemption: |  
Development may be exempt from the requirement for a Development Permit if the proposal:  
  i. does not involve the construction of any new buildings or structures; or  
  ii. is for a renovation or a small addition that is considered to have no material change to the external appearance of the premises, meets all the requirements of the Zoning Bylaw, and conforms to Guidelines BF-B15; or  
  iii. is for a renovation or small addition that is considered to be minor in nature with no substantial change to the external appearance of the premises, meets all requirements of the Zoning Bylaw, has been reviewed and recommended for support by the Design Review Committee, and conforms to Guidelines BF-B15. |
Schedule B – Built Form Guidelines BF-B15

I. CONTEXT AND CHARACTER

a. New development should minimize visual impacts of development to the surrounding residential neighbourhood through siting and design.

II. BUILDING DESIGN

a. The dwelling units should create a sensitive transition to neighbourhood context, and provide architectural variety (within three distinct but related areas) on the site as shown on the map below:

   - **Area 1:** Location of the original “Elliott House.” The footprint of the new dwelling should mirror the original and its form and character be informed by the original design.
   - **Area 2:** Single family units along the west property line. The mid-century modern language of the building in Area 1 should be utilized, with strong reference to the original design of the “Elliott House.”
   - **Area 3:** Single family units along the east property line, and the two-family units. This area should relate to the character of the adjacent single family neighbourhood and the multifamily development to the south of the site (Esker Lane), with a more traditional domestic, west coast influenced architectural expression.

b. The use of wood as a feature material, architectural concrete, natural stone and a natural colour palette should be used to blend the buildings into the neighbourhood and relate to the architectural designs within the development.

c. Variation of flat and low-profile hip roof with wide eaves should be used to reduce visual impact and relate to the architectural designs within the development.

d. Elements of the façade should include generous use of wood and glazing.

e. Use design to promote ageing in place and privacy between units.
f. ‘Green’ building technologies should be used including but not limited to a minimum LEED “Silver” rating, lower-flowing plumbing fixtures for water reduction and strict insulation and glazing measures, optimized mechanical systems, and wherever possible, locally and regionally sourced construction materials.

g. No roof top mechanical equipment should be used, and any exterior mechanical equipment should be adequately screened from views and sited to avoid noise pollution to the units or surrounding residences.

III. LANDSCAPE DESIGN

a. The overall landscape strategy is to integrate the single family and two-family residential development into the existing neighbourhood by creating a sense of place and to provide screening and privacy from Mathers Avenue and from adjacent properties. Significant trees should be retained and protected where appropriate.

b. The Mathers Avenue frontage and vehicle entry point should maintain the neighbourhood character and emulate the existing single family character.

c. A strong internal streetscape should be created through the planting of street trees and enhanced by robust plantings of vegetation and groundcover.

d. The rain garden at the south end of the property should serve as both a focal point and as spatial screening to Esker Lane to the south. The rain garden should collect storm water and be permitted to percolate and “scrubbed” clean before entering any municipal storm system.

e. Pedestrian connection through the site should be maintained as an important community linkage to Lawson Avenue.

f. The landscape design should integrate retained mature trees and vegetation with the new landscape design.

g. Glare and light spill of exterior or ground level lighting to surrounding properties should be minimized.

h. Driveways, parking areas, patios and walkways should be finished with pervious material.

IV. CIRCULATION AND PARKING

a. Principal vehicular access is from Mathers Avenue.

b. Parking is provide on-site, via private garages and driveways, plus visitor parking distributed throughout.

c. Parking areas should be away from adjacent properties and integrated into the landscape design.
District of West Vancouver

Zoning Bylaw No. 4662, 2010
Amendment Bylaw No. 4852, 2015
(370 & 380 Mathers Avenue)

Effective Date:

974694v1
District of West Vancouver

Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 4852, 2015

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  Schedule A ....................................................................................................... 4
  Schedule B ....................................................................................................... 5
Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 4852, 2015

Part 1 Citation

1.1 This bylaw may be cited as “Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 4852, 2015”.

Part 2 Severability

2.1 If a portion of this bylaw is held invalid by a Court of competent jurisdiction, then the invalid portion must be severed and the remainder of this bylaw is deemed to have been adopted without the severed section, subsection, paragraph, subparagraph, clause or phrase.

Part 3 Adds the CD52 Zone & Rezones the Site

3.1 Zoning Bylaw No. 4662, 2010, Schedule A, Section 600 Comprehensive Development Zones is hereby amended by adding the CD52 – Comprehensive Development Zone 52 (370 & 380 Mathers Avenue), as set out in Schedule A to this bylaw.

3.2 Zoning Bylaw No. 4662, 2010, Schedule A, Table of Contents is amended accordingly.
Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 4852, 2015

3.3 The Lands shown shaded on the map in Schedule B to this bylaw are rezoned from RS3 (Single Family Dwelling Zone 3) and PA2 (Public Assembly Zone 2 (Places of Worship)) to CD52 – Comprehensive Development Zone 52 (370 & 380 Mathers Avenue).

Part 4 Amends the Zoning Maps

4.1 Zoning Bylaw No. 4662, 2010, Schedule A, Section 852, Schedule 2, Zoning Maps is hereby amended by changing the zoning of the lands as shown shaded on the map in Schedule B to this bylaw,

From: RS3 (Single Family Dwelling Zoning 3) and PA2 (Public Assembly Zone 2 (Places of Worship))

To: CD52 – Comprehensive Development Zone 52 (370 & 380 Mathers Avenue)

Schedules

Schedule A: CD 52 – Comprehensive Development Zone 52 (370 & 380 Mathers Avenue)
Schedule B: Amendment to Zoning Bylaw No. 4662, 2010, Schedule A, Section 852, Schedule 2, Zoning Maps
Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 4852, 2015

READ A FIRST TIME on

PUBLICATION OF NOTICE OF PUBLIC HEARING on

PUBLIC HEARING HELD on

READ A SECOND TIME on

READ A THIRD TIME on

APPROVAL by the Minister of Transportation and Infrastructure on

ADOPTED by the Council on

_________________________________
Mayor

_________________________________
Municipal Clerk
### Schedule A

**652 – CD52 (370 & 380 Mathers Avenue)**

<table>
<thead>
<tr>
<th><strong>652.01</strong></th>
<th><strong>Permitted Uses</strong></th>
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<tbody>
<tr>
<td></td>
<td>(1) accessory buildings and structures</td>
</tr>
<tr>
<td></td>
<td>(2) child care</td>
</tr>
<tr>
<td></td>
<td>(3) home based business</td>
</tr>
<tr>
<td></td>
<td>(4) single family dwellings</td>
</tr>
<tr>
<td></td>
<td>(5) two-family dwellings</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th><strong>652.02</strong></th>
<th><strong>Density</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(1) Maximum 17 dwelling units as follows:</td>
</tr>
<tr>
<td></td>
<td>(a) 9 single family dwelling units; and</td>
</tr>
<tr>
<td></td>
<td>(b) 8 two-family dwelling units.</td>
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<tr>
<td></td>
<td>(2) Maximum 0.38 Floor Area Ratio (FAR)</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th><strong>652.03</strong></th>
<th><strong>Site Area</strong></th>
</tr>
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<tbody>
<tr>
<td></td>
<td>The minimum site area for this zone shall be 8,885 square metres.</td>
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<table>
<thead>
<tr>
<th><strong>652.04</strong></th>
<th><strong>Site Coverage</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(1) Buildings and structures shall not occupy more than 28% of the site</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th><strong>652.05</strong></th>
<th><strong>Setbacks</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The minimum required yards for all buildings and structures and all accessory buildings and structures shall be:</td>
</tr>
<tr>
<td></td>
<td>Front (north): 7.3 metres</td>
</tr>
<tr>
<td></td>
<td>Rear (south): 10.2 metres</td>
</tr>
<tr>
<td></td>
<td>Side (east): 3.5 metres</td>
</tr>
<tr>
<td></td>
<td>Side (west): 6.2 metres</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>652.06</strong></th>
<th><strong>Building Height</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(1) Building and structures shall not exceed a height of 7.62 metres maximum.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>652.07</strong></th>
<th><strong>Number of Storeys</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(1) 2 storeys plus basement</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>652.08</strong></th>
<th><strong>Off-Street Vehicle Parking</strong></th>
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</thead>
<tbody>
<tr>
<td></td>
<td>(1) A minimum of 39 parking spaces shall be provided on the site as follows:</td>
</tr>
<tr>
<td></td>
<td>(a) 34 parking spaces within enclosed garages; and</td>
</tr>
<tr>
<td></td>
<td>(b) 5 visitor parking spaces.</td>
</tr>
<tr>
<td></td>
<td>(2) A minimum of 2 parking spaces must be provided for per dwelling unit.</td>
</tr>
</tbody>
</table>
Schedule B

Amendment to Zoning Bylaw No. 4662, 2010, Schedule A, Section 852, Schedule 2, Zoning Maps.

The area shown shaded on the map below rezones the subject site to CD52.

370 and 380 Mathers Avenue
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Phased Development Agreement
Authorization Bylaw No. 4853, 2015
(370 & 380 Mathers Avenue)

Effective Date:
District of West Vancouver

Phased Development Agreement
Authorization Bylaw No. 4853, 2015

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District of West Vancouver

Phased Development Agreement
Authorization Bylaw No. 4853, 2015

A bylaw to enter into a Phased Development Agreement between the District of West Vancouver and North Shore Unitarian Church, Inc. No. 7696S and John William Biasucci.

WHEREAS under the Local Government Act Council may enter into a phased development agreement with a developer; and

WHEREAS Council published notices of its intention to enter into a phased development agreement with North Shore Unitarian Church, Inc. No. 7696S and John William Biasucci, and held a public hearing in respect of this bylaw in accordance with the Local Government Act;

NOW THEREFORE, the Council of The Corporation of the District of West Vancouver enacts as follows:

Part 1 Citation

1.1 This bylaw may be cited as “Phased Development Agreement Authorization Bylaw No. 4853, 2015.”

Part 2 Authorizes a Phased Development Agreement

2.1 The District enters into, and the Mayor and Municipal Clerk are authorized to execute, the Phased Development Agreement (attached as Schedule A and forming a part of this bylaw) on behalf of the District and are authorized to execute and deliver such transfers, deeds of land, plans and other documents as are required to give effect to the Phased Development Agreement.

Schedules

Schedule A – Phased Development Agreement between the District of West Vancouver and North Shore Unitarian Church, Inc. No. 7696S and John William Biasucci.
Phased Development Agreement Authorization Bylaw No. 4853, 2015

READ A FIRST TIME on

PUBLICATION OF NOTICE OF PUBLIC HEARING on

PUBLIC HEARING HELD on

READ A SECOND TIME on

READ A THIRD TIME on

ADOPTED by the Council on

________________________________________
Mayor

________________________________________
Municipal Clerk
SCHEDULE A

PHASED DEVELOPMENT AGREEMENT

This Agreement dated for reference the ___ day of ________________, 2015.

BETWEEN:

DISTRICT OF WEST VANCOUVER
750 17th Street
West Vancouver, BC V8V 3T3

(the “District”)

AND

NORTH SHORE UNITARIAN CHURCH, INC. NO. 7696S
370 Mathers Avenue
West Vancouver, BC V7S 1H3

and

JOHN WILLIAM BIASUCCI
4761 Pilot House Road
West Vancouver, BC V7W 3T3

(the “Developers”)

GIVEN THAT:

A. The Developers are the owners of lands and premises set out in section 1.1;

B. The Developers are constructing on the Lands a 17-unit strata development consisting of nine single family dwellings and four two-family dwellings, tree retention and planting, and landscaping with a maximum Floor Area Ratio of 0.38.

C. The Developers intend to transfer the Lands to Webbe Holdings (370 Mathers) Ltd., Inc. No. BC0938402;

D. The District’s Council is considering an amendment to the District’s Zoning Bylaw by way of Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 4852, 2015 (the “Zoning Amendment Bylaw”) to permit the development on the Lands;
E. The Developers have undertaken to provide funds in lieu of amenities in conjunction with the development of the Lands and the parties wish to ensure that the provisions of the Zoning Amendment Bylaw continue to apply to the Lands for the period more particularly set out in this Agreement, and that the funds are provided in accordance with this Agreement;

F. The Council of the District has, by bylaw, authorized the making of this agreement.

NOW THEREFORE in consideration of the mutual promises set out in this Agreement, the Developers and the District agree pursuant to section 905.1 of the Local Government Act as follows:

1.0 DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement:

"Amenities" includes the funds for community benefits to be paid to the District under section 9.0.

"Approving Officer" means the subdivision approval official appointed for that purpose under the provisions of the Land Title Act.

"Development" means the development of the Lands.

"Force Majeure" means any act reasonably beyond the control of the party seeking to invoke the benefit of Force Majeure under this Agreement including but without restricting the generality thereof, severe weather conditions, lightening, earthquakes, fires, floods and storms, strikes, lockouts and industrial disturbances, any acts, rules regulations, order or directives of any government or agency thereof, civil disturbances, explosions, transportation embargoes, or failure or delays in transportation, breakdown or mechanical or operational failure of any technical facilities, excessive electrical power fluctuations, excessive water pressure fluctuations, the order of any Court, or any other causes either herein enumerated or otherwise not reasonably within the control of such party; provided that financial incapacity, insolvency and general economic conditions shall not in any event constitute or deemed to constitute an event of Force Majeure.

"Lands" means the parcels of lands legally described as:

THE EAST ½ OF THE NORTHEAST ¼ OF DISTRICT LOT 1074
GROUP 1 NEW WESTMINSTER DISTRICT EXCEPT PART IN PLAN 10097; and
LOT 1 DISTRICT LOT 1074 PLAN 10097.
"Specified Zoning Bylaw Provisions" means those provisions of the Zoning Amendment Bylaw that regulate density and use for the purpose of development and are applicable to the Lands and that are adopted pursuant to section 903 of the Local Government Act, but do not include any subdivision bylaw provisions or development permit provisions.

"Term" means the term of this Agreement set out in section 4.1.

1.2 The headings and captions are for convenience only and do not form a part of this Agreement and will not be used to interpret, define or limit the scope, extent or intent of this Agreement or any of its provisions.

1.3 The word “including” when following any general term or statement is not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar terms or matters but rather as permitting it to refer to other items or matters that could reasonably fall within its scope.

1.4 A reference to currency means Canadian currency.

1.5 A reference to a statute includes every regulation made pursuant thereto, all amendments to the statute or to any such regulation in force from time to time, and any statute or regulation that supplements or supersedes such statute or any such regulation.

1.6 This Agreement shall be governed by and construed in accordance with and governed by laws applicable in the Province of British Columbia.

1.7 A reference to time or date is to the local time or date in West Vancouver, British Columbia.

1.8 A word importing the masculine gender includes the feminine or neuter, and a word importing the singular includes the plural and vice versa.

1.9 A reference to approval, authorization, consent, designation, waiver or notice means written approval, authorization, consent, designation, waiver or notice.

1.10 A reference to a section means a section of this Agreement, unless a specific reference is provided to a statute.

SCHEDULES

1.11 The following Schedules are attached to and form part of this Agreement:

Schedule A – Enforcement Covenant
APPLICATION OF AGREEMENT

1.12 This Agreement applies to the Lands, and to no other land except to public highway areas expressly referenced to in this Agreement.

2.0 CONDITIONS PRECEDENT

2.1 The obligations of the parties under this Agreement are subject to the fulfillment of the following conditions precedent:

   a) Council of the District, in its sole and unfettered discretion, has adopted the Zoning Amendment Bylaw and a bylaw to authorize the making of this agreement in accordance with s. 905.1 – 905.3 of the Local Government Act;

   b) The District has otherwise complied with all relevant provisions of the Community Charter, the Local Government Act and all other applicable enactments.

3.0 SPECIFIED ZONING BYLAW PROVISIONS

3.1 For the Term of this Agreement, any amendment or repeal of the Specified Zoning Bylaw Provisions shall not apply to the Lands, subject to:

   (a) the express limits set out in section 905.1 of the Local Government Act;

   (b) the termination of this Agreement under section 5.0; or

   (c) changes that the Developers agree in writing shall apply.

4.0 TERM OF AGREEMENT

4.1 The Term of this Agreement is five (5) years from the reference date of this Agreement.

5.0 TERMINATION

5.1 The parties may terminate this Agreement at any time by written agreement, subject to the Council of the District adopting a bylaw to terminate this Agreement in accordance with the same procedures, terms and conditions required to adopt the bylaw to enter into this Agreement;

5.2 If the Developers do not comply with any of the provisions of this Agreement, other than as a result of or due to an act or omission of the District, the District may at its option terminate the Agreement before the expiry of the Term by providing notice in writing to the Developers, provided that:
(a) in the case of a failure on the Developers’ part to pay a sum of money or to provide a security for an obligation, the District has, at least thirty (30) days prior to giving such notice, advised the Developers in writing of the alleged failure to pay or to provide the security (the “Default Notice”) and the Developers have not corrected the failure to the reasonable satisfaction of the District within that thirty (30) day period;

(b) in the case of any other failure on the Developers’ part to comply with the provisions of this Agreement, the District has, at least sixty (60) days prior to giving such notice, provided the Developers with a Default Notice in respect of such failure, and the Developers has not corrected the failure or deficiency in performance to the reasonable satisfaction of the District, within that sixty (60) day period; or

(c) if a failure or deficiency (but for certainty, not including a failure to pay a sum of money or provide security as referred to in section 5.2(a)) requires longer than sixty (60) days to remedy, the Developers have failed to substantially commence remedying such failure of deficiency within sixty (60) days after receipt of the Default Notice to the reasonable satisfaction of the District and further has failed to diligently pursue remedying the failure or deficiency thereafter.

6.0 DEVELOPMENT

6.1 Except as expressly provided in this Agreement, nothing in this Agreement shall relieve the Developers from any obligation or requirement arising under any applicable statute, bylaw or regulation in respect of the subdivision and development of the Lands, and without limiting the generality of the foregoing, the Developers shall remain fully responsible to ensure that the development of the Lands is in full compliance with all requirements of the bylaws of the District including those respecting land development, zoning, subdivision and building construction. Nothing in this Agreement shall relieve the District of the authority to utilize any contractual, statutory or common law remedy it may have to enforce this Agreement.

6.2 Without limiting the generality of section 6.1, in connection with any application for approval of subdivision or development of the Lands, the Developers must obtain all development permits required under the District’s Official Community Plan as amended from time to time, and in respect of any subdivision must obtain the approval of the Approving Officer, and must comply with all applicable enactments and bylaws in connection with that subdivision.
6.3 The parties acknowledge that the Approving Officer is an independent statutory officer, and that nothing in this Agreement shall be interpreted as prejudicing or affecting the duties and powers of the Approving Officer in respect of any application to subdivide the Lands.

6.4 Subject to every other provision of this Agreement, the Developers may develop the Lands in phases, and may determine the sequence and timing of each phase.

7.0 IMPACTS

7.1 The Developers, acting reasonably and in a timely manner, shall address reasonable construction and development concerns raised by the District by way of written notice under this Agreement.

8.0 SECTION 219 COVENANT

8.1 The Developers shall execute, deliver and register in the Land Title Office a Covenant under section 219 of the Land Title Act, in the form and with the content of Schedule A, concurrently with and conditional upon the adoption of the Zoning Amendment Bylaw, with the intention that this covenant shall be registered against title to the Lands in order to secure the obligations of the owner of the Lands to use and develop the Lands in accordance with the provisions of this agreement.

9.0 AMENITIES

9.1 The Developers covenant and agree to deliver to the District one (1) year from the referenced date of this agreement, or one (1) year from the date of adoption of the Zoning Amendment Bylaw, whichever comes first, payment of a cash contribution to the District in the amount of $1,342,500.00, for deposit to a District reserve fund to be used for amenity projects determined by the District’s Council which may include but are not limited to streetscape improvements, land acquisition for the purposes of public enjoyment or improved public space or other priorities identified by the District’s Council from time to time.

9.2 The Developers covenant and agree to deliver to the District a clean unconditional, irrevocable letter of credit in the amount of $1,342,500.00 (the “Letter of Credit”) before or on the execution of this Agreement as security for the payment under section 9.1.
9.3 On receipt of the payment in accordance with the requirements of section 9.1, the District will release the Letter of Credit referred to in section 9.2. If the Developers do not make the payment in accordance with the requirements of section 9.1, the District may without notice to the Developers draw down the full outstanding balance of the Letter of Credit and hold and retain the cash in lieu thereof and thereafter, the Developers are not obligated to make the payment referred to in section 9.1.

9.4 The Letter of Credit shall be issued in a form, and by a bank, satisfactory to the District. If the Letter of Credit provided under section 9.2 (or any replacement or substitute therefor) will expire prior to December 31, 2016, then the Developers shall deliver to the District, at least 30 days prior to its expiry, a replacement or substitute Letter of Credit issued on like terms and conditions. If the Developers fail to do so, the District without notice to Developers may draw down the full outstanding balance of the Letter of Credit, as applicable, (or any replacement or substitute therefor), and hold and retain the cash in lieu thereof.

10.0 DEVELOPMENT OF LAND FOLLOWING TERMINATION

10.1 Development of the Lands shall continue to be governed by the section 219 Covenant attached as Schedule A, during and after the Term of this Agreement.

11.0 INDEMNITY AND RELEASE

11.1 The Developers shall indemnify and keep indemnified the District from any and all claims, causes of action, suits, demands, fines, penalties, costs, deprivation, expenses or legal fees whatsoever, whether based in law or equality, whether known or unknown, which anyone has or may have against the District or which the District incurs as a result of any loss, damage or injury, including economic loss or deprivation, arising out of or connected with or any breach by the Developers of this Agreement.

11.2 The Developers hereby release, save harmless and forever discharge the District of and from any claims, causes of action, suits, demands, fines, penalties, costs, deprivation, expenses or legal fees whatsoever which the Developers can or may have against the District, whether based in law or equity, whether known or unknown, for any loss, damage or injury, including economic loss or deprivation, that the Developers may sustain or suffer arising out of or connected with this Agreement, including the restrictions and requirements of this Agreement, the provisions of the Amenities and the development of the Lands as contemplated under this Agreement, or any breach by the Developers of any covenant in this Agreement, save and except as a result of any breach by the District of this Agreement.
11.3 The indemnity and release provisions of sections 11.1 and 11.2 shall survive the expiry or termination of this Agreement.

12.0 NO RECOVERY OF AMENITIES

12.1 The Developers covenant and agree that expiry of the Agreement and any termination in accordance with section 5.0 or otherwise, does not entitle the Developers to recover any portion of the Amenities or seek restitution in relation thereto or in relation to any other obligation of the Developers as performed (and the Developers specifically agree that the Specified Zoning Bylaw Provisions of this Agreement for the period prior to expiry or termination provides sufficient consideration for the Amenities) and the release and indemnity provisions under sections 11.1 and 11.2 apply in this regard.

12.2 The Developers covenant and agree they will not commence or advance a legal proceeding of any kind to seek to quash, set aside, hold invalid this Agreement, or the Zoning Amendment Bylaw, or to recover any portion of the Amenities provided under this Agreement, or seek restitution in relation to any of the Amenities provided under this agreement, and if the Developers do any of the foregoing, the District may provide this Agreement to the Court as a full and complete answer.

12.3 Without any limitation, section 9.1 applies whether or not the Developers proceed with any development on the Lands.

13.0 ASSIGNMENT OF AGREEMENT

13.1 Except as provided in this section 13.1 and 13.2, the Developers shall not be entitled to assign this Agreement or to effect or allow a Change of Control without the prior written consent of the District, such consent to be in the sole and absolute discretion of the District provided that the Developers shall be entitled to assign this Agreement without the consent of, but with notice to the District to:

(a) an affiliate of the Developers as that term is defined in the Business Corporations Act (British Columbia);

(b) a limited partnership where the Developers control the general partner of such limited partnership; or

(c) Webbe Holdings (370 Mathers) Ltd., Inc. No. BC0938402 provided there is no Change in Control of that corporation after the reference date of this Agreement;
each being an “Assignee”, and no further assignment shall be permitted by an Assignee except with the consent of the District as described above. In the event of any such assignment, the Developers shall not be released from their obligations under this Agreement and the Assignee shall be bound by the terms of this Agreement.

14.0 In section 13.1, “Change of Control” means a transfer by sale, assignment or otherwise of any shares, voting rights or interests in the Developers which results in a change of the party or parties who, as of the date hereof, exercise voting control of the Developers. AMENDMENT OF AGREEMENT

14.1 The Developers and the Director of Planning, Land Development, and Permits may in writing agree to minor amendments to this Agreement, and for that purpose a “minor amendment” is a change or amendment to Schedule A of this Agreement.

15.0 DISPUTE RESOLUTION

15.1 If a dispute arises between the parties in connection with this Agreement, the parties agree to use the following procedure as a condition precedent to any party pursuing other available remedies:

(a) either party may notify the other by written notice (“Notice of Dispute”) of the existence of a dispute and a desire to resolve the dispute by mediation;

(b) a meeting will be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute;

(c) if, within forty-eight (48) hours after such a meeting or such further period as is agreeable to the parties (the “Negotiation Period”), the parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to mediation and to bear equally the costs of mediation;

(d) the parties will jointly appoint a mutually acceptable mediator (who must be an expert in the subject matter of the dispute), within forty-eight (48) hours of the conclusion of the Negotiation Period;
(e) the parties agree to participate in good faith in the mediation and negotiations related thereto for a period of thirty (30) days following appointment of the mediator or for such longer period as the parties may agree. If the parties are not successful in resolving the dispute through mediation or if the mediation has not commenced within fourteen (14) days following the appointment of the mediator or if the parties cannot agree upon the mediator appointment, then the parties agree that the dispute will be settled by a single arbitrator in accordance with the Commercial Arbitration Act, R.S.B.C. 1996, Chapter 55, as amended. The decision of the arbitrator will be final and binding and will not be subject to appeal on a question of fact, law, or mixed fact and law; and

(f) the costs of mediation or arbitration will be awarded by the mediator or arbitrator in his or her absolute discretion.

15.2 In no event shall the foregoing be construed as impeding or affecting the District’s authority to enforce its zoning and other regulatory bylaws.

16.0 NOTICE

16.1 Any notice permitted or required by this Agreement to be given to either party must be given to that party at the address set out above, or to any other address provided in writing.

17.0 POWERS PRESERVED

17.1 Except as expressly set out in this Agreement, nothing in this Agreement shall prejudice or affect the rights and powers of the District in the exercise of its powers, duties or functions under the Community Charter or the Local Government Act or any of its bylaws, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement has not been execute and deliver to the Developers, subject only to section 905.1 of the Local Government Act.

18.0 DISTRICT’S REPRESENTATIVE

18.1 Any option, decision, act or expression of satisfaction or acceptance of the District provided for in this Agreement may be taken or made by the Chief Administrative Officer or their designate, unless expressly provided to be taken or made by another official of the District.

19.0 TIME

19.1 Time is to be the essence of this Agreement.
20.0 BINDING EFFECT

20.1 This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees.

21.0 WAIVER

21.1 The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

22.0 CUMULATIVE REMEDIES

22.1 No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.

23.0 RELATIONSHIP OF PARTIES

23.1 No provision of this Agreement shall be construed to create a partnership or joint venture relationship, an employer-employee relationship, a landlord-tenant, or a principal-agent relationship.

24.0 SURVIVAL

24.1 All representations and warranties set forth in this Agreement and all provision of this Agreement, the full performance of which is not required prior to a termination of this Agreement, shall survive any such termination and be fully enforceable thereafter.

25.0 NOTICE OF VIOLATIONS

25.1 Each party shall promptly notify the other party of any matter which is likely to continue to give rise to a violation of its obligations under this Agreement.

26.0 LEGAL FEES

26.1 The Developers shall promptly on receipt of an invoice from the District reimburse the District for its reasonable legal and appraisal fees incurred in relation to the development of the Lands.

27.0 ENTIRE AGREEMENT

27.1 The whole agreement between the parties is set forth in this document and no representations, warranties or conditions, express or implied, have been made other than those expressed.
28.0 SEVERABILITY

28.1 Each article of this Agreement shall be severable. If any provision of this Agreement is held to be illegal or invalid by a Court of competent jurisdiction, the provision may be severed and the illegality or invalidity shall not affect the validity of the remainder of this Agreement.

29.0 COUNTERPART

29.1 This Agreement may be executed in counterpart with the same effect as if both parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement.

IN WITNESS WHEREOF the parties hereto have set their hands and seals as the day and year first above written.

DISTRICT OF WEST VANCOUVER by its Authorized signatories:

Mayor

Municipal Clerk

THE DEVELOPERS by its Authorized signatories:
THE DEVELOPERS by its Authorized signatories: 

______________________________

______________________________

______________________________

______________________________

______________________________
SCHEDULE A (to the Phased Development Agreement)

Enforcement Covenant

TERMS OF INSTRUMENT – PART 2

WHEREAS:

A. The Grantor is the registered owner in fee simple of:

THE EAST ½ OF THE NORTH WEST ¼ OF DISTRICT LOT 1074
GROUP 1 NEW WESTMINSTER DISTRICT EXCEPT PART IN PLAN
10097; and
LOT 1 DISTRICT LOT 1074 PLAN 10097

(the "Lands")

B. The Grantee is the District of West Vancouver;

C. The Grantor has agreed to develop the Lands in accordance with a
Phased Development Agreement dated for reference the _____day of
__________, 2015 and made between the Grantor and the Grantee (the
"Phased Development Agreement").

NOW THEREFORE, in consideration of the payment of the sum of $10.00 by the
Grantee to the Grantor and the premises and the covenants herein contained
and for other valuable consideration, receipt and sufficiency of which is hereby
acknowledged by the properties, each of the parties hereto covenants and
agrees with the other as follows:

1. In this Covenant the following terms have the following meanings:

   (a) "Development" means the Development of the Lands
       contemplated by the Phased Development Agreement
       and includes an activity that alters the Lands or any
       vegetation on the Lands in preparation for or in
       connection with the installation on the Lands of buildings,
       improvements, works or services, including without
       limitation, a highway;

   (b) "Grantor" means the Grantor as shown on the Form C attached
       hereto; and

   (c) "Grantee" means the Grantee as shown on the Form C attached
       hereto.
2. The Grantor covenants with the Grantee that it will construct and cause to be constructed any building or structure on the Lands in accordance with the Phased Development Agreement dated for reference the ____ day of ________, 2015.

3. If the Grantor is in breach of an obligation under the Phased Development Agreement, or the Grantee terminates the Phased Development Agreement as a result of a breach of the Phased Development Agreement by the Grantor, the Grantor covenants that it shall not further subdivide the Lands, under the Land Title Act (British Columbia) or the Strata Property Act (British Columbia) or Regulations under those Acts, construct any improvements on the Lands, or alter the use of the Lands, without the consent of the District.

4. The restrictions and covenants herein contained shall be covenants running with the Lands and shall be perpetual, and shall continue to bind all of the Lands when subdivided, and shall be registered in the Land Title Office pursuant to section 219 of the Land Title Act. Subject to the Grantor completing its obligations under the Phased Development Agreement and complying with all other applicable bylaws, the Grantee agrees to discharge this Agreement from title to the Lands (or the applicable portion thereof) upon the issuance by the District of an occupancy permit in respect of any building constructed on the Lands (or the applicable portion thereof).

5. **NO BUILD COVENANT**

The Grantor covenants and agrees with the District that until the Grantor fulfills its obligation under s. 9.0 of the Phase Development Agreement:

a. the Grantor shall not suffer, cause or permit any buildings, structures or improvements which require a development or a building permit to be built, erected or installed, or any excavation in respect thereof to be commenced, on the Lands;

b. the Grantor shall not apply for any building permit and shall not take any action, directly or indirectly, to compel the issuance of a development permit or a building permit in respect of any building, structure or improvement, including any required excavation in respect thereof, on the Lands;

c. the District shall not be under any obligation to issue a development permit or a building permit in respect of any building, structure or improvement on the Lands; and

d. the Owner shall not suffer, cause or permit the Lands to be occupied or used for any purpose except uses that are lawful as of the reference date of this Agreement.
e. the Owner and the District agree that the No Build Covenant is in force until the completion of s. 9.0 of the Phased Development Agreement.

6. The Grantor and the Grantee agree that the enforcement of this Agreement shall be entirely within the discretion of the Grantee and that the execution and registration of this covenant against the title to the Lands shall not be interpreted as creating any duty on the part of the Grantee to the Grantor or to any other person to enforce any provision or the breach of any provision of this Agreement.

7. Nothing contained or implied herein shall prejudice or affect the rights and powers of the Grantee in the exercise of its functions under any public or private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands as if the Agreement had not been executed and delivered by the Grantor.

8. The Grantor hereby releases and forever discharges the Grantee, its officers, employees and agents, of and from any claim, cause of action, suit, demand, expenses, costs and expenses, and legal fees whatsoever which the Grantor can or may have against the said Grantee for any loss or damage or injury, including economic loss, that the Grantor may sustain or suffer arising out of the breach of this Agreement by the Grantor or a party for whom the Grantor is at responsible at law.

9. The Grantor covenants and agrees to indemnify and save harmless the Grantee, its officers, employees and agents, from any and all claims, causes of action, suits, demands, expenses, costs and expenses, and legal fees whatsoever that anyone might have as owner, occupier or user of the Lands, or by a person who has an interest in or comes onto the Lands, or by anyone who suffers loss of life or injury, including economic loss, to his person or property, that arises out of breach of this Agreement by the Grantor or a party for whom the Grantor is at responsible at law.

10. It is mutually understood, acknowledged and agreed by the parties hereto that the Grantee has made no representations, covenants, warranties guarantees, promises or agreements (oral or otherwise) with the Grantor other than those contained in this Agreement.

11. This Agreement shall be registered as a first charge against the Lands and the Grantor agrees to execute and deliver all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.

12. The Grantor shall pay the legal fees of the Grantee in connection with the preparation and registration of this Agreement. This is a personal covenant between the parties.
13. The Grantor covenants and agrees for itself, its heirs, executors, successors and assigns, that it will at all times perform and observe the requirements and restrictions hereinbefore set out. Notwithstanding the foregoing, it is understood and agreed by the Grantee that this Agreement shall only be binding upon the Grantor as personal covenants during the period of its ownership of the Lands.

14. This Agreement shall ensure to the benefit of the Grantee and shall be binding upon the parties hereto and their respective heirs, executors, successors and assigns.

15. Wherever the expressions “Grantor” and “Grantee” are used herein, they shall be construed as meaning the plural, feminine or body corporate or politic where the context or the parties so require.

16. The Grantor agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.

17. Time is of the essence of this Agreement.

18. If any part of this Agreement is found to be illegal or unenforceable, that part will be considered separate and severable and the remaining parts will not be affected thereby and will be enforceable to the fullest extent permitted by law.

*, the registered holder of a charge by way of * against the within described property which said charge is registered in the Land Title Office under number *, for and in consideration of the sum of One ($1.00) Dollar paid by the Grantee to the said Charge holder (the receipt whereof is hereby acknowledged), agrees with the Grantee, its successors and assigns, that the within section 219 Covenant shall be an encumbrance upon the within described property in priority to the said charge in the same manner and to the same effect as if it had been dated and registered prior to the said charge.

IN WITNESS WHEREOF the parties hereto hereby acknowledge that this Agreement has been duly executed and delivered by the parties executing Form C (pages 1 and 2) attached hereto.
This page intentionally left blank
LAND TITLE ACT
FORM C (Section 233) CHARGE
GENERAL INSTRUMENT - PART 1 Province of British Columbia

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)

   THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER

   Terry Tasa, Applicant's Agent
   750 - 17th Street
   West Vancouver

   File No: 1135-13-15-006
   Phone No: 604-925-7099

Deduct LTSA Fees? Yes [Y]

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

   [PID] [LEGAL DESCRIPTION]

   015-957-187 THE EAST 1/2 OF THE NORTH WEST 1/4 OF DISTRICT LOT 1074 GROUP 1
   NEW WESTMINSTER DISTRICT EXCEPT PART IN PLAN 10097

   STC? YES [Y]

3. NATURE OF INTEREST

   SEE SCHEDULE

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

   (a) [ ] Filed Standard Charge Terms D.F. No.
   (b) [X] 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):

   NORTH SHORE UNITARIAN CHURCH, INC. NO. 76968 (AS TO COVENANT) AND CANADIAN WESTERN TRUST COMPANY (AS TO PRIORITY)

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

   THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER

   750 - 17TH STREET
   WEST VANCOUVER
   BRITISH COLUMBIA
   V7V 3T3
   CANADA

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)

   NORTHERN SHORE UNITARIAN CHURCH, Inc. No. 76968, by their authorized signatories:

   Name:

   Name:

OFFICER CERTIFICATION:
Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.
<table>
<thead>
<tr>
<th>Officer Signature(s)</th>
<th>Execution Date</th>
<th>Transferor / Borrower / Party Signature(s)</th>
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<td>CANADIAN WESTERN TRUST COMPANY, Incorporation No. A44106, by their authorized signatory:</td>
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<td>THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER by its authorized signatories:</td>
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<td>Mayor:</td>
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<td>Municipal Clerk:</td>
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<tr>
<td>Covenant</td>
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<td>Entire Instrument</td>
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<tr>
<td>Priority Agreement</td>
<td></td>
<td>Page 12 Priority Agreement granting Covenant herein, priority over Mortgage BL239295, modification of BL239294, see M97224 and GD75058</td>
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TERMS OF INSTRUMENT - PART 2

SECTION 219 COVENANT
(No Build Covenant)

This agreement dated for reference the 29th day of September, 2015 is

BETWEEN:

NORTH SHORE UNITARIAN CHURCH, Inc. No. 7696S
of 370 Mathers Avenue, West Vancouver BC V7S 1H3

(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 – 175h Street, West Vancouver, BC V7V 3T3

WHEREAS:

A. NORTH SHORE UNITARIAN CHURCH, Inc. No.7696S is the registered owner in fee
simple of all the land in the District of West Vancouver, legally described as:

   PID: 015-957-187, the East 1/2 of the North West 1/4 of District Lot 1074 Group
   1 New Westminster District except part in Plan 10097
   (the “Owner’s Land”);

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: 009-506-438 Lot 1 District Lot 1074 Plan 10097
   (the “Other Lands”);

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

D. The Owner has agreed to grant and the District has agreed to accept the section 219
covenant contained in this Agreement over the Lands; and

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, excavate 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. **Schedule** — The Tree Prevention Covenant attached as Schedule A to this Agreement forms part of this Agreement:

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
TERMS OF INSTRUMENT – PART 2

(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 substantially 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

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 4852 is not adopted by the District’s Council before __________, 2015 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 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 9 upon receipt of the invoice for same from the District. The covenant in this section 9 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.

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.

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

North Shore Unitarian Church, Inc. No. 7696S
370 Mathers Avenue
West Vancouver BC V7S 1H3

Attention: 
Office: 604-
Email: 

(b) if to the Developer, as follows:

Name:
Address:

Attention: 
Office: 604-
Email: 

(c) if to the District, as follows:

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

Attention: Director, Engineering and Transportation
Facsimile: (604) 925-6083

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 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.
PRIORITY AGREEMENT

CANADIAN WESTERN TRUST COMPANY, Incoproration No. A44106 (the "Chargeholder") is the holder of a mortgage encumbering the Lands which are registered in the Lower Mainland Land Title Office as follows:

Mortgage BL239295, Modification of BL239294, see M97224 and GD75058

(the "Bank Charge")

The Chargeholder, being the holder of the Bank Charge, by signing the Form C, General Instrument attached hereto as Part 1, in consideration of payment of Ten Dollars ($10.00) and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder) hereby consents to the granting of this Section 219 Covenant and hereby covenants that this Section 219 Covenant shall bind the Bank Charge in the Lands and shall rank in priority upon the Lands over the Bank Charge as if the Section 219 Covenant had been registered prior to the Bank Charge and prior to the advance of any monies pursuant to the Bank Charge. The grant of priority is irrevocable, unqualified and without reservation or limitation.
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 ________________, 2015, 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 – 17th 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. 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 Froggers Creek & Tree Consultants Ltd. and dated ______________, 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

C. 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.

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:
TERMS OF INSTRUMENT – PART 2

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.

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 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 8 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 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 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.

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 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.
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:
(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.
PRIORITY AGREEMENT

________________________ (the "Chargeholder") is the holder of a mortgage encumbering the Lands which are registered in the Lower Mainland Land Title Office as follows:

Mortgage __________

(the "Bank Charge")

The Chargeholder, being the holder of the Bank Charge, by signing the Form C, General Instrument attached hereto as Part 1, in consideration of payment of Ten Dollars ($10.00) and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder) hereby consents to the granting of this Section 219 Covenant and hereby covenants that this Section 219 Covenant shall bind the Bank Charge in the Lands and shall rank in priority upon the Lands over the Bank Charge as if the Section 219 Covenant had been registered prior to the Bank Charge and prior to the advance of any monies pursuant to the Bank Charge. The grant of priority is irrevocable, qualified and without reservation or limitation.
SCHEDULE "A"
PLAN OF COVENANT AREA

FROGGERS CREEK TREE CONSULTANTS LTD. PLAN

END OF DOCUMENT
APPENDIX 3
TREE PROTECTION DRAWING

TREE INVENTORY

NOTES:
1. SITE LAYOUT INFORMATION AND TREE SURVEY DATA PER SUPPLIED DRAWING
2. REFER TO ATTACHED TREE PROTECTION REPORT FOR INFORMATION CONCERNING TREE SPECIES, STEM DIAMETER, HEIGHT, CANOPY SPREAD AND CONDITION
3. PROPOSED TREE REMOVAL AND RETENTION REFLECTS PRELIMINARY DRIVEWAY AND SERVICES CORRIDOR ALIGNMENT CONSIDERATIONS
4. ALL MEASUREMENTS ARE METRIC

SCALE TO FIT
ALL DISTANCES ARE IN METERS

LEGEND
TREE PROPOSED FOR RETENTION
TREE PROPOSED FOR REMOVAL

02
01
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)
   THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER
   Terry Tasa, Applicant's Agent
   750 - 17th Street
   West Vancouver
   File No: 1135-13-15-007
   BC V7V 3T3

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
   [PID] [LEGAL DESCRIPTION]
   009-506-438 LOT 1 DISTRICT LOT 1074 PLAN 10097
   STC? YES ☐

3. NATURE OF INTEREST
   Covenant

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):
   JOHN WILLIAM BIASUCCI

6. TRANSFEREE(S): (including postal address(es) and postal code(s))
   THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER
   750 - 17TH STREET
   WEST VANCOUVER
   BRITISH COLUMBIA
   V7V 3T3
   CANADA

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)
   Transferor(s) Signature(s)
   Execution Date
   Y M D

JOHN WILLIAM BIASUCCI

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.
THE CORPORATION OF THE
DISTRICT OF WEST VANCOUVER by
its authorized signatories:

Name:

Municipal Clerk:

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
(No Build Covenant)

This agreement dated for reference the 29th day of September, 2015 is

BETWEEN:

JOHN WILLIAM BIASUCCI of 4761 Pilot House Road,
West Vancouver BC V7W 1J2

(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 - 175th Street, West Vancouver, BC V7V 3T3

AND:

THE DEVELOPER

AND:

AND:

WHEREAS:

A. JOHN WILLIAM BIASUCCI is the registered owner in fee simple of all the land in the
District of West Vancouver, legally described as:

PID: 009-506-438, Lot 1 District Lot 1074 Plan 10097

(the "Owner's Land");

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: 015-957-187, the East 1/2 of the North West 1/4 of District Lot 1074 Group
1 New Westminster District except part in Plan 10097

(the "Other Lands");

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

D. The Owner has agreed to grant and the District has agreed to accept the section 219
covenant contained in this Agreement over the Lands; and

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, excavate 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. **Schedule** – The Tree Prevention Covenant attached as Schedule A to this Agreement forms part of this Agreement:

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 substantially 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

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 4852 is not adopted by the District’s Council before __________, 2015 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 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 9 upon receipt of the invoice for same from the District. The covenant in this section 9 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.

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.

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

John William Biasucci  
4761 Pilot House Road  
West Vancouver BC V7S 1H3

Office: 604-  
Email:

(b) if to the Developer, as follows:

Name:  
Address:  
Attention:  
Office: 604-  
Email:

(c) if to the District, as follows:

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

Attention: Director, Engineering and Transportation  
Facsimile: (604) 925-6083

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 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.
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 ______________, 2015, 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 – 17th 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. 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 Froggers Creek & Tree Consultants Ltd. and dated ___________, 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

C. 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.

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.

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 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 8 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.

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
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.

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:
(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.
PRIORITY AGREEMENT

________________________________________ (the "Chargeholder") is the holder of a mortgage encumbering the Lands which are registered in the Lower Mainland Land Title Office as follows:

Mortgage ____________

(the "Bank Charge")

The Chargeholder, being the holder of the Bank Charge, by signing the Form C, General Instrument attached hereto as Part 1, in consideration of payment of Ten Dollars ($10.00) and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder) hereby consents to the granting of this Section 219 Covenant and hereby covenants that this Section 219 Covenant shall bind the Bank Charge in the Lands and shall rank in priority upon the Lands over the Bank Charge as if the Section 219 Covenant had been registered prior to the Bank Charge and prior to the advance of any monies pursuant to the Bank Charge. The grant of priority is irrevocable, qualified and without reservation or limitation.
APPENDIX 3
TREE PROTECTION DRAWING

TREE INVENTORY

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<thead>
<tr>
<th>#</th>
<th>Type</th>
<th>Species</th>
<th>ID</th>
<th>Date 1</th>
<th>Date 2</th>
<th>Depth</th>
<th>Width</th>
<th>Height</th>
<th>Canopy Spread</th>
<th>Condition</th>
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<td>Tree</td>
<td>Quercus</td>
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<td>1992-01-01</td>
<td>1992-01-02</td>
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<td>12</td>
<td>15</td>
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<td>Tree</td>
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<td>1993-02-02</td>
<td>1993-02-03</td>
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<td>Good</td>
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<td>1994-03-04</td>
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<td>20</td>
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<td>Tree</td>
<td>Ulmus</td>
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<td>1995-04-04</td>
<td>1995-04-05</td>
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<td>Good</td>
</tr>
<tr>
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<td>1996-05-05</td>
<td>1996-05-06</td>
<td>22</td>
<td>24</td>
<td>28</td>
<td>Excellent condition</td>
<td>Good</td>
</tr>
</tbody>
</table>

LEGEND
TREE PROPOSED FOR RETENTION 
TREE PROPOSED FOR REMOVAL

NOTES:
1. SITE LAYOUT INFORMATION AND TREE SURVEY DATA PER SUPPLIED DRAWING
2. REFER TO ATTACHED TREE PROTECTION REPORT FOR INFORMATION CONCERNING TREE SPECIES, STEM DIAMETER, HEIGHT, CANOPY SPREAD AND CONDITION
3. PROPOSED TREE REMOVAL AND RETENTION REFLECTS PRELIMINARY REVIEW AND SERVICE CONSIDERATIONS
District of West Vancouver

Proposed

Development Permit No. 12-053

Current Owner: NORTH SHORE UNITARIAN CHURCH, INC. NO. 7696S

This Development Permit applies to:

Civic Address: 370 MATHERS AVENUE

Legal Description: 015-957-187
THE EAST 1/2 OF THE NORTH WEST 1/4 OF DISTRICT LOT 1074
GROUP 1 NEW WESTMINSTER DISTRICT EXCEPT PART IN
PLAN 10097
(the ‘Lands’)

Current Owner: JOHN WILLIAM BIASUCCI

This Development Permit applies to:

Civic Address: 380 MATHERS AVENUE

Legal Description: 009-506-438
LOT 1 DISTRICT LOT 1074 PLAN 10097
(the ‘Lands’)

1.0 This Development Permit:

(a) imposes requirements and conditions for the development of the Lands, which are designated by the Official Community Plan as the ‘370 & 380 Mathers Avenue Development Permit Area’ to ensure that the single family and two-family residential development integrates within the existing neighbourhood and meets a high quality of building and landscape design in keeping with the site and neighbourhood context, and subject to Guidelines BF-B15 specified in the Official Community Plan; and

(b) is issued subject to the Owner’s compliance with all of the Bylaws of the District applicable to the Lands, except as varied or supplemented by this Permit.

2.0 The following requirements and conditions shall apply to the Lands:

2.1 Building, structures, on-site parking, driveways and site development shall take place in accordance with the attached Schedule A.

2.2 Sprinklers must be installed in all areas as required under the Fire Protection and Emergency Response Bylaw No. 4366, 2004.
2.3 No wood burning fireplaces shall be installed, constructed or otherwise permitted on the Lands or in any building on the lands.

2.4 On-site landscaping shall be installed at the cost of the Owner in accordance with the attached Schedule A.

2.5 Sustainability measures and commitments shall take place in accordance with the attached Schedule A.

2.6 All balconies, decks and patios are to remain fully open and unenclosed and the weather wall must remain intact.

3.0 Prior to commencing site work or Building Permit issuance, whichever occurs first, the Owner must:

3.1 Provide and implement a plan for traffic management during construction to the satisfaction of the District’s Manager of Development Engineering.

3.2 Install tree, vegetation and/or hedge protection measures as required to the satisfaction of the District’s Environmental Protection Officer.

3.3 Submit a “Sediment and Erosion Plan” to the District’s Environmental Protection Officer for approval, and the owner shall be responsible for maintaining, repairing and implementation of the sediment control measures.

3.4 Provide a Traffic Impact Assessment to the satisfaction of the District’s Manager of Roads and Transportation.

4.0 Prior to Building Permit issuance:

4.1 Provide engineering civil drawings detailing works, including but not limited to:

(a) storm water management measures;

(b) site service connections;

(c) new civil engineering drawings for the sanitary sewer realignment on the site including connection details to upstream and downstream sewer mains;

(d) a revised plan of right-of-way and right-of-way agreement in favour of the District for the District’s sanitary sewer showing the revised alignment;

(e) a new plan of right-of-way and right-of-way agreement in favour of the District for the revised storm water sewer alignment;

(f) provision of a report on the expected water demand for the completed project prepared by a Professional Engineer registered in the Province of British Columbia, which includes recommendations for upgrade of the existing system if any;

(g) boulevard plans along the frontage of the site on Mathers Avenue including any curbs and/or sidewalks, where required and a grading plan; and

(h) repaving of Mathers Avenue along the frontage of the Lands,
must be submitted for acceptance, and security provided for the due and property completion of the engineering works, all to the satisfaction of the District's Manager of Development Engineering.

5.0 Security for Landscaping

5.1 Prior to building permit issuance, security for the due and proper completion of the landscaping set forth in section 2.4 of this Development Permit shall be provided in the amount of $338,000.00 (the "Landscape Deposit") to the District in the form of cash or unconditional, irrevocable auto-renewing letter of credit issued by a Canadian chartered bank or credit union.

5.2 Release of the Landscape Deposit:

(i) Following installation of the landscaping set forth in section 2.4 of this Development Permit and upon receipt of a certified letter or report by a Landscape Architect in good standing with the British Columbia Society of Landscape Architects to the District that:

a. the landscaping has been installed substantially in accordance with section 2.4 of this Development Permit; and

b. any variations that may have been undertaken to the landscaping set forth in section 2.4 of this Development Permit are clearly identified, including but not limited to:

   i. any adjustments to retaining walls,
   ii. changes to the mixture or sizes of any plant materials or trees,
   iii. completion of any off-site or boulevard works,
   iv. any areas that received alternative treatment,
   v. any paving changes, or
   vi. any other additional or omitted plantings or alterations,

   together with a clear rationale and explanation thereof and that a final review with the landscape contractor has been completed and provision of the date when this final review was completed on, and that it is noted if there are any outstanding landscape items that need attention, and confirm that the installed landscape is complete, the District will release 80% of the initial value of the Landscape Deposit. The remaining 20% of the initial value of the Landscape Deposit shall be retained by the District as a warranty deposit (the "Warranty Deposit") to ensure successful installation of the landscaping.

(ii) After a minimum of a one-year period following certification that the landscaping set forth in section 2.4 has been completed, and upon final certification by a Landscape Architect in good standing with the British Columbia Society of Landscape Architects, the District will release the Warranty Deposit.

(iii) In the event that the landscaping is not completed as provided for in this Permit, the District may, at its option, enter upon, carry out and complete the landscaping so as to satisfy the terms of the Development
Permit, and recover the costs of doing so from the security deposited, including the costs of administration and supervision.

6.0 This Development Permit lapses if the work authorized herein is not commenced within 12 months of the date this permit is issued.

In the event the Owner is delayed or interrupted or prevented from commencing or continuing the development by reason of any Act of God, labour unrest (including strike and lockouts), weather conditions or any similar cause reasonably beyond the control of the Owner, the time for the completion of the work shall be extended for a period equal to the duration of the contingency that occasioned the delay, interruption or prevention, provided that the commercial or financial circumstances of the Owner shall not be viewed as a cause beyond the control of the Owner.

THE COUNCIL OF WEST VANCOUVER APPROVED THIS PERMIT BY RESOLUTION PASSED ON _________________.

________________________  __________________________
MAYOR  MUNICIPAL CLERK

THE REQUIREMENTS AND CONDITIONS UPON WHICH THIS PERMIT IS ISSUED ARE ACKNOWLEDGED AND AGREED TO. IT IS UNDERSTOOD THAT OTHER PERMITS / APPROVALS MAY BE REQUIRED INCLUDING PERMITS / APPROVALS FOR BUILDING CONSTRUCTION, SOIL AND ROCK REMOVAL OR DEPOSIT, BOULEVARD WORKS, AND SUBDIVISION.

FOR 370 MATHERS AVENUE:

Owner: Signature  Owner: Print Name above  Date

FOR 380 MATHERS AVENUE:

Owner: Signature  Owner: Print Name above  Date
FOR THE PURPOSES OF SECTION 6.0, THIS PERMIT IS ISSUED ON ______________.

Schedules:
A – Building plans, landscaping and sustainability measures.
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