

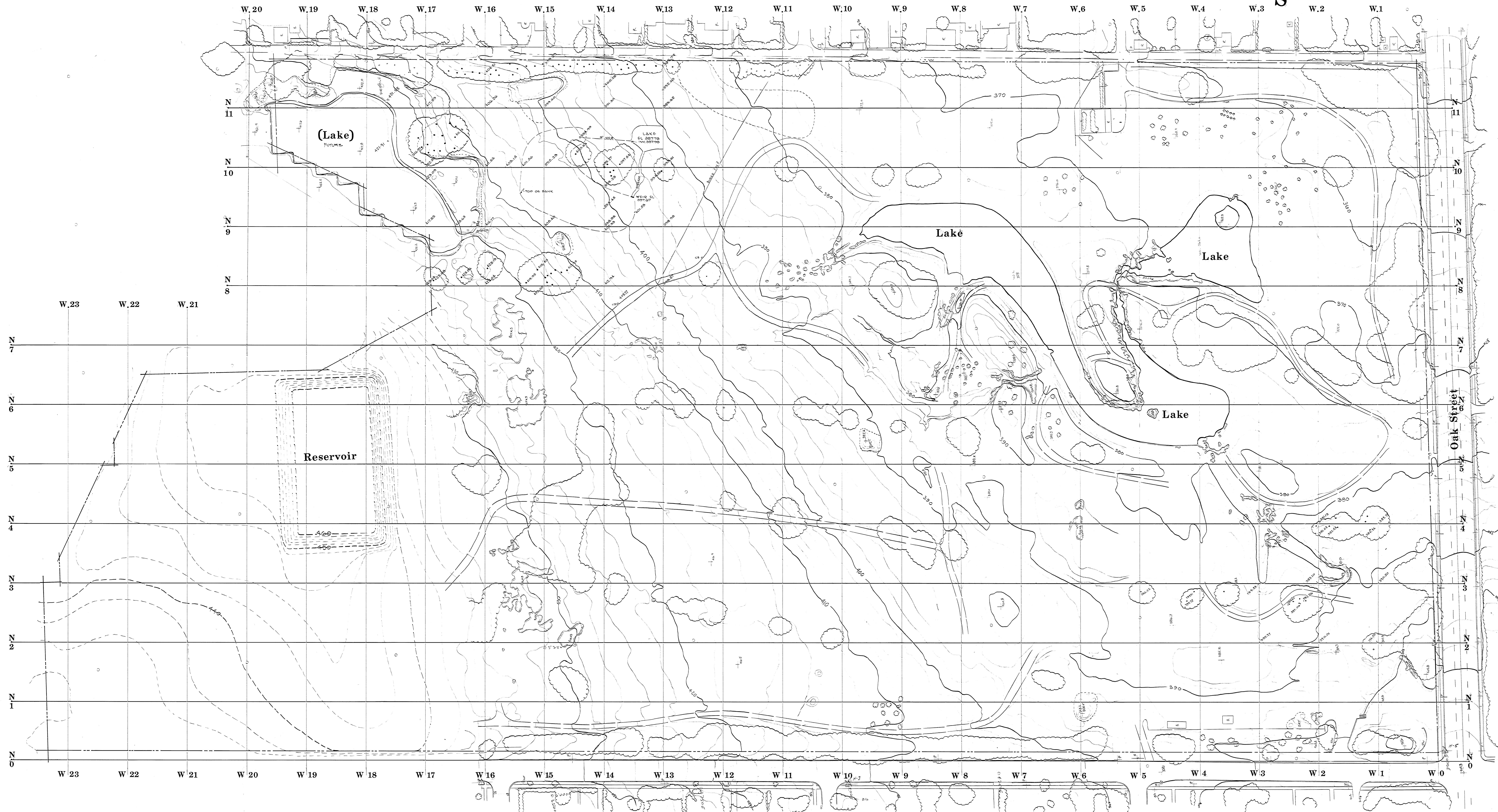
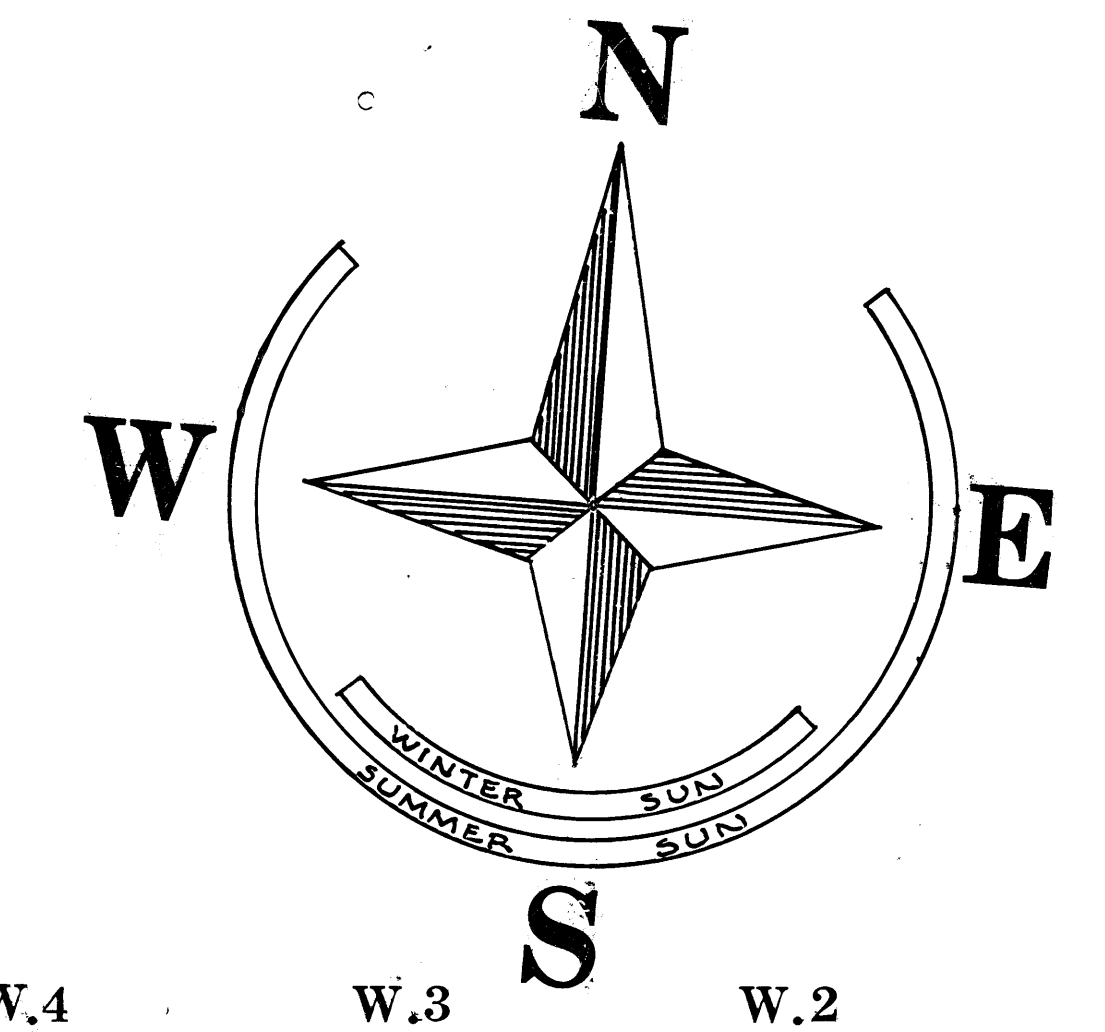
Legend

Water
Sewer
Catch Basin
Drainage

Path System
Unpaved
Paved
Grid Marker

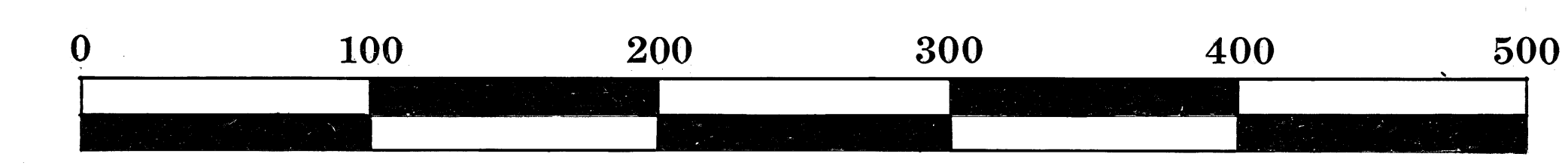
Notes

Solid contours from aerial survey Feb. 5, 1973
Broken " " site " July 14, 1970
Contour Interval 2'



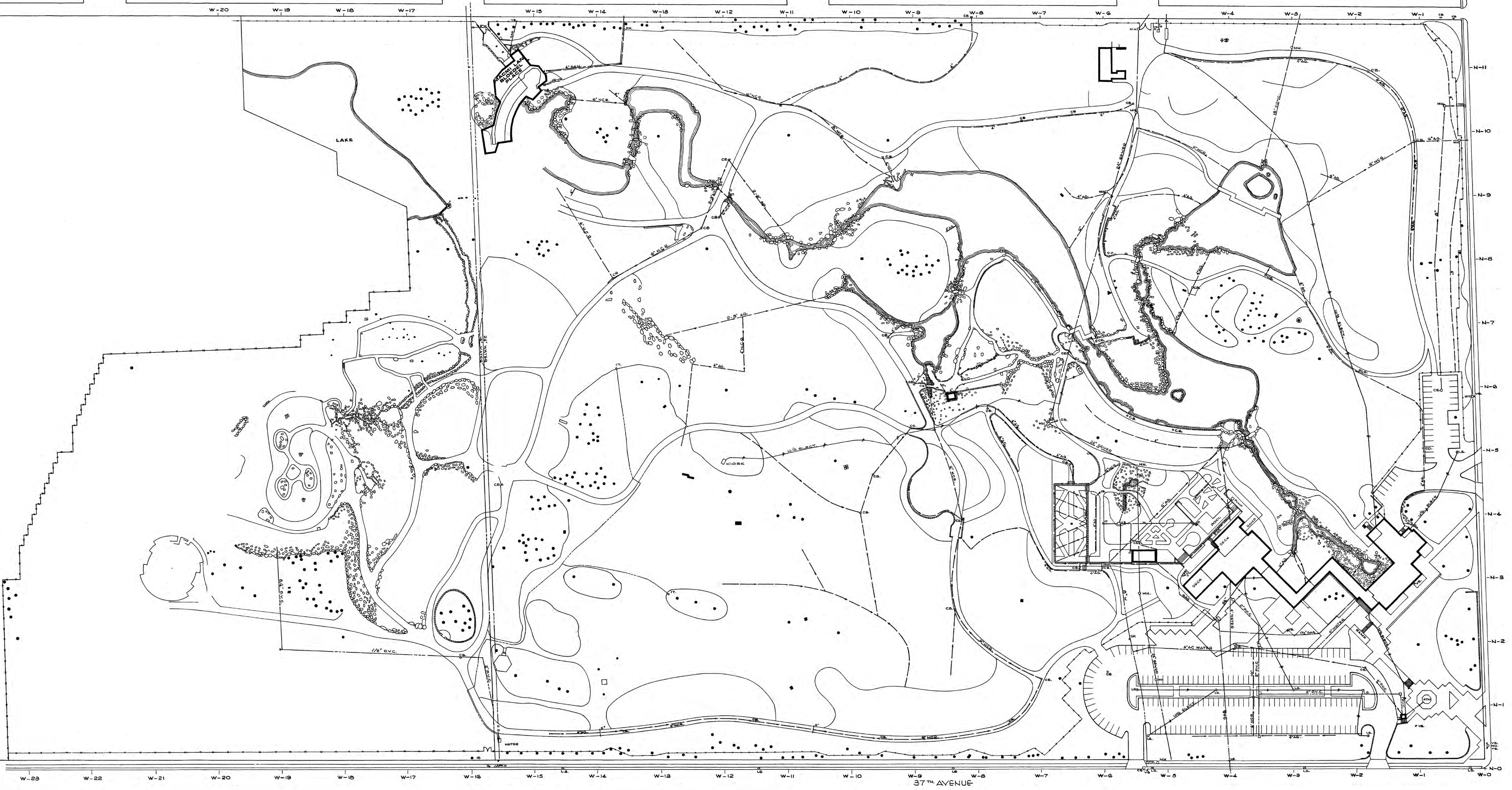
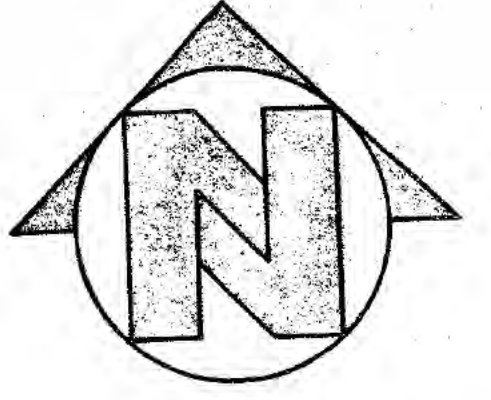
AD 291.002

VanDusen Botanical Garden Record of Development



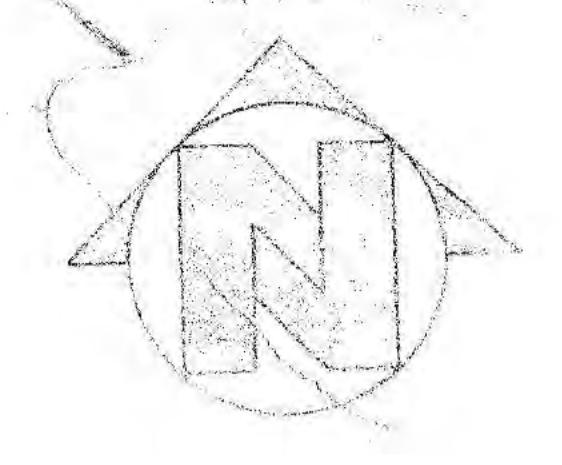
Scale in Feet

RL 291.002

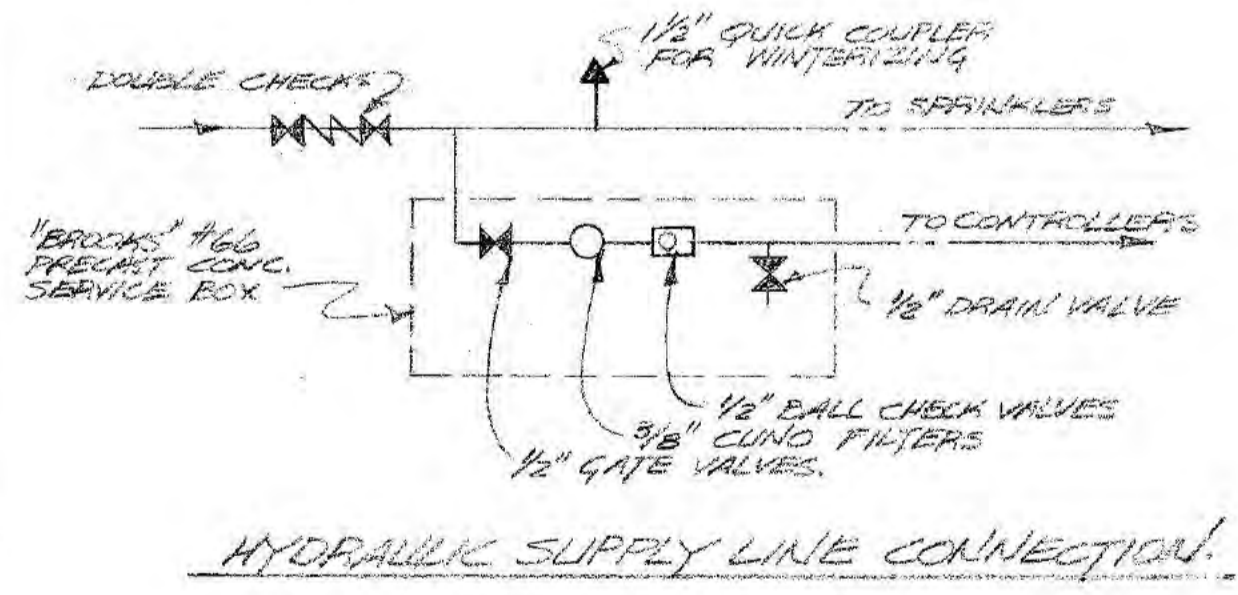
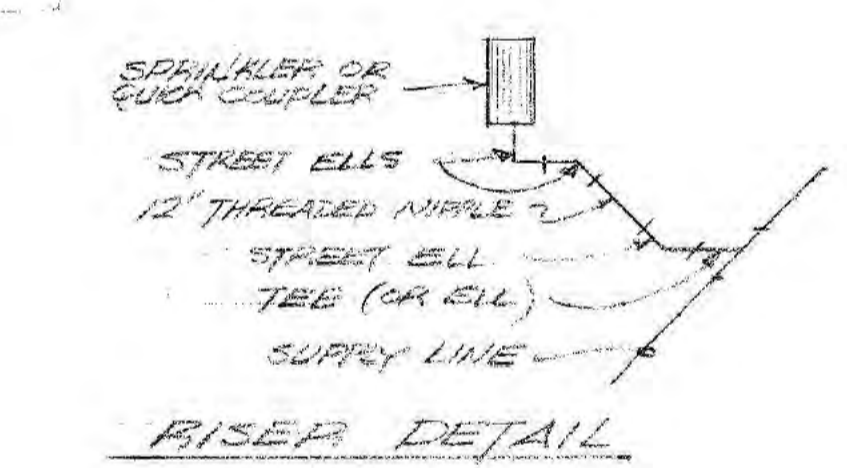
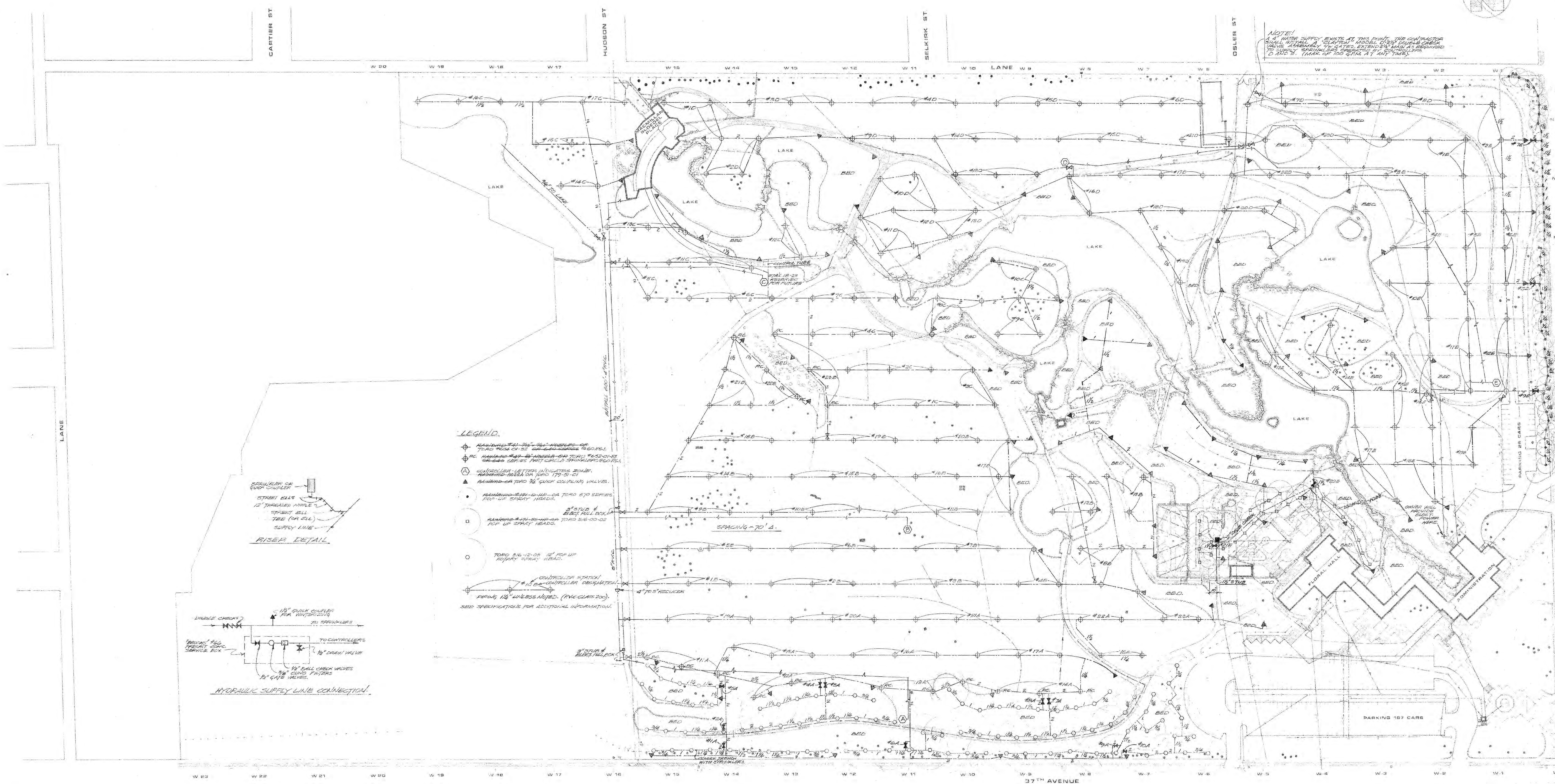


REV.	DATE	DRAWN	DESCRIPTION	SHEET	OF
DRAWN BY:			VANDUSEN BOTANICAL DISPLAY GARDEN	FILE NUMBER	RL
CHECKED BY:			SITE PLAN + SERVICES	DRAWING NUMBER	281.001
DATE:			BOARD OF PARKS AND PUBLIC RECREATION	STANLEY PARK, VANCOUVER, B.C.	
SCALE: 1" = 50'					

DR. SAI:001



NOTES:
 1. IF WATER SUPPLY EXISTS AT THIS POINT, THE CONTRACTOR SHALL INSTALL A 1" SPLITTING VALVE AT EACH CHECK VALVE. MINIMUM 1/2" SPLITTING VALVE IS REQUIRED TO VERIFY OPERATION. OPERABLE BY A CONTRACTOR. SEE SPEC. (PART OF 100 QTY. AT 40% TYP.)



LEGEND:

- ♦ MAINLINE 2\"/>
- TORN 2\"/>
- TORN 1\"/>
- TORN 1/2\"/>
- TORN 1/4\"/>
- TORN 3/8\"/>

SEE SPECIFICATIONS FOR ADDITIONAL INFORMATION.

APPROVED BY	1. 12/17/15 W.M.B. 'AS CONSTRUCTED'	SHEET	OF
DESIGNED BY	W.M.B.		
CHECKED BY	D.A. CLARK	TITLE	OF
DATE	2/2/16	VANOUSEN BOTANICAL DISPLAY GARDEN IRRIGATION PLAN.	
SCALE	1" = 50'	BOARD OF PARKS AND PUBLIC RECREATION	201-003/01



Inter-Office Correspondence

mm

LAW DEPARTMENT

September 26th, 1978

MEMO TO: City Clerk

RE: Shaughnessy Place Apartments

Enclosed for safekeeping are fully executed copies of the attached agreements:

- 1) right of way for sewer purposes over the common property, Strata Plan #VR368 for the benefit of the City of Vancouver registration number F43606.
- 2) right of way for water meter between Marathon Realty Company Limited and the City of Vancouver over Lot 1, Block 901, District Lot 526, Plan 16502, registered under number F43603.

There is no termination date of these documents.

Yours very truly,

Ian G. Henley

/attach.
/pf

MAE 19 2 10
CITY CLERK - 11/1/78

file 1097


FORM 6


CERTIFICATE OF STRATA CORPORATION

(Section 12(4a))

The Owners, Strata Plan No. VR.368 (a strata corporation) hereby certifies that the owners of the strata lots in the said strata plan by special resolution, duly passed, directed this strata corporation to execute the instrument, of which a true copy is annexed hereto, and that the instrument conforms to the terms of the resolution.

The Common Seal of The Owners, Strata Plan No. VR.368 was hereunto affixed on the 27th day of June, 1978 in the presence of:





(C/S)

JUN 20 1 37 P 78

F 43606

Space above for Land Registry Office Use.

A. Charge by way of:		Substitute Form C—Particulars	
C. Address of party entitled to be registered if different from that shown in instrument:		B. Full name, postal address and telephone of person presenting instrument for registration: LAW DEPARTMENT CITY OF VANCOUVER 453 West 12th Avenue Vancouver 10, B.C. Telephone: 873-7514	
D. Declared value:	British Subject	Solicitor or Agent	
\$	Yes No		

For Land Registry Office Use

THIS AGREEMENT made this 29th day of June in the year of Our Lord one thousand nine hundred and seventy-eight

BETWEEN:

THE OWNERS, STRATA PLAN NO. VR 368, a corporation subsisting under the Strata Titles Act S.B.C. 1964 Ch. 89 as amended on behalf of the strata lot owners thereof;
(hereinafter called the "Grantor")

OF THE FIRST PART

AND:

THE CORPORATION OF THE CITY OF VANCOUVER,

(hereinafter called the "Grantee")

OF THE SECOND PART

WHEREAS:

A. The Grantor as a Strata Corporation is charged with the management and control of the common property of the Strata Corporation being all and singular that certain parcel or tract of lands and premises situate, lying and being in the City of Vancouver, in the Province of British Columbia and being more particularly known and described as The Common Property, Strata Plan No. VR 368 ~~xxxxxx2, B166x961xxB18xx82xxB18xx82xxB18xx82xxB18xx82xx~~ (hereinafter called the "Said Lands") and has been directed by the owners of the strata lots to grant the within right-of-way;

B. The Grantor wishes to grant a right-of-way for the purposes herein contained over the portion or portions of the Said Lands more particularly described in Schedule "A" hereto (herein called the "Easement Area") for the benefit of the Grantee;

NOW THIS INDENTURE WITNESSETH

1. THAT, in consideration of the premises and of the terms, covenants and conditions on the part of the Grantee to be performed and observed herein, the Grantor doth hereby grant and convey unto the Grantee the full, free and uninterrupted right, liberty and easement for the Grantee, its licencees, agents, servants, officials and workmen, at all times hereafter, by night and by day, and at their will and pleasure, for the benefit of the Grantee, to enter, labour, go, return, pass and repass upon and along ~~xxx~~ the Easement Area ~~xxxxxxx~~ and to dig up the soil thereof, and to lay down, construct, instal and maintain water-mains, sewers, drains, ditches, manholes, pipes, or any of them, or any other utility, for the purpose of conveying, draining or disposing of water, sewage, liquid waste, or any of them, over, through or under the said easement area, as the Grantee may require or may be deemed expedient, and the same to cover with soil, alter, enlarge, remove, repair, renew, maintain, inspect and replace as may be necessary and expedient by the Grantee or its licencees, agents, servants, officials and workmen, together with the right, liberty and easement of unobstructed access to the said easement area, and to have the said easement area, including the subsoil thereof, remain at all times unoccupied by any embankment or fill, or by any building or structure likely to obstruct such access, other than a boundary fence. For the purposes of these presents, the said water-mains, sewers, drains, manholes, pipes and other utilities, and each and every of them, and all works forming part thereof, are hereinafter called "the said works".

2. TO HAVE AND TO HOLD unto the Grantee from and after the date hereof as appurtenant to the public streets and lanes abutting on the said lands, forever.

3. PROVIDED that nothing herein contained shall be deemed to include or imply any covenant or agreement on the part of the Grantee with the Grantor or with any other person or persons as a condition hereof or otherwise, to construct, instal or maintain the said works or any of them, or any public work or utility whatsoever on the said lands or any portion thereof.

4. The Grantor covenants and agrees with the Grantee that the Grantor will not, while at any time otherwise having the right so to do, maintain any embankment or fill or any building or structure of any kind whatsoever which shall occupy, and will not erect any embankment or fill or any building or structure of any kind which shall occupy, any portion of the said easement area, including the subsoil thereof, other than a boundary fence, and that in the event of the maintenance or erection of any such embankment or fill or any such building or structure as aforesaid, and the neglect of the Grantor to remove the same within thirty (30) days after receipt of notice in writing from the Grantee requiring such removal, the Grantee, in addition to any other right or remedy secured to the Grantee by these presents or otherwise, shall have the right, liberty and easement to do all things necessary to remove the same without any liability for damage; and the Grantor shall forthwith pay to the Grantee all costs, charges and expenses to which the Grantee may be put by reason of such removal, which costs, charges and expenses shall be and remain at all times charged upon and against the said lands.

5. It is hereby understood, covenanted and agreed that the covenants herein contained shall be covenants running with the said lands and with public streets and lanes abutting upon the said lands, and that none of the covenants herein contained shall be personal or binding upon the parties hereto save and except during the Grantor's seizin of or ownership of any interest in the said easement area, and with respect

only to that portion of the said easement area of which the Grantor shall be seized or in which he shall have an interest; but that the said lands shall, nevertheless, be and remain at all times charged therewith.

6. The Grantor doth hereby release and forever discharge the Grantee from and against all manner of actions, causes of action, suits and demands whatsoever at law or in equity which the Grantor may at any time have by reason of the laying, construction, repair, renewal, maintenance, inspection or removal of the said works, or any of them, or any portion thereof.

7. Save as aforesaid, nothing in this indenture shall be interpreted so as to restrict or prevent the Grantor from using the said easement area in any manner which shall not interfere with the security or efficient functioning of or unobstructed access to the said works.

8. These presents shall enure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.


9. Words herein importing the singular number, or the masculine gender only, shall include more persons, parties or things of the same kind than one, and females as well as males, and the converse, whenever the context so requires.


IN WITNESS WHEREOF the Grantor has hereunto set his hand and seal, and the Grantee has caused these

presents to be sealed with the Common Seal of the City of Vancouver and signed by the Director of Legal Services on the day and year first above written.

The Common Seal of THE OWNERS,)
STRATA PLAN NO. VR.368 was)
hereunto affixed in the)
presence of the undersigned)
Members of the Council of)
THE OWNERS, STRATA PLAN NO.)
VR.368:)

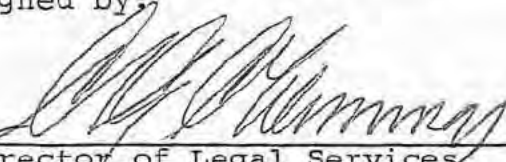
(C/S)





SEALED with the Common Seal of)
the CITY OF VANCOUVER and)
signed by:)

(C/S)

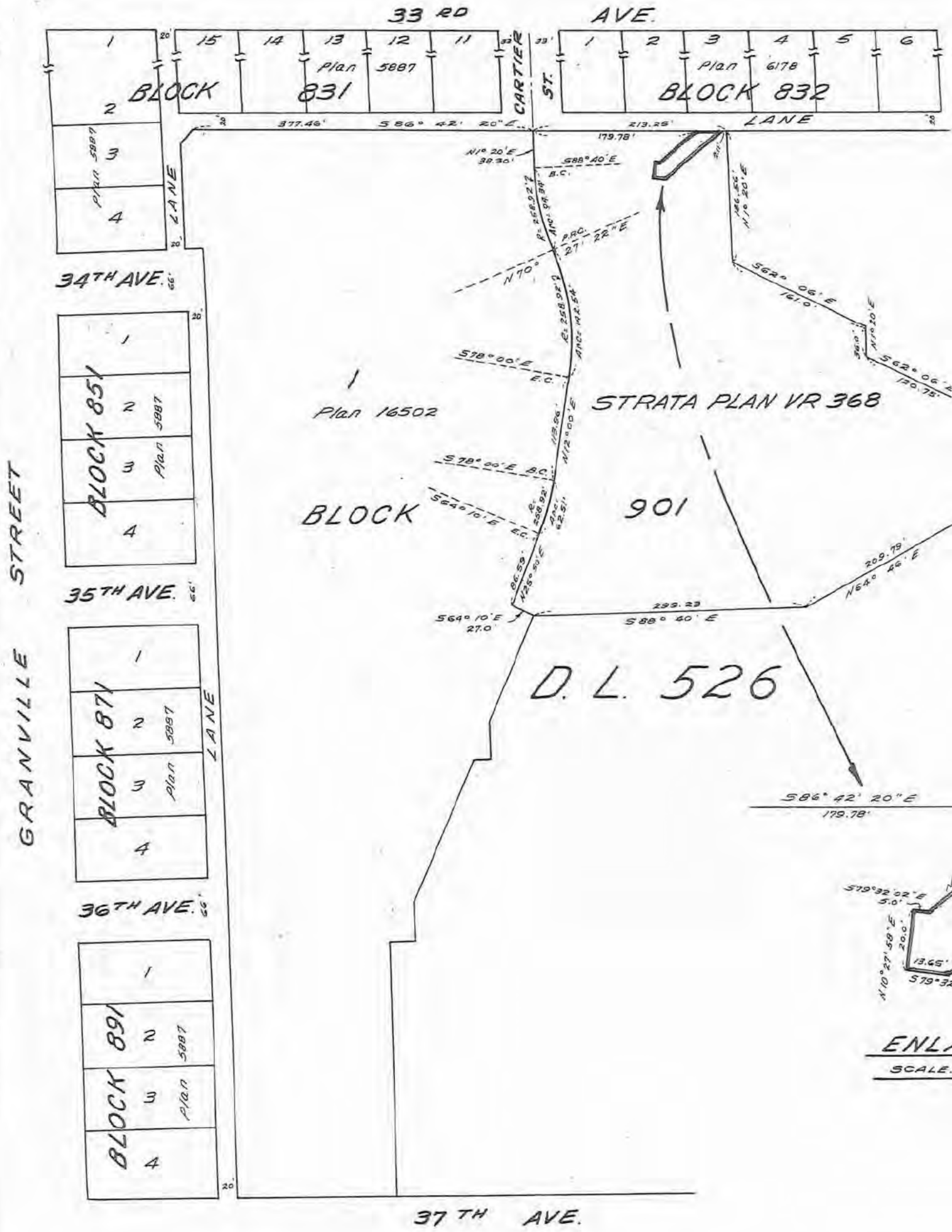


Director of Legal Services)

SCHEDULE "A"

That portion of the Said Lands being ALL AND SINGULAR that certain parcel or tract of land, situate, lying and being a portion of the Common Property of Strata Corporation The Owners, Strata Plan No. VR 368 which may be more particularly described as follows:

COMMENCING at a point on the northerly boundary of the said Common Property, Strata Plan No. VR 368, distant S 86° 42' 20" E, 179.78 feet, from the northwest corner thereof; thence S 86° 42' 20" E, along the said northerly boundary 31.36 feet; thence S 53° 40' 34" W, 86.24 feet; thence N 79° 32' 02" W, 13.65 feet; thence N 10° 27' 58" E, 20.00 feet; thence S 79° 32' 02" E, 5.00 feet; thence N 53° 40' 34" E, 53.42 feet, more or less, to the point of commencement: said portion of Common Property, Strata Plan No. VR 368 containing 0.036 acres, more or less, by admeasurement and shown outlined in red on the Explanatory Plan prepared by F.B. Underhill, B.C.L.S. and certified correct on December 31, 1976, a print of which is attached hereto.



Bearings Astronomic and derived from Plan 16502

This plan lies within the Greater Vancouver Regional District

Underhill & Underhill
Engineers & Surveyors
Vancouver, B.C.

Certified Correct according to Land Regis. Office Records:

F. B. Underhill B.C.L.S.

December 31st, 1976

A-297-R1

"PLAN"

Deposited in the Land Registry Office
at Vancouver, B.C. this day
of 19

REGISTRAR

PLAN OF RIGHT OF WAY OVER THE COMMON PROPERTY OF STRATA PLAN VR 368 "FOR UTILITY PURPOSES"

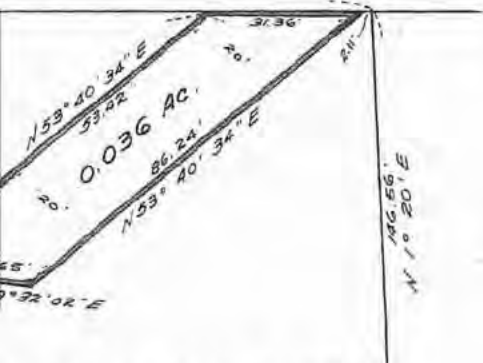
SCALE: 1 INCH - 100 FEET

BOOK OF REFERENCE

OWNER	DESCRIPTION	AREA
PRIVATE OWNERSHIP	COMMON PROPERTY, STRATA PLAN VR 368	0.036 AC.

Plan 13962

BLOCK 903



LARGEMENT

SCALE: 1 INCH - 30 FEET


Registry

S.S.

ACKNOWLEDGMENT OF AN OFFICER OF A CORPORATION

I HEREBY CERTIFY that on the 22nd day of June
1978 , at the City of Vancouver,
in the Province of British Columbia, CHARLES S. FLEMING
appeared before me and acknowledged to me that he is
Director of Legal Services of the City of Vancouver
and that he is the person who subscribed his name to the
annexed instrument as Director of Legal Services
of the said City of Vancouver
and affixed the seal of the said City of Vancouver
to the said Instrument, that he was
first duly authorized to subscribe his name aforesaid, and
affix the said seal to the said Instrument, and that such
corporation is legally entitled to hold and dispose of land
in the Province of British Columbia.

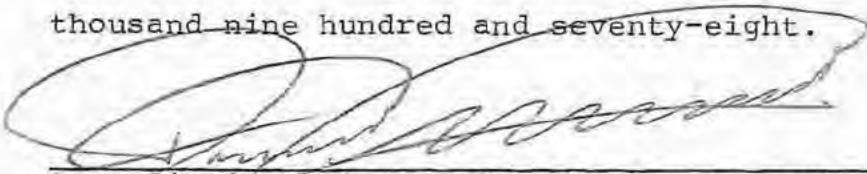
IN TESTIMONY WHEREOF I have hereunto set my Hand
and Seal of Office at the City of Vancouver,
, in the Province of British
Columbia this 22nd day of June , in the
year of our Lord one thousand nine hundred and seventy-
eight.


A Commissioner for taking Affidavits for British
Columbia / ~~A Notary Public in and for the Province~~
~~of British Columbia~~

FOR THE SECRETARY OR OTHER OFFICER
OF A CORPORATION

I HEREBY CERTIFY that on the 27th day of June, 1978 in the City of Vancouver, in the Province of British Columbia AULAY OUGHTRED and WILLIAM SATTEN who are personally known to me, appeared before me and acknowledged that they are Members of the Council of THE OWNERS, STRATA PLAN NO. VR 368 and that they are the persons who subscribed their names to the annexed instrument as Members of the Council of the said OWNERS, STRATA PLAN NO. VR 368 and affixed the seal of THE OWNERS, STRATA PLAN NO. VR 368 to the said instrument and further that the seal of the said Strata Corporation was affixed in their presence and that they were first duly authorized to subscribe their names as aforesaid, and affix the said seal to the said instrument, and that the said Strata Corporation is legally entitled to hold and dispose of land in the Province of British Columbia.

IN TESTIMONY WHEREOF I have hereunto set my Hand and Seal of Office at the City of Vancouver, in the Province of British Columbia this 27th day of June, in the year of our Lord one thousand nine hundred and seventy-eight.


A Commissioner in and for the Province of British Columbia.

DAVID P.L. MYDSKE
BARRISTER & SOLICITOR
2100-700 W. Georgia St.
VANCOUVER, B.C. V7Y 1A8

DATED: June 27th 1978

BETWEEN:

THE OWNERS, STRATA PLAN
NO. VR 368

OF THE FIRST PART

AND:

THE CORPORATION OF THE CITY
OF VANCOUVER

OF THE SECOND PART

RIGHT OF WAY OVER COMMON PROPERTY,
STRATA PLAN NO. VR 368 FOR THE
BENEFIT OF THE CITY OF VANCOUVER

The original of this document was
received in the Vancouver
Land Registry Office on the 28th
day of June 1978
as NO. F43606
DLM

LADNER DOWNS

BARRISTERS AND SOLICITORS
2100 PACIFIC CENTRE SOUTH
P.O. BOX 10021
700 WEST GEORGIA STREET
VANCOUVER, B.C. V7Y 1A8
TELEPHONE (604) 687-5744

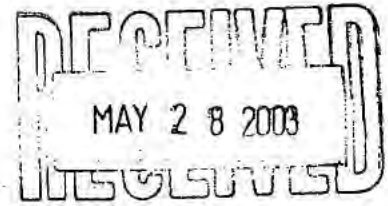
NAME
NOM

SHAUGHNESSY LAKE
MAINTENANCE AGREEMENT

No.



Condominium Property Managers



May 26th, 2003

Dr. John Blatherwick
Environmental Health
800-601 West Broadway
Vancouver, BC V5Z 4C2

Mayor Larry Campbell
City of Vancouver
453 West 12th Avenue
Vancouver, BC V5Y 1V4

Dear Dr. Blatherwick/Mayor Campbell:

**Re: West Nile Virus – Shaughnessy Place I
4900 Cartier Street, Vancouver, BC**

Strata Plan VR 368

On behalf of the Strata Council and residents of Shaughnessy Place I, located at Cartier and 33rd Avenue, directly adjacent to Van Dusen Gardens, we write to express serious concerns regarding potential West Nile virus emanating from the Van Dusen pond.

As you may be aware there is a substantial pond, with still waters, located behind this residential strata neighborhood. Many units directly abut the pond and are occupied by senior citizens, with perhaps weakened immune systems. Many residents in this development have made Shaughnessy Place their home for 30 years. Concern has been expressed regarding lack of action proposed to be taken by the City of Vancouver to address the potential West Nile virus.

Your response is respectfully requested, advising of action intended to be taken. Specifically, the pond may need spraying and monitoring of mosquitoes. Your early response is appreciated. Residents await your input.

Thank you kindly.

Yours truly,
CONDEX PROPERTY MANAGEMENT LTD.

Barbara G. Whitlock,
Property Manager

BGW/dc

cc: Van Dusen Gardens
All City Aldermen
Council President



POND MAINTENANCE AGREEMENT

This Agreement dated for reference the day of , 1996

BETWEEN:

CITY OF VANCOUVER, a Municipality and a Corporation continued under the **Vancouver Charter** (British Columbia) with offices at 453 West 12th Avenue, Vancouver, British Columbia, V5Y 1V4

AND:

THE OWNERS, STRATA PLAN VR 368, a Corporation created under the **Condominium Act** (British Columbia) having an address for business at 400 - 1281 West Georgia Street Vancouver, British Columbia, V6E 3J7

The City of Vancouver and The Owners, Strata Plan VR 368 agree with each other as follows:

1.0 **Definitions and Interpretation**

1.1 In this Agreement:

- (a) "Board" means the City of Vancouver, a municipality and a corporation continued under the **Vancouver Charter** (British Columbia), acting through its Board of Parks and Recreation;
- (b) "Corporation" means The Owners, Strata Plan VR 368, a corporation created under the **Condominium Act** (British Columbia) on the deposit of Strata Plan VR 368 in the Vancouver Land Title Office;

From
Lianne
McKenna

Parks Board

- (c) "Corporation Property" means the land that is designated as common property in the Plan;
- ~~(d) "Extraordinary Costs" means any cost(s) to be incurred from time to time by the Board for Pond maintenance, preservation and repair other than those costs incurred in accordance with paragraph 2.0 herein, and include, but are not limited to costs to supply and install plastic or concrete Pond liners, water outflow gates or barriers at or in the Pond;~~
- (e) "Gardens" means the botanical gardens maintained by the Board that are called the VanDusen Botanical Display Gardens;
- (f) "Plan" means Strata Plan VR 368, deposited in the Vancouver Land Title Office; and
- (g) "Pond" means the ornamental pond that lies between and on part of the Corporation Property and part of the Gardens, as is illustrated on the sketch that forms Schedule A.

1.2 Reference to this Agreement to

- (a) the singular includes a reference to the plural and a reference to the plural includes a reference to the singular.
- (b) a particular numbered "section" or to a particular lettered "schedule" is a reference to the corresponding numbered or lettered section or schedule of this Agreement,

- (c) any law, statute, by-law or regulation is to be considered also to be a reference to any amendment or re-enactment of, or any replacement for, that law, statute, by-law or regulation, and
- (d) a "party" or "parties" is a reference to a party or the parties to this Agreement.

2.0 Cleaning of Pond

2.1 The Board agrees to remove weeds, wood, and other aesthetically displeasing substances (the "Pond Material") from the Pond in accordance with the terms of this Agreement and the Corporation agrees to reimburse the Board for one-half of the costs incurred by the Board to remove the Pond Material in accordance with the terms of this Agreement.

2.2 Whenever the Corporation or the Board considers that the Pond Material constitutes a health hazard or is aesthetically displeasing, it may give written notice to the other party stating that in its opinion removal of the Pond Material is necessary. Within five (5) business days after the date that the written notice is received, representatives appointed by the Board and the Corporation shall meet and agree on the date that the Pond Material is to be removed (the "Pond Material Removal Date"). The parties shall use reasonable and best efforts to agree on the date for removal of the Pond Material.

2.3 The Board shall remove the Pond Material on the Pond Material Removal Date. If, for reasons beyond its control, the Board cannot remove the Pond Material on the Pond Material Removal Date, the Board shall forthwith notify the Corporation in writing of the delay and thereafter shall remove the Pond Material as soon

as it is reasonably practicable after the Pond Material Removal Date.

2.4 The Corporation grants to the Board, shall, to the extent necessary to allow the Board to remove the Pond Material, grant the Board a contractual licence to be on Corporation Property.

2.5 If the party who receives the notice under Section 2.2 does not agree that removal of the Pond Material is necessary, it must forthwith notify the other party in writing of its disagreement, and give reasons for its disagreement. The parties shall use reasonable efforts and negotiate in good faith in attempting to agree that the removal of the Pond Material is necessary.

~~2.6 If, within 10 days after notice is given under Section 2.2 the parties cannot agree that removal of the Pond Material is necessary, the parties agree to forthwith submit the dispute to a single independent arbitrator chosen by the party who gave the notice under Section 2.2. The parties agree to be bound by the decision of the arbitrator and further agree that each party will pay its own legal costs one-half of the arbitration costs. In the event that the arbitrator determines that the Pond Material is to be removed, the Board shall remove the Pond Material and thereafter shall deliver an invoice to the Corporation in accordance with Section 2.7. that the party who gave the notice under Section 2.2 may, at its own risk, remove the Pond Material. If the Board removes the Pond Material under this section, Sections 2.1 and 2.7 do not apply. If the Corporation removes the Pond Material, Section 2.1 applies and the Corporation shall deliver an invoice to the Board. The Board shall pay its one-half share of the cost in accordance with the terms and conditions for payment contained in Section 2.7 as amended by this section. For the purposes of this section, and payment by the Board herein, the word "Board",~~

~~whenever it is used in Section 2.7, shall be substituted for the word "Corporation" and vice versa. The Board and the Corporation do agree to grant each other the contractual licence to be on Corporation Property, or the Gardens, as the case may be, in order that the Pond Material can be removed in accordance with this section.~~

2.7 The Board from time to time may deliver an invoice to the Corporation setting out the one-half share of the cost that must be paid by the Corporation and any social services, goods and services or other consumption or added value taxes that are payable by the Corporation in respect of removal of the Pond Material from the Pond. Within 30 days after the date of each invoice the Corporation must pay the amount of that invoice to the Board. Any amount that remains unpaid more than 30 days after the date of the invoice bears interest payable to the Board starting 31 days after the date of the invoice at the annual rate of interest, compounded annually not in advance, that is 3% greater than the annual rate of interest charged from time to time by the Bank of Montreal, Main Branch, 595 Burrard Street, Vancouver, on demand Canadian dollar commercial loans made in Canada to its most creditworthy commercial customers and designated by that bank as its prime rate.

3.0 Maintenance of Water levels in the Pond

~~3.1 The Board agrees to provide and maintain, at no cost to the Corporation a constant supply of fresh water to the Pond and further agrees that the level of the water in the Pond shall be kept level with the height of the water outflow for the Pond. (that is adequate to maintain the average water level of the Pond as measured at the water outflow for the Pond during the months of May and June.) The Board must supply fresh water to the Pond at the end of the Pond that is opposite to the water outflow for the Pond.~~

3.1 Subject to section 3.2, during the months of May to September of each year, inclusive, the Board must maintain a supply of fresh water to the Pond that is adequate to maintain the water level of the Pond so that it just overflows the water outlet for the Pond during the months of May and June. The Board must supply that fresh water at the end of the Pond that is opposite to the water outflow for the Pond. The Corporation agrees to pay half of the cost of water supply as provided in section 5.0 of this Agreement.

3.2 The obligation of the Board under section 3.1 is suspended during any period during which the Greater Vancouver Water District, the Greater Vancouver Regional District or any other public authority with the jurisdiction to do so requests or requires the Board specifically, or Greater Vancouver Regional District water users generally, to reduce or eliminate unnecessary water uses or to ration the use of water.

4.0 Changes in the Gardens

4.1 The Board agrees to use reasonable efforts to give notice to the Corporation of any proposed changes in the design, layout or planting of the Gardens, including the Pond, that is immediately adjacent to and visible from the Corporation Property. The Board agrees to use reasonable efforts to consult with the Corporation on any of those proposed changes and to consider any suggestions or requests made by the Corporation. The Board is not obliged to implement any suggestions or requests made by the Corporation. The Board may carry out any proposed changes despite failure by it to give notice to or consult with the Corporation.

5.0 Allocation of Risk

5.1 The Board is not liable for:

- (a) damage caused to the Corporation Property or any other property of any kind during removal of the Pond Material except to the extent that the damage is caused directly or indirectly by the negligent act or omission of the Board, its agents, servants, assigns or employees,
- (b) damage caused to the Corporation Property or any other property of any kind by water in the Pond except to the extent that the damage is caused directly or indirectly by the negligent act or omission of the Board, its agents, servants, assigns, or employees, or
- (c) personal injury or death suffered by anyone in that part of the Pond that is on the Corporation Property except to the extent that the personal injury or death is caused directly or indirectly by the negligent act or omission of the Board, its agents, servants, assigns, or employees.

5.2 The Corporation agrees that for the purposes of the Occupiers' Liability Act (British Columbia) the Board is not an occupier of that part of the Pond that is on the Corporation Property. The Corporation agrees that it must take reasonable care to ensure that no personal injury or death is suffered in connection with that part of the Pond that is on the Corporation Property.

6.0 Costs

6.1 The Board agrees that prior to the 15th day of January of each calendar year during the term of this Agreement, it will submit to the Corporation a written estimate of the reasonable costs the Board anticipates it will incur during the calendar year ~~to remove the Pond Material, and where applicable, a written~~

~~estimate of the reasonable Extraordinary Costs the Board anticipates it will incur during the calendar year in order to permit the Corporation to incorporate its one-half share of the Pond Material removal costs, or the Extraordinary Costs, into the Corporation's annual budget for each calendar year.~~

6.2 In the event that the Corporation advises the Board in writing within 7 days of the date that the Corporation is advised in writing of the anticipated Extraordinary Costs for the calendar year that the anticipated Extraordinary Costs are not reasonable, the parties agree that they shall forthwith submit the matter to a single independent arbitrator chosen by the Board who, in the arbitrator's sole discretion, shall determine the reasonableness of the anticipated Extraordinary Costs, after which any Extraordinary Costs incurred by the Board will be payable by the Corporation in accordance with Section 2.7. The parties agree to be bound by the arbitrator's decision and each party will pay its own legal costs and one-half of the arbitration costs.

7.0 Statutory Covenant Regarding Corporation Property

7.1 In accordance with Section 215 of the Land Title Act (British Columbia), the Corporation agrees with the Board that the part of the Corporation Property that is covered by the Pond may be used, maintained and occupied only in accordance with the terms of this Agreement.

8.0 Effectiveness and Termination

8.1 This Agreement is effective after the _____ day of _____, 1996.

8.2 Either party may terminate this Agreement by giving 90 days notice of termination to the other party and this Agreement terminates on expiry of the 90 days.

9.0 General

9.1 Any notice or invoice which may be or is required to be given under this Agreement must be in writing and delivered addressed as follows:

(a) to the Board:

Board of Parks and Recreation
2099 Beach Avenue
Vancouver, British Columbia
V6G 1Z4

Attention: Director of Environment and Operations

(b) to the Corporation:

The Owners, Strata Plan VR 368
c/o Vancouver Condominium Services Ltd.
400 - 1281 West Georgia Street
Vancouver, British Columbia
V6E 3J7
Attention: Mr. Neil Fraser

or to such other address of which notice has been given as provided in this section. Any notice, direction or demand that is delivered is to be considered to have been given on the next business day after its dispatch for delivery. If a party changes its address it must promptly give notice of its new address to the other party as provided in this section.

~~9.2~~ The obligations created by Section 7.1 are not merely personal, but are covenants which burden the Corporation Property and run with it.

9.3 If any term of this Agreement is held by a court to be invalid, illegal or unenforceable, that term 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 term.

9.4 No alleged waiver of any breach of this Agreement is effective unless it is an express waiver in writing of the breach in respect of which it is asserted against the party alleged to have given the waiver. No waiver by the Board or the Corporation of any breach of this Agreement operates as a waiver of any other breach of this Agreement.

~~9.5 The Corporation may, at its own cost, take steps to register this Agreement and the interests it creates against title to the Corporation Property in the appropriate Land Title Office with priority over all other charges and encumbrances other than charges and encumbrances held by the Board.~~

9.6 This is the entire agreement between the Board and the Corporation concerning its subject and it may be changed only in a document executed by the Board and the Corporation.

9.7 This Agreement is 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 to this Agreement have executed and delivered this Agreement under seal on the dates set out below:

The Common Seal of the)
 City of Vancouver was)
 hereunto affixed in the)
 presence of:)
) c/s
)
)
 _____)
 Authorized Signatory)

Date executed and delivered by City of Vancouver:
 _____, 1996

The Common Seal of The)
 Owners, Strata Plan VR 368)
 was hereunto affixed in the)
 presence of:)
) c/s
)
)
 _____)
 Authorized Signatory)
)
)
 _____)
 Authorized Signatory)

Date executed and delivered by The Owners, Strata Plan VR 368:
 _____, 1996

LAKE RENOVATION AND MAINTENANCE AT VANDUSEN GARDENS

VanDusen Gardens has a number of small man made lakes that were constructed between 1972 and 1975. The lakes are relatively shallow and offer an ideal environment for aquatic vegetation. The control of aquatic vegetation has been an issue for a number of years. Various methods of weed control have been tried, with varying degrees of success.

Manual harvesting of aquatic weeds is a labour intensive operation that is a short term solution because of the rapid regrowth of leaves. In order to be effective, this would need to be done monthly during the growing season. This is the least cost effective method.

Aquatic herbicides have been used in the past at VanDusen. Provincial regulations prohibit the use of pesticides near water bodies and require a special use permit for aquatic herbicide applications. The Ministry of the Environment is increasingly reluctant to issue these types of permits. The use of aquatic herbicides alone has proven to be ineffective.

The use of various types of bottom barriers have had mixed results. If bottom barriers are used on top of existing vegetation, gases are produced for a long period of time while the vegetation decomposes. Non porous barriers made of made of polyethylene do not allow gases to vent and tend to float to the surface. Porous felt like fabrics that allow gases to vent seem to work better, but also float to the surface.

Dredging of the lakes has proven to be the most effective method of aquatic weed control. When combined with the installation of a porous bottom barrier, there is long term control.

Various methods of weed control have been tried in the lakes at VanDusen with varying degrees of success:

- Shaughnessy Lake (April 1992) was drained, a granular herbicide was applied and a porous bottom barrier installed on top of vegetation. The gas production from decomposition of vegetation resulted in the membrane floating to the surface. There was also weed regrowth, indicating that the herbicide was not 100% effective. In both 1995 and 1996, the lake was again drained and herbicide applied. There has been some regrowth of weeds, showing the ineffectiveness of the herbicide.
- Heron Lake (September 1992) was drained, dredged and a porous bottom barrier installed. There is still good control of weed growth, with the exception of milfoil.
- Livingstone Lake (September 1993) was drained, dredged and a porous bottom barrier installed. There is still good control of weed growth, with the exception of milfoil.

.../2

- Cypress Pond (September 1995) was drained and dredged. There was no bottom barrier installed. There is already significant regrowth of weeds.

Three lakes at VanDusen Gardens have been dredged at a cost of approximately \$1.42 per square foot of area. Based on this figure, the cost to renovate Shaughnessy Lake would be approximately \$46,500. This cost would include dredging the lake, disposal of the waste material and installation of a liner.

Livingston Lake	21,800 ft ²	\$31,000	\$1.42/ft ²
Heron Lake	34,200 ft ²	\$48,000	\$1.40/ft ²
Cypress Lake	19,000 ft ²	\$27,000	\$1.42/ft ²
Shaughnessy Lake	32,700 ft ²	\$46,500	\$1.42/ft ²

In addition to the renovation cost, there is an annual maintenance cost of approximately \$1,000. This covers the cost of spot weeding and liner maintenance. We estimate the renovation will be effective for a seven to ten year period. At that time, it may be necessary to remove sediment and possibly replace the liner.

Please see the attached presentation by Roy Forster titled "Maintenance of Ponds in Public Gardens".

Prepared by Ron Caswell
October 23, 1996

(MAINTENANCE OF PONDS IN PUBLIC GARDENS)

Short talk for the AABGA by Roy Forster,
Curator, VanDusen Botanical Garden

Annual Meeting July, 1995

Since antiquity, lakes and ponds have been an important element of landscape gardens, from a recreational or aesthetic point of view. The activities that centered on ponds included the staging of mock naval battles, the sailing of model boats, theatrical and musical performances, or simply messing about in boats. Ponds play a part in affecting the immediate climate, providing a habitat for wildlife, flood control, water storage for irrigation and facilitating drainage of a site.

The aesthetic role of ponds in the landscape is profound. As one of three basic cosmic elements of the ancients, water, in a garden satisfies a fundamental need: It instills a calmness of the mind; gives inspiration to the painter and poet; it is the yin to the yang of rocks, trees and gaudy flowers.

Still water, by reflecting a mirror image of the landscape, enlarges our perceptions of a garden, as well as providing a setting for fountains and sculpture. Without water, no garden is complete: However, all lakes, ponds and streams, whether natural or man-made, create difficulties for garden managers because of their very nature - always in a state of change. It has been said that a lake or pond can be defined as a transition between a hole in the ground filled with water and the bog it is destined to become.

This is a reference to the well known tendency for shallow ponds to silt up and become choked with vegetation. The development of peaty deposits caused by the decay of aquatic plants eventually displaces the water. Terrestrial plants gain a foothold and the transition to woodland begins. In maintained public gardens this process needs to be arrested or reversed as there is often considerable capital investment involved in the construction or reconstruction of ponds. Before embarking on the construction of ponds, in the first place garden managers may wish to consider the on-going costs of maintenance and restoration. Our experience in the VanDusen Botanical Garden suggests that restoration costs of "naturalistic" ponds may run as high as \$1.00 Cdn. per square foot at a frequency of between five and ten years, depending on the rate of deterioration, which is affected by many factors including available nutrients, vegetation type, depth, and water movement.

This contribution deals only with our experience with the maintenance of mud-bottom ponds at VanDusen Botanical Garden. The rate at which aquatic and marginal plants invade a pond is very much a product of its depth and also the pressure of invasive alien aquatic plants which may have few or no natural controls.

The maintenance/restoration of such ponds has become a considerable problem for gardens that lack the resources to install liners and circulation/filtration systems. The removal and disposal of mud, debris and aquatic growth is expensive. The work is messy and potentially damaging to wildlife habitat.

At Vandusen the worst scenario is a shallow pond of some

19,000 sq. ft. x 18" deep called Cypress Pond. The pond is a setting for a grove of Bald Cypress. The pond is the last body of water in a connected, descending-series of ponds. The bulk of the dissolved nutrients, aquatic plant seeds and plant fragments end up in this pond. The growth of native and alien aquatic plants has been very aggressive.

In 1990 the pond was drained. All plant growth and mud was removed. Our practice is to use a commercial excavating machine with a "clean-out" type bucket. The pond bottom is scraped down to the hard mineral impervious subsoil which forms the bottom of all the ponds at VanDusen. Except for some areas of the bank, it was not found necessary to waterproof the pond with clay. All salvagable aquatic plants were saved, freed of contaminating aquatic weeds, and planted in tubs to be replaced in the pond later. Fish were netted and placed in another pond. Total cost of cleaning and disposal was 88 cents Cdn. per square foot. No membrane or herbicides were used in this early work.

Within five years after this treatment the entire pond surface was again covered with weed growth of alien species, principally Nymphoides peltatum and Myriophyllum asiaticum. The common white water lily, Nymphaea alba was also a major invader. All this had a negative impact on the aesthetics of the pond from an overall visual-amenity point of view: However, the pond had evolved as a much loved resource with educators and volunteers for the study of pondlife. This apparent contradiction of purpose led to some lively exchanges between educators and garden maintenance staff.

The rapid colonization of the above-noted weeds tends to negate expensive restorative treatment. One option - the use of herbicides - is controversial and, although aquatic herbicides can be very effective if used correctly, their use is frowned on by many citizens, by some of the staff, and by our political masters who are ever sensitive to public opinion. Because of this we have been experimenting with permeable and non-permeable membranes.

In the larger ponds, in size up to 34,000 sq. ft., we have used inexpensive permeable-membranes such as Nilex C24, a black felt-like material. This product, when placed on a clean well-prepared surface, effectively suppressed weed growth. The fabric must be lapped up the pond banks and affixed just to the high water mark level. A frequent source of re-infestation of weeds is from inadequately-covered pond margins. There are aesthetic factors to be considered in this treatment. The fabric and attachments must be concealed beneath the water surface or by being covered with rip-rap.

In ponds where there is considerable inflow but relatively still water, sedimentation occurs on the new membrane-covered pond bottom. Aquatic plant seeds and fragments take root in this sediment and may actually penetrate the fabric. Because of this we may need to re-evaluate the use of membranes and re-think our pond restoration strategy.

With small ponds up to 5,000 sq. ft., there may be justification in undertaking the initial high capital-cost of an integral concrete structure or a permanent, heavy-duty, non-

permeable membrane such as 45 mil, black synthetic-rubber: If well designed, such ponds may easily be drained and cleaned out. They can also be made to appear quite natural. Vegetation is controlled by planting in large pots resting on the pond bottom or in specially lined planting bays. Such construction methods are well known but to be effective, the design must be very carefully worked out.

One can conclude that the major problem remaining to be solved by many garden managers is to find a balance within naturalistic ponds between the natural fecundity, rich bio-diversity, aesthetic value and acceptable maintenance standards.

c:\curator\pondsp

June 22, 1995

HOBBS & LEIGH
Barristers & Solicitors

P.O. Box 49270
Suite 3404, Four Bentall Centre
1055 Dunsmuir Street
Vancouver, British Columbia
V7X 1L3

Telephone: (604) 669-6609
Fax: (604) 669-6612

File No. 1241.038

February 29, 1996

BY FAX

City Hall
Legal Department
453 West 12th Avenue
Vancouver, British Columbia
V5Y 1V4

Attention: Mr. Jeremy Shotton

Dear Sirs:

Re: The Owners, Strata Plan VR 368 (the "Owners")
- Shaughnessy Place and VanDusen Gardens
Pond Maintenance Agreement Negotiations

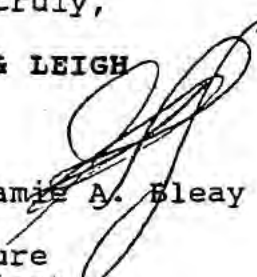
On the instructions of our client, The Owners, we enclose for your review the draft Pond Maintenance Agreement between the City of Vancouver and the Owners.

We look forward to receiving your comments to same.

Yours truly,

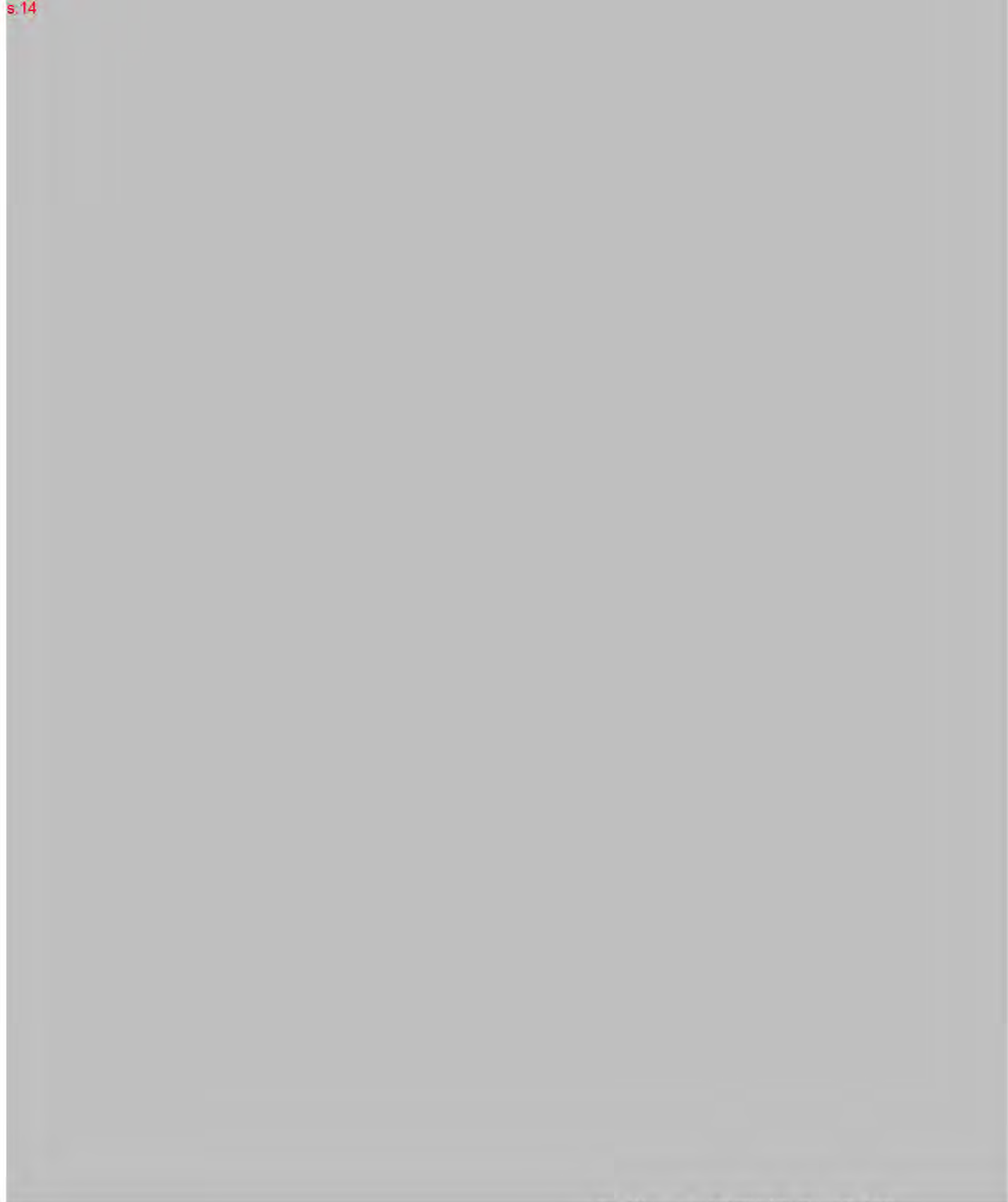
HOBBS & LEIGH

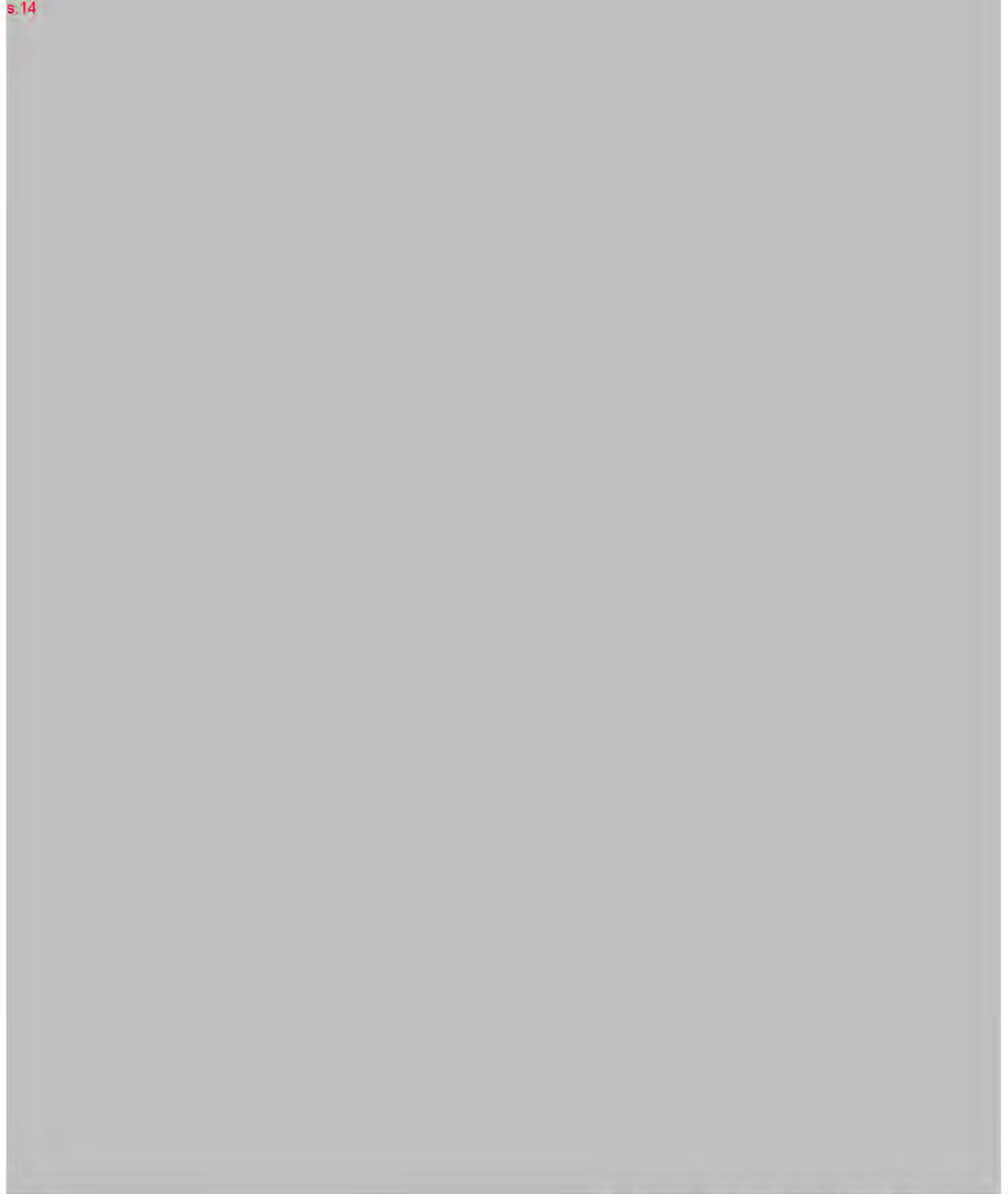
Per:

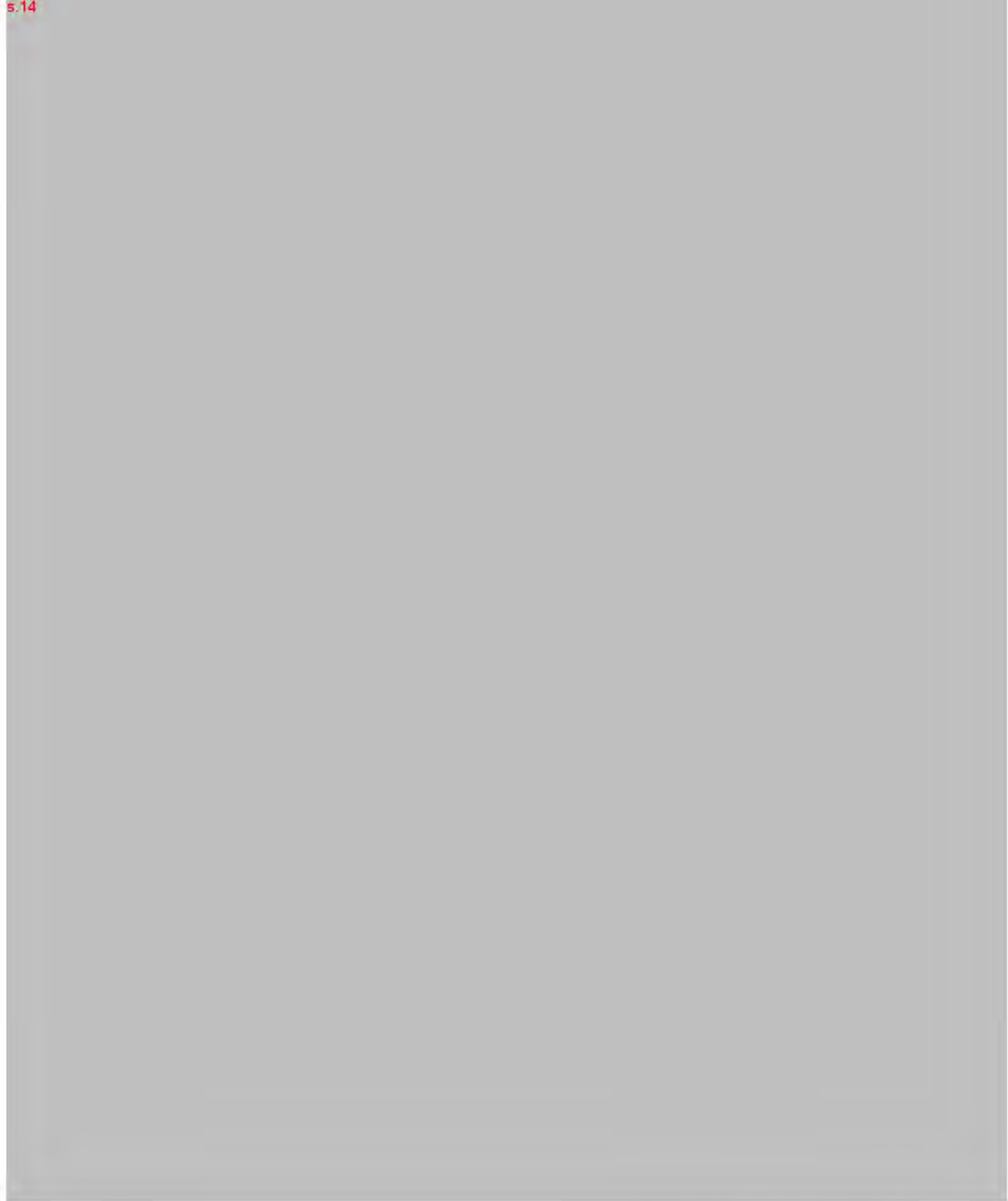

Jamie A. Bleay

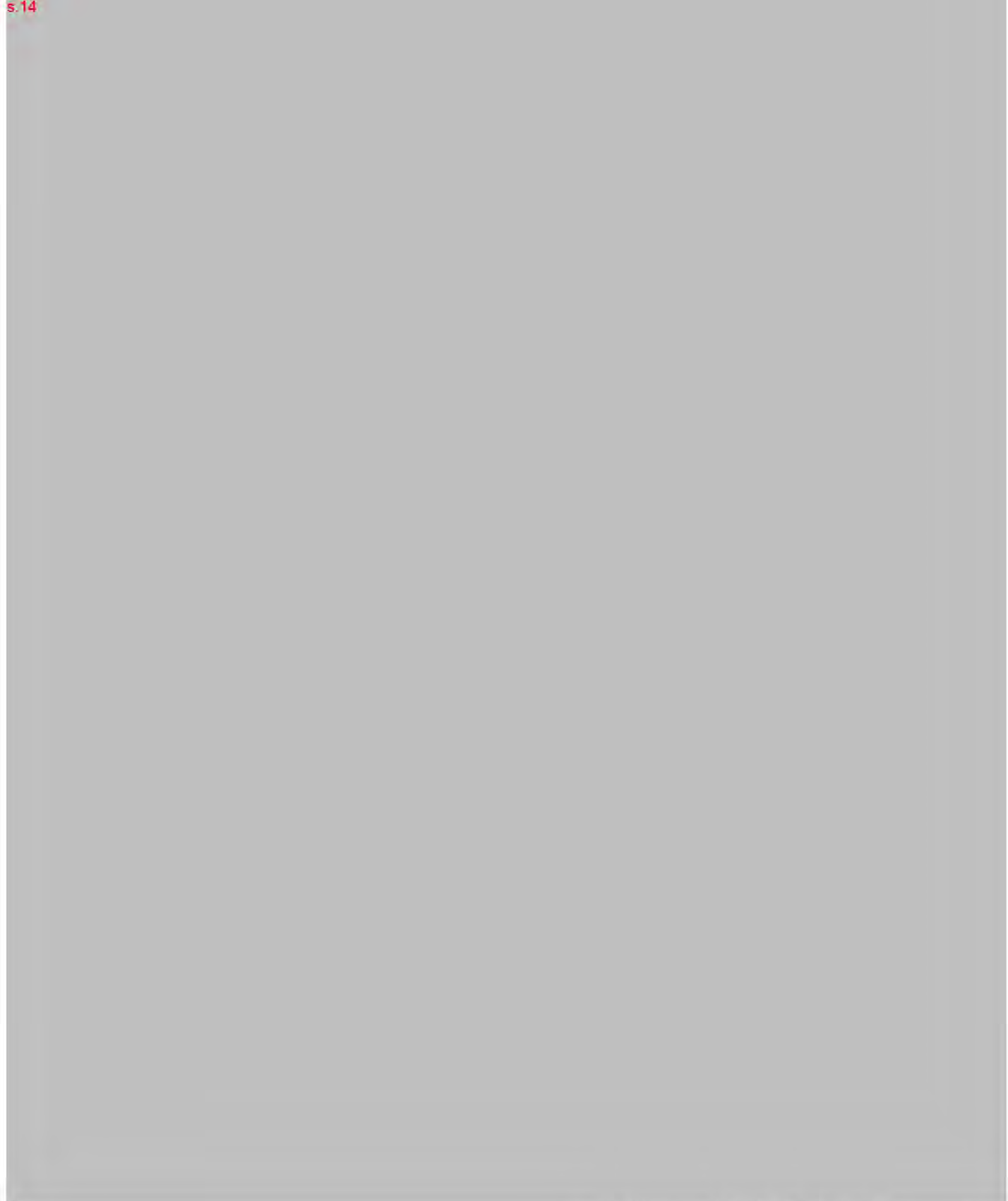
/jar

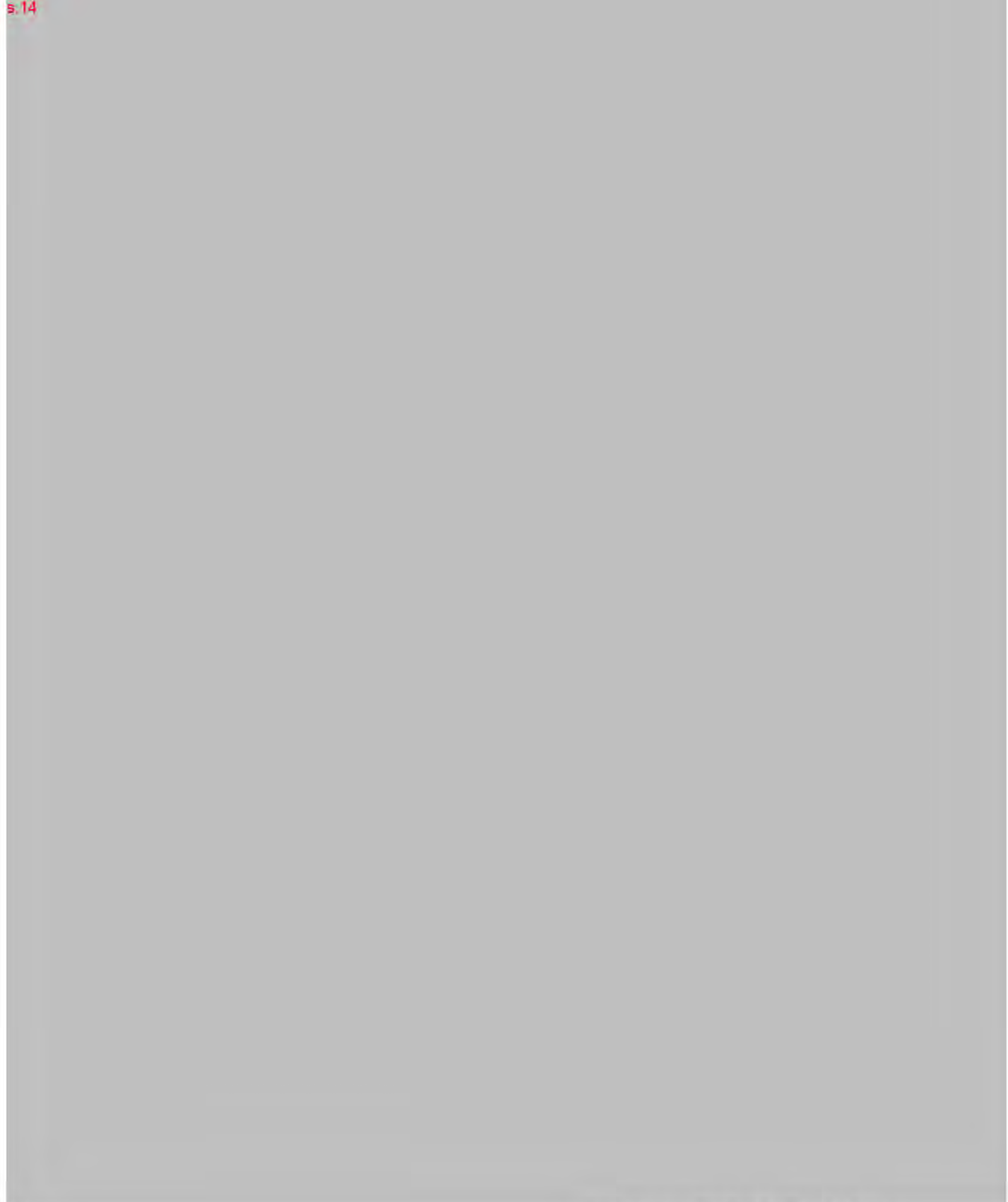
Enclosure
cc. client







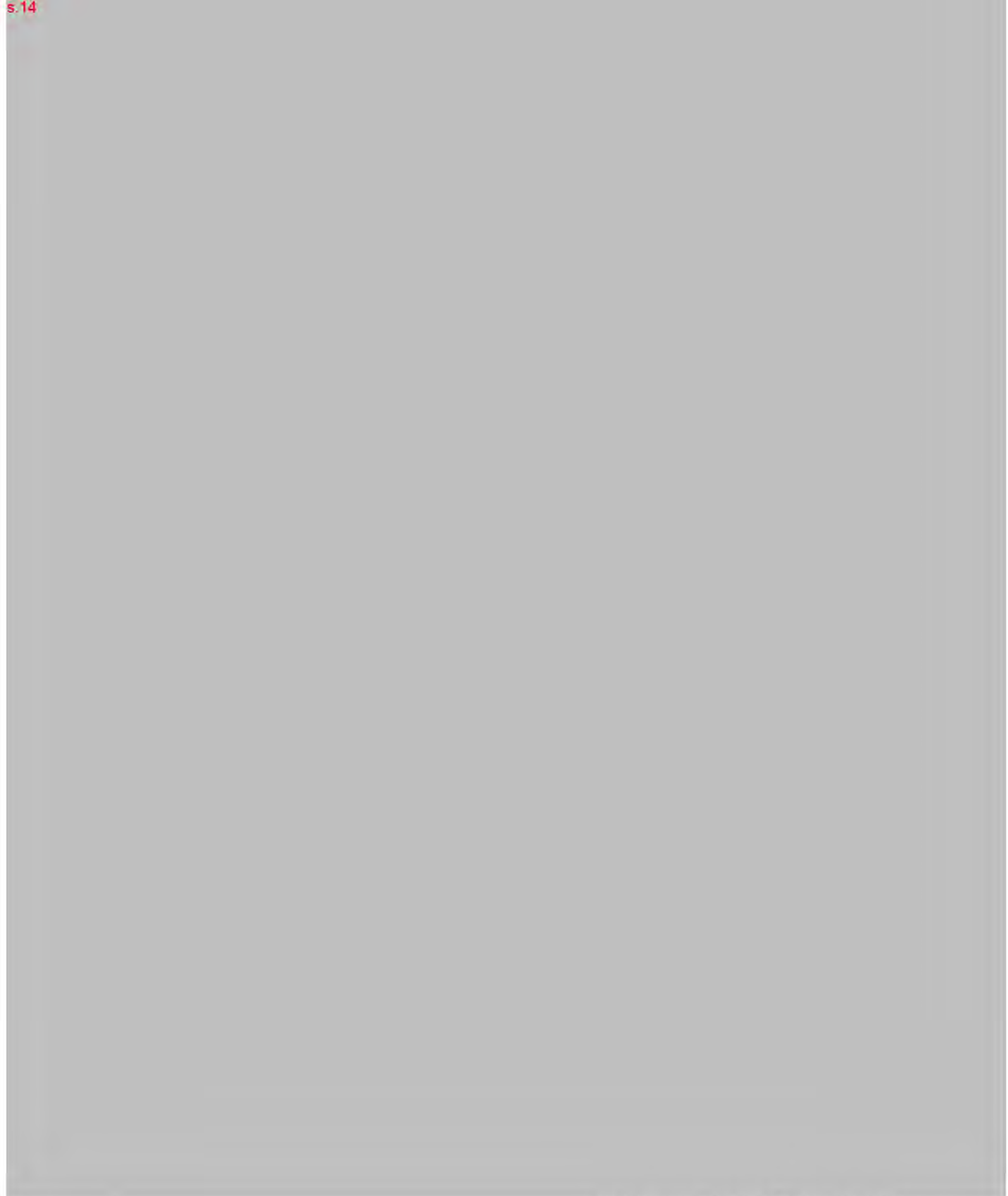


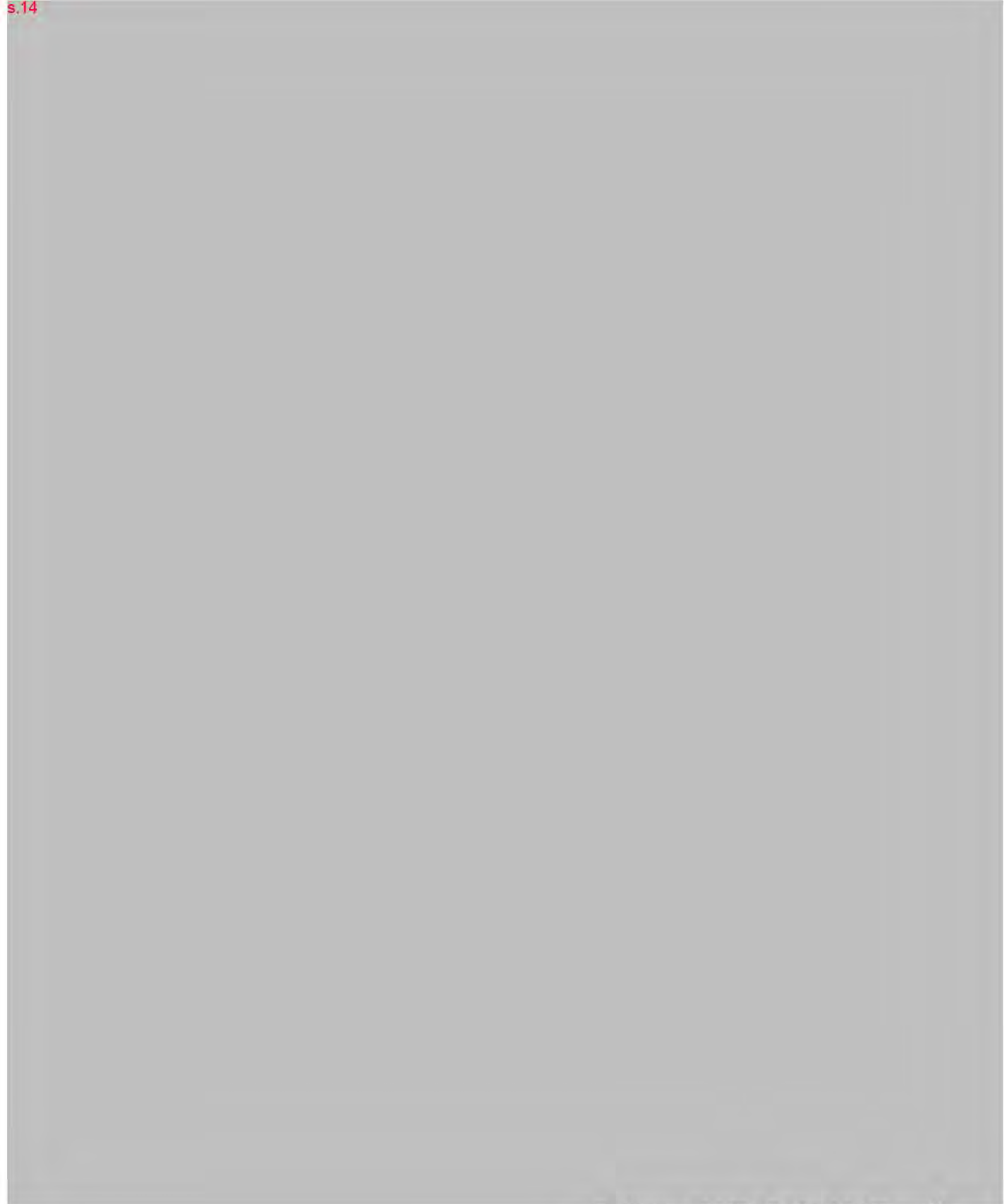




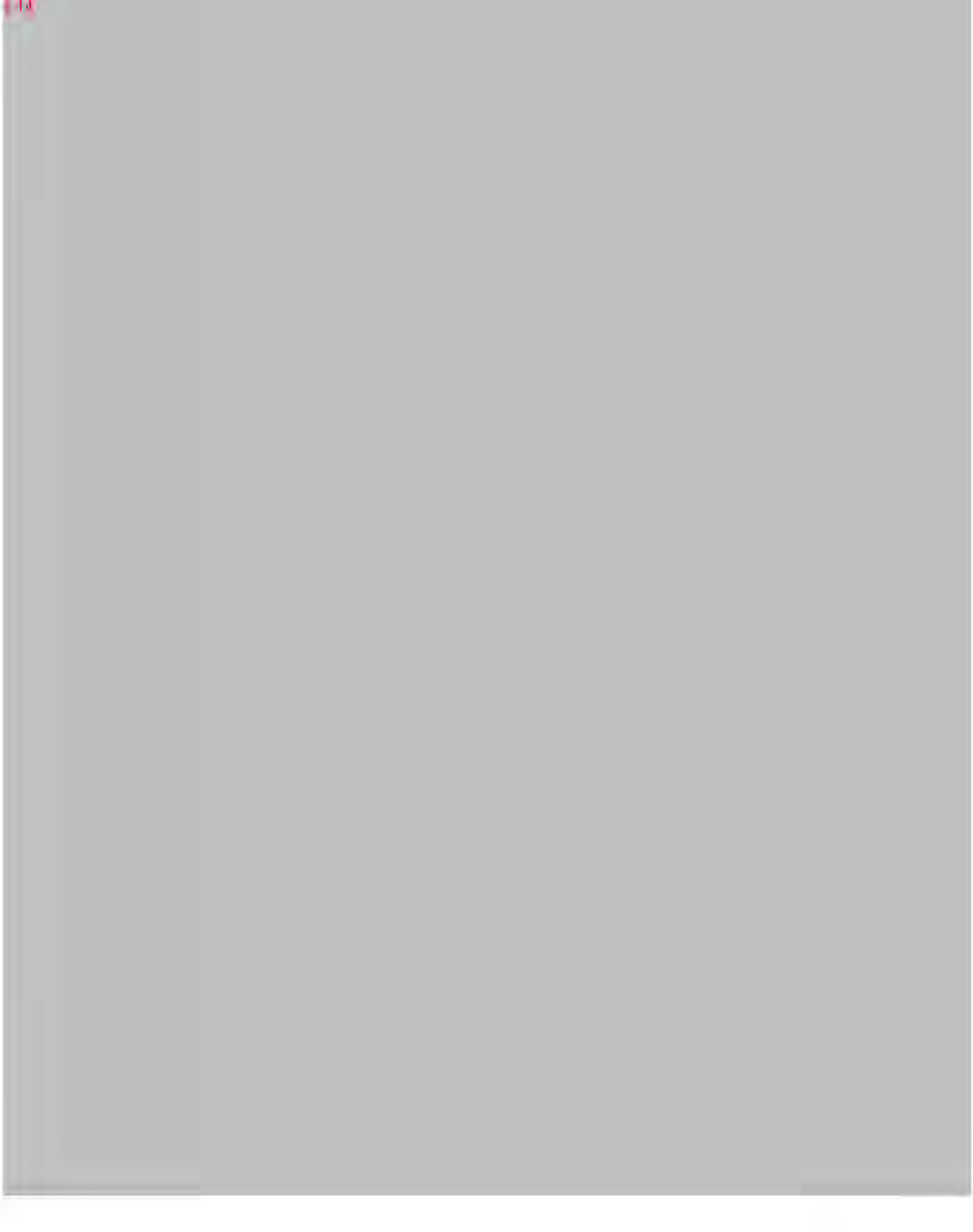


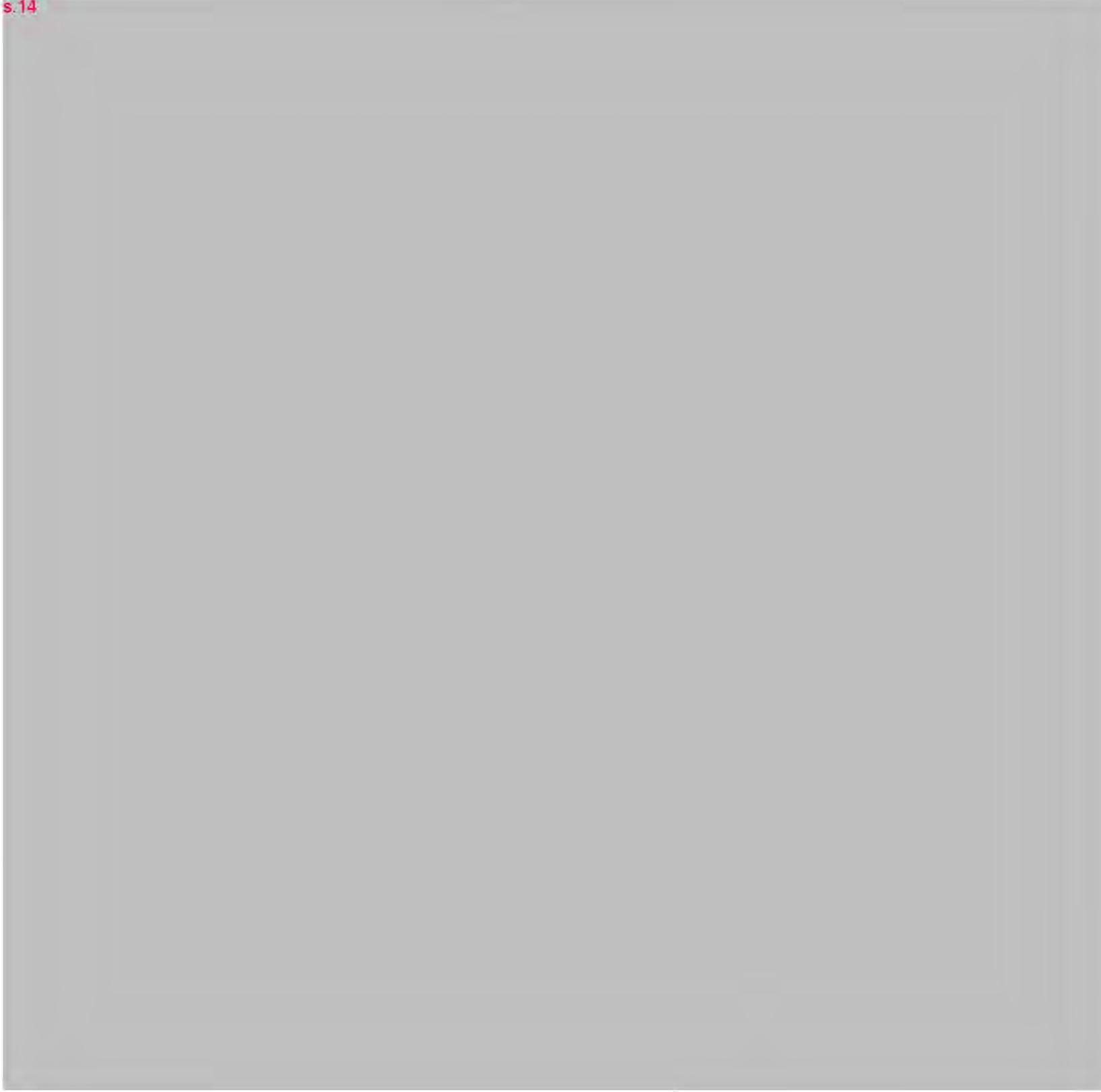






RECEIVED
MAR 8 - 1996







POND MAINTENANCE AGREEMENT

This Agreement dated for reference June 1, 1991 is

BETWEEN

CITY OF VANCOUVER, a
municipality and a corporation
continued under the *Vancouver Charter*
(British Columbia) with offices at
453 West 12th Avenue,
Vancouver, British Columbia
V5Y 1V4

AND

THE OWNERS, STRATA PLAN VR-368, a
corporation created under the
Condominium Act (British Columbia),
4900 Cartier Street,
Vancouver, British Columbia
V6M 4H2

The City of Vancouver and The Owners, Strata Plan VR-368 agree with each other as follows:

1.0 Definitions and Interpretation

1.1 In this Agreement

- (a) "Board" means the City of Vancouver, a municipality and a corporation continued under the *Vancouver Charter* (British Columbia), acting through its Board of Parks and Recreation;
- (b) "Corporation" means the The Owners, Strata Plan VR-368, a corporation created under the *Condominium Act* (British

Columbia) on the deposit of strata plan VR-368 in the Vancouver Land Title Office;

- (c) "Corporation Property" means the land that is designated as common property in the Plan;
- (d) "Gardens" means the botanical gardens maintained by the Board that are called the VanDusen Botanical Display Gardens;
- (e) "Plan" means strata plan VR-368, deposited in the Vancouver Land Title Office; and
- (f) "Pond" means the ornamental pond that lies between and on part of the Corporation Property and part of the Gardens, as is illustrated on the sketch that forms schedule A.

1.2 Reference in this Agreement to

- (a) the singular includes a reference to the plural and a reference to the plural includes a reference to the singular,
- (b) a particular numbered "section" or to a particular lettered "schedule" is a reference to the corresponding numbered or lettered section or schedule of this Agreement,

- (c) any law, statute, by-law or regulation is to be considered also to be a reference to any amendment or re-enactment of, or replacement for, that law, statute, by-law or regulation, and
- (d) a "party" or "parties" is a reference to a party or the parties to this Agreement.

1.3 The division of this Agreement into articles and sections is for convenience of reference only and does not affect its interpretation. The section headings used in this Agreement are for convenience of reference only and do not affect the interpretation of this Agreement.

2.0 Cleaning of Pond

2.1 The Board agrees to remove weeds from the Pond as provided in this Agreement and the Corporation agrees to pay half of the cost of weed removal as provided in this Agreement.

2.2 Whenever the Corporation or the Board considers that the Pond is in an aesthetically displeasing state or constitutes a health hazard because of weed growth in it, it may give notice to the other party stating that in its opinion removal of the weeds is necessary. Within five business days after that notice is given representatives of the Corporation and the Board must meet and agree on the dates on which the weeds are to be removed as is convenient to the Corporation and to the

on the Corporation Property or the Gardens, as the case may be, to the extent reasonably necessary to remove the weeds from the Pond under this section.

2.6 The Board from time to time may deliver an invoice to the Corporation setting out the one half share of the cost that must be paid by the Corporation and any social services, goods and services or other consumption or added value taxes that are payable by the Corporation in respect of removal of the weeds from the Pond. Within 30 days after the date of each invoice the Corporation must pay the amount of that invoice to the Board. Any amount that remains unpaid more than 30 days after the date of the invoice bears interest payable to the Board starting 31 days after the date of the invoice at the annual rate of interest, compounded annually not in advance, that is 3% greater than the annual rate of interest charged from time to time by the Bank of Montreal, Main Branch, 595 Burrard Street, Vancouver, on demand Canadian dollar commercial loans made in Canada to its most creditworthy commercial customers and designated by that bank as its prime rate.

3.0 Maintenance of Water Levels in the Pond

3.1 Subject to availability of water at a cost no greater than its average cost to the Board during the months of November through March in the immediately preceding year, the Board must maintain a supply of fresh water to the Pond that is adequate to maintain the average water level of the Pond as measured at the water outflow for the Pond during

the months of May and June. The Board must supply fresh water to the Pond at the end of the Pond that is opposite to the water outflow for the Pond.

4.0 Changes in the Gardens

4.1 The Board agrees to use reasonable efforts to give notice to the Corporation of any proposed changes in the design, layout or planting of ~~any part of~~ the Gardens, including the Pond, that is immediately adjacent to and visible from the Corporation Property. The Board agrees to use reasonable efforts to consult with the Corporation on any of those proposed changes and to consider any suggestions or requests made by the Corporation. The Board is not obliged to implement any suggestions or requests made by the Corporation. The Board may carry out any proposed changes despite failure by it to give notice to or consult with the Corporation.

5.0 Allocation of Risk

5.1 The Board is not liable for

- (a) damage caused to the Corporation Property or any other property of any kind during removal of weeds from the Pond,
- (b) damage caused to the Corporation Property or any other property of any kind by water in the Pond, or

(c) personal injury or death suffered by anyone in that part of the Pond that is on the Corporation Property.

5.2 The Corporation agrees that for the purposes of the *Occupiers' Liability Act* (British Columbia) the Board is not an occupier of that part of the Pond that is on the Corporation Property. The Corporation agrees that it must take reasonable care to ensure that no personal injury or death is suffered in connection with that part of the Pond that is on the Corporation Property.

6.0 Statutory Covenant Regarding Corporation Property

6.1 In accordance with section 215 of the *Land Title Act* (British Columbia), the Corporation agrees with the Board that

- (a) the part of the Corporation Property that is covered by the Pond may be used and occupied only in accordance with the terms of this Agreement, and
- (b) the Corporation must indemnify the Board, its employees and agents against any liability, loss, expense or cause of action that may be suffered by or asserted against the Board or its employees or agents in connection with that part of the Pond that is located on the Corporation Property.

6.2 The Corporation agrees that the indemnity created by section 6.1 is both an indemnity granted in accordance with section 215 of the *Land Title Act* (British Columbia) as an integral part of the statutory covenant created by section 6.1 and an indemnity granted under the common law.

7.0 Effectiveness and Termination

7.1 This Agreement is effective after June 1, 1991.

7.2 Either party may terminate this Agreement by giving 90 days notice of termination to the other party and this Agreement terminates on expiry of the 90 days.

8.0 General

8.1 Any notice or invoice which may be or is required to be given under this Agreement must be in writing and delivered addressed as follows:

(a) to the Board:

Board of Parks and Recreation
2099 Beach Avenue
Vancouver, British Columbia
V6G 1Z4

Attention: Director of Environment and Operations

(b) to the Corporation:

The Owners, Strata Plan VR-368,
4900 Cartier Street
Vancouver, British Columbia
V6M 4H2

Attention: Strata Council Chair,

or to such other address of which notice has been given as provided in this section. Any notice, direction or demand that is delivered is to be considered to have been given on the next business day after its dispatch for delivery. If a party changes its address it must promptly give notice of its new address to the other party as provided in this section.

8.2 The obligations created by sections 6.1 and 6.2 are not merely personal, but are covenants which burden the Corporation Property and run with it.

8.3 If any term of this Agreement is held by a court to be invalid, illegal or unenforceable, that term 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 term.

8.4 No alleged waiver of any breach of this Agreement is effective unless it is an express waiver in writing of the breach in respect of which it is asserted against the party alleged to have given the waiver.

No waiver by the Board or the Corporation of any breach of this Agreement operates as a waiver of any other breach of this Agreement.

8.5 The Corporation must promptly do everything necessary to ensure that this Agreement and the interests it creates are registered against title to the Corporation Property in the appropriate Land Title Office with priority over all other charges and encumbrances other than charges and encumbrances held by the Board.

8.6 This is the entire agreement between the Board and the Corporation concerning its subject and it may be changed only in a document executed by the Board and the Corporation.

8.7 This Agreement is 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 to this Agreement have executed and delivered this Agreement under seal on the dates set out below:

The Common Seal of the)
CITY OF VANCOUVER)
was affixed in the)
presence of:)
_____)
Authorized Signatory)

C/S

Date executed and delivered by City of Vancouver: _____, 1991.

The Common Seal of THE)
OWNERS, STRATA PLAN VR-368)
was affixed in the)
presence of:)
_____)
Authorized Signatory)
_____)
Authorized Signatory)

C/S

Date executed and delivered by The Owners, Strata Plan VR-368:
_____, 1991.

(VANDUSEN/DL8/HP)

SCHEDULE A

to the Pond Maintenance Agreement
dated for reference June 1, 1991 with the Board of Parks and Recreation

Illustrative sketch of the Pond and its surroundings

See attached.

