

## **TERMS OF INSTRUMENT - PART 2**

### **SECTION 219 COVENANT (Development Covenant)**

This Agreement dated for reference the 20<sup>th</sup> day of May, 2016

BETWEEN:

**SEWELL'S LIMITED**, a company incorporated under the laws of the Province of British Columbia and having its registered and records office at 700 – 401 West Georgia Street, Vancouver, BC V6B 5A1

(the “**Owner**”)

AND:

**THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER**, having its office 750 – 17<sup>th</sup> Street, West Vancouver, British Columbia, V7V 3T3

(the “**District**”)

AND:

**HB NELSON LIMITED PARTNERSHIP**, a limited partnership formed under the laws of the Province of British Columbia and having an office at 501 – 1067 West Cordova Street, Vancouver, BC, V6C 1C7

(the “**Developer**”)

AND:

**WESTBANK PROJECTS CORP.**, a company incorporated under the laws of the Province of British Columbia and having an office at 501 – 1067 West Cordova Street, Vancouver, BC, V6C 1C7

(the “**Covenantor**”)

WHEREAS:

- A. The Owner is the registered owner in fee simple of the Lands, as defined herein;

- B. The Owner has entered into the Purchase Agreement with the Covenantor pursuant to which the Developer has agreed to acquire a portion of the Lands and to undertake a redevelopment of the Lands for residential and commercial uses and for this purpose requires that the Lands be rezoned;
- C. The Owner desires to develop the Lands for mixed commercial and residential uses in accordance with the Development Master Plan and desires to grant this covenant to the District and the Owner has agreed to enter into this Agreement restricting the use, development and subdivision of the Lands and to provide the District with certain amenities in connection with the proposed development, all on the terms set out in this Agreement;
- D. The Developer may, pursuant to the Purchase Agreement, undertake some or all of the Owner's obligations under this Agreement;
- E. The Covenantor has agreed to guarantee all covenants and obligations of the Developer under the terms of this Agreement; and
- F. Section 219 of the *Land Title Act* of British Columbia permits the registration of a covenant of a negative or positive nature in favour of a municipality, in respect of the use of land, the building on land, the subdivision of land and the preservation of land or a specified amenity on the land.

THIS AGREEMENT is evidence that, pursuant to s. 219 of the *Land Title Act*, and in consideration of \$10.00 paid by the District to the Owner, the Developer, the Covenantor, and other good and valuable consideration (the receipt and sufficiency of which the Owner, the Developer, and the Covenantor each acknowledge), the Owner, the Developer, and the Covenantor grant to and covenant with the District as follows:

1. **Definitions** – In this Agreement:

- (a) **“Accepted Development Parcel”** means the Development Parcel, or the Air Space Parcel formed upon the air space Subdivision of a Development Parcel, accepted by the Director under subsection 13(a) the owner of which (or the Strata Corporation formed upon the stratification of which) will assume all of the Owner's obligations under subsection 15(a) and under the Covenant required to be granted to the District pursuant subsection 15(a);
- (b) **“Air Space Parcels”** means any air space parcels created by the air space subdivision of a Development Parcel, and **“Air Space Parcel”** means any one of them;

- (c) **“Approved Construction and Traffic Management Plans”** has the meaning given to it in section 20(a);
- (d) **“Approving Officer”** means the approving officer for the District appointed under the *Land Title Act*;
- (e) **“Commercial Purposes”** means the permitted commercial uses on the Lands as set out in section 654 of the Zoning Bylaw;
- (f) **“Council”** means the council of the District of West Vancouver;
- (g) **“Covenant”** means a covenant granted by the Owner to the District under section 219 of the *Land Title Act* in respect of any part of the Lands;
- (h) **“Develop”** or **“Developed”** means any one or more of construct on, build on, improve or alter and **“Development”** has the corresponding meaning but, unless specifically stipulated in this Agreement, does not include the issuance of a Development Permit;
- (i) **“Development Master Plan”** means the plans prepared by Merrick Architecture dated April 29, 2016, excerpts of which said plans are attached hereto as Schedule “B”, all as may be modified from time to time in accordance with section 11 herein;
- (j) **“Development Parcels”** means the Marina Parcel and the Residential/Commercial Parcel, created upon the Subdivision of the Lands in accordance with the provisions of this Agreement, and **“Development Parcel”** means any one of them;
- (k) **“Development Permit”** means the permit issued by the District, as amended from time to time, permitting the Development of the Lands and construction thereon, in accordance with the Development Master Plan;
- (l) **“Director”** means the District’s Director of Planning & Development Services, or his or her designate;
- (m) **“District”** means the Corporation of the District of West Vancouver;
- (n) **“Dwelling Unit”** means a self-contained unit consisting of one or more rooms designed, occupied or intended for occupancy as a separate household with sleeping and sanitary facilities and not more than one cooking facility that is constructed or to be constructed on the Lands;
- (o) **“Engineer”** means the District’s Manager of Development Engineering or his or her designate;

- (p) **“Environmental Works”** means those environmental works and improvements to be constructed on the Lands described on Schedule “F” hereto;
- (q) **“Floor Area”** means the floor area as that term is defined in the Zoning Bylaw;
- (r) **“Lands”** means those lands situate in the District of West Vancouver and legally described in Schedule “A” hereto.
- (s) **“LTO”** means the Lower Mainland Land Title Office and any successor of that office;
- (t) **“Madrona Island”** means the island located in the marina area owned by the Province of British Columbia adjacent to the Lands as indicated in the Development Master Plan attached as Schedule “A” and as indicated in the sketch plan(s) attached as Schedule “C”;
- (u) **“Marina Parcel”** means the part of the Lands outlined in red and labelled “Draft Revised M3 Foreshore Lot” on the draft consolidation/subdivision plan attached hereto as Schedule “D”.
- (v) **“Marina Parking Stalls”** means approximately 226 commercial parking stalls in the Underground Parking Facility;
- (w) **“Merrick Architecture”** means Merrick Architecture – Borowski Sakumoto Fligg McIntyre Ltd.;
- (x) **“Owner”** means the person or persons registered in the LTO as owner of the Lands, or of any parcel into which the Lands is consolidated or subdivided, whether in that person’s own right or in a representative capacity or otherwise;
- (y) **“Proposed Development”** means the development of the Lands as contemplated in this Agreement, the Development Master Plan, all Development Permits issued by the District and the Zoning Bylaw;
- (z) **“Public Features Works”** means the works and improvements to be constructed on the Lands as shown on the Development Master Plan as part of the Public Plazas and Pedestrian Ways, that will be available for public use from time to time in the District’s discretion pursuant to the Public Access Statutory Rights of Way, and includes the Public Plazas and Pedestrian Ways, all as generally shown on the Development Master Plan and includes all hard and soft landscaping, walkways, paths, roads (including but not limited to curbs and gutters, sidewalks, boulevards, street paving with concrete, asphalt, stone, brick or other all-weather impervious surface of any kind), plazas, public squares, fountains, trails,

passages, bicycle paths, stairs, street furniture, play structures and play space, and public gathering places with associated drainage works, lighting, retaining walls, railings, benches, signs, waste receptacles and other street furniture and other facilities and appurtenances necessary or convenient for public use of the Public Features as shown in the applicable Development Permit, but public features does not include public art;

- (aa) **“Public Plazas and Pedestrian Ways”** means the public plazas and pedestrian ways to be constructed on the Lands by the Owner and the pedestrian bridge connecting the Lands to Madrona Island, as contemplated in the Development Master Plan and as indicated in the sketch plan(s) attached as Schedule “C” containing the Public Features Works;
- (bb) **“Purchase Agreement”** means the purchase agreement made as of December 14, 2015 among Sewell’s Limited, Sewell’s Landing Inc., and the Covenantor, as the same may be amended from time to time, pursuant to which the Developer has agreed to acquire a portion of the Lands and to undertake the development of the Lands on behalf of the Owner and the Developer, on the terms and conditions set forth therein;
- (cc) **“Rental Disclosure Statement”** means a rental disclosure statement filed under the *Strata Property Act (British Columbia)*;
- (dd) **“Replacement Covenant”** has the meaning given to it in subsection 26(d);
- (ee) **“Residential/Commercial Parcel”** means the part of the Lands containing the Residential Buildings and excluding the Marina Parcel, as shown on the draft consolidation/subdivision plan attached hereto as Schedule “D”.
- (ff) **“Residential Buildings”** means those 6 mixed commercial and residential buildings and identified as Parcel 1, Parcel 2A and 2B, Parcel 3, Parcel 4a and Parcel 4b intended to be located on the Residential/Commercial Parcel as shown in the Development Master Plan attached hereto as Schedule “A”, and **“Residential Building”** means any one of them;
- (gg) **“Residential Strata”** means the Strata Corporation formed upon the deposit of a strata plan under the *Strata Property Act (British Columbia)* in respect of the Residential Buildings;
- (hh) **“Servicing Agreement”** has the meaning given to it in section 19;
- (ii) **“Standard Bylaws”** means the Schedule of Standard Bylaws as prescribed under the *Strata Property Act (British Columbia)*;

- (jj) **“Strata Corporation”** means the strata corporation formed upon the deposit of a strata plan under the *Strata Property Act (British Columbia)* in respect of a building on a Development Parcel;
- (kk) **“Subdivision”** and **“Subdivided”** means the division of land into two or more parcels (including Air Space Parcels) by any means, including by deposit of a subdivision, reference or other plan under the *Land Title Act*, lease, fractional interest, or deposit of a strata plan or a bare land strata plan under the *Strata Property Act* (including deposit of any phase of a phased strata plan);
- (ll) **“Superintendent of Real Estate”** means the Superintendent of Real Estate under the British Columbia Financial Institutions Commission;
- (mm) **“Underground Parking Facility”** means the underground parking structure to be constructed on the Lands in accordance with the Development Master Plan;
- (nn) **“Zoning Amendment Bylaw”** means Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 4898, 2016; and
- (oo) **“Zoning Bylaw”** means the District of West Vancouver Zoning Bylaw No. 4662, 2010 as modified by the Zoning Amendment Bylaw and as amended, consolidated, re-enacted or replaced from time to time.

2. **Schedules** – The schedules listed below form part of this Agreement:

- (a) Schedule “A” – Legal Description of Lands
- (b) Schedule “B” – Development Master Plan
- (c) Schedule “C” – Public Plazas and Pedestrian Ways
- (d) Schedule “D” – Consolidation/Subdivision Plan
- (e) Schedule “E” – Replacement Covenant
- (f) Schedule “F” – Environmental Works
- (g) Schedule “G” – Engineering Servicing Agreement

3. **Covenants Regarding Use, Subdivision and Development** – Except in accordance with this Agreement:

- (a) the Lands must not be used, Developed or Subdivided; and
- (b) no Development Permit, building permit or occupancy permit or Subdivision approval may be applied for, or is required to be issued by the District or approved by the Approving Officer, in respect of any improvement on the Lands or Subdivision of the Lands.

4. **Development Master Plan** – The Owner agrees that the Development Master Plan sets out the conceptual layout of all development on the Lands and that the Lands must not be used, Subdivided or Developed except in substantial accordance with the Development Master Plan as may be modified from time to time in accordance with section 11.
5. **Subdivision** – Except as set out in this section 5, the Lands may not be Subdivided. Subject to sections 6, 7, 8 and 9 and compliance with the other conditions and restrictions contained in this Agreement, the Lands may be subdivided to create the Development Parcels, and the Development Parcels may be further subdivided by either or both deposit of air space subdivision plans under Part 9 of the British Columbia *Land Title Act* and strata plans under the British Columbia *Strata Property Act*, but may not otherwise be Subdivided by any means.
6. **Consolidation/Subdivision Plan**– The Lands need not be Developed and no building permit is required to be issued by the District in respect of any improvement on the Lands unless and until a subdivision plan in the form attached hereto as Schedule “D” is accepted for registration by the LTO to:
  - (a) consolidate the Lands; and
  - (b) subdivide the parcel resulting from such consolidation into the Marina Parcel and the Residential/Commercial Parcel.
7. **Approving Officer Authority** – The Owner acknowledges and agrees that the Subdivision(s) contemplated in sections 5 and 6 are subject to all applicable enactments and to the authority of the Approving Officer and, for greater certainty, the Owner acknowledges that any Subdivision to create the Development Parcels requires the approval of the Approving Officer which said approval is within the Approving Officer's sole discretion which is not in any manner subject to the provisions hereof, and without limiting the foregoing, the Approving Officer may, in carrying out his duties under the *Land Title Act*:
  - (a) require changes in the layout, configuration, and size of Development Parcels and Air Space Parcels; and
  - (b) impose additional conditions or requirements on the approval of any Subdivision to create any of the Development Parcels or to create Air Space Parcels or otherwise.
8. **Subdivision Conditions** – Without limiting section 7, the Lands shall not be Subdivided to create Development Parcels unless and until:
  - (a) the Director is satisfied that the proposed subdivision is consistent and compatible with the Development Master Plan and the Zoning Bylaw;

- (b) the Director is satisfied that the Owner is not in material breach of any of its obligations under this Agreement; and
- (c) the Director is satisfied that the proposed Subdivision and all improvements constructed on the Development Parcels created by the proposed Subdivision comply with this Agreement and be compatible with the Zoning Bylaw and the intended Development Permit(s); and
- (d) the Owner has complied with the requirements set out in section 9 in respect of the Development Parcels.

## **9. Allocation of Development Rights**

- (a) The Zoning Amendment Bylaw establishes the aggregate Floor Area and Dwelling Unit density restrictions for each of the Development Parcels.
- (b) The Owner and the District agree that the Lands must not be Developed by any means unless a modification of this Agreement, executed by the Owner and/or the District, as applicable and by the District, in form and content acceptable to the District, is fully registered following the Subdivision in favour of the District against the Development Parcel(s) to be Developed stipulating:
  - (i) the maximum Floor Area for residential uses and maximum number of Dwelling Units permitted on each of the Development Parcels;
  - (ii) the maximum Floor Area for commercial and other non-residential uses permitted on each of the Development Parcel;
  - (iii) allocation of building location on each of the Development Parcels; and
  - (iv) allocation of parking requirements on each of the Development Parcels;
- (c) The Owner and the District further agree that the Marina Parcel and the Residential/Commercial Parcel must not be Subdivided to create Air Space Parcels, unless, prior to the Approving Officer approving of such Subdivision, the Approving Officer and the District have been satisfied that the allocation of Floor Area for residential uses, the allocation of Floor Area for commercial and other non-residential uses and the allocation of Dwelling Units in respect of the Development Parcels is in compliance with the



Zoning Bylaw and is substantially as set out in the Development Master Plan, and, for greater certainty, the total aggregate Floor Area for residential uses, the total aggregate Floor Area for commercial and other non-residential uses, and the total aggregate number of Dwelling Units on all of the Lands does not exceed the maximums permitted under the Zoning Bylaw.

10. **Sale of Development Parcels** – The Development Parcels may be sold or otherwise transferred separately, but in such case this Agreement will continue to apply to any such Development Parcel so sold or otherwise transferred.
11. **Modification Procedure** – Non-material modifications to this Agreement (including minor modifications of the Development Master Plan, the location, size and configuration of Development Parcels, minor reallocations of Floor Area and Dwelling Units or any modifications required by the Approving Officer under section 7) may be considered and approved by the Director in his or her discretion. Except as provided for in the Development Permit, all substantial modifications must be approved by the Council in its sole and unfettered discretion.
12. **Variances** – In the event that the Development Master Plan or any provision in this Agreement contemplates or requires, either directly or by implication, variances to the Zoning Bylaw, the Owner acknowledges and agrees that neither this Agreement nor the approval of the Development Master Plan nor any approval of a modification of the Development Master Plan under section 11 or otherwise is a predetermination or pre-approval of any such variance, and that all variances are at all times subject to approval by Council in its sole and unfettered discretion and to all statutory requirements and restrictions.
13. **Compliance with Development Master Plan** – The Owner covenants and agrees that neither the Lands nor any Development Parcel will be used or Developed and no building permit will be applied for, or is required to be issued by the District, in respect of any improvement on the Lands or on any Development Parcel unless:
  - (a) the Owner has submitted to the District, and the District has approved, detailed plans, specifications and architectural drawings for the applicable Development Parcel that comply with the Development Master Plan, the Zoning Bylaw, any other applicable Bylaws of the District, any issued Development Permit and all the requirements of this Agreement; and
  - (b) the building permit application for the improvement complies with the approved plans and architectural drawings and any Development Permit.

**14. Commercial Uses**

- (a) Except as set out in subsection 14(c), the Lands shall not be used or Developed and no building permit is required to be issued by the District for any Development on the Lands unless and until:
  - (i) the Director has approved the location of and detailed plans and specifications for any strata lot(s) or Air Space Parcel(s) in the Development to be used for Commercial Purposes and to be counted towards the minimum Floor Area requirement for Commercial Purposes as set out in the Zoning Bylaw (the “**Commercial Parcels**”); and
  - (ii) if required by the Director, a new Covenant, executed by the Owner in form and substance acceptable to the Director must be registered in favour of the District against the Residential/Commercial Parcel stipulating that the buildings to be constructed in, on, over and under the Residential/Commercial Parcel must be subdivided to create the Commercial Parcels, and stipulating that the Commercial Parcels must be used only for Commercial Purposes.
- (b) The total aggregate Floor Area of all Commercial Parcels on the Lands shall not exceed the Floor Area for Commercial Purposes permitted under the Zoning Bylaw.
- (c) Subsection 14(a) does not apply to:
  - (i) demolition of buildings and structures on the Lands existing as of the reference date of this Agreement;
  - (ii) any site preparation work on the Lands including without limitation any site environmental remediation, removal of vegetation, exploratory excavation, the work required for the completion of engineering studies, the deposit thereon of fill and preloading;
  - (iii) any other servicing work approved in writing by the Engineer; or
  - (iv) a building permit for, and the construction of, the Underground Parking Structure on all or part of the Lands.

- 15. The Public Access Easements and Statutory Right of Way** – The Owner covenants and agrees that no Development Parcel may be occupied, and no occupancy permit will be applied for or is required to be issued by the District in respect thereof, unless and until:

- (a) a Covenant, executed by the Owner and the District, in form and substance acceptable to the District is registered in favour of the District against all of the Lands for the replacement, repair, alteration, maintenance, inspection, cleaning and operation in perpetuity of the Public Features Works, once constructed, to District standards for the safe use by the public as set out in 17(c) with a provision requiring the owner of the Accepted Development Parcel, or if an Accepted Development Parcel is subdivided by means of a strata plan, the resulting Strata Corporation formed upon such subdivision of the Accepted Development Parcel, to assume full and sole responsibility for the Owner's maintenance obligations, all in form and content satisfactory to the Director;
- (b) the Director has accepted the Public Features Plans and Specifications in accordance with section 18;
- (c) statutory rights of way under section 218 of the *Land Title Act*, executed by the Owner and the District, in form and substance acceptable to the District are registered in favour of the District against the Lands for:
  - (i) the use of the Public Features Works by the public from time to time in the District's discretion;
  - (ii) the replacement, repair, alteration, maintenance, inspection, cleaning and operation of the Public Features Works by the District in the event that the Owner, or the owner of the Accepted Development Parcel, or the owner of the Strata Corporation formed upon the stratification of the Accepted Development Parcel fail to do so in accordance with the Covenant referred to in subsection 15(a); and
- (d) shared use and maintenance easement(s) (reciprocal or otherwise) are registered against, and for the benefit of, each and every one of the Development Parcels created by any Subdivision of the Lands, in form and substance satisfactory to the Director, setting out appropriate arrangements for the maintenance, repair, replacement, use and operation, in accordance with the Covenant referred to in subsection 15(a), of:
  - (i) all of the Public Features Works; and
  - (ii) any and all public and private utilities to service the Development Parcels, or any one or more of the Development Parcels,

accompanied by a Covenant or Covenants, executed by the Owner and by the District, in form and substance acceptable to the Director, acting reasonably, and fully registered in favour of the District against all of the Development Parcels stipulating, inter alia, that the shared use and maintenance easement(s) are not to be modified or discharged without the prior written consent of the District.

## 16. **Public Access Agreement**

- (a) Except in relation to the matters set out in subsections 16(b)(i) to (iii) herein, the Owner covenants and agrees with the District that:
  - (i) no building or structure shall be built or installed on the Lands; and
  - (ii) the District will not issue any building permit in respect of any building or structure on the Lands,

unless and until the Owner has entered into an agreement (the “**Public Access Agreement**”) to construct and install, at the Owner’s sole cost and expense, all the Public Features Works in accordance with the Public Features Plans and Specifications, and any Development Permit.

- (b) The provisions of section 16(a) will not apply in respect of, and the covenants set forth in this section 16 shall not be contravened by:
  - (i) demolition of buildings and structures on the Lands existing as of the reference date of this Agreement;
  - (ii) any site preparation work on the Lands including without limitation any site environmental remediation, removal of vegetation, exploratory excavation, the work required for the completion of engineering studies, the deposit thereon of fill and preloading; or
  - (iii) any other servicing work approved in writing by the Engineer.
- (c) The Public Access Agreement must be in a form and upon terms and conditions (including, without limitation, terms and conditions relating to the timing of commencement and completion of the work) satisfactory to the Director.
- (d) The Public Features Works must be constructed and installed to standards that are safe for use of the public and are consistent and compatible with the standard of the Proposed Development

generally, as determined by the Director (which may exceed District standards for such works).

- (e) The Owner shall, before the issuance of the first building permit for any Development on the Lands (other than in relation to the matters set out in subsections 16(b)(i) to (iii) herein) and after the Public Access Agreement is executed, post security satisfactory to the Director to secure the construction and installation of the Public Features Works, which Security may consist of an irrevocable or unconditional letter of credit in a form satisfactory to the Director.
- (f) The Public Access Agreement may provide that some of the works and services may be completed on a staged basis as the various stages of the Proposed Development are developed, subject to the District's previous consent.
- (g) This section has no further force and effect after the Public Access Agreement is fully executed and delivered by the Owner and the District, and successfully registered in the Land Title Office. Upon satisfaction of the foregoing condition, the District will at the request of the Owner enter into and deliver to the Owner a modification of this Agreement in a form capable of registration in the applicable Land Title Office confirming that this section is no longer of any force or effect.

17. **Owner's Public Features Works Design Covenants** – The Owner will, at its sole cost and expense:

- (a) cause to be prepared the Public Features Plans and Specifications under the direction of, and to be sealed under the professional seal of, a registered architect, landscape architect and professional engineer retained by the Owner (the "**Owner's Consultants**"), which said Public Features Plans and Specifications must:
  - (i) comply with all requirements set out in this Agreement and in any Development Permit;
  - (ii) meet or exceed any and all applicable laws, bylaws, statutes, regulations, rules, orders, permits, licences, codes, building codes, professional standards and specifications;
  - (iii) be safe for use by the public as determined by the Engineer (in accordance with applicable District standards for such works);
  - (iv) be of a quality and standard that is not less than the quality and standard of the Proposed Development generally;

- (v) be otherwise satisfactory to the Director;
- (b) if required by the Director, cause to be prepared and delivered to the Director reports and professional certifications from the Owner's Consultants with respect to all or any part of the Public Features Works or with respect to any one or more of the requirements set out in section 17(a); and
- (c) deliver to the Director for the Director's acceptance the Public Features Plans and Specifications immediately upon the Owner's receipt of the same from the Owner's Consultants.

**18. Public Features Plans and Specifications**

- (a) The Public Features Plans and Specifications must be prepared by the Owner's Consultants in consultation with the District.
- (b) The Owner will notify the Director of any deviations in the Public Features Plans and Specifications from the criteria and requirements set out in subsection 17(a).
- (c) The Owner's Consultants will make all changes to the draft Public Features Plans and Specifications reasonably required by the Director or the Engineer.
- (d) The District will review the proposed Public Features Plans and Specifications resubmitted by the Owner in a timely manner, and the Director will accept, reject or require further changes to be made to the resubmitted plans and specifications within 30 days of receipt of the resubmitted plans and specifications from the Owner.
- (e) When the Public Features Plans and Specifications are accepted by the District such Public Features Plans and Specifications will become part of this Agreement.
- (f) The District's review and acceptance of the Public Features Plans and Specifications will not relieve the Owner of responsibility for errors or omissions in said plans and specifications (including design errors or inadequacies) or for meeting all requirements for this Agreement unless the Director or the Engineer in writing accepts a deviation from this Agreement.

**19. Engineering Services Agreement**

- (a) Except in relation to the matters set out in subsections 19(b)(i) to (iii) herein, the Owner covenants and agrees with the District that:

- (i) no building or structure shall be built or installed on the Lands;
- (ii) the Lands will not be Subdivided; and
- (iii) the District will not issue any building permit in respect of any building or structure on the Lands,

unless and until the Owner has entered into a servicing agreement with the District to construct and install, at the Owner's sole cost and expense, all works and services as therein required, in the form attached hereto as Schedule "G" (the "**Servicing Agreement**");

- (b) The covenants set forth in this section 19(a) shall not be contravened by:
  - (i) demolition of buildings and structures on the Lands existing as of the reference date of this Agreement;
  - (ii) any site preparation work on the Lands including without limitation any site environmental remediation, removal of vegetation, exploratory excavation, the work required for the completion of engineering studies, the deposit thereon of fill and preloading; or
  - (iii) any other servicing work approved in writing by the Engineer; and
- (c) This section 19 will have no further force and effect after the Servicing Agreement is fully executed and delivered by the Owner and the District. Upon satisfaction of the foregoing condition, the District will at the request of the Owner enter into and deliver to the Owner a modification of this Agreement in a form capable of registration in the applicable Land Title Office confirming that this section 19 is no longer of any force or effect.

## 20. Traffic Management

- (a) Except for:
  - (i) demolition of buildings and structures on the Lands existing as of the reference date of this Agreement;
  - (ii) any site preparation work on the Lands including without limitation any site environmental remediation, removal of vegetation, exploratory excavation, the work required for the

completion of engineering studies, the deposit thereon of fill and preloading; or

- (iii) any other servicing work approved in writing by the Engineer,

no building permit is required to be issued by the District in respect of any improvement on a Development Parcel unless and until the Owner has provided to the Director a traffic management plan that addresses to the Director's satisfaction all traffic issues that will or may arise during the Development of the said Development Parcel (the "**Approved Construction and Traffic Management Plans**");

- (b) The Director may require modifications to Approved Construction and Traffic Management Plans as necessary to address traffic issues and problems that may arise during construction, as determined by the Director, and, for greater certainty, the overriding objectives of the Approved Construction and Traffic Management Plans are to minimize disruption to the neighbourhood and to minimize inconvenience to and impacts on the travelling public, and if the Director is not satisfied that these objectives are being met, then the Director may require any revisions to the Approved Construction and Traffic Management Plans that he or she deems necessary to ensure that the objectives are met, and the Plans as revised must be complied with in accordance with this section and the Servicing Agreement and all bylaws of the District;
- (c) The Owner must strictly comply with all Approved Construction and Traffic Management Plans as modified from time to time by the Director under subsection 20(a); and
- (d) If the Director determines that the Approved Construction and Traffic Management Plans are not being complied with by the Owner or any contractor retained by the Owner or any subcontractor working on the Proposed Development or any suppliers supplying materials to the Proposed Development then the Owner shall make all reasonable efforts to cause compliance with the Approved Construction and Traffic Management Plans, failing which the District may issue and enforce a stop work order as if the Owner had failed to perform work on the Proposed Development in accordance with the requirements of applicable bylaws of the District until the Director is satisfied that the contravention has ceased and steps have been taken to ensure that it will not happen again.

## 21. **Parking Stalls to be Transferred to Marina Parcel**



A Development Parcel shall not be used or Developed and no building permit is required to be issued by the District for any Development on a Development Parcel, unless and until the Owner has:

- (a) provided documentation to the District satisfactory to the Director that exclusive use of the Marina Parking Stalls shall be provided to the Marina Parcel from and after the date of first occupancy of any building in a Development Parcel, whether by way of transferring ownership of an Air Space Parcel containing such Stalls to the Owner of the Marina Parcel or a lease or easement or other agreement in favour of the Owner of the Marina Parcel, or otherwise; and

until the Owner has:

- (b) granted to the District a section 219 of the *Land Title Act* covenant, in a form satisfactory to the District, securing the use of the Marina Parking Stalls on the Development Parcel for the Marina Parcel.

No building or structure on a Development Parcel shall be occupied and the Owner shall not apply for a certificate of occupancy in respect of any building or structure on the Development Parcel unless and until the Owner has fulfilled all of its obligations set out in any Public Access Covenant that is or ought to be registered against the said Development Parcel pursuant to section 15(a).

## **22. Environmental Works**

The Owner covenants with the District to construct and install, at the Owner's sole cost and expense, the Environmental Works.

No building or structure on a Development Parcel shall be occupied and the Owner shall not apply for a certificate of occupancy in respect of any building or structure on the Development Parcel unless and until:

- (a) the Owner has fulfilled its obligation to construct and install all of the Environmental Works; and
- (b) the Owner has fulfilled its obligation to construct and install part of the Environmental Works and the District has waived the Owner's obligation to construct and install any remaining Environmental Works.

## **23. Limitation on Rental Restrictions**

No Residential Building or any part thereof shall be occupied and the Owner shall not apply for a certificate of occupancy in respect of any Residential Building unless and until:

- (a) the Owner has filed a Rental Disclosure Statement with the Superintendent of Real Estate preserving the right to rent all of the Dwelling Units contained in the Residential Buildings for a period of not less than 99 years; and
  - (b) the Owner has entered into a Housing Agreement with the District pursuant to section 483 of the *Local Government Act* ensuring that no restrictions shall be placed on the rental or leasing of the Dwelling Units contained in the Residential Buildings for a period of not less than 99 years.
- 24. **Indemnity** – Except to the extent caused by or contributed to by the negligent act or omission of the District, its elected and appointed officials, officers and employees, the Owner releases, indemnifies and saves harmless the District, its elected and appointed officials, officers, and employees (the “**District Indemnitees**”), from and against all liabilities, claims, actions, suits, damages, losses, costs, debts, fines, penalties, taxes, demands and expenses, including legal fees and disbursements, whether arising from death, bodily injury, property damage, property loss, economic loss or any other loss or damage of any kind whatsoever, suffered or incurred by the District Indemnitees, arising directly or indirectly or in any way related to: (a) the granting or existence of this Agreement; (b) the performance by the Owner of this Agreement; or (c) default by the Owner under or in respect of this Agreement.
- 25. **Cost** - The Owner shall, at its own cost and expense except where otherwise expressly provided, comply with, observe and perform all of the Owner’s requirements under this Agreement.
- 26. **Progressive Discharge of this Agreement** - The District agrees that the Owner is entitled to give notice to the District requiring the District to execute and deliver to the Owner a discharge, in registrable form, of this Agreement from title to any Development Parcel if:
  - (a) occupancy permit(s) have been issued in respect of all the buildings on the Development Parcel;
  - (b) the District determines, acting reasonably, as of the date on which the Owner gives notice to the District under this section that, in respect of such Development Parcel described in that notice, all material requirements of this Agreement relevant to such Development Parcel have been performed, except any of an on-going nature, and that there is otherwise no breach or default under this Agreement;
  - (c) the Owner is not then in default in the performance of any of their obligations under this Agreement; and

- (d) a new replacement Covenant is registered in favour of the District against the title to such Development Parcel, which replacement covenant must be in the form and content substantially as set out in Schedule “E” hereto (the “**Replacement Covenant**”).

Notwithstanding the foregoing, if this Agreement is not automatically discharged from title to the remainder of the Lands or the remainder of any Development Parcel upon its creation, then the District will execute and deliver to the Owner a discharge, in registrable form, of this Agreement from title to the remainder of the Lands or the remainder of any Development Parcel. The Owner is responsible for preparation of discharges under this section and for costs of registration.

- 27. **District’s Expenses** – The Developer shall pay the costs and expenses incurred and payments and expenditures made by the District, including without limitation, all survey, advertising, legal fees and disbursements (including the costs of in-house legal time and external actual legal costs) in connection with:

- (a) the negotiation and preparation of this Agreement;
- (b) the negotiation and preparation of the Servicing Agreement and the Public Access Agreement, and any amendments thereto;
- (c) any Subdivision of the Lands and meeting any conditions of the Subdivision imposed by the Approving Officer;
- (d) the preparation, approval and modification, if any, of the Development Master Plan; and
- (e) the negotiation and preparation of all other covenants, agreements and statutory rights of way granted by the Owner to the District or entered into between the Owner and the District in respect of the Proposed Development contemplated in this Agreement and ancillary documents and any modifications of them from time to time.

The District may render an invoice for its costs and expenses at any time and the Developer will remit amounts owing to the District pursuant to this section 27 upon receipt of the invoice for same from the District. The covenant in this section 27 will survive the expiry or early termination of this Agreement.

- 28. **Priority** – This Agreement and all covenants, easements and statutory rights of way required to be registered against the Lands or on any portion thereof must be registered in priority to all financial charges and encumbrances and in priority to all leases, options to purchase and rights of first refusal.

- 29. **Plans** – Where a Covenant, right of way or other document required by this Agreement requires a survey or other plan, the Owner shall be solely

responsible, at its own cost, for preparation of the document, including the survey and the plan, and for all costs of registration of such documents.

30. **No Liability in Tort** - The parties agree that this Agreement creates only contractual obligations and obligations arising out of the nature of this document as a covenant under seal. The intent of this section is to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract and under the law pertaining to covenants under seal.
31. **Bylaw to the Contrary** - This Agreement shall restrict use of the Lands in the manner provided herein notwithstanding any right or permission to the contrary contained in any bylaw of the District.
32. **No Public Law Duty** - Where the District is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner and the Developer agree that subject to section 53(l) and provided that the District acts in good faith, then the District is under no public law duty of fairness or natural justice in that regard and agrees that the District may do any of those things in the same manner as if it were a private party and not a public body.
33. **No Waiver** - No provision or breach of this Agreement, or any default, is to be considered to have been waived or acquiesced in by a party unless the waiver is express and is in writing by the party. The waiver by a party of any breach by the other party of any provision, or default, is not to be construed as or constituted a waiver of any further or other breach of the same or any other provision or default.
34. **Rights are Cumulative** – All rights and remedies of a party under or in respect of this Agreement (including its breach) are cumulative and are in addition to, and do not exclude, or limit any other right or remedy. All rights and remedies may be exercised concurrently.
35. **Third Party Beneficiaries** – This Agreement is not to be interpreted to create rights in, or to grant remedies to, any Strata Corporations formed upon the stratification of any of the Development Parcels, the owners or lessees from time to time of either all or any part of the Development Parcels, or any other third party.
36. **Rights are Permissive Only** - The rights given to the District by this Agreement are permissive only and nothing in this Agreement imposes any legal duty of any kind on the District to the Owner, the Developer, any Strata Corporations formed upon the stratification of any of the Development Parcels, the owners or lessees from time to time of either all or any part of the Development Parcels, or anyone else, and nothing in this Agreement obliges the District to enforce this

Agreement, to perform any act or to incur any expense in respect of this Agreement.

37. **No Effect on Laws or Powers** – Except as expressly provided for in this Agreement and except in respect of those matters which the giving of effect to this Section would abrogate applicable statutory duties, this Agreement and the Owner's and the Developer's contributions, obligations and agreements set out in this Agreement do not:
- (a) affect or limit the discretion, rights, duties or powers of the District or the Approving Officer under any enactment or at common law, including in relation to the use, development, servicing or Subdivision of the Lands;
  - (b) impose on the District or the Approving Officer any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;
  - (c) affect or limit any enactment relating to the use, development or Subdivision of the Lands; or
  - (d) relieve the Owner or the Developer from complying with any enactment, including in relation to the use, development or Subdivision of the Lands, and without limitation shall not confer directly or indirectly any exemption or right of set-off from development cost charges, connection charges, application fees, user fees or other rates, levies and charges payable under any bylaw of the District.
38. **Agreement's Relevance to Subdivision Approval** – The Owner agrees that the Approving Officer is, with respect to any preliminary or final application for Subdivision approval under any enactment, entitled (but not required) to consider whether the Subdivision complies with the applicable requirements under this Agreement or whether the requirements of this Agreement have been complied with. Nothing in this Agreement commits the Approving Officer to approve any Subdivision Plan.
39. **Remedies for Breach** – The Owner agrees that, without affecting any other rights or remedies the District may have in respect of any breach of this Agreement, the District is entitled, in light of the public interest in securing strict performance of this Agreement, to seek and obtain from the British Columbia Supreme Court a mandatory or prohibitory injunction, or order for specific performance, in respect of the breach.

40. **Binding Effect** – This Agreement enures to the benefit of and is binding upon the parties and their respective heirs, executors, administrators, trustees, receivers and successors (including successors in title).
41. **Covenant Runs With the Lands** – Every provision of this Agreement and every obligation and covenant of the Owner in this Agreement, is a covenant granted by the Owner to the District in accordance with section 219 of the *Land Title Act*, and this Agreement burdens the Lands to the extent provided in this Agreement, and runs with it and binds the Owner's successors in title. This Agreement also burdens and runs with every parcel into which the Lands are or may be consolidated (including by the removal of interior parcel boundaries) or Subdivided by any means, including by subdivision under the *Land Title Act* or by strata plan or bare land strata plan under the *Strata Property Act*.
42. **Voluntary Agreement** – The Owner and the Developer acknowledge that the Owner and the Developer have entered into this Agreement voluntarily and have received legal advice with regard to the entry of this Agreement and the Proposed Development.
43. **Limitation on Owner's Obligations** – The Owner is only liable for breaches of this Agreement in respect of any part of the Lands that occur while the Owner is the registered Owner of such part of the Lands.
44. **Further Acts** – The Owner and the Developer must do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.
45. **Joint Obligations of Owner** – If two or more persons should ever comprise the Owner, the liability of each such person to observe and perform all of the Owner's obligations pursuant to this Agreement will be deemed to be joint and several.
46. **Severance** – If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
47. **No Joint Venture** - Nothing in this Agreement shall constitute the Owner or the Developer as the agent, joint venturer or partner of the District or give the Owner or the Developer any authority or power to bind the District in any way.
48. **Notice** – All notices and other communications required or permitted to be given under this Agreement must be in writing and must be sent by registered mail or delivered by hand or facsimile transmission to the following addresses:

(a) if to the Owner, as follows:

Sewell's Limited  
6409 Bay Street  
West Vancouver, B.C. V7W 3H5

with a copy to:

Koffman Kalef LLP  
19<sup>th</sup> Floor, 885 West Georgia Street  
Vancouver, B.C. V6C 3H4  
Attention: Patrick J. Julian

- (b) if to the Developer, as follows:

c/o HB Nelson Limited Partnership  
501 – 1067 West Cordova Street  
Vancouver, B.C. V6C 1C7  
Attention: Development Manager

with a copy to :

Kornfeld LLP  
1100 One Bentall Centre  
505 Burrard Street  
Vancouver, B.C. V7X 1M5

Attention: E. Neil Kornfeld, Q.C.

- (c) if to the District, as follows:

The Corporation of the District of West Vancouver  
750 – 17<sup>th</sup> Street  
West Vancouver, B.C. V7B 3T3

Attention: Director of Planning and Development  
Services  
Facsimile: 604-925-6083

- (d) if to the Covenantor, as follows:

Westbank Projects Corp.  
501 – 1067 West Cordova Street  
Vancouver, B.C. V6C 1C7

Attention: Development Manager

with a copy to :

Kornfeld LLP  
1100 One Bentall Centre  
505 Burrard Street  
Vancouver, B.C. V7X 1M5

Attention: Neil Kornfeld  
Fax: (604) 683-0570

Any notice or other communication that is delivered by hand or via facsimile is considered to have been given on the next business day after it is dispatched for delivery. Any notice or other communication that is sent by registered mail is considered to have been given five days after the day on which it is mailed at a Canada Post office. If there is an existing or threatened strike or labour disruption that has caused, or may cause, an interruption in the mail, any notice or other communication must be delivered until ordinary mail services is restored or assured. If a party changes its address it must immediately give notice of its new address to the other party as provided in this section.

49. **Acknowledgement of Developer Obligations** -- The District acknowledges and agrees that Sewell's Limited is executing this Agreement as the current registered owner of the Lands, but pursuant to the Purchase Agreement, Sewell's Limited and HB Nelson Limited Partnership intend for HB Nelson Limited Partnership to acquire a portion of the Lands and to undertake the Proposed Development on the Lands, and accordingly, notwithstanding that Sewell's Limited is a party to this Agreement, HB Nelson Limited Partnership will be undertaking, at HB Nelson Limited Partnership's sole cost and expense, all of the covenants and obligations to the District set forth in this Agreement with respect to the Proposed Development, on its behalf and on behalf of Sewell's Limited. The District further acknowledges that HB Nelson Limited Partnership may be a party to any or all of the further agreements contemplated herein to satisfy the conditions and obligations of the Owner under this Agreement.
50. The Developer hereby covenants and agrees with the Owner that, except as provided for in any other agreement between the Owner and either or both the Developer and the Covenantor:
- (a) the Owner has no obligation to undertake, and is not responsible or liable for the costs or expense of, any obligations or covenants to the District set forth in this Agreement with respect to the Proposed



Development and the Developer will be solely responsible, at the Developer's sole cost and expense, for all such covenants and obligations to the District set forth in this Agreement with respect to the Proposed Development; and

- (b) the Developer hereby releases the Owner, and indemnifies and saves harmless and agrees to reimburse the Owner, from and against all liabilities, claims, actions, suits, damages, losses, costs, debts, fines, penalties, demands and expenses, including legal fees and disbursements, which may arise or accrue to the District or any other person, firm or corporation against the Owner or which the Owner may pay, incur, sustain or be put to by reason of any breach, default or failure of the Developer to comply with any of the covenants and obligations to the District set forth in this Agreement with respect to the Proposed Development.

- 51. The releases and indemnities set forth in this Section shall survive the expiration, termination or discharge of this Agreement, but shall be subject to the provision of any other written agreement between the Owner and the Developer and/or the Covenantor.
- 52. The Covenantor hereby unconditionally and irrevocably guarantees to the District the due and punctual performance of the Developer's covenants hereunder.
- 53. **Interpretation** – In this Agreement:
  - (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
  - (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
  - (c) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
  - (d) reference to the "Lands" or to any other parcel of land is a reference also to any parcel into which it is Subdivided or consolidated by any means (including the removal of interior parcel boundaries) and to each parcel created by any such Subdivision or consolidations;
  - (e) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;

- (f) reference to any enactment includes any regulations, orders, permits or directives made or issued under the authority of that enactment;
- (g) unless otherwise expressly provided, reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced;
- (h) time is of the essence;
- (i) reference to a “party” is a reference to a party to this Agreement and to their respective heirs, executors, successors (including successors in title), trustees, administrators and receivers;
- (j) reference to a “day”, “month”, “quarter” or “year” is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided; and
- (k) where the word “including” is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word “including”; and
- (l) any act, approval, decision, determination, consideration, opinion, consent or exercise of discretion by a party or person as provided in this Agreement must be performed, made, formed or exercised acting reasonably and in an expeditious manner, except that any act, decision, determination, consideration, consent, opinion or exercise of discretion that is said to be within the “sole discretion” of a party or person may be performed, made, formed or exercised by that party or person in the sole, unfettered and absolute discretion of that party or person exercised reasonably.

54. **Deed and Contract** – By executing and delivering this Agreement each of the parties intends to create both a contract and a deed of covenant executed and delivered.

As evidence of their agreement to be bound by the above terms, the Owner and the District have each executed and delivered this Agreement under seal by executing Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement, and the Developer and the Covenantor has hereto set their hands and seals below, as of the day and year first above written.

**THE CORPORATION OF THE DISTRICT** )  
**OF WEST VANCOUVER** )  
by its authorized signatories )  
 )  
\_\_\_\_\_) )  
Mayor )  
 )  
\_\_\_\_\_) )  
Municipal Clerk )

**SEWELL'S LIMITED** )  
by its authorized signatory )  
 )  
\_\_\_\_\_) )  
Name: )  
 )

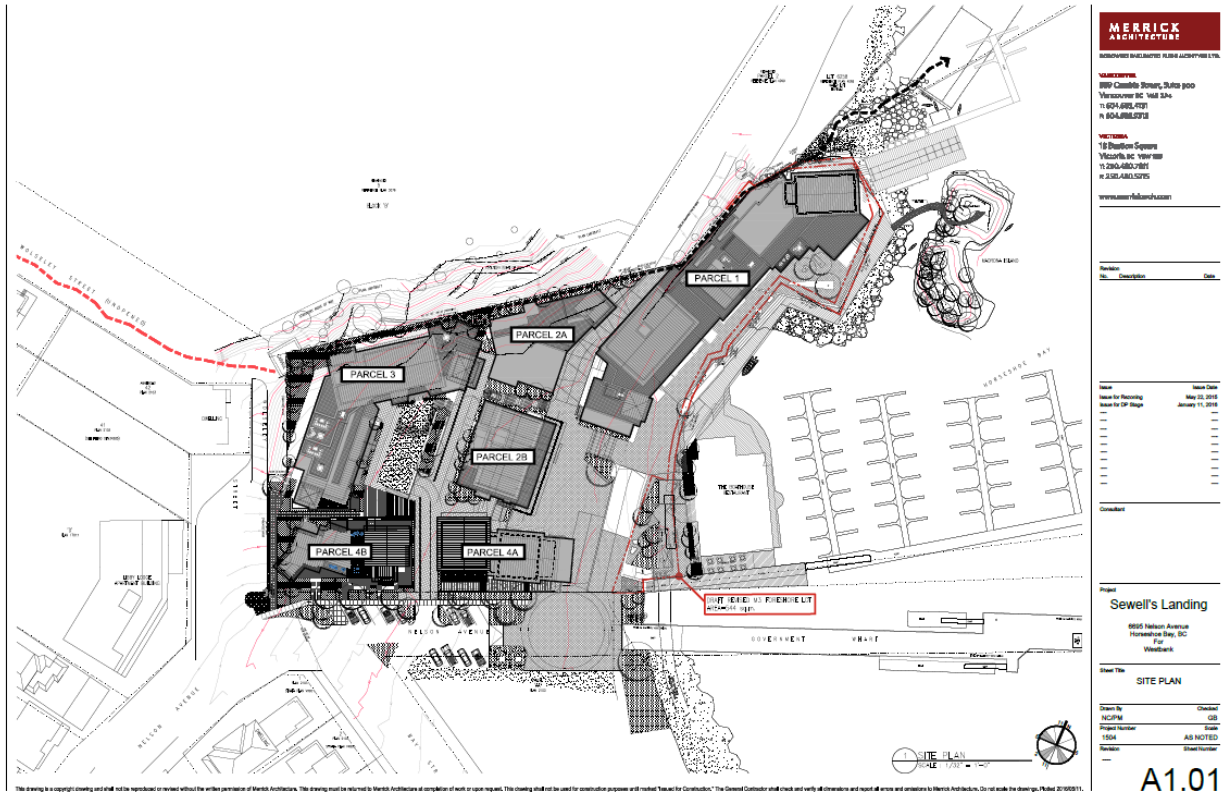
**HB NELSON LIMITED PARTNERSHIP** )  
by its authorized signatory )  
 )  
\_\_\_\_\_) )  
Name: )  
 )

**WESTBANK PROJECTS CORP.** )  
by its authorized signatory )  
 )  
\_\_\_\_\_) )  
Name: )  
 )

**Schedule “A” to Development Covenant**  
Legal Description of Lands

- (i) PID: 024-591-149  
Parcel C District Lots 430 and 3840 Group 1 New Westminster District Plan  
LMP43225; and
- (ii) PID: 014-051-061  
Block 30 District Lot 430 Plan 2130.

## Schedule "B" to Development Covenant Development Master Plan

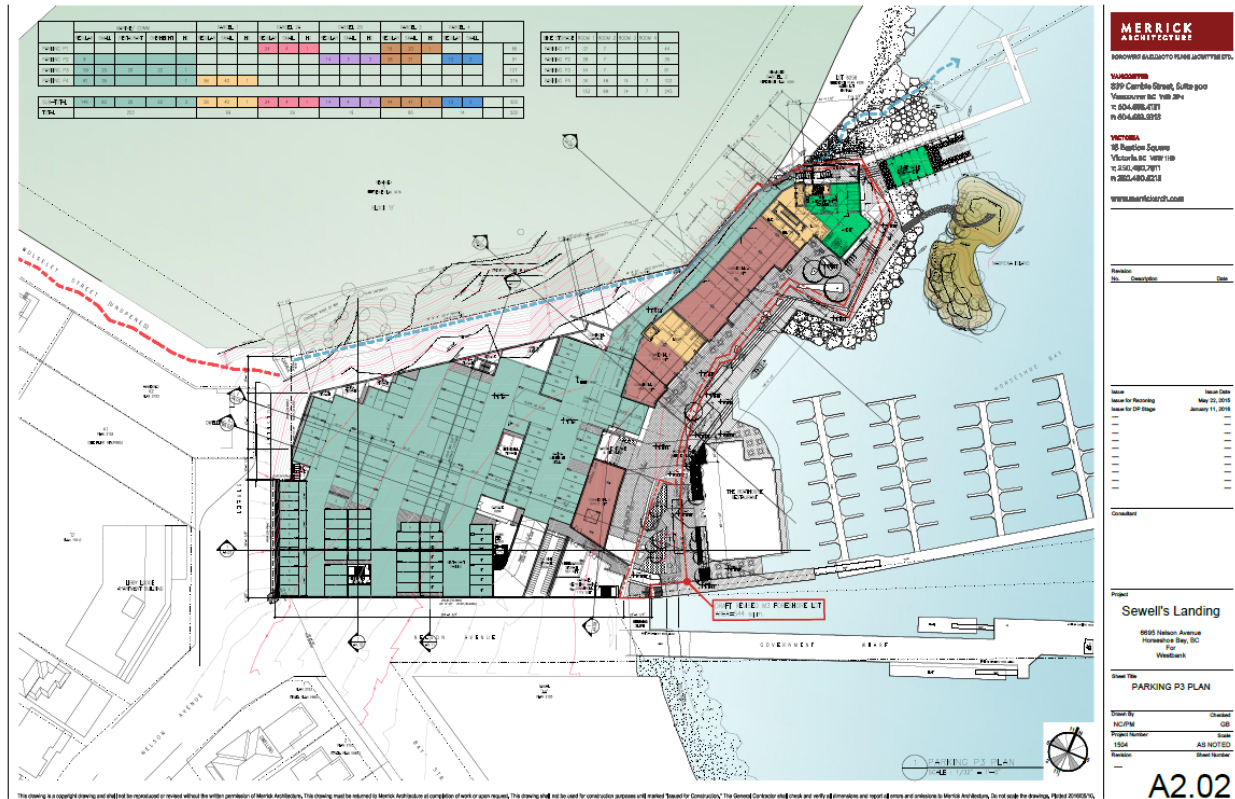


A1.01

## Schedule "C" to Development Covenant Public Plazas and Pedestrian Ways



## Schedule "D" to Development Covenant Consolidation/Subdivision Plan



**Schedule “E” to Development Covenant  
Replacement Covenant**

**SECTION 219 REPLACEMENT COVENANT**

THIS AGREEMENT dated for reference the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_

BETWEEN:



(the “**Owner**”)

AND:

**THE CORPORATION OF THE DISTRICT OF WEST  
VANCOUVER**, having its office at 750 – 17<sup>th</sup> Street, West  
Vancouver, BC, V7V 3T3

(the “**District**”)

WHEREAS:

- A. The Owner is the registered owner in fee simple of lands in the District of West Vancouver, British Columbia legally described in Item 2 of the Form C General Instrument Part 1 to which this Agreement is attached and which forms part of this Agreement (the “**Development Parcel**”);
- B. On \_\_\_\_\_, 2016 the elected council of the District adopted Bylaw No. 4898, 2016 amending the District of West Vancouver Zoning Bylaw No. 4662, 2010 to facilitate a large mixed-use development, which development included the development on the Development Parcel;
- C. To ensure that the rezoning was in the public interest and to secure the Owner’s obligation to, among other things, develop the Development Parcel only in accordance with the Development Master Plan, as defined herein, the Owner granted a section 219 Covenant to the District (the “**Previous Covenant**”). The Previous Covenant was registered against the Development Parcel on \_\_\_\_\_, 2016 in favour of the District under number \_\_\_\_\_;



- D. The granting to the District of the section 219 covenants contained in this Agreement is a precondition to the discharge, as against the Development Parcel, of the Previous Covenant; and
- E. The Owner has agreed to grant and the District has agreed to accept the Section 219 Covenant contained in this Agreement over the Development Parcel.

NOW THEREFORE in consideration of the sum of \$10.00 now paid by the District to the Owner and other good and valuable consideration, the receipt and sufficiency of which the Owner hereby acknowledges, the parties covenant and agree pursuant to Section 219 of the *Land Title Act* (British Columbia) as follows:

1. **Definitions** – In this Agreement:

- (a) **Approving Officer** means the approving officer for the District appointed under the *Land Title Act*;
- (b) **Council** means the Council of the District of West Vancouver;
- (c) **Develop** or **Developed** means any one or more of construct on, build on, improve or alter;
- (d) **Development Master Plan** has the meaning given to it in the Previous Covenant;
- (e) **Development Parcel** has the meaning given to it in Recital A;
- (f) **Development Permit** means the permit issued by the District, as amended from time to time, permitting the Development of the Development Parcel and construction thereon, in accordance with the Development Master Plan;
- (g) **Director** means the District's Director of Planning and Development Services and his or her designate;
- (h) **Dwelling Unit** means a dwelling unit as defined in the Zoning Bylaw;
- (i) **Floor Area** means floor area as that term is defined in the Zoning Bylaw;
- (i) **LTO** means the Lower Mainland Land Title Office and any successor of that office;
- (j)

- (k) **Owner** means the person or persons registered in the LTO as owner of the Development Parcel, whether entitled to it in that person's own right or in a representative capacity or otherwise;
  - (l) **Register** means to register something, including a charge, in the LTO under the *Land Title Act* or any other applicable enactment;
  - (m) **Proposed Development** means the entire Proposed Development as contemplated in the Development Master Plan;
  - (n) **Strata Corporation** means the strata corporation formed upon the stratification of the Development Parcel;
  - (o) **Subdivide** or **Subdivided** means the division of land into two or more parcels (including Development Parcels) by any means, including by deposit of a subdivision, reference or other plan under the *Land Title Act*, lease, fractional interest, or deposit of a strata plan or bare land strata plan under the *Strata Property Act* (including deposit of any phase of a phased bare land strata plan), and **Subdivision** has the corresponding meaning; and
  - (p) **Zoning Bylaw** means the District of West Vancouver "Zoning Bylaw No. 4662, 2010" as modified by "Zoning Bylaw Amendment Bylaw No. 4898, 2016" and as further amended, consolidated, re-enacted or replaced from time to time.
2. **Covenants Regarding Use and Development** - Except in accordance with this Agreement:
- (a) the Development Parcel must not be used, Developed or Subdivided; and
  - (b) no Development Permit, building permit or occupancy permit may be applied for, or is required to be issued by the District, in respect of any improvement on the Development Parcel.
3. **Development Master Plan**— The Owner agrees that that the Development Parcel must be used and Developed in compliance with the Development Master Plan, as may be modified from time to time in accordance with section 8 herein.
4. **Maximum Residential Gross Floor Area** – The maximum Floor Area for residential uses on the Development Parcel is 22,809 square meters.
5. **Maximum Non-Residential Gross Floor Area** – The maximum Floor Area for commercial uses on the Development Parcel is 1,273 square meters.

6. **Maximum Number of Dwelling Units** – The maximum number of Dwelling Units permitted on the Development Parcel is 159.
7. **Subdivision Restriction** – The Development Parcel may be further subdivided by either or both deposit of air space subdivision plans under Part 9 of the British Columbia *Land Title Act* and strata plans under the *Strata Property Act*, but may not otherwise be Subdivided by any means. Bare land strata plans are not permitted.
8. **Development Master Plan Modification Procedure** – The Owner acknowledges that all material modifications to the Development Master Plan must be approved in writing by the Council of the District in its sole and unfettered discretion and must:
  - (a) comply with the Zoning Bylaw; and
  - (b) not alter the maximum residential Floor Area, maximum non-residential Floor Area, minimum Floor Area for Commercial Purposes and, except as permitted by Council maximum number of Dwelling Units on the Development Parcel as set out in sections 4 to 6 herein.

The Director in his or her discretion acting reasonably shall determine whether or not a proposed modification is a material modification requiring consent of Council.
9. **Indemnity** – Except to the extent caused by or contributed to by the act or omission of the District or those for whom the District is responsible in law, the Owner releases and must indemnify and save harmless the District, its elected and appointed officials and employees, from and against all liabilities, claims, actions, suits, damages, losses, costs, debts, fines, penalties, taxes, demands and expenses, including legal fees and disbursements, whether arising from death, bodily injury, property damage, property loss, economic loss or any other loss or damage of any kind whatsoever, suffered or incurred by the District, or anyone else, arising directly or indirectly from the granting of this Agreement, from the performance by the Owner of this Agreement, or any breach or default by the Owner under or in respect of this Agreement.
10. **Cost** - The Owner shall comply with all requirements of this Agreement at its own cost and expense.
11. **Plans** – Where a covenant, right of way or other document required by this Agreement requires a survey or other plan, the Owner shall be solely responsible, at its own cost, for preparation of the document, including the survey and the plan, and for all costs of registration of such documents.

12. **No Liability in Tort** - The parties agree that this Agreement creates only contractual obligations and obligations arising out of the nature of this document as a covenant under seal. The parties agree that no tort obligations or liabilities of any kind exist between the parties in connection with the performance of, or any default under or in respect of, this Agreement. The intent of this section is to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract and under the law pertaining to covenants under seal.
13. **Bylaw to the Contrary** - This Agreement shall restrict use of the Development Parcel in the manner provided herein notwithstanding any right or permission to the contrary contained in any bylaw of the District.
14. **No Public Law Duty** - Where the District is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that subject to section 15 and provided that the District acts in good faith, the District is under no public law duty of fairness or natural justice in that regard and agrees that the District may do any of those things in the same manner as if it were a private party and not a public body.
15. **Exercise of Discretion** - Any act, approval, decision, determination, consideration, opinion, consent or exercise of discretion by a party or person as provided in this Agreement must be performed, made, formed or exercised acting reasonably and in an expeditious manner, except that any act, decision, determination, consideration, consent, opinion or exercise of discretion that is said to be within the "sole discretion" of a party or person may be performed, made, formed or exercised by that party or person in the sole, unfettered and absolute discretion of that party or person.
16. **No Waiver**- No provision or breach of this Agreement, or any default, is to be considered to have been waived or acquiesced in by a party unless the waiver is express and is in writing by the party. The waiver by a party of any breach by the other party of any provision, or default, is not to be construed as or constituted a waiver of any further or other breach of the same or any other provision or default.
17. **Rights are Cumulative** – All rights and remedies of a party under or in respect of this Agreement (including its breach) are cumulative and are in addition to, and do not exclude, or limit any other right or remedy. All rights and remedies may be exercised concurrently.

18. **Third Party Beneficiaries** – This Agreement is not to be interpreted to create rights in, or to grant remedies to, any strata corporation formed upon the stratification of the Development Parcel or any third party.
19. **Rights are Permissive Only** - Except as expressly provided for in this agreement and except in respect of such matters which would abrogate applicable statutory duties, the rights given to the District by this Agreement are permissive only and nothing in this Agreement imposes any duty of any kind on the District to the Owner, any strata corporation formed upon the stratification of the Development Parcel, or to anyone else, and nothing in this Agreement obliges the District to enforce this Agreement, to perform any act or to incur any expense in respect of this Agreement.
20. **No Effect on Laws or Powers** – This Agreement and the Owner's contributions, obligations and agreements set out in this Agreement do not:
  - (a) affect or limit the discretion, rights, duties or powers of the District or the Approving Officer under any enactment or at common law, including in relation to the use, development, servicing or Subdivision of the Development Parcel;
  - (b) impose on the District or the Approving Officer any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;
  - (c) affect or limit any enactment relating to the use, development or Subdivision of the Development Parcel; or
  - (d) relieve the Owner from complying with any enactment, including in relation to the use, development or Subdivision of the Development Parcel, and without limitation shall not confer directly or indirectly any exemption or right of set-off from development cost charges, connection charges, application fees, user fees or other rates, levies and charges payable under any bylaw of the District,and the Owner covenants and agrees to comply with all such enactments with respect to the Development Parcel.
21. **Agreement's Relevance to Subdivision Approval** – The Owner agrees that the Approving Officer is, with respect to any preliminary or final application for Subdivision approval under any enactment, entitled (but not required) to consider whether the Subdivision complies with the applicable requirements under this Agreement or whether the requirements of this Agreement generally have been complied with .

22. **Remedies for Breach** – The Owner agrees that, without affecting any other rights or remedies the District may have in respect of any breach of this Agreement, the District is entitled, in addition to any rights and remedies it may have and in light of the public interest in securing strict performance of this Agreement, to seek and obtain from the British Columbia Supreme Court a mandatory or prohibitory injunction, or order for specific performance, in respect of the breach.
23. **Binding Effect** – This Agreement enures to the benefit of and is binding upon the parties and their respective heirs, executors, administrators, trustees, receivers and successors (including successors in title).
24. **Covenant Runs With the Land** – Every provision of this Agreement and every obligation and covenant of the Owner in this Agreement, constitutes a deed and a contractual obligation, and also a covenant granted by the Owner to the District in accordance with section 219 of the *Land Title Act*, and this Agreement burdens the Development Parcel to the extent provided in this Agreement, and runs with it and binds the Owner's successors in title. This Agreement also burdens and runs with every parcel into which the Development Parcel is consolidated (including by the removal of interior parcel boundaries) or Subdivided by any means, including by subdivision under the *Land Title Act* or by strata plan or bare land strata plan under the *Strata Property Act*.
25. **Voluntary Agreement** – The Owner acknowledges that the Owner has entered into this Agreement voluntarily and has taken legal advice with regard to the entry of this Agreement and the development of the Development Parcel.
26. **Limitation on Owner's Obligations** – The Owner is only liable for breaches of this Agreement in respect of any part of the Development Parcel that occur while the Owner is the registered Owner of such part of the Development Parcel.
27. **Further Acts** – The Owner must do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.
28. **Joint Obligations of Owner** – If two or more persons execute this Agreement as Owner, the liability of each such person to observe and perform all of the Owner's obligations pursuant to this Agreement will be deemed to be joint and several.
29. **Severance** – If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.

30. **No Joint Venture** - Nothing in this Agreement shall constitute the Owner as the agent, joint venturer or partner of the District or give the Owner any authority or power to bind the District in any way.
31. **Amendment** – This Agreement may be amended from time to time by agreement between the Owner and the District. Except as otherwise expressly provided in this Agreement, the amendment agreement must be by an instrument in writing duly executed by the Owner and the District.
32. **Notice** – All notices and other communications required or permitted to be given under this Agreement must be in writing and must be sent by registered mail or delivered as follows:

(a) if to the Owner, as follows:



(b) with a copy to :



(c) if to the District, as follows:

The Corporation of the District of West  
750 – 17th Street  
West Vancouver, B.C. V7B 3T3

Attention: Director of Planning and Development Services  
Facsimile: 604-925-6083

Any notice or other communication that is delivered is considered to have been given on the next business day after it is dispatched for delivery. Any notice or other communication that is sent by registered mail is considered to have been given five days after the day on which it is mailed at a Canada Post office. If there is an existing or threatened strike or labour disruption that has caused, or may cause, an interruption in the mail, any notice or other communication must be delivered until ordinary mail services is restored or assured. If a party changes its address it must immediately give notice of its new address to the other party as provided in this section.

33. **Interpretation** – In this Agreement:
- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;

- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (c) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
- (d) reference to the “**Development Parcel**” or to any other parcel of land is a reference also to any parcel into which it is Subdivided or consolidated by any means (including the removal of interior parcel boundaries) and to each parcel created by any such Subdivision or consolidations;
- (e) any word or expression that is not defined in this Agreement has, unless the context requires otherwise, the meaning given to that word or expression, as the case may be:
  - (i) in the *Land Title Act* or the *Strata Property Act*, or the regulations under either, on the reference date of this Agreement; or
  - (ii) in the Zoning Bylaw;
- (f) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (g) reference to any enactment includes any regulations, orders, permits or directives made or issued under the authority of that enactment;
- (h) unless otherwise expressly provided, reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced;
- (i) the provisions of section 25 of the *Interpretation Act* with respect to the calculation of time apply;
- (j) time is of the essence;
- (k) reference to a “**party**” is a reference to a party to this Agreement and to their respective heirs, executors, successors (including successors in title), trustees, administrators and receivers;
- (l) reference to the District is a reference also to its elected and appointed officials, officers, employees and agents;



- (m) reference to a “**day**”, “**month**”, “**quarter**” or “**year**” is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided;
- (n) where the word “**including**” is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word “**including**”; and

any act, decision, determination, consideration, opinion, consent or exercise of discretion by a party or person as provided in this Agreement must be performed, made, formed or exercised acting reasonably, except that any act, decision, determination, consideration, consent, opinion or exercise of discretion that is said to be within the “**sole discretion**” of a party or person may be performed, made, formed or exercised by that party or person in the sole, unfettered and absolute discretion of that party or person acting reasonably.

34. **Deed and Contract** – By executing and delivering this Agreement each of the parties intends to create both a new contract and a deed of covenant executed and delivered under seal.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement under seal by executing Part I of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

## **Schedule “F” to Development Covenant Environmental Works**

### **Sustainable Design Building Features**

1. Installation of an Ocean loop to utilize ocean water for the majority of heating and cooling demand of the development
2. Installation of electric vehicle charging capacity in both the residential and commercial parkades
3. Onsite cistern to capture storm water runoff that can be used for irrigation
4. The planting of native and drought tolerant plant species
5. Installation of both private and public bike facilities to encourage cycling as a method of transportation
6. Local recycling of onsite rock material as well as waste diversion throughout the construction process
7. The use of ocean barges for delivery, thereby reducing carbon emissions used for transport of construction materials
8. A well-insulated envelope to reduce solar gain and losses in line with the following values:
  - U Value Windows = 0.33
  - R Value for Insulated spandrel = 12
  - Window to wall ratio = 60/40

**Schedule “G”  
Engineering Servicing Agreement**

END OF DOCUMENT