

APPENDIX A

Covenant for Establishing Burnaby Mountain Conservation Area

TERMS OF INSTRUMENT FOR PART 2 OF SECTION 215 COVENANT

In this Appendix, "Transferor" means the Local Government and "Transferee" means the Province.

TERMS OF INSTRUMENT - Part 2

WHEREAS the Transferee contributed to the purchase of the Land by the Transferor on condition, inter alia, that the Transferor grant a covenant under section 215 of the *Land Title Act* to the Transferee on the terms and conditions set out below.

NOW THEREFORE in consideration of the premises and the sum of \$1.00 now paid by the Transferee to the Transferor (the receipt and sufficiency of which is acknowledged by the Transferor), the parties agree as follows:

1. In this Part "Land" means the land described in item 2 of Part 1 of this General Instrument.
2. The Transferor covenants with the Transferee that
 - (a) the Land will be used as a public park, within which the Transferor may develop only a public trail system, cycling paths, small parking lots and other support facilities (which may include picnic facilities) for the trail system but the Transferor will otherwise use the Land only as a conservation area;
 - (b) trees and shrubs on the Land will be thinned or removed only where required for
 - (i) development of the facilities mentioned in paragraph (a),
 - (ii) stream enhancement,
 - (iii) public safety, or
 - (iv) forest or fish management,

and that replantings of trees and shrubs on the Land will be limited to indigenous species compatible with the preservation of the natural environment of the Land;

- (c) subject to paragraphs (a) and (b), no earth, fill or other material will be deposited on the Land or any part of it for the purpose of filling in or raising the level of the Land;
- (d) no object of archaeological significance on the Land will be removed, damaged or destroyed;
- (e) subject to paragraphs (a) and (b), no soil material will be removed from or displaced on the Land; and
- (g) subject to paragraphs (a) and (b), no building, modular home, mobile home or unit, improvement or structure will be constructed, erected or placed on the Land;

unless and to the extent that the Transferee provides its prior written waiver of such covenants, which waiver may be withheld without giving reasons.

3. The Transferor will indemnify and save the Transferee harmless from all actions, causes of action, claims, demands, suits, losses, damages, debts, accounts, liabilities, costs, expenses and compensation of any kind, including fees of solicitors and other professional advisors, arising out of any breach, violation or non-performance by the Transferor of the covenants set out in section 2.
4. No term, condition, covenant or other provision of this Agreement will be considered to have been waived by the Transferee unless such waiver is expressed in writing by the Transferee and the waiver by the Transferee of any such term, condition, covenant or other provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of that or any other term, condition, covenant or other provision of this Agreement.
5. This Agreement extends to, is binding upon and cures to the benefit of the parties and their respective heirs, executors, administrators, successors and assigns.
6. In this Agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.
7. This Agreement will be interpreted according to the laws of the Province of British Columbia.
8. Where there is a reference to an enactment of the Province of British Columbia in this Agreement, that reference includes a reference to any subsequent enactment of the Province of British Columbia of like effect and, unless the context otherwise requires, all statutes referred to in this Agreement are enactments of the Province of British Columbia.

9. If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining parts or sections, as the case may be, will not be affected and will be enforceable to the fullest extent permitted by law.
10. This Agreement will be registered as a charge against the Land pursuant to section 215 of the *Land Title Act*.

END OF DOCUMENT

THIS AMENDING AGREEMENT dated the 10 day of October, 1996

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Environment, Lands and Parks, Parliament Buildings, Victoria, British Columbia, V8V 1X4

(the "Province")

AND:

CITY OF BURNABY, a municipal corporation incorporated under the *Municipal Act*, having its offices at 4949 Canada Way, Burnaby, British Columbia V5G 1M2

(the "Local Government")

WHEREAS:

- A. By agreement dated the 10th day of November, 1995, as amended by agreements dated June 7, 1996 and August 19, 1996 (collectively the "Agreement"), the Province agreed to make a cash contribution to the Local Government in respect of the acquisition of certain lands in Burnaby which are to be used as a public park; and
- B. The parties have agreed to amend and supplement certain provisions of the Agreement.

NOW THEREFORE, in consideration of the covenants contained in this Amending Agreement, and for other valuable consideration, the receipt and sufficiency of which are acknowledged by parties, the parties covenant and agree with each other as follows:


- 1. The Agreement is amended by:
 - (a) deleting the words "September 30, 1996" in sections 1.01 and 1.02(b) and replacing them with "October 31, 1996"; and
 - (b) deleting the word "cycling" in section 2(a) of Schedule "C".
- 2. This Amending Agreement and the Agreement will be read and construed together.
- 3. Except as modified by this Amending Agreement, the Agreement is hereby ratified and confirmed.

4. This Amending Agreement enures to the benefit of and is binding upon the Local Government and the Province and their respective successors and permitted assigns.

The parties have executed this Amending Agreement as of the date first set out above.

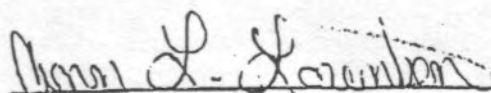
SIGNED on behalf of HER MAJESTY
THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA
by the Minister of Environment, Lands
and Parks or his duly authorized
representative in the presence of:




Minister of Environment, Lands and
Parks or his Authorized Representative *ADM.*

The Corporate Seal of the CITY OF
BURNABY was hereunto affixed in the
presence of its duly authorized signatories:

MAYOR


CITY CLERK

Ann L. Lorentsen
ADMINISTRATIVE OFFICER

C/S

