



District of West Vancouver

**Phased Development Agreement Authorization
Bylaw No. 4769, 2013**

Effective Date – December 9, 2013

District of West Vancouver

Phased Development Agreement Authorization Bylaw No. 4769, 2013

A bylaw to enter into a Phased Development Agreement between the District of West Vancouver and Marine Drive BT Holdings Limited, Inc. No. 0906708

WHEREAS under the Local Government Act Council may by bylaw 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 Marine Drive BT Holdings Limited, Inc. No. 0906708, and held a public hearing in respect of this bylaw in accordance with the Local Government Act;

NOW THEREFORE, the Council 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. 4769, 2013”.

Part 2 Authorizes a Phased Development Agreement

- 2.1 Attached to this bylaw as Schedule "A" and forming part of this bylaw is a copy of a Phased Development Agreement between the District of West Vancouver and Marine Drive BT Holdings Limited, Inc. No. 0906708 (the "PDA").
- 2.2 The Mayor and Clerk are authorized to execute the PDA on behalf of the District of West Vancouver and to execute and deliver such transfers, deeds of land, plans and other documents as are required to give effect the PDA.

SCHEDULES

Schedule A – Phased Development Agreement between the District of West Vancouver and Marine Drive BT Holdings Limited, Inc. No. 0906708

READ A FIRST TIME on October 21, 2013

PUBLIC HEARING HELD on November 21, 2013

READ A SECOND TIME on December 2, 2013

READ A THIRD TIME on December 2, 2013

ADOPTED by the Council on December 9, 2013

[Original signed by Mayor]

Mayor

[Original signed by Municipal Clerk]

Municipal Clerk

SCHEDULE A

PHASED DEVELOPMENT AGREEMENT Section 905.1 *Local Government Act*

This Agreement dated for reference the ___ day of _____, 2013

BETWEEN:

**THE CORPORATION OF THE DISTRICT OF WEST
VANCOUVER**

750 – 17th Street
West Vancouver, British Columbia V7V 3T3

(the "District")

OF THE FIRST PART

AND

MARINE DRIVE BT HOLDINGS LIMITED

2000 – 1040 West Georgia Street
Vancouver, British Columbia V6E 4H1

("Marine Drive")

OF THE SECOND PART

GIVEN THAT:

A. Marine Drive is the owner of land legally described as:

Parcel Identifier: 008-994-498
Lot B, Block 25, District Lot 237, Plan 11655

Parcel Identifier: 011-751-207
Lot 5, Block 25, District Lot 237, Plan 4210

Parcel Identifier: 004-428-374
Lot 6, Block 25, District Lot 237, Plan 4210

Parcel Identifier: 011-751-215
Lot 7, Block 25, District Lot 237, Plan 4210

Parcel Identifier: 011-751-274
Amended Lot 8 (Explanatory Plan 4068), Block 25, District Lot 237, Plan 4210

and the District is the owner of land legally described as:

Parcel Identifier: 008-988-528
Lot A, Block 25, District Lot 237, Plan 11926

Parcel Identifier: 011-751-282
Lot A, Block 25, District Lot 237, Plan 4210

Parcel Identifier: 011-751-291
The Closed Lane in Explanatory Plan 15273, Block 25, District Lot 237, Plan 4210

and is the owner of the "Ambleside Lane" and the "Closed Lane" shown on the sketch plan attached as Schedule J;

- B. The parcels of land described in paragraph A are referred to as the "Lands" in this Agreement;
- C. Marine Drive has applied to the District for an amendment to the District's Zoning Bylaw by way of Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 4767, 2013 (the "Zoning Amendment Bylaw") to permit the development on the Lands as generally depicted in Schedule A and in the Development Permit for the Lands;
- D. Marine Drive has undertaken to provide certain 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, that the Lands are developed in the phases and in the sequence identified herein, and that the Amenities and additional works and services are provided in conjunction with the development of the Lands and in the sequence provided for in this Agreement;
- E. 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, Marine Drive and the District agree pursuant to section 905.1 of the *Local Government Act* as follows:

1.0 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

"Amenities" includes the community benefits to be provided under sections 10.0 through 12.0.

"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 as generally depicted on the site plan attached as Schedule A.

"Development Phase" or **"Phase"** means a phase of the Development, including all services and Amenities contemplated or required in connection with that Phase, as depicted on the Phasing Plan (the **"Phasing Plan"**) attached as Schedule B.

"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, lightning, 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 be deemed to constitute an event of Force Majeure.

"Galleria" means the portion of the Public Open Space Area depicted as the **"Galleria"** on Schedule C.

"Lands" means the parcels of land described in paragraph A of the preamble.

"Phase 1" means that Phase of the Development numbered as Phase 1 on the Phasing Plan.

"Phase 2" means that Phase of the Development numbered as Phase 2 on the Phasing Plan.

"Public Open Space Area" means the area shown as such on the Plan attached as Schedule C, comprising:

- (a) the public realm area of the Lands in Phase 1, including the Galleria,
- (b) the public realm area of the Lands in Phase 2,
- (c) the public realm area not on the Lands in Phase 1, being primarily the public sidewalk area, surrounding the Lands, and
- (d) the public realm area not on the Lands in Phase 2, being primarily the public sidewalk area surrounding the Lands.

"Qualified Professional" means a member of the Association of Professional Engineers and Geoscientists, the Architectural Institute of British Columbia or the British Columbia Society of Landscape Architects, as elected by the District in its sole discretion, in good standing with experience in the design and provision of local government services.

"Specified Zoning Bylaw Provisions" means all those provisions of the Zoning Amendment Bylaw that are applicable to the Lands and that are adopted pursuant to section 903 of the *Local Government Act*.

"Term" means the ten (10) year term of this Agreement set out in section 5.1.

- 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 the 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 - Site Plan
- Schedule B - Phasing Plan
- Schedule C – Public Open Space Area
- Schedule D - Highway Dedication
- Schedule E - Form of Statutory Right of Way
- Schedule F – Enforcement Covenant
- Schedule G – Flood Covenant

Schedule H – LEED Scorecard
Schedule I – Sustainability Elements
Schedule J – Closed Lanes

2.0 APPLICATION OF AGREEMENT

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

3.0 CONDITIONS PRECEDENT

3.1 The obligations of the parties under this Agreement are subject to the Council of the District, in its sole and unfettered discretion, adopting both the Zoning Amendment Bylaw and the bylaw to authorize the making of this Agreement.

4.0 SPECIFIED ZONING BYLAW PROVISIONS

4.1 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 6.0; or
- (c) changes that Marine Drive agrees in writing shall apply.

5.0 TERM OF AGREEMENT

5.1 The Term of this Agreement is ten (10) years from the reference date of this Agreement.

6.0 TERMINATION

6.1 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.

6.2 If Marine Drive does not comply with any of the provisions of sections 7.0 through 14.0 and section 17.0 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 this Agreement before the expiry of the Term by providing notice in writing to Marine Drive, provided that:

- (a) in the case of a failure on Marine Drive's part to pay a sum of money or to provide security for an obligation, the District has, at least thirty (30) days prior to giving such notice, advised Marine Drive in writing of the alleged failure to pay or to provide the security (the "**Default Notice**") and the Marine Drive has 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 Marine Drive's part to comply with the provisions of sections 7.0 through 14.0 and section 17.0 of this Agreement, the District has, at least sixty (60) days prior to giving such notice, provided Marine Drive with a Default Notice in respect of such failure, and Marine Drive 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 6.2(a)) requires longer than sixty (60) days to remedy, Marine Drive has failed to substantially commence remedying such failure or 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.

7.0 TRANSFER OF INTERESTS IN LAND TO DISTRICT

7.1 Marine Drive covenants that prior to issuance of a building occupancy permit for a building on the Phase 1 area of the Lands, Marine Drive shall grant to the District:

- (a) a dedication of highway contiguous to Bellevue Avenue in the location shown in Phase 1 on Schedule D, by way of registration of a subdivision plan or highway dedication plan in the Land Title Office; and
- (b) a statutory right of way agreement under section 218 of the *Land Title Act* in the form of that attached as Schedule E, under which the District and its invitees, including the public, may enjoy the free right of passage on the portion of the Public Open Space Area located on the Phase 1 portion of the Lands.

7.2 Marine Drive covenants that prior to issuance of a building occupancy permit for a building on the Phase 2 area of the Lands, Marine Drive shall grant to the District:

- (a) a dedication of highway contiguous to Bellevue Avenue in the location shown in Phase 2 on Schedule D, by way of registration of a subdivision plan or highway dedication plan in the Land Title Office; and
- (b) a statutory right of way agreement under section 218 of the *Land Title Act* in the form of that attached as Schedule E, under which the District and its invitees, including the public, may enjoy the free right of passage on the portion of the Public Open Space Area located on the Phase 2 area of the Lands.

7.3 Marine Drive shall reimburse the District for the cost of preparing all plans, transfer forms and other documents necessary to give effect to the grants required to be made under sections 7.1 and 7.2.

7.4 Nothing in section 7.2 limits the ability of the District to grant a statutory right of way to itself in respect of the Phase 2 area of the Lands.

7.5 Marine Drive and the District shall satisfy all legal requirements and conditions necessary to effect the grants and dedications required under sections 7.1 and 7.2, and shall obtain all necessary approvals required to effect the grants and dedications, all at Marine Drive's sole cost.

8.0 DEVELOPMENT AND DEVELOPMENT PHASING

8.1 Marine Drive covenants that it shall not develop the Lands, disturb the surface of the Lands, cut or damage vegetation on the Lands or subdivide the Lands except in accordance with the terms of this Agreement.

8.2 Except as expressly provided in this Agreement, nothing in this Agreement shall relieve Marine Drive 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 forgoing, Marine Drive 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.

8.3 Without limiting the generality of section 8.2, in connection with any application for approval of subdivision or development of the Lands, Marine Drive 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.

8.4 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.

8.5 Marine Drive acknowledge and agrees that the Development is being designed to target LEED Gold as per the sample LEED scorecard attached as Schedule H, which scorecard may be modified provided LEED Gold targets are maintained. In furtherance of this objective, Marine Drive intends the Development to contain many sustainability elements as more particularly set forth and described in Schedule I. Without limitation, Marine Drive shall apply for certification of LEED status.

8.6 The Developer intends to develop and construct the Development in two phases as shown on the plans attached as Schedule B - 1.1. through 1.3.

- 8.7 After the completion of construction of the building on the Phase 1 Lot, the Developer intends to create a retail air space parcel (the “First Air Space Parcel”) containing those portions of the building in the Phase 1 Lot which are intended to be used for commercial purposes and related facilities and parking (see approximate illustrations in Schedule B – 2.1 and 2.2).
- 8.8 After the creation of the First Air Space Parcel, the Developer then intends to register a phased strata plan in respect of the Phase 1 Lot (the legal description of which will except out the First Air Space Parcel) and the Phase 2 Lot.
- 8.9 After the completion of construction of the building on the Phase 2 Lot, the Developer intends to create a retail air space parcel (the “Second Air Space Parcel”) containing those portions of the building in the Phase 2 Lot which are intended to be used for commercial purposes and related facilities and parking (see approximate illustrations in Schedule B – 3.1 and 3.2).
- 8.10 After the creation of the Second Air Space Parcel, the Developer then intends to register a strata plan in respect of the Phase 2 Lot (the legal description of which will except out the Second Air Space Parcel).
- 8.11 The District acknowledges the intended phasing of the Development as described above and as set forth in Schedule B.
- 8.12 For the purposes of this section 8.0:
- (a) “**Phase 1 Lot**” means the lands comprised within Phase 1 as shown on Schedule B – 1.1; and
 - (b) “**Phase 2 Lot**” means the lands comprised within Phase 2 as shown on Schedule B – 1.1.

9.0 IMPACTS/SOLUTIONS

- 9.1 Following the construction of the Phase 1 building and/or prior to the construction of the Phase 2 building, either party may identify and notify the other party of any concerns which have arisen and are related to glare, reflection or premature wear in respect of the lighting of and materials used in the Phase 1 building, landscape or streetscape. Marine Drive agrees that, acting reasonably, in these circumstances it will attempt to address the concerns and will propose to the District a recommended solution for the approval of the Director of Planning, Land Development and Permits, acting reasonably and in a timely manner.

10.0 PUBLIC OPEN SPACE AREA IMPROVEMENTS AND MAINTENANCE

- 10.1 Marine Drive covenants and agrees at its sole cost to:

- (a) undertake the enhancements and improvements of the Public Open Space Area under sections 10.2 through 10.4, and
 - (b) provide for the continuing maintenance of the enhancements and improvements under section 10.5 through 10.7.
- 10.2 Prior to any development of the Lands, Marine Drive must provide the District with a detailed Public Open Space Area improvement and enhancement plan respecting the materials, finish and features comprising the area, prepared by a Qualified Professional. The detailed plan must be consistent with the Development Permit, and must be to the satisfaction of the District's Director, Planning, Land Development and Permits, acting reasonably.
- 10.3 Marine Drive shall deliver to the District a:
- (a) clean unconditional irrevocable letter of credit, in a form satisfactory to the District, in an amount equal to 115% of the estimated cost of completing the Public Open Space Area works on the Phase 1 portion of the Lands on the closing date of the purchase by Marine Drive of the District's Lands in Phase 1, and
 - (b) a clean unconditional irrevocable letter of credit in a form satisfactory to the District, in an amount equal to 115% of the estimated cost of completing the Public Open Space Area works on the Phase 2 portion of the Lands on the date the District delivers to Marine Drive vacant possession of the Lands in Phase 2.
- 10.4 Upon the issuance of a building permit authorizing the Public Open Space Area enhancement and improvement work in respect of a Phase, and upon receipt of all necessary permits or approvals from the District for the work, Marine Drive shall undertake the applicable Public Open Space Area work in respect of a Phase and shall complete the work to the District's satisfaction within thirty-six (36) months of all the said permits and approvals being issued, in respect of each Phase. Marine Drive shall complete the work at its sole cost, and in full compliance with the terms and conditions of the permits and approvals. If Marine Drive fails to complete the work within the time required under this section 10.4, the District may draw upon the applicable letter of credit provided under section 10.3 and may complete that work at Marine Drive's sole cost. Provided that if Marine Drive has with all due diligence pursued the completion of the Public Open Space Area works throughout the thirty-six (36) month period and is prevented from completing the Public Open Space Area works within the time required due to an event of Force Majeure, Marine Drive may request that the District consent to an extension of time of up to six (6) months for completion of the work, such consent not to be unreasonably withheld.
- 10.5 Without limiting section 10.4, the District may draw upon the letters of credit provided under section 10.3 and may use the funds so drawn for the purpose of completing landscaping work on the Lands and the portion of the Public Open Space Area that is not on the Lands if Marine Drive has not obtained a

building permit for Phase 1 of the Development and commenced construction of Phase 1 of the Development within thirty-six (36) months of the closing date of the purchase by Marine Drive of the District's Lands within Phase 1 of the Development or has not obtained a building permit for Phase 2 of the Development and commenced construction of Phase 2 of the Development within thirty-six (36) months of the date upon which the District delivers vacant possession of the Lands in Phase 2 to Marine Drive, or both.

- 10.6 Concurrently with the execution and delivery of this Agreement Marine Drive and the District, in relation to their respective portions of the Lands, shall grant to the District a covenant under s. 219 of the *Land Title Act* in the form of that attached as Schedules E and F, to ensure the maintenance, repair, replacement and administration, at the sole cost of the owner of the Lands, of the Public Open Space Area enhancement and improvement work contemplated under sections 10.2 through 10.4 of this Agreement and located on the Lands.
- 10.7 Marine Drive and the District shall provide their approval, by executing and delivering a petition satisfactory to the District's Director, Planning, Land Development and Permits, to establish a District local area service for the purpose of maintaining, repairing, replacing and administering, at the sole cost of the owner of the Lands, the Public Open Space Area enhancement and improvement work contemplated under sections 10.2 through 10.4 of this Agreement and not located on the Lands.

11.0 OTHER AMENITIES

- 11.1 Marine Drive covenants and agrees to deliver to the District payment of a cash contribution in an amount of \$11,336,000.00, plus interest under section 11.1(b)(ii), 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 additional public parking in the Ambleside area, arts, culture, recreation or other civic facilities, streetscape enhancement, foreshore restoration or other works, 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, to be paid to the District by delivery of the following:
- (a) on the closing date of the purchase by Marine Drive of the District's Lands in Phase 1:
 - (i) a bank draft in the amount of \$5,668,000.00, and
 - (ii) a clean unconditional, irrevocable letter of credit in the amount of \$5,668,000.00 as security for the payment under section 11.1(b), and
 - (b) on or before March 31, 2017,
 - (i) a bank draft in the amount of \$5,668,000.00, and

- (ii) interest at the rate of 0.25% above the prevailing Municipal Finance Authority rate calculated from the closing date of the purchase by Marine Drive of the District's Lands in Phase 1 to the date of delivery of this bank draft,

on receipt of such bank draft and interest the District will release the letter of credit referred to in paragraph (a).

- 11.2 Without limiting section 11.1, Marine Drive shall deliver a clean unconditional irrevocable letter of credit in the amount of \$250,000.00, on the closing date of the purchase by Marine Drive of the District's Lands in Phase 1, as security for the completion by Marine Drive of the construction and installation of the works and services reasonably required by the District on, under and above the westernmost half of 14th Street beyond the centre line, between Marine Drive and Bellevue Avenue.
- 11.3 The Letters of Credit referred to in paragraph 11.1(a) and section 11.2 shall be issued in a form, and by a bank, satisfactory to the District. Partial draws shall be permitted. If the Letter of Credit provided under section 11.1(a) or section 11.2 (or any replacement or substitute therefor) will expire prior to April 1, 2017, then Marine Drive 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 Marine Drive fails to do so, the District without notice to Marine Drive 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. If the District under this section draws down in full the Letter of Credit referred to in section 11.1(a), Marine Drive is not also obligated to make the payment referred to in section 11.1(b), Marine Drive will pay to the District within 14 days interest calculated under section 11.1(b)(ii) by way of a bank draft, and thereafter Marine Drive is not also obligated to make the payment referred to in section 11.1(b).
- 11.4 If Marine Drive fails to deliver the bank draft referred to in section 11.1(b) as required under that section, the District may at any time thereafter without notice to Marine Drive draw down the full outstanding balance of the Letter of Credit provided under section 11.1(a) (or any replacement or substitute therefor) and deposit same to a District reserve fund to be used for the amenity projects referred to in section 11.1.
- 11.5 If prior to issuance of a building occupancy permit for a building in the Phase 1 area, Marine Drive fails to complete the construction and installation of the works and services reasonably required by the District on, under and above the westernmost half of 14th Street beyond the centre line, between Marine Drive and Bellevue Avenue, the District may at any time thereafter without notice to Marine Drive draw down the full outstanding balance of the Letter of Credit provided under section 11.2 (or any replacement or substitute therefor) and deposit same to a District reserve fund to be used for the 14th Street works and services.

12.0 ELECTRIC VEHICLES

12.1 Marine Drive shall install electric vehicle charging facilities as follows:

- (a) in respect of each private garage constructed ancillary to residences, at least one 110V plug-in per parking space in a garage, and a rough-in capacity for a future 220V upgrade. For clarification, a standard double-gang receptacle has two plug-ins, and they may be provided on a column or wall between two adjacent parking spaces;
- (b) in respect of open parking stalls serving residences, one 110V plug-in per parking space. For clarification, a standard double-gang receptacle has two plug-ins, and they may be provided on a column or wall between two adjacent parking spaces; and
- (c) in respect of the commercial customer parking stalls, 200V electric vehicle charging stations for a minimum of four vehicles, and a minimum of two of the applicable parking spaces shall be signed as for electric vehicle parking only.

13.0 SECTION 219 COVENANT

- 13.1 Marine Drive and the District shall each, in relation to their respective portions of the Lands, 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 F, 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.
- 13.2 Marine Drive and the District shall each, in relation to their respective portions of the Lands, execute, deliver and register in the Land Title Office a Flood Covenant under section 219 of the *Land Title Act*, in the form and with the content of Schedule G, 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 Flood Covenant.

14.0 DEVELOPMENT OF LAND FOLLOWING TERMINATION

- 14.1 Following termination of this Agreement development of the Land shall continue to be governed by the section 219 Covenant attached as Schedule F, the Flood Covenant attached as Schedule G and the Statutory Right of Way attached as Schedule E.

15.0 INDEMNITY AND RELEASE

- 15.1 Marine Drive 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 equity, 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 Marine Drive of this Agreement.
- 15.2 Marine Drive hereby releases, saves harmless and forever discharges the District of and from any claims, causes of action, suits, demands, fines, penalties, costs, deprivation, expenses or legal fees whatsoever which Marine Drive 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 Marine Drive 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 Marine Drive of any covenant in this Agreement, save and except as a result of any breach by the District of this Agreement.
- 15.3 The indemnity and release provisions of sections 15.1 and 15.2 shall survive the expiry or termination of this Agreement.

16.0 NO RECOVERY OF AMENITIES

- 16.1 Marine Drive covenants and agrees that expiry of the Agreement and any termination in accordance with section 6.0 or otherwise, does not entitle Marine Drive to recover any portion of the Amenities or to seek restitution in relation thereto or in relation to any other obligation of Marine Drive as performed (and Marine Drive specifically agrees 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 15.1 to 15.2 apply in this regard.
- 16.2 Marine Drive covenants and agrees it 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 Marine Drive does any of the foregoing, the District may provide this Agreement to the Court as a full and complete answer.
- 16.3 Without limitation, sections 11.1 through 11.5 apply whether or not Marine Drive proceeds with any development on the Lands.

17.0 ASSIGNMENT OF AGREEMENT

17.1 Except as provided in this section 17.1 and 17.3, Marine Drive 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 Marine Drive shall be entitled to assign this Agreement without the consent of, but with notice to the District to:

- (a) an affiliate of Grosvenor Capital Corporation, as that term is defined in the *Business Corporations Act* (British Columbia); or
- (b) a limited partnership where Grosvenor Capital Corporation controls the general partner of such limited partnership,

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, Marine Drive shall not be released from its obligations under this Agreement and the Assignee shall be bound by the terms of this Agreement.

17.2 In section 17.1, "**Change of Control**" means a transfer by sale, assignment or otherwise of any shares, voting rights or interests in Marine Drive which results in a change of the party or parties who, as of the date hereof, exercise voting control of Marine Drive.

17.3 Notwithstanding section 17.1, after the District receives all payments and security as set out in this Agreement, including under section 11.0, Marine Drive shall be entitled to assign this Agreement or to effect or allow a change of control without the prior written consent of the District provided such assignee enters into an assumption agreement with the District whereby the assignee agrees to be bound by the terms of this agreement. In such event Marine Drive shall be released from its obligations under this Agreement.

18.0 AMENDMENT OF AGREEMENT

18.1 Marine Drive and the Director of Planning may in writing agree to minor amendments to this Agreement, and for that purpose a "minor amendment" is a change or amendment to any of Schedules A through I of this Agreement.

19.0 DISPUTE RESOLUTION

19.1 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 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.

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

20.0 NOTICE

20.1 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.

21.0 POWERS PRESERVED

21.1 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 had not been executed and delivered to Marine Drive, subject only to section 905.1 of the *Local Government Act*.

22.0 DISTRICT'S REPRESENTATIVE

22.1 Any opinion, 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.

23.0 TIME

23.1 Time is to be the essence of this Agreement.

24.0 BINDING EFFECT

24.1 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.

25.0 WAIVER

25.1 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.

26.0 LANGUAGE

26.1 Wherever the singular, masculine and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.

27.0 CUMULATIVE REMEDIES

27.1 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.

28.0 LAW APPLICABLE

28.1 This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

29.0 RELATIONSHIP OF PARTIES

29.1 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.

30.0 AMENDMENT

30.1 This Agreement may not be modified or amended except by the written agreement of the parties.

31.0 INTEGRATION

31.1 This Agreement contains the entire agreement and understanding of the parties with respect to the matters contemplated by this Agreement and supersedes all prior and contemporaneous agreements between them with respect to such matters.

32.0 SURVIVAL

32.1 All representations and warranties set forth in this Agreement and all provisions 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.

33.0 NOTICE OF VIOLATIONS

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

34.0 LEGAL FEES

34.1 Without limiting section 7.3, Marine Drive 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.

35.0 ENTIRE AGREEMENT

35.1 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.

36.0 SEVERABILITY

36.1 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.

37.0 COUNTERPART

37.1 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.

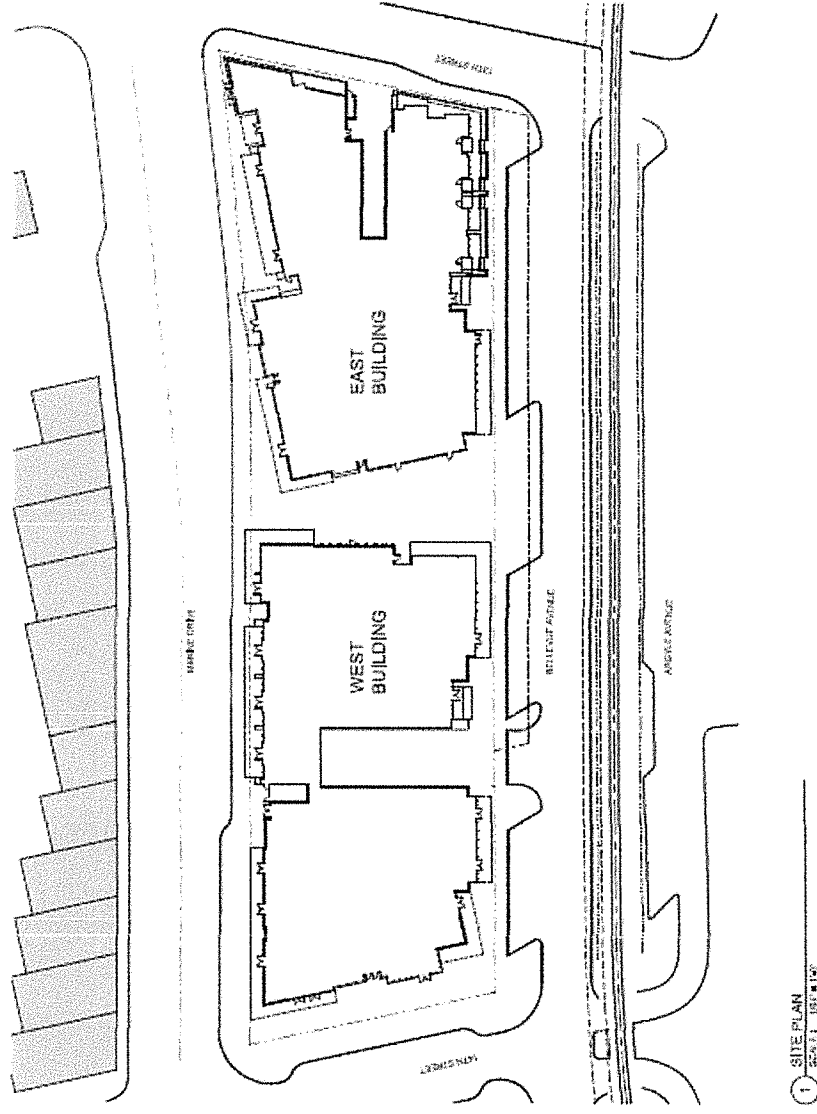
IN WITNESS WHEREOF the parties hereto have set their hands and seals as of the day and year first above written.

DISTRICT OF WEST VANCOUVER by its)
Authorized signatories:)
)
)
_____)
Mayor)
)
)
_____)
Municipal Clerk)

MARINE DRIVE BT HOLDINGS LTD. by its)
authorized signatories:)
)
)
_____)
)
)
_____)
)

SCHEDULE A

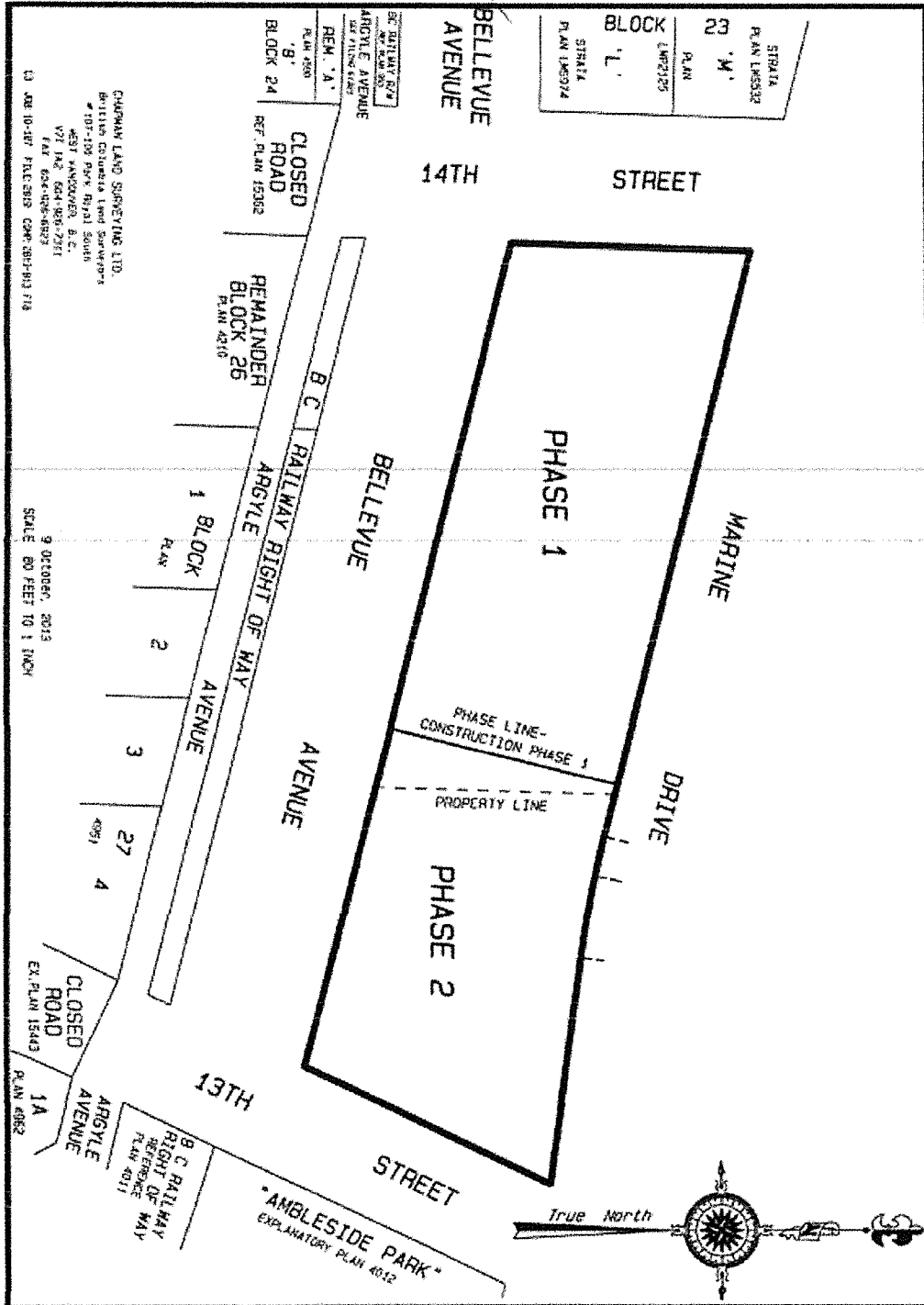
Site Plan

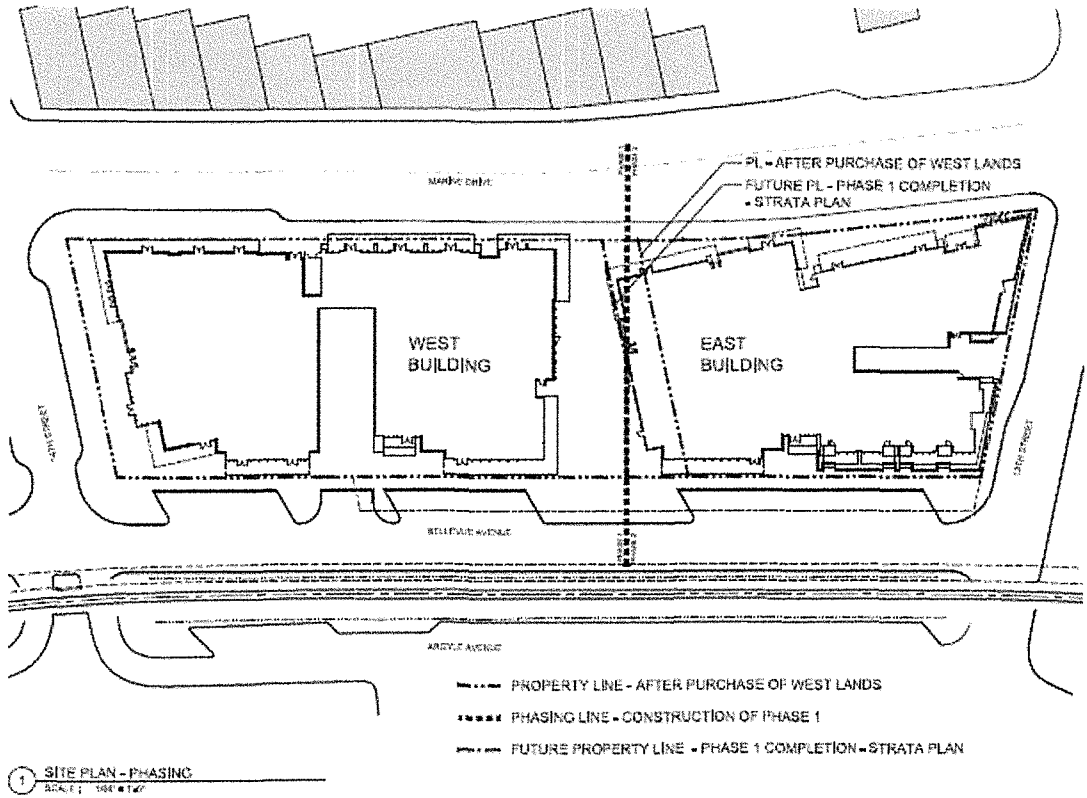


SCHEDULE B

Phasing Plan

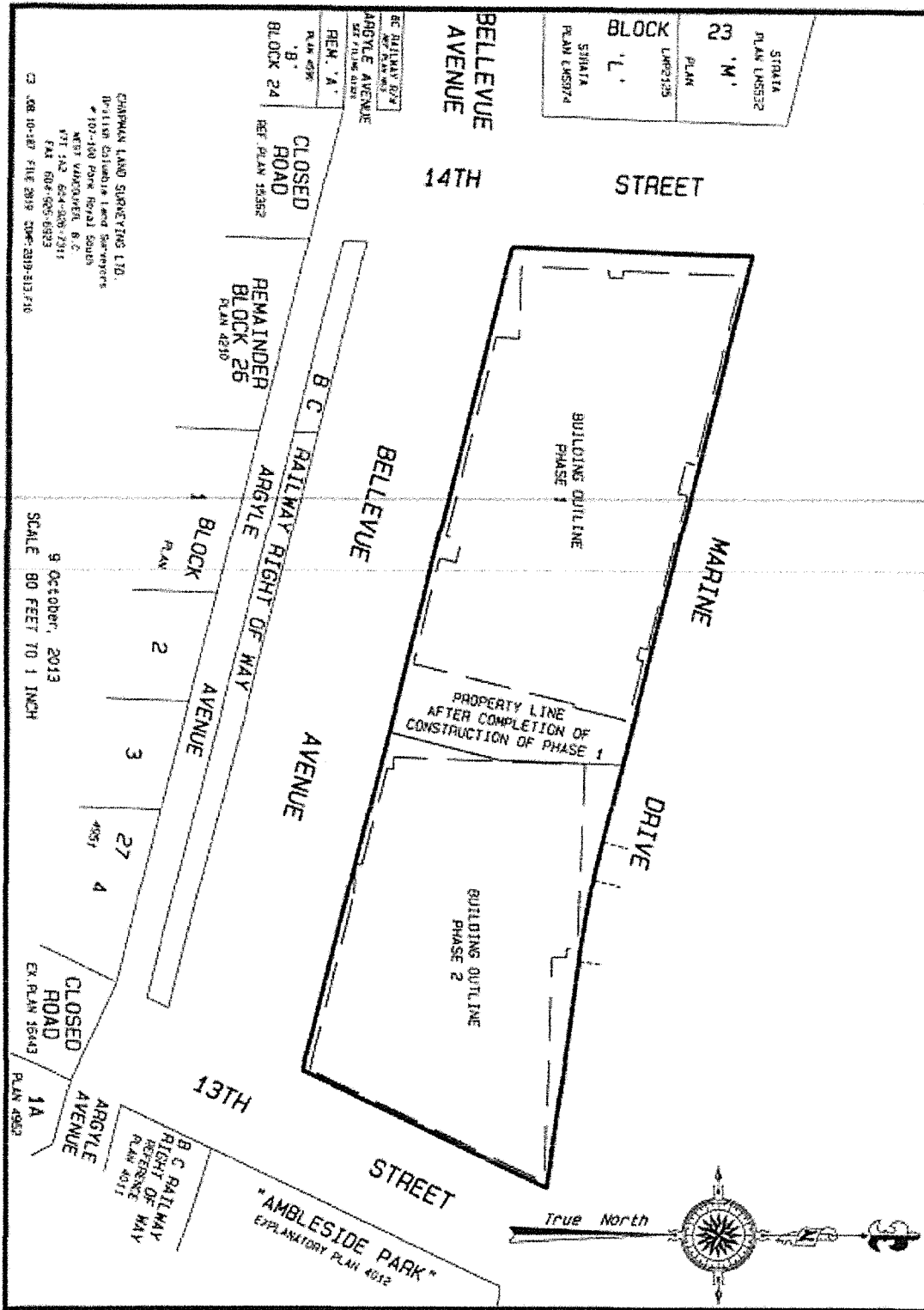
Schedule B - 1.1



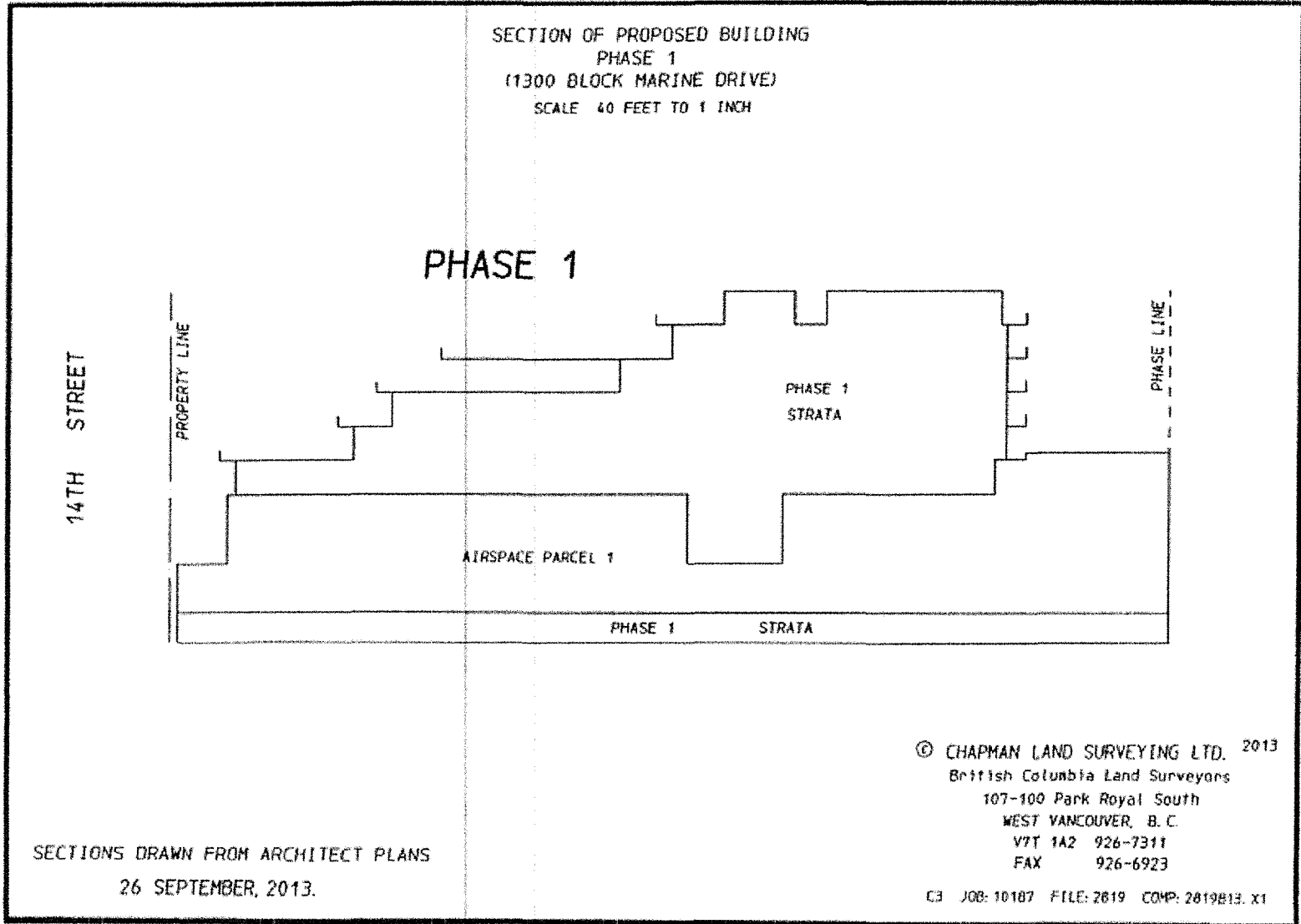


Schedule B - 1.2

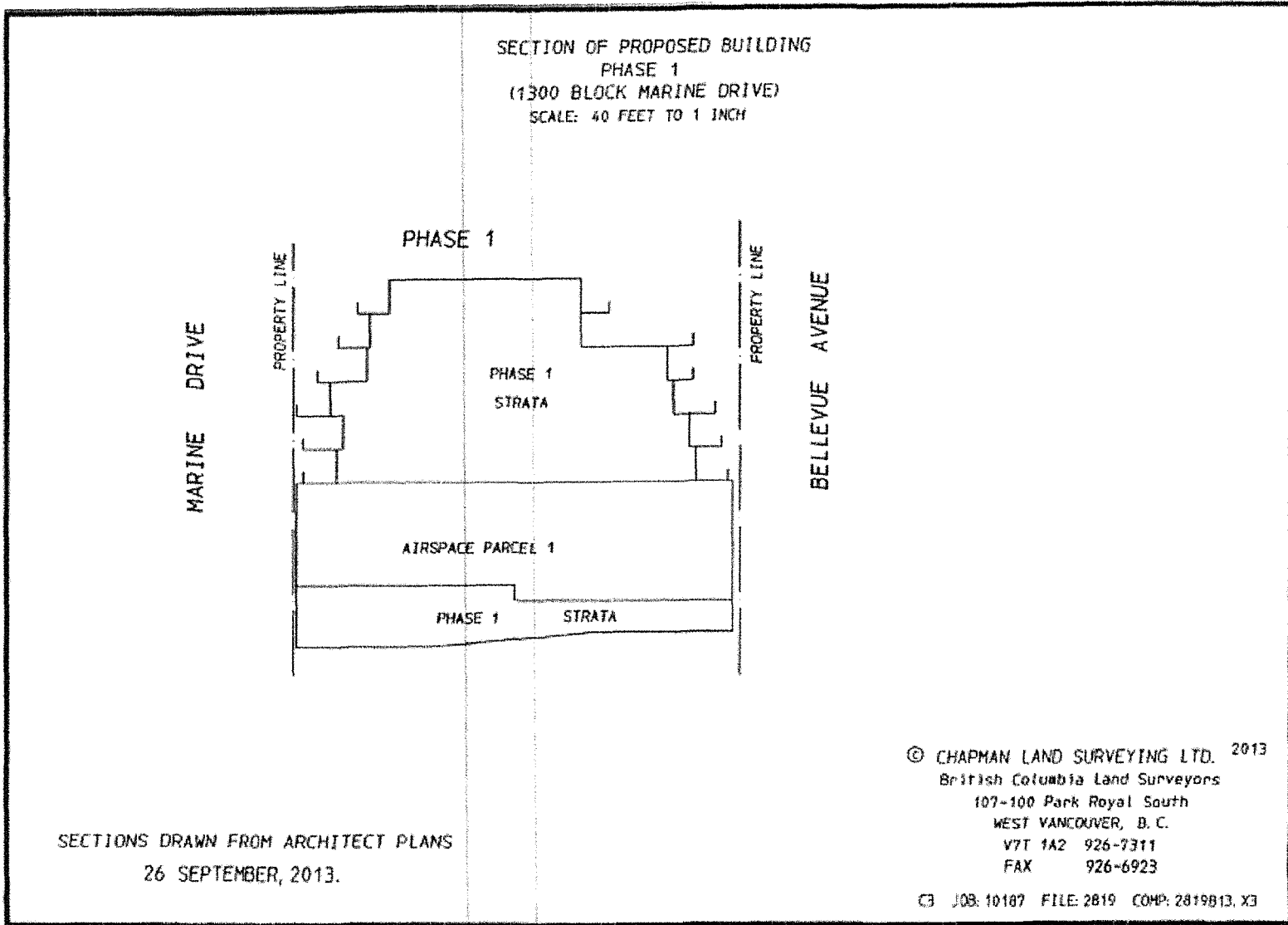
Schedule B - 1.3



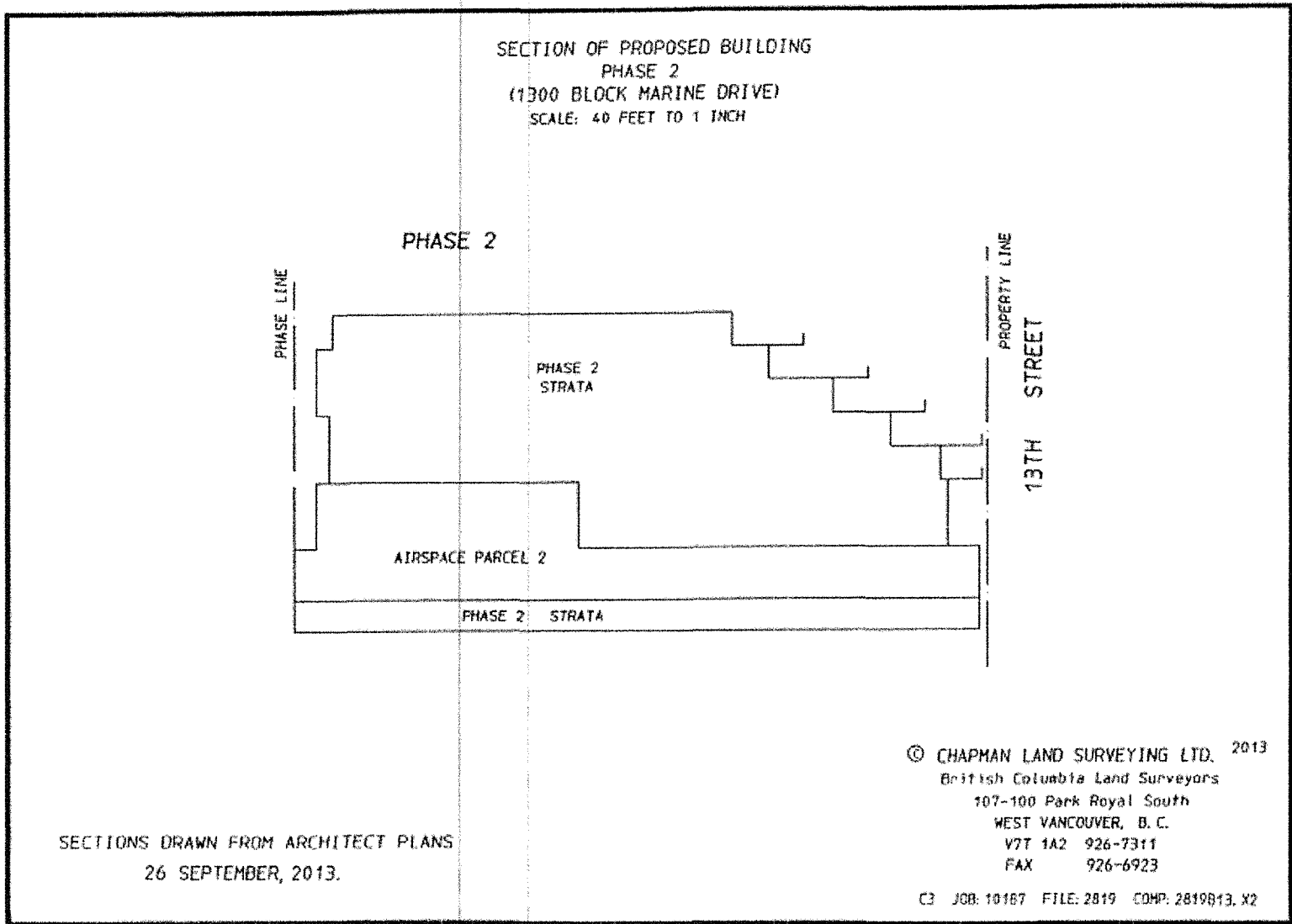
Schedule B - 2.1



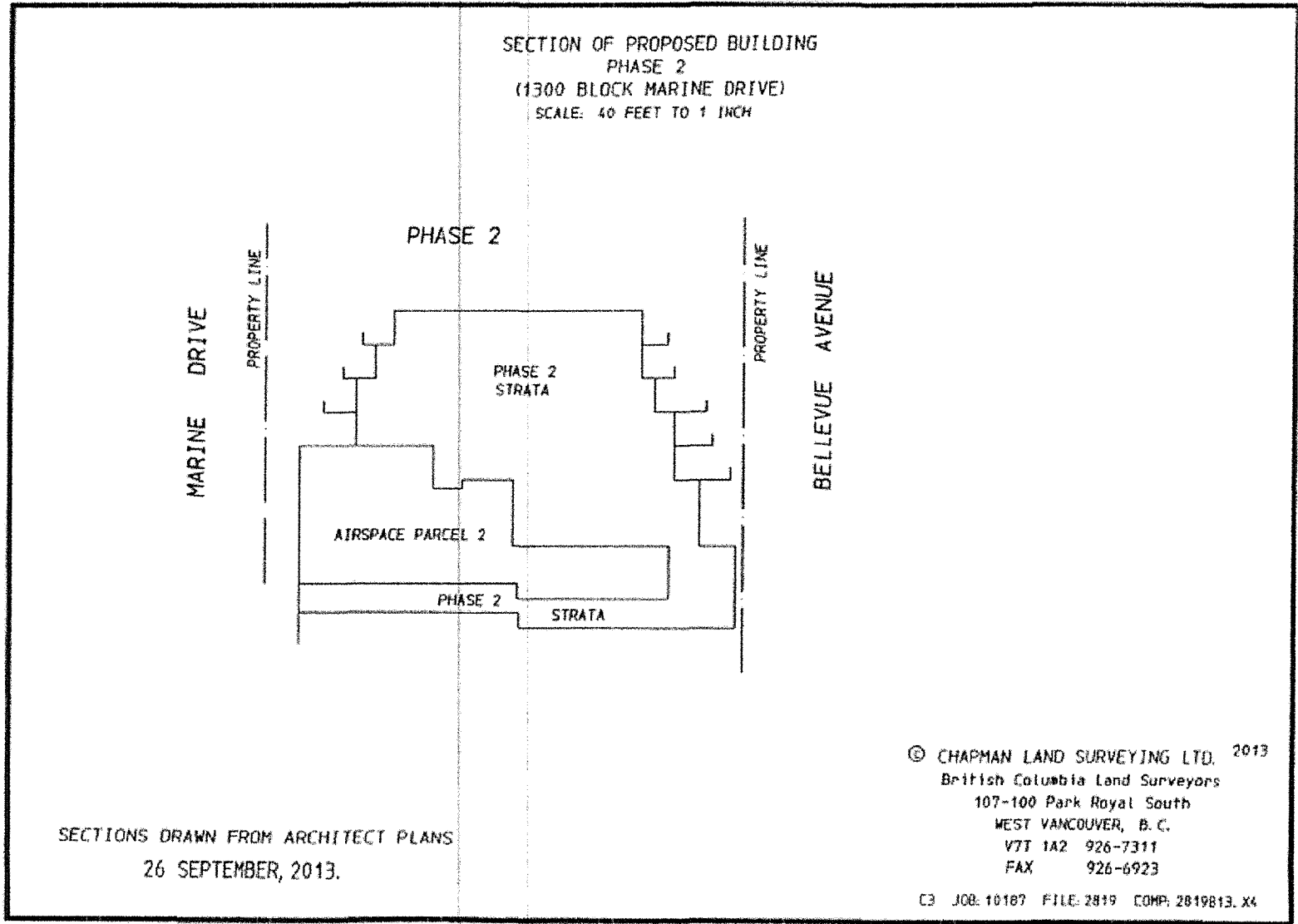
Schedule B – 2.2



Schedule B - 3.1

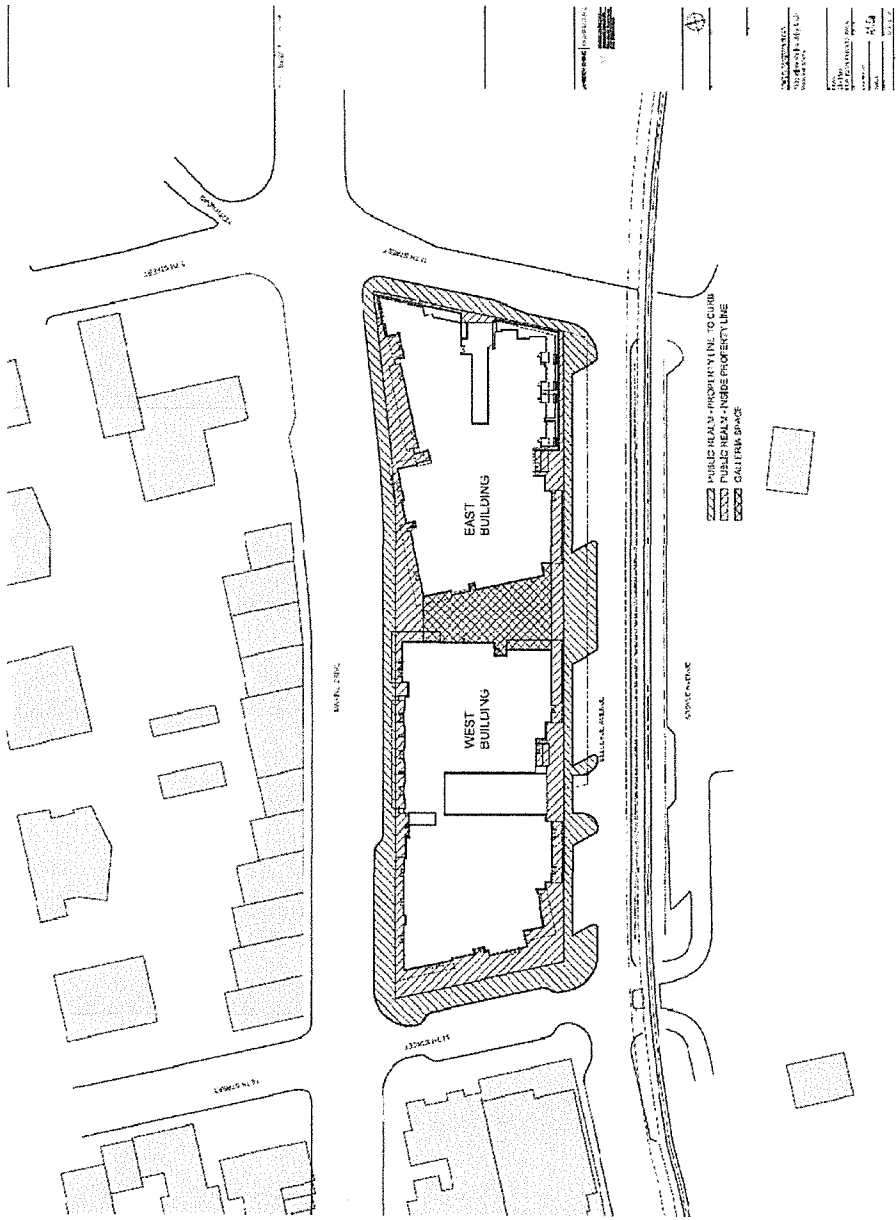


Schedule B - 3.2



SCHEDULE C

Public Open Space Area



SCHEDULE E

Form of Statutory Right of Way

**TERMS OF INSTRUMENT – PART 2
STATUTORY RIGHT OF WAY AND
SECTION 219 COVENANT – PUBLIC OPEN SPACE**

THIS COVENANT dated for reference the ____ day of _____, _____

BETWEEN:

(the "Owner")

AND:

(the "District")

WHEREAS:

- A. The Owner is the registered owner in fee simple of that parcel of land situate in West Vancouver, B.C. and legally described as:

(the "Land");

- B. The District has requested that the Owner grant to the District a statutory right of way over a portion of the Land for use as public open space;
- C. This Statutory Right of Way is necessary for the operation and maintenance of the District's undertaking;
- D. Section 219 of the *Land Title Act* allows an owner to grant to a District a covenant, of a negative or positive nature, in respect of the use of land and that a specified amenity be preserved and maintained;
- E. The Owner also wishes to grant to the District a section 219 covenant for the preservation and maintenance of the Public Open Space Area (as hereinafter defined);

NOW THEREFORE in consideration of the premises herein contained, of the sum of ONE DOLLAR (\$1.00) paid by the District to the Owner, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, pursuant to Section 218 and Section 219 of the *Land Title Act*, the parties covenant and agree as follows:

1. The Owner hereby grants in perpetuity (subject to Section 9) to the District a statutory right of way over that portion of the Land shown on the reference plan attached hereto as Schedule A (the "Public Open Space Area") for the purposes of access, use and enjoyment of the public;
2. The Owner shall:
 - (a) not do or permit to be done any act or thing which in the opinion of the District might interfere with, injure, or obstruct the public access to or the use of the Public Open Space Area; and
 - (b) permit the District and its public invitees to peaceably hold and enjoy the rights hereby granted.

Notwithstanding the foregoing, the District acknowledges and agrees that the Galleria portion of the Public Open Space Area (which portion is shown on the plan attached hereto) may be used for events and performances and as a result the use of such area by the public may be temporarily interfered with. In this regard, during any period of such temporary interference, the Owner will ensure that there is a public passage-way through the Galleria area which is approximately 3 metres wide.

3. The Owner shall preserve and maintain the Public Open Space Area, and without limitation shall inspect, repair, maintain, keep clear of hazards and obstructions, and keep free from garbage and litter the Public Open Space Area and do all other things reasonably necessary for the safe use and preservation of the Public Open Space Area. The Owner agrees that:
 - (a) the District's regulatory bylaws, including but not limited to nuisance, noise, patio or sign regulation, shall apply to the Public Open Space Area, except that provisions of the District's noise regulation bylaw shall not apply to the Galleria portion of the Public Open Space Area (which portion is shown on the plan attached hereto); and
 - (b) any use of the Public Open Space Area for patio, seating, display or similar uses other than pedestrian traffic shall first be approved by the District in writing.

4. All chattels, equipment, supplies, fixtures or other materials within the Public Open Space Area or otherwise installed over, on, in or under the Land are and shall remain the property of the Owner, any rule of law or equity to the contrary notwithstanding.
5. The Owner assumes all risk of damage to property of, or injury, including death, to the District and the District's contractors, invitees (including the public), employees, and others in connection with the exercise of the privileges hereunder and the Owner releases the District, its elected officials, officers, employees, agents, contractors, and others, from and against all present and future actions, causes of action, claims, demands, losses, damages, costs and liabilities including fees of solicitors and other professional advisors, which the District may suffer arising out of or connected with or resulting from any personal injury, death, property loss or property damage occurring on the Public Open Space Area or other loss or damage, including economic, related to the Public Open Space Area or this Agreement, save and except if caused by the wrongful act, omission or negligence of the District, its elected officials, officers, employees, agents, contractors, invitees and others for whom it is in law responsible.
6. The Owner shall indemnify and save harmless the District, its elected officials, officers, employees, agents, contractors, and others, from and against all actions, causes of action, claims, demands, losses, damages, costs and liabilities, including fees of solicitors and other professional advisors, arising out of or connected with or resulting from any personal injury, death, property loss or property damage occurring on or about the Public Open Space Area or other loss or damage, including economic, related to the Public Open Space Area or this Agreement, save and except if caused by the wrongful act, omission or negligence of the District, its elected officials, officers, employees, agents, contractors, invitees and others for whom it is in law responsible.
7. The District will carry out all of its activities on the Public Open Space Area under this Statutory Right of Way in accordance with all applicable laws and regulations.
8. The District will keep the Land free and clear of any liens, charges and encumbrances resulting from the District's use or occupation of the Public Open Space Area or the activities of the District on the Public Open Space Area. Should any such lien, charge or encumbrance be registered against the Land, the District will promptly, upon the request of the Owner, take all necessary steps to have the lien, charge or encumbrance removed from the Land.
9. Notwithstanding anything herein contained to the contrary, it is understood and agreed that the Owner shall only be liable under this Agreement in respect of the period of its ownership of the Land. After any termination, cancellation or discharge of this Statutory Right of Way, the Owner's obligation under this Agreement to release, indemnify and save harmless the District shall continue in effect in respect of the prior period.

10. Notwithstanding anything herein contained, the District reserves all rights and powers of expropriation otherwise enjoyed by the District.
11. Waiver of any default by either party shall not be deemed to be a waiver of any subsequent default by that party.
12. This Agreement runs with the Land.
13. Any notice, document or communication required or permitted to be given shall be in writing and shall be deemed to be satisfactory if and deemed to have occurred when:
 - (a) sent by facsimile transmission or when delivered by hand, on the date of delivery; or
 - (b) mailed by prepaid registered mail, on the date received or on the sixth day after receipt of mailing by any Canada Post office, whichever is the earlier;

PROVIDED the notice is mailed to the party at the address provided herein or to whatever address the parties from time to time in writing agree to.

14. Wherever the singular or masculine is used in this Agreement, the same is deemed to include the plural or the feminine or the body politic or corporate as the context so requires.
15. Every reference to each party is deemed to include the heirs, executors, administrators, successors, assigns, employees, agents, officers, and invitees of such party wherever the context so requires or allows.
16. Any opinion which the District is entitled by virtue of this Agreement to form may be formed on behalf of the District by the District Engineer in which event the opinion of the District Engineer shall be deemed to be the opinion of the District for the purposes of this Agreement.
17. If any section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of the Agreement.
18. This Agreement shall enure to the benefit of and be binding on the parties hereto notwithstanding any rule of law or equity to the contrary.
19. This Agreement shall be governed and construed in accordance with the laws of the Province of British Columbia.

As evidence of their agreement to be bound by the terms of this instrument, the parties hereto have executed the Land Title Office Form C or Form D which is attached hereto and forms part of this Agreement.

END OF DOCUMENT

SCHEDULE F

Enforcement Covenant

TERMS OF INSTRUMENT - PART 2

WHEREAS:

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

PID

(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 ____, 2013 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 parties, 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 _____; and
 - (c) "**Grantee**" means _____.
- 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 and the Development Permit issued in respect the Lands Under No. _____.

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 will not further subdivide the Lands, under the *Land Title Act (British Columbia)* or the *Strata Property Act (British Columbia)* or Regulations under those Acts 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*. Notwithstanding the foregoing, the Grantee agrees to discharge this Agreement from title to the Lands (or the applicable portion thereof) forthwith 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. 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.
6. 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.
7. 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.
8. 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 the breach of this Agreement by the Grantor or a party for whom the Grantor is at responsible at law.
9. 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.

10. 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.
11. 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.
12. 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.
13. This Agreement shall enure to the benefit of the Grantee and shall be binding upon the parties hereto and their respective heirs, executors, successors and assigns.
14. 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.
15. The Grantor agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
16. Time is of the essence of this Agreement.
17. 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 Chargeholder (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.

SCHEDULE G
Flood Covenant

SCHEDULE G
TERMS OF INSTRUMENT - PART 2

FLOOD COVENANT - SECTION 219 OF THE LAND TITLE ACT

THIS AGREEMENT dated for reference this _____ day of _____, 2013,

BETWEEN:

(the "Grantor")

OF THE FIRST PART

AND:

(the "District")

OF THE SECOND PART

WITNESSES THAT WHEREAS:

- A. The Grantor is the registered owner of that certain parcel or tract of land and premises situate, lying and being in the District of West Vancouver, in the Province of British Columbia, and more particularly described as:

(the "Lands");

- B. The Grantor has applied to the District for a development permit to construct a building on the Lands;
- C. The Grantor acknowledges that the Lands are potentially subject to flooding; and

- D. Section 219 of the *Land Title Act* provides, inter alia, that a covenant whether of a negative or positive nature, in respect of the use of land or use of a building on or to be erected on land in favour of the District, may be registered as a charge against the title to that land.

NOW THEREFORE that in consideration of the mutual covenants and agreements contained herein and the sum of TEN (\$10.00) DOLLARS now paid to the Grantor by the District (the receipt and sufficiency whereof is hereby acknowledged), the parties hereto covenant and agree each with the other as follows:

1. Pursuant to Section 219 of the *Land Title Act* the Grantor covenants and agrees with the District that the Lands shall not be built on or used except in accordance with any development permit issued by the District and the terms of this Agreement.
2. The Grantor, on behalf of itself and its successors and assigns, acknowledges that the District does not represent to the Grantor, nor to any other person that any building, modular home, mobile home or unit, improvement, chattel or other structure, including the contents of any of them, built, constructed or placed on the Lands will not be damaged by flooding or other danger and the Grantor, on behalf of itself and its successors and assigns, with full knowledge of the potential flood or other danger hereby:
 - (a) agrees to indemnify and save harmless the District and its employees, servants or agents from all loss, damage, costs, actions, suits, debts, accounts, claims and demands which the District or any of its employees, servants or agents, may suffer or incur or be put to arising out of or in connection with any breach of any covenant or agreement on the part of the Grantor or its successors and assigns, contained in this Agreement or arising out of or in connection with any personal injury, death or loss or damage to the Lands, or to any building, modular home, mobile home or unit, improvement, chattel or other structure, including the contents of any of them, built, constructed or placed on the Lands, caused by flooding, erosion or some such similar cause; and
 - (b) does remise, release and forever discharge the District and its employees, servants or agents from all manner of actions, cause of actions, suits debts, accounts, covenants, contracts, claims and demands which the Grantor or any of its successors and assigns, may have against the District and its employees, servants or agents for and by reason of any personal injury, death or loss or damage to the Lands, or to any building, modular home, mobile home or unit, improvement, chattel or other structure, including the contents of any of them, built, constructed or placed on the Lands, caused by flooding, erosion or some such similar cause.

3. Subject to the provisions of Section 219 of the *Land Title Act* the Grantor's covenants contained in this Agreement shall burden and run with the Lands and shall enure to the benefit and be binding upon the Grantor and its successors and assigns, and the District and its successors and assigns.
4. The Grantor shall do or cause to be done at its expense all acts reasonably necessary for the District to gain priority for this Agreement over all financial liens, charges and encumbrances which are or may be registered against the Lands.
5. Nothing contained or implied herein shall prejudice or affect the rights and powers of the District in the exercise of its functions under any public and private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Grantor.
6. Wherever the singular or masculine is used herein the same shall be construed as meaning the plural, feminine or the body corporate or politic where the contents or the parties so require.
7. This Agreement and each and every provision hereof shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Every reference to the parties is deemed to include the successors and assigns of the parties.
8. If any section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a Court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Agreement.
9. The parties hereto shall do and cause to be done all things and execute and cause to be executed all documents which may be necessary to give proper effect to the intention of this Agreement.
10. The Grantor shall not be liable for any breach of any covenant, promise or agreement herein (including without limitation, Section 2) with respect to any portion of the Lands sold, assigned, conveyed or otherwise disposed of, occurring after the Grantor has ceased to be the owner thereof.

IN WITNESS OF THIS AGREEMENT the parties have executed this Agreement by signing the "Form C - General Instrument - Part 1" attached hereto.

SCHEDULE I

Sustainability Elements

Marine Drive is targeting LEED Gold in the design. Some of the elements being considered are as follows:

- A provision will be in place for some residential and commercial vehicles to have the ability to charge their electric vehicles onsite (see Section 13.1)
- Bicycle parking will be provided for both residents and patrons
- Locker and shower facilities for employees in the commercial facility to further encourage bicycling to work
- Improving the area's walkability through introducing setbacks and a mid-block galleria that connects Marine Drive to Bellevue
- Green roofs
- A forced air system to provide cooling and a radiant floor system to provide space heating
- Overhangs to limit indoor solar gains in the summer
- Heat recovery from exhaust air derived at the core of the building which benefits energy efficiency as well as indoor air quality
- Waste heat from the commercial areas to be collected and fed into satisfy residential preheating domestic hot water
- Solar energy systems to supplement base building systems
- Occupancy sensors in parkade to conserve energy
- Energy star appliances and lowered lighting power density to conserve energy
- High efficiency irrigation and low-flow fixtures in the bathroom to reduce demand on potable water resources

SCHEDULE J
CLOSED LANES

