

STATUTORY RIGHT OF WAY AND COVENANT

PUBLIC PARKING

Terms of Instrument – Part 2

THIS AGREEMENT dated for reference April 27, 2016 is

BETWEEN:

DISTRICT OF WEST VANCOUVER

750 – 17th Street
West Vancouver, BC V8V 3T3

(the “**District**”)

AND:

NEWPORT PROJECTS CORP., INC. No. BC0361004

#530 North Office Tower, 650 West 41 Avenue
Vancouver, BC V5Z 2M9

(the “**Owner**”)

WHEREAS:

- A. The Owner is the owners of Lands and premises set out in section 1.1;
- B. Section 218 of the *Land Title Act*, R.S.B.C. 1996, c.250 enables the Owner to grant in favour of the Municipality an easement without a dominant tenement known as a statutory right of way;
- C. The Owner has applied to the District to rezone the Lands to permit the redevelopment of a mixed-use residential and commercial building on the Lands, and has proposed to provide as a public amenity and add to the community, free access to motor vehicle parking spaces on the Lands for members of the public, on the terms set out in this Agreement;
- D. The District requires and the Owner wishes to grant the District a statutory right of way for public parking purposes and certain covenants over portions of the Lands, to secure the public amenity;
- E. Section 219 of the *Land Title Act*, R.S.B.C. 1996, c.250, provides, *inter alia*, that a covenant, whether of a negative or positive nature, may be registered as a charge against the title to land in favour of a municipality; and

- F. The statutory right of way granted in this instrument is necessary for the operation and maintenance of the District's undertaking.

NOW THEREFORE in consideration of the premises contained in this Agreement, \$10.00 paid by the District to the Owner, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1.0 DEFINITIONS AND INTERPRETATIONS

- 1.1 In this Agreement:

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

Parcel Identifier: 011-788-461, LOT 12 BLOCK R DISTRICT LOT 775 PLAN 4140; and

Parcel Identifier: 011-788-496, LOT 13 BLOCK R DISTRICT LOT 775 PLAN 4140.

"Motor Vehicles" includes all types of passenger transportation vehicles that may be licensed for use on highways in British Columbia;

"Public Parking Spaces" means enclosed motor vehicle parking spaces located on the Lands, being 15 of the parking spaces indicated on Drawing A2.2 of Schedule A to Development Permit No. 14-052 of 1763 Bellevue Avenue, West Vancouver, B.C. prepared by Karl Gustavson Architect Inc. and dated June 8, 2015, a copy of which is attached to this Agreement as Schedule A;

"Public Parking Times" means 7:00 a.m. to 11:00 p.m. Monday through Sunday, including statutory holidays;

"Statutory Holiday" means New Year's Day, Family Day, Good Friday, Easter Monday, Victoria Day, Canada Day, British Columbia Day, Labour Day, Remembrance Day, Christmas Day and Boxing Day.

- 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 permitted it to refer to other items or matters that could reasonably fall within its scope.
- 1.4 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.

- 1.5 This Agreement shall be governed by and construed in accordance with and governed by laws applicable in the Province of British Columbia.
- 1.6 A reference to time or date is to the local time or date in West Vancouver, British Columbia.
- 1.7 A word importing the masculine gender includes the feminine or neuter, and a word importing the singular includes the plural and vice versa.
- 1.8 A reference to approval, authorization, consent, designation, waiver or notice means written approval, authorization, consent, designation, waiver or notice.
- 1.9 A reference to a section means a section of this Agreement, unless a specific reference is provided to a statute.
- 1.10 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 requires or allows.

SCHEDULE

- 1.11 The following Schedule is attached to and forms part of this Agreement:

Schedule A – Public Parking Spaces

2.0 STATUTORY RIGHTS OF WAY

- 2.1 Pursuant to section 218 of the *Land Title Act*, the Owner hereby grants and conveys in perpetuity to the District, its officers, employees and agents, its invitees, and members of the public, the full, free and uninterrupted right, license, liberty, privilege, easement and right of way (the “Statutory Right of Way”), in common with the Owner over the Lands (the “Statutory Right of Way Area”) purpose of:
 - (a) Permitting all members of the public to enter on the Right of Way Area to park motor vehicles in the Public Parking Spaces and to have access to and from the Public Parking Spaces by motor vehicle and on foot, during the Public Parking Times.
- 2.2 Pursuant to section 218 of the *Land Title Act*, the Owner hereby grants and conveys in perpetuity to the District, its officers, employees and agents, the full, free and uninterrupted right, license, liberty, privilege, easement and right of way to enter on the Public Parking Spaces and Statutory Right of Way Area with or without

motor vehicles during the Public Parking Times to inspect such area for the purpose of ensuring that the Owner is in compliance with the terms of this Agreement, including without limitation the terms requiring the posting of legible signage and the terms requiring the maintenance of the Public Parking Spaces, and for the purpose of enforcing any parking time limits that may have been imposed under section 4.0 of this Agreement, including without limitation by removing motor vehicles from the Public Parking Spaces and by ticketing motor vehicles.

3.0 PUBLIC PARKING

3.1 The Owner shall:

- (a) ensure that during the Public Parking Times there are 15 motor vehicle parking spaces available for public use within the building on the Lands and without limiting the generality of the foregoing ensure that no gate or similar obstruction prevents access to the Public Parking Spaces by members of the public who are not in possession of a key or code to open such gate;
- (b) post legible English language signage at the vehicular entrance to the Public Parking Spaces;
 - i. indicating the availability of free public parking spaces during the Public Parking Times, subject to any parking time limit that has been prescribed by the District and communicated to the Owner in writing under this Agreement;
 - ii. indicating that access to the spaces is closed at 11:00 p.m.; and
 - iii. identifying a telephone number that can be used after that time to contact a person with authority to open any gate or other obstruction to enable a member of the public to remove their vehicle, if access to the Public Parking Spaces is obstructed by a gate or other obstruction after 11:00 p.m.;
- (c) keep the Public Parking Spaces clear of all obstructions during the Public Parking Times including obstructions that limit the vertical dimension of the space, and without limiting the generality of the foregoing not store or place on any Public Parking Space any container for garbage or recycled material;
- (d) ensure that pedestrian access from Bellevue Avenue to the Public Parking Spaces is available through a separate

entrance of the Owner's building during the Public Parking Times;

- (e) impose no fee or charge of any kind for the use of the Public Parking Spaces by members of the public in accordance with this Agreement, and permit no other person to impose such a fee or charge, but nothing in this section prohibits the imposition of a fee or charge for removing from a Public Parking Space a motor vehicle that has been left in the space after 11:00 p.m.
 - (f) maintain the Public Parking Spaces to at least the same standard as all other parking spaces in the building on the Lands, including the maintenance of parking space surfacing and markings;
 - (g) take reasonable steps to ensure that the parking of vehicles in parking spaces on the Lands that are not Public Parking Spaces does not interfere with the use of the Public Parking Spaces for parking passenger vehicles;
 - (h) take reasonable steps to ensure that tenants and occupiers of the Lands and their invitees do not park motor vehicles in the Public Parking Spaces during the Public Parking Times, by placing appropriate signage, by informing such tenants and occupiers in their lease documents that such parking is not permitted, and by making a provision to that effect in strata corporation bylaws, should the Lands be strata titled;
 - (i) post legible signage indicating the name and telephone number of any towing contractor that has been engaged by the Owner to remove vehicles of members of the public that are parked in a Public Parking Space outside of the Public Parking Times; and
 - (j) do not permit to be done any act or thing which in the opinion of the District might interfere with or obstruct public access to or the use of the Public Parking Spaces.
- 3.2 The District may, for the purpose of section 3.1(b), advise the Owner in writing form time to time of:
- (a) any parking time limit that the District wishes to impose in respect of the use of the Public Parking Spaces; and
 - (b) the name and number of any towing contractor that the District has engaged to enforce parking time limits on the use of the Public Parking Spaces during the Public Parking Times;

and within 5 business days of receiving such a notice the Owner shall make such alterations to signage that has been posted

pursuant to this Agreement as are required to provide the information to members of the public using the Public Parking Spaces.

- 3.3 No right granted to the District in this Agreement shall require the District to clean, repair, or maintain the Public Parking Spaces or the Statutory Right of Way Area.

4.0 Reduction of Statutory Right of Way Area after Construction of Building

4.1 The District and the Owner agree as follows:

- (a) After the building on the Lands is constructed, the Owner may cause a British Columbia Land Surveyor to prepare a statutory right of way plan showing as statutory right of way area those parts of the Lands required for the ongoing operation of the Public Parking Spaces, with the statutory right of way area being of sizes and dimensions generally in accordance with the area shown outlined in bold on the plan attached as Schedule "A";
- (b) any statutory right of way plan prepared under this section 4.1 shall be delivered to the District for review and approval for the purposes of this section and the Owner must cause such changes to the plan to be made as the District, acting reasonably, considers necessary for the purposes of the Statutory Right of Way;
- (c) once the statutory right of way plan provided for in this section has been approved by the District under section 4.1(b), the Owner shall cause the approved plan to be deposited in the Land Title Office and the District shall, within a reasonable time after request by the Owner, execute and deliver to the Owner a discharge of this Agreement from any part of the Lands that is not shown as part of the Statutory Right of Way on the approved plan; and
- (d) upon deposit of the discharge in the Land Title Office, reference herein to the Statutory Right of Way Area is a reference to the statutory right of way area shown on the approved plan.

5.0 SECTION 219 COVENANT

- 5.1 The Owner covenants with the District under s. 219 of the *Land Title Act* not use the Statutory Right of Way Area during the Public Parking Times for any purpose other than the public parking of passenger motor vehicles, and without limiting the generality of the foregoing, not to use the Statutory Right of Way Area for the storage of any container for garbage or recycled material, the storage of goods or materials of any kind, or the parking of unlicensed or inoperative vehicles of any kind.
- 5.2 The Owner further covenants and agrees with the District to pre-wire all parkades on the Lands, including the Public Parking Spaces, to permit for the installation of electric vehicle (“EV”) charging stations, to the satisfaction of the District. For the Public Parking Spaces, the Owner shall install at least one charging station for use by the public. The parties agree that the District may withhold issuance of an occupancy permit for the Lands if the Owner has not complied with this section 5.2.

6.0 USE AND MAINTENANCE

- 6.1 The Owner may, for the purposes of maintaining or repairing the building on the Lands, temporarily obstruct public access to and use of the Public Parking Spaces on such terms as the Municipality may in its sole discretion determine, acting reasonably, provided that the Owner has in writing requested the District’s consent to such obstruction at least 10 business days prior to the obstruction occurring, except in cases of emergency where the Owner may request consent without prior notice, and in the event that the District has given its consent in writing section 3.1(c) of this Agreement shall have no application to such obstructions provided that the Owner is in compliance with the terms of the District’s consent. The parties agree that the District may withhold consent if the maintenance or repairs can, in the opinion of the District, be practically carried out without obstruction of any of the Public Parking Spaces.

7.0 NOTICE

- 7.1 Should the Owner omit, fail or neglect to carry out one of its obligations contained in this Agreement or do some act contrary to its obligations contained in this Agreement, the District may give the Owner 14 days written notice in the manner provided in this Agreement requiring the default to be cured; if the Owner fails to cure such default to the satisfaction of the District within the time specified, the District may enter onto the Lands and rectify such

default to the extent considered necessary by it and the cost of doing shall be a debt due and owing to the District by the Owner with interest accrue at the prime rate of the Bank of Canada as of the date of the notice.

- 7.2 Whenever it is required or desired that either party shall deliver or serve a notice on the other, delivery or service shall be deemed to be satisfactory if and deemed to have occurred when:
- (a) the Chief Administrative Officer of the District or a director of the Owner has been served personally, on the date of service; 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, so long as the notice is mailed to the party that the address provided in this Agreement or to whatever address the party may from time to time provide to the other party.

8.0 PRIORITY

- 8.1 The Owner shall, after execution of this Agreement by it, at the expense of the Owner, do or cause to be done all acts reasonably necessary to grant priority to this Agreement over all financial charges and encumbrances which may have been registered against the title to the Lands in the Land Title Office save and except those as have been specifically approved in writing by the District or have been granted in favour of the District.

9.0 INDEMNITY AND RELEASE

- 9.1 The Owner shall at all times and does hereby indemnify, save harmless, release and forever discharge the District from and against all manner of actions, causes of action, claims, debts, suits, damages, demands and promises, at law or in equity, whether known or unknown, including without limitation for injury to persons or property including death, of any person directly or indirectly arising or resulting from, or attributable to, any act, omission, negligence or default of the Owner in connection with or in consequence of this Agreement, save and except to the extent caused by an act, omission, negligence or default of the District, in which case the District shall indemnify the Owner under section 9.2 of this Agreement.
- 9.2 The District shall at all times and hereby indemnify, save harmless, release and forever discharge the Owner from and against all manner of actions, causes of action, claims, debts, suits, damages, demands and promises, at law or in equity, whether known or unknown, including without limitation for injury to persons or property including death, of any person directly or indirectly arising

or resulting from, or attributable to, any act, omission, negligence or default of the District in connection with or in consequence of this Agreement, save and except to the extent caused by an act, omission, negligence or default of the Owner, in which case the Owner shall indemnify the District under section 9.1 of this Agreement.

10.0 LIABILITY INSURANCE

10.1 The Owner shall, at its cost, obtain and maintain, with the District named as an additional insured, comprehensive general liability insurance protecting against claims for personal injury, death or property damage or loss upon, in or about the Statutory Right of Way Area and arising out of or connected to the use of the Public Parking Spaces and the Statutory Right of Way Area, or any parts thereof, by the District (including the general public) on an occurrence basis and in an amount of not less than \$5,000,000.00 per occurrence or such greater amount as the District may reasonably require from time to time, in respect of any injury to or death of one or more persons and any loss or damage to the property of others in respect of each occurrence and with provisions for severability of interest, cross-liability, owner's protective liability and blanket contractual liability and including a waiver of subrogation clause.

11.0 WAIVER

11.1 Waiver of any default by either party shall not be deemed to be a waiver of any subsequent default by that party.

12.0 REMEDIES

12.1 The Owner covenants and agrees that in addition to any remedies that area available under this Agreement or at law, the District will be entitled to all equitable remedies, including, without limitation, specific performance, injunction and declaratory relief, or any combination, to enforce its rights under this Agreement. The Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a default by the Owner under this Agreement. The Owner acknowledges and agrees that no failure or delay on the part of the District to exercise any right under this Agreement will operate as a waiver of such right.

13.0 RUNS WITH THE LANDS

13.1 This Agreement runs with the Lands.

14.0 SUBDIVISION

14.1 In the event that the Lands are subdivided under the *Strata Property Act*, the Owner agrees that the Public Parking Spaces will

be designated on the strata plan as common property and not limited common property, and that this Agreement shall be registered as a charge against the title to each of the strata lots created by the subdivision.

15.0 DISTRICT'S REPRESENTATIVE

15.1 Any opinion which the District is entitled by virtue of this Agreement to form may be formed on behalf of the District by the Director of Planning Services in which event the opinion of the Director of Planning Services shall be deemed to be the opinion of the District for the purposes of this Agreement.

16.0 SEVERABILITY

16.1 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.

17.0 GENERAL PROVISIONS

17.1 The parties agree, for the coordination of parking enforcement measures and the convenience of persons using the Public Parking Spaces, to consult with one another regarding the engagement of towing contractors to enforce parking regulations on the Lands, with a view to engage a single contractor, but nothing in this section obliges the parties to agree on the engagement of a single contractor.

17.2 The Owner shall:

- (a) execute all further documents and things for the better assuring unto the District of the Statutory Right of Way granted by this Agreement; and
- (b) permit the Municipality to peaceably hold and enjoy the rights granted by this Agreement.

17.3 The Owner covenants and agrees that the grant of the statutory rights of way contained in this Agreement will not abrogate or detract from the liabilities and obligations of the Owner as the occupier of the Statutory Right of Way Area and the party responsible for the condition of the Statutory Right of Way Area from time to time.

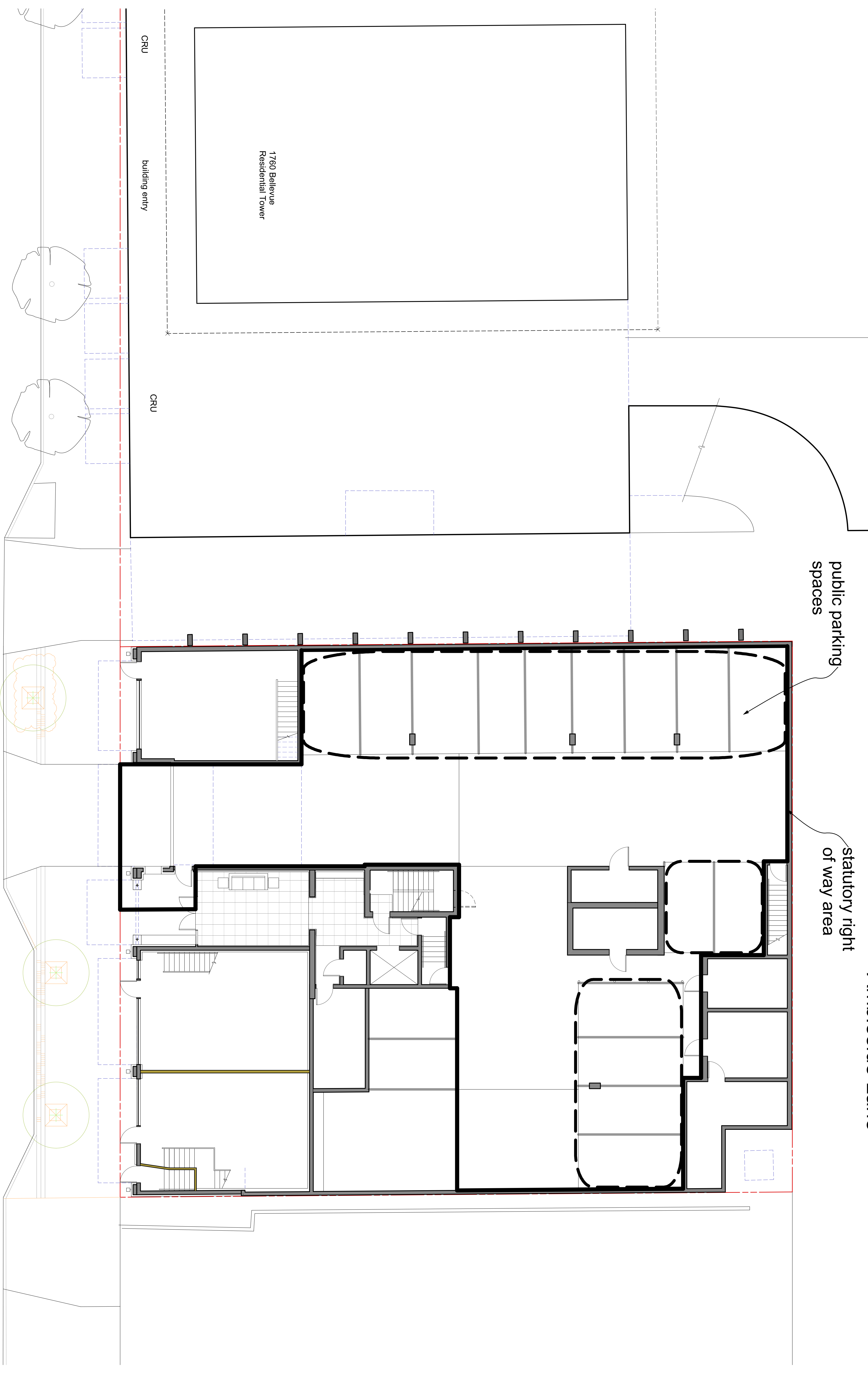
17.4 This Agreement shall enure to the benefit of and be binding on the parties notwithstanding any rule of law or equity to the contrary.

17.5 This Agreement may be assigned by the District without the consent of the Owner.

- 17.6 Notwithstanding anything contained in this Agreement, neither the Owner named herein or any future owner of the Lands or any portion of the Lands shall be liable under any of the covenants and agreement contained herein where such liability arises by reason of an act or omission occurring after the Owner named herein or any future owner ceases to have a further interest in the Lands.
- 17.7 Wherever this Agreement creates a power or obligation of the District to make a decision or to exercise any contractual right or remedy, the District may do so in accordance with the provisions of this Agreement and no public law duty, whether arising from the principles of procedural fairness or the rules of natural justice, shall have any application.

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 and D which is attached hereto and forms part of this Agreement.

THIS DRAWING MUST NOT BE SCALED. THE GENERAL CONTRACTOR SHALL VERIFY ALL DIMENSIONS, DATUMS AND LEVELS PRIOR TO COMMENCEMENT OF WORK. ALL ERRORS AND OMISSIONS TO BE REPORTED IMMEDIATELY TO THE ARCHITECT. VARIATIONS AND MODIFICATIONS TO WORK SHOWN ON THESE DRAWINGS SHALL NOT BE CARRIED OUT WITHOUT WRITTEN PERMISSION FROM THE ARCHITECT. THIS DRAWING IS THE EXCLUSIVE PROPERTY OF THE ARCHITECTS AND CANNOT BE REPRODUCED OR USED WITH THE PERMISSION OF THE ARCHITECTS, IN WHICH CASE THE REPRODUCTION MUST BEAR THEIR NAME AS ARCHITECTS.



Bellevue Avenue

public parking spaces

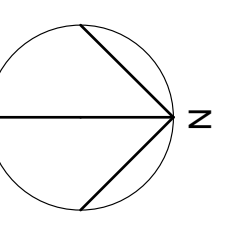
statutory right of way area

Ambleside Lane

1 Ground Floor/P2 Parking

Scale: 1/8" = 1'-0"

total floor area: 4459.5 sq ft
residential: 1555.5 (not incl. bikescooter storage)
commercial: 2904 sq ft



date revision

June 20, 2014	1. Client Review
July 4, 2014	2. Issued for Consultant Review
July 11, 2014	3. Issued for Energy Modeling
Aug 15, 2014	4. Issued for Consultant Review
Sept 5, 2014	5. Submit for rezoning/OCP amendment/DP
Nov 13, 2014	6. Issued for consultant coordination
Nov 18, 2014	7. Misc revisions, re-issued for rezoning/OCP amendment/DP
Nov 25, 2014	8. Revised site sections, re-issued for rezoning/OCP amendment/DP
Feb 12, 2015	9. Minor revisions, re-issued for Advisory Design Panel
Mar 18, 2015	10. Additional CRU and P3 parking, re-issued for Advisory Design Panel
June 9, 2015	11. Updated and re-submitted to DWV

KARL GUSTAVSON ■ ARCHITECT INC

3685 McKECHNIE AVENUE, WEST VANCOUVER, B.C. V7V 2M7
phone (604) 926-1649 fax (604) 926-1059

DATE	June 8, 2015	PROJECT	Proposed Development 1763 Bellevue Avenue West Vancouver
DRAWN	DP	SHEET TITLE	Ground Floor/Parking P2
CHECKED	KG		
SCALE	as noted		
JOB NO.			

A2.2

PRIORITY AGREEMENT

VANCOUVER CITY SAVINGS CREDIT UNION, INC NO. F197, (the "Chargeholder") being the holder of Mortgage No. CA3485357, Assignment of Rents No. CA3485358, Mortgage No. CA4465807, and Assignment of Rents No. CA4465808 (collectively, the "Charge").

The Chargeholder, in consideration of the premises and the sum of One Dollar (\$1.00) now paid to the Chargeholder by the Transferee, hereby approves of, joins in and consents to the granting of the within Agreement and covenants and agrees that the same shall be binding upon its interest in or charge upon the Lands and shall be an encumbrance upon the Lands prior to the Charge in the same manner and to the same effect as if it had been dated and registered prior to the Charge.

IN WITNESS WHEREOF the Chargeholder has executed this Agreement on Form D to which this Agreement is attached and which forms part of this Agreement.

END OF DOCUMENT