

AGENDA

PUBLIC HEARING

Tuesday, October 7, 2014

7:00 p.m.

Council Chamber, Municipal Hall

355 West Queens Road,

North Vancouver, BC

Council Members:

Mayor Richard Walton

Councillor Roger Bassam

Councillor Robin Hicks

Councillor Mike Little

Councillor Doug MacKay-Dunn

Councillor Lisa Muri

Councillor Alan Nixon



NORTH VANCOUVER
DISTRICT

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PUBLIC HEARING

7:00 p.m.
Tuesday, October 7, 2014
Municipal Hall, Council Chambers
355 West Queens Road, North Vancouver

1. **OPENING BY THE MAYOR**
2. **INTRODUCTION OF BYLAWS BY CLERK**

**The District of North Vancouver Rezoning Bylaw 1307 (Bylaw 8041)
Phased Development Agreement Bylaw 8042, 2014**

Purpose of Bylaws:

These bylaws propose to allow for a development at 2035 Fullerton Avenue consisting of 451 residential units, a small amount of at grade commercial, a mini storage business, a public community centre and a public plaza and village green.

This will be accomplished through Bylaw 8041 creating Comprehensive Development Zone 79 and Bylaw 8042 which authorizes a phased development agreement. This phased development agreement is with 332391 BC Ltd. and is for a period of 10 years, the build-out period for the development, during which time certain provisions of Bylaw 8041 may not be amended or repealed.

3. **PRESENTATION BY STAFF**

Presentation: Tamsin Guppy, Community Planner
4. **PRESENTATION BY APPLICANT**

Presentation: Art Phillips, LARCO
5. **REPRESENTATIONS FROM THE PUBLIC**
6. **QUESTIONS FROM COUNCIL**
7. **COUNCIL RESOLUTION**

Recommendation:

THAT the October 7, 2014 Public Hearing be closed;

AND THAT "The District of North Vancouver Rezoning Bylaw 1307 (Bylaw 8041)" be returned to Council for further consideration;

AND THAT "Phased Development Agreement Bylaw 8042, 2014" be returned to Council for further consideration.

8. CLOSING

The Corporation of the District of North Vancouver

Bylaw 8041

A bylaw to amend the District of North Vancouver Zoning Bylaw 3210, 1965

The Council for The Corporation of the District of North Vancouver enacts as follows:

1. Citation

This bylaw may be cited as “District of North Vancouver Rezoning Bylaw 1307 (Bylaw 8041)”.

2. Amendments

The following amendments are made to the “District of North Vancouver Zoning Bylaw 3210, 1965”:

- (a) Part 2A, Definitions is amended as follows:

Definitions Applicable to the Employment Zones, Village Commercial Zones, Comprehensive Development Zones 65, 67, 68, 69, and 79.

The following definitions apply in the Employment Zones [Sections 750 (EZ-I), 770 (EZ-LI)], Village Commercial Zones [Sections 600-A (VC-G), 600-B (VC-DC)], and Comprehensive Development Zones 65, 67, 68, 69, and 79 [Sections 4B370 to 4B385 (CD 65), 4B402 to 4B410 (CD 67), 4B411 to 4B418 (CD 68), 4B420 to 4B435 (CD 69), and 4B 79 – 1 to 4B 79 – 10 (CD 79)] only:

- (b) Part 2A, Definitions is amended by adding in the following definition in alphabetic order:

“mini-storage use” means the use of land, buildings and structures for a business that provides individually controlled storage compartments primarily for the storage of personal articles. This use class does not include “warehouse use” and is not intended for the storage of merchandise or vehicles.

- (c) Part 2A, Definitions is amended as follows:

The following terms referred to in the Employment Zones and Village Commercial Zones have the meanings given to them in Part 2 of this Bylaw:

And replace with:

The following terms referred to in the Zones to which the forgoing definitions apply, have the meanings given to them in Part 2 of this Bylaw:

- (d) Section 301 (2) by inserting the following zoning designation:
“Comprehensive Development Zone 79 CD 79”
- (e) Part 4B Comprehensive Development Zone Regulations by inserting the following, inclusive of Schedule B:

4B79 Comprehensive Development Zone 79 CD 79

The CD 79 zone is applied to:

Lot H, Block 15, District Lot 764, Explanatory Plan LMP 11271,
PID: 018 -349-269

4B 79 – 1 Intent

The purpose of the CD 79 Zone is to permit a commercial and residential medium density mixed use development which also includes a community centre, public plaza and park space.

4B 79 – 2 Permitted Uses:

The following *principal* uses shall be permitted in the CD 79 Zone:

- a) Uses Permitted Without Conditions:
Not applicable.

- b) Conditional Uses:

The following *principal* uses are permitted when the conditions outlined in Section 4B 79-3 Conditions of Use, are met:

live-work use;
mini-storage use;
office use;
personal service use;
recreation/community centre use;
restaurant use;
retail use; and
residential use.

4B 79-3 Conditions of Use

- a) **All conditional uses:** All uses of land, buildings and structures are only permitted when the following condition of use is met:

- i) All aspects of the use are completely contained within an enclosed building except for:
 - (1) Parking and loading areas;
 - (2) *Outdoor customer services areas*;
 - (3) The display of goods;
 - (4) Outdoor amenity areas (plazas, roof decks, play areas, and private or semi-private outdoor space); and
 - (5) Public plazas and park areas.

- b) **Residential and live-work:** *Residential uses* and *live-work uses* are only permitted when the following conditions are met:
 - i) Each dwelling unit has access to private or semi-private outdoor space; and
 - ii) Each dwelling unit has exclusive access to a private storage space.

- c) **Live-work:** *Live-work use* is only permitted when the following condition is met:
 - i) An outside public entrance is provided; or
 - ii) An entrance onto a corridor that is open to the public, as in a commercial building.

- (d) **Mini-storage:** Except as set out below, *mini-storage use* is only permitted when the following conditions are met:
 - i) Must be located on a basement level in a commercial, residential or mixed use building; and
 - ii) Must be entirely located below natural and finished grade.
 - iii) As an exception to the foregoing, a *mini-storage use* having a maximum gross floor area of 150m² (1,614 square feet) is permitted without meeting the foregoing conditions.

4B 79-4 Accessory Use

- a) *Accessory uses* customarily ancillary to the principal uses are permitted.

- b) *Home occupations* are permitted in *residential* dwelling units.

- c) The production of energy for use on site or as part of a District Energy program that they are part of is permitted as an *accessory use*.

4B 79 – 5 Density

- a) The maximum permitted density is 44,275 m² (476,572 sq. ft.) *gross floor area*, inclusive of any density bonus for energy performance.

- b) A minimum of 425 m² (4,575 sq. ft.) of the total permissible *gross floor area* must be used for commercial purposes located immediately adjacent to the public park and plaza as noted in Schedule B, where commercial purposes includes any of the following permitted uses singly or in combination: *personal service use, restaurant use, and retail use*.
- c) The maximum permitted number of dwelling units inclusive of both *residential units* and *live-work units* is 460 units.
- d) For the purpose of calculating *gross floor area* the following are exempted:
 - i) The public *recreation/ community centre* contemplated in Phased Development Agreement Bylaw 8042;
 - ii) Any areas completely below natural and finished grade;
 - iii) Bicycle storage located on the ground floor of up to 100 m² (1,076 sq. ft.) gross floor area for each residential building to a maximum of 400m² (4,305 sq.ft.) gross floor area in total in the CD 79 Zone;
 - iv) The area of balconies and covered patios up to 10% of the total residential floor area for the building they are part of;
 - v) Common amenity areas that are accessory to the residential buildings permitted in this zone of up to 200 m² (2,152 sq. ft.) gross floor area per residential building to a maximum of 500m² (5,382 sq.ft.) gross floor area in total in the CD 79 Zone.

4B79 – 6 Height

- a) The maximum permitted height for any building in the CD 79 Zone, shall be regulated as follows:

Development Area A: The maximum permitted height is 56.4 metres (185 feet) and 18 storeys.

Development Area B: The maximum permitted height is 41.2 metres (135 feet) and 12 storeys.

Development Area C: The maximum permitted height is 19.8 metres (65 feet) and 6 storeys.

Development Area D: The maximum permitted height is 13.7 metres (45 feet) and 4 storeys.

(Development Areas are delineated in Schedule B of this Bylaw, Bylaw 8041)

- b) For the purpose of measuring building *height*, the rules set out in the definition of *height* in Part 2 of this Bylaw apply, except that *height* will be measured to from the *finished grade*.
- c) In addition to Part 4 General Regulations, Section 407 Height Exceptions, the following height exceptions shall apply in the CD 79 zone: Elevator penthouses, heating, cooling, ventilation and other mechanical equipment required for building operations are permitted above the maximum height limit, provided they are completely screened and integrated into the building's design and do not extend more than 5.0 metres (16.4 feet) above the highest point of any roof surface.

4B 79 – 7 Setbacks

The intent of the following minimum setbacks is to ensure a 4.0 metre (13.1 foot) setback from public road or public trail to residential building face.

- a) North - Fullerton Avenue: The minimum building setback is 4.0 metres (13.1 feet).
- b) West - Greenway Trail: The minimum building setback from the west lot line is 7 metres (23 feet).
- c) South - Curling Road: The minimum building setback is 4.0 metres (13.1 feet);
- d) East - New Street: The minimum building setback is 4.0 metres (13.1 feet).

4B 79 – 8 Coverage

- a) Building Coverage: The maximum building coverage is 60%.
- b) Site Coverage: The maximum site coverage is 65%.

4B 79 – 9 Landscaping and Storm Water Management

- a) All land areas not occupied by buildings, and patios shall be landscaped in accordance with a landscape plan approved by the District of North Vancouver.

- b) A 2m (6.6. ft) high screen consisting of a solid wood fence, or landscaping or a combination thereof, with 90% opacity, is required to screen from view:
 - i) any utility boxes, vents or pumps that are not located underground and/ or within a building; and
 - ii) any solid waste (garbage, recycling, compost) or loading areas or facilities that are not located underground and / or within a building.

4B 79- 10 Parking, Loading and Servicing Regulations

- a) Parking and loading are required as follows:

| Use | Parking Requirement |
|---|---|
| <i>Residential</i> <i>Residential</i> dwelling unit in a mid rise, low rise, or high rise building | 1.1 space/ unit |
| <i>Residential</i> townhouse dwelling unit | 1.5 space/ unit |
| <i>Residential</i> rental dwelling units in an entirely rental building | 0.75 space/ unit |
| <i>Residential</i> Visitor Parking | 0.1 space / unit |
| <i>Recreation/community centre use</i> | 66 spaces, of which up to 15 may be converted to Red Cross Storage |
| Public Parking | Visitor parking, recreation/community centre parking and commercial parking shall all be in a central area and available for shared use |
| Commercial including <i>office use, personal service use, restaurant use and retail use</i> | 1 space/ 30m ² |
| <i>Mini-storage use</i> | 1 space/ 1,950 m ² and 1 loading space/ 1,300 m ² |

- b) Bicycle storage for residents shall be provided on the basis of one space per unit.
- c) Except as specifically provided in 4B79-10 (a) and (b) Parking and Loading shall be provided in accordance with Part 10 of this Bylaw.
- (f) The Zoning Map is amended in the case of the lands illustrated on the attached map (Schedule A) by rezoning the land from the Recreation Commercial Zone (C5) to Comprehensive Development Zone CD 79.

READ a first time September 15th, 2014

PUBLIC HEARING held

READ a second time

READ a third time

Certified a true copy of Bylaw 8061 as at Third Reading

Municipal Clerk

APPROVED by the Ministry of Transportation and Infrastructure on

ADOPTED

Mayor

Municipal Clerk

Certified a true copy

Municipal Clerk

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The Corporation of the District of North Vancouver

Bylaw 8042

A bylaw to authorize a phased development agreement

The Council for The Corporation of the District of North Vancouver enacts as follows:

1. Citation

This bylaw may be cited as “Phased Development Agreement Bylaw 8042, 2014”.

2. Phased Development Agreement

The Mayor and Municipal Clerk may execute and deliver an agreement with 332391 B.C. Ltd. substantially in the form attached as Schedule A to this Bylaw.

READ a first time September 15th, 2014

PUBLIC HEARING held

READ a second time

READ a third time

ADOPTED

Mayor

Municipal Clerk

Certified a true copy

Municipal Clerk

Schedule A to Bylaw 8042

PHASED DEVELOPMENT AGREEMENT

This agreement dated for reference the ____ day of _____ 2014 is

BETWEEN:

THE CORPORATION OF THE DISTRICT OF NORTH VANCOUVER, a municipality incorporated under the *Local Government Act*, R.S.B.C. 1996, c.323 and having its office at 355 West Queens Road, North Vancouver, BC V7N 4N5

(the “District”)

AND:

332391 BC LTD. (Incorporation No. 332391) a corporation incorporated under the laws of the Province of British Columbia with an office at 300 – 100 Park Royal, West Vancouver, BC V7T 1A2

(the “Developer”)

WHEREAS:

- A. The Developer is the registered owner in fee simple of all the land in the District of North Vancouver legally described as PID: 018-349-269, Lot H, Block 15, District Lot 764 Group 1, NWD Explanatory Plan LMP11271 (the “Land”)
- B. The Developer has applied to the District for an amendment of the Zoning Bylaw (as defined in this Agreement) to permit the development on the Land of a range of residential and commercial uses and civic and community uses;
- C. The Developer wishes to provide certain amenities and features in the development of the Land, and the parties wish to ensure that the provisions of the Zoning Bylaw as amended by the Zoning Amendment Bylaw (defined in this Agreement) continue to apply to the Land for the period more particularly set out in this Agreement; and
- D. The Council of the District has given notice and held a public hearing and has, by Bylaw No. 8042, 2014, authorized the execution of this Agreement,

NOW THEREFORE in consideration of the mutual promises set out in this Agreement, the parties agree pursuant to section 905.1 through 905.5 of the *Local Government Act* as follows:

Definitions

1. In this Agreement:

- (a) “*Air Space Easements*” means the easements (reciprocal or otherwise) and statutory rights of way for access, repair, service, maintenance and support to be registered against title to the Land in connection with and in favour of the Village Green and Public Plaza Air Space Parcel and Community Centre Air Space Parcel all as reasonably required by the District;
- (b) “*Business Day*” means any day other than Saturdays, Sundays or statutory holidays in the Province of British Columbia;
- (c) “*Certificate of Completion*” means the certificate issued by the Developer’s Consultant upon the satisfactory completion of the Works (except any deficiencies that may be completed or remedied after the Community Centre Closing Date pursuant to section 38), which said certificate must be accepted by the District’s Representative pursuant to section 36;
- (d) “*Commencement Date*” has the meaning given to it in section 3;
- (e) “*Community Centre*” means a community centre having a Gross Floor Area of at least 26,550 square feet to be constructed on the Land in the location shown on the Master Development Plan meeting the Performance Criteria and Requirements;
- (f) “*Community Centre Air Space Parcel*” means:
 - (i) the air space parcel containing the Community Centre and the Community Centre Parking Stalls, which said airspace parcel is to be created by deposit of a subdivision plan to subdivide Parcel 3 in accordance with this Agreement and the Development Covenant; and
 - (ii) the Air Space Easements required by the District in connection therewith;
- (g) “*Community Centre Closing Date*” means the date that is 30 days after the latest of the following events:
 - (i) full registration in the LTO of a plan of subdivision of Parcel 3 creating, among other things, an indefeasible title to the Community Centre Air Space Parcel registered in the name of the Developer; or
 - (ii) Total Completion of the Works;
- (h) “*Community Centre Parking Stalls*” means the portion of level 1 in the Underground Parking Structure immediately beneath the Community Centre Shell as delineated in the Development Covenant containing sufficient floor area for 66 finished parking stalls and associated drive aisles, which said floor area may contain a room for a Red Cross lending center, to be designed and built by the Developer for the District in accordance with, and within the time stipulated in, this Agreement and the Development Covenant, and includes all structural

elements, access ramps, utilities and services required for the support and operation of the same;

- (i) *“Community Centre Shell”* means all building elements (structural and otherwise), equipment and fittings included in the core and shell of the Community Centre, which said building elements, equipment and fittings are to be constructed by the Developer in accordance with, and within the time stipulated in, this Agreement and the Development Covenant, and include, without limitation, the building elements, equipment and fittings comprising the core and shell of the Community Centre described in Schedule “A”, all as required to meet the Performance Criteria and Requirements, and all as will be more particularly set out in the Detailed Plans and Specifications;
- (j) *“Community Centre Transfer”* has the meaning given to it in section 63(a);
- (k) *“Default Notice”* has the meaning given to it in section 5 herein;
- (l) *“Deficiencies”* has the meaning given to it in subsection 38(a) herein;
- (m) *“Deficiency Holdback”* has the meaning given to it in subsection 38(a) herein;
- (n) *“Design”* means the design for the Community Centre Shell and the Community Centre Parking Stalls consisting of the Performance Criteria and Requirements, the Standards and the Detailed Plans and Specifications;
- (o) *“Detailed Plans and Specifications”* means the construction drawings and construction specifications based on, conforming to, and satisfying the Performance Criteria and Requirements and the Standards for all components, structural and otherwise, of the Community Centre Shell and the Community Centre Parking Stalls, all to be prepared by or for the Developer and accepted by the District in accordance with this Agreement;
- (p) *“Developer’s Consultant”* has the meaning given to it in section 24(b) herein;
- (q) *“Development Covenant”* means the covenant under section 219 of the *Land Title Act* dated for reference _____, 2014 granted by the Developer to the District and registered at the LTO against the Land under number _____;
- (r) *“Development Parcels”* has the meaning given to it in the Development Covenant;
- (s) *“Director”* means the District’s General Manager of Planning, Properties and Permits and his or her designate;
- (t) *“District’s Representative”* means the District’s General Manager of Engineering, Parks and Facilities and his or her designate;

- (u) “*Environmental Laws*” means all federal, provincial, municipal or local laws, statutes or ordinances relating to environmental matters, including all rules, regulations, policies, guidelines, criteria or the like promulgated under or pursuant to any such laws;
- (v) “*Event of Force Majeure*” means an event or circumstance which is beyond the control and without the fault or negligence of the Developer and which by the exercise of reasonable diligence the Developer was unable to prevent provided that event or circumstance is limited to the following:
 - (i) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not) acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority;
 - (ii) earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions regardless of severity; and
 - (iii) strikes at Provincial level or industrial disputes at a Provincial level, or strike or industrial disputes by labour not employed by the Developer, its subcontractors or its suppliers and which affect an essential portion of the Work but excluding any industrial dispute which is specific to the performance of the Work or this Agreement;
- (w) “*Greenway Trail*” means a lighted public trail along the west perimeter of the Land having a width for its entire length of at least 3.0 metres, said trail to be designed, constructed and installed by the Owner pursuant to this Agreement, the Development Covenant and the Servicing Agreement;
- (x) “*Gross Floor Area*” means the floor area of the Community Centre measured to the exterior of its walls, but excludes Community Centre Parking Stalls and any portion of the Community Parking Stall that may be used by the District for the Red Cross lending center or other purpose;
- (y) “*Hazardous Substances*” means contaminants, pollutants, dangerous goods, waste, toxic substances, or hazardous substances as defined in or pursuant to any Environmental Law and coming into existence or migrating to or from the Land or any part or parts thereof;
- (z) “*Land*” has the meaning given to it in recital A;
- (aa) “*Letter of Credit*” has the meaning given to it in section 66 herein;
- (bb) “*LTO*” means the Lower Mainland Land Title Office;
- (cc) “*Master Development Plan*” has the meaning given to it in the Development Covenant;

- (dd) “Parcel 2”, “Parcel 3” and “Parcel 4” have the meanings given to them in the Development Covenant;
- (ee) “*Performance Criteria and Requirements*” means all of the criteria and requirements contained in the document prepared by Bruce Carscadden Architects Inc. entitled “District of North Vancouver Bridging Report for Lower Capilano Community Centre” dated November 5, 2013 and all of the final appendices to that document [*note this definition may need some work*];
- (ff) “*Permitted Charges*” means any reservations, charges or encumbrances included in any grant from the Crown or approved in writing by the Director and any charges or encumbrances required to be granted to the District as a condition of adoption of the Zoning Amendment Bylaw;
- (gg) “*Phase 3 of the Development*” means the third phase of the proposed development on the portion of the Land comprising Parcel 3 as shown on the phasing plan attached to the Development Covenant;
- (hh) “*Prime Rate*” means the annual percentage rate of interest established from time to time by the Royal Bank of Canada, Main Branch, Vancouver, British Columbia as the base rate that will be used to determine rates of interest charged by it for Canadian dollar loans to customers in Canada and designated by the Royal Bank of Canada as the prime rate;
- (ii) “*Records*” means all records, documents, and plans which are or ought to be in the possession and control of the Developer pertaining to the Community Centre Shell and the Community Centre Parking Stalls, and their operation, and includes permits, licences, approvals, survey certificates, plans and specifications, “as-built” drawings, and environmental reports, investigations, assessments and audits;
- (jj) “*Rental Housing Agreement*” means the housing agreement pursuant to section 905 of the *Local Government Act* entered into between the Developer and the District and dated _____, 2014;
- (kk) “*Servicing Agreement*” has the meaning given to it in the Development Covenant;
- (ll) “*Specified Zoning Bylaw Provisions*” means sections 4B79-2 to 4B79-8 of the Zoning Bylaw;
- (mm) “*Standards*” means any and all laws, bylaws, statutes, regulations, rules, orders, permits, licences, codes, building codes, professional standards and specifications (including Canadian Standards Association standards) applicable to the Land, the Community Centre and the Community Centre Parking Stalls;
- (nn) “*Total Completion of the Works*” means total completion of all of the Works, except any deficiencies that may be completed or remedied after the Community

Centre Closing Date pursuant to section 38, as evidenced by issuance by the Developer's Consultant and acceptance by the District's Representative of a Certificate of Completion pursuant to section 36 herein;

- (oo) "*Underground Parking Structure*" means the underground parking structure to be constructed on the Land in accordance with the Master Development Plan;
- (pp) "*Village Green and Public Plaza*" has the meaning given to it in the Development Covenant;
- (qq) "*Village Green and Public Plaza Air Space Parcel*" means:
 - (i) the air space parcel containing the three dimensional section of Parcel 2 containing the Village Green and Public Plaza and extending at least 40 feet into the air above the Village Green and Public Plaza, which said airspace parcel is to be created by deposit of a plan of subdivision of Parcel 3 in accordance with this Agreement and the Development Covenant; and
 - (ii) the Air Space Easements required by the District in connection therewith;
- (rr) "*Village Green and Public Plaza Closing Date*" means the date that is 30 days after full registration in the LTO of a subdivision plan of Parcel 2 creating an the indefeasible title to the Village Green and Public Plaza Air Space Parcel registered in the name of the Developer;
- (ss) "*Village Green and Public Plaza Transfer*" has the meaning given to it in section 62(a);
- (tt) "*Warranties*" means all warranties, guarantees or contractual obligations of third persons which entitle the Developer to any rights against a contractor or supplier engaged in the construction of the Works or any part thereof;
- (uu) "*Warranty Deposit*" has the meaning given to it in section 40 herein;
- (vv) "*Warranty Period*" means the period commencing on the date that is the later of:
 - (i) the Community Centre Closing Date; and
 - (ii) the date that all Deficiencies have been rectified to the satisfaction of the District's Representative,

and ending on the first anniversary of that date; provided, however that if as at such anniversary date there are any warranty claims outstanding between the District and the Developer, the Warranty Period in respect of each item regarding which a warranty claim remains outstanding will be extended until all claims related to such item have been resolved to the satisfaction of the District;

- (ww) “*Works*” means everything to be constructed and installed by the Developer on the Land pursuant to the Developer’s construction obligations under this Agreement with respect to, and limited to, the Community Centre Shell and Community Centre Parking Stalls;
- (xx) “*Zoning Amendment Bylaw*” means District of North Vancouver Rezoning Bylaw 8041 (No. 1307, 2014); and
- (yy) “*Zoning Bylaw*” means the District of North Vancouver Zoning Bylaw No. 3210, 1965 as *modified* by the Zoning Amendment Bylaw and as further amended, consolidated, re-enacted or replaced from time to time.

Application of Agreement

- 2. This Agreement applies to the Land, including any parcels into which the Land may be subdivided. This Agreement applies to the Land and to no other land.

Term of Agreement

- 3. The term of this Agreement is 10 years, commencing on the date of execution of this Agreement by both parties (the “Commencement Date”). When this Agreement refers to the “term”, it means the duration of this Agreement until expiry or earlier termination.

Termination by Agreement

- 4. The parties may terminate this Agreement at any time by mutual agreement in writing.

Termination for Default

- 5. If the Developer does not comply with this Agreement, the District may at its option terminate this Agreement by providing notice of termination in writing to the Developer, provided that the District has, at least two months prior to giving such notice, advised the Developer in writing of any alleged failure to comply (the “Default Notice”) and the Developer has not corrected the default to the reasonable satisfaction of the District, or if such default reasonably requires longer than two months to remedy, the Developer has failed to substantially commence remedying such default within two months after receipt of the Default Notice to the reasonable satisfaction of the District or has failed to substantially complete remedying the default within six months after receipt of the Default Notice to the reasonable satisfaction of the District.
- 6. Despite the preceding section, if the default is one that cannot be remedied by the Developer, the District may give notice of termination at the same time as the Default Notice.
- 7. For certainty, the following are defaults that cannot be remedied by the Developer:
 - (a) if the Developer makes a general assignment for the benefit of creditors; or

- (b) if the Developer institutes proceedings to be adjudicated bankrupt or insolvent or consents to the institution of bankruptcy or insolvency proceedings against the Developer or files an application or petition or answer or consent seeking re-organization or re-adjustment of the indebtedness of the Developer under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* or any law of Canada or any province of Canada relating to bankruptcy or insolvency, or consents to the filing of any such application or petition, or consents to the appointment of a receiver or receiver-manager; or
- (c) if a receiver, interim receiver, receiver manager, trustee, liquidator, or custodian of all or substantially all of the property of the Developer or of the Developer's interest in the Land is appointed or applied for by the Developer or appointed pursuant to an instrument or by order of a court and such appointment or order is not in good faith contested by the Developer; or
- (d) if a judgment, decree, or order is entered by a court of competent jurisdiction adjudging the Developer a bankrupt or insolvent or subject to the provisions of the *Bankruptcy and Insolvency Act* or determining that proceedings for re-organization, arrangement, adjustment, composition, liquidation, or any similar relief under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* or any law of Canada or any province of Canada relating to bankruptcy or insolvency have been properly instituted otherwise than by the Developer, provided that such judgment, decree or order is not in good faith contested by the Developer; or
- (e) if any application or petition or certificate or order is made or granted for the winding-up or dissolution of the Developer, voluntary or otherwise and such appointment or order is not in good faith contested by the Developer.

Other Remedies

8. The parties covenant and agree each with the other that the District's remedies in the event of a default by the Developer under this Agreement include but are not limited to:
 - (a) termination of this Agreement in accordance with section 5;
 - (b) seeking an order for any and all damages suffered by the District as a result of the default;
 - (c) drawing on the letter of credit and applying the proceeds on account of damages suffered by the District as a result of the default as set out in sections 67(b), 71 and 72;
 - (d) seeking an order of specific performance with respect to the completion of the Community Centre Shell and Community Centre Parking Stalls, the creation of the Community Centre Air Space Parcel and the transfer of the Community Centre Air Space Parcel to the District in accordance with this Agreement;

- (e) seeking an order of specific performance with respect to the creation of the Village Green and Public Plaza Air Space Parcel and transfer of Village Green and Public Plaza Air Space Parcel to the District in accordance with this Agreement; and
 - (f) enforcement of any covenants granted by the Developer pursuant to section 219 of the *Land Title Act*.
9. The District may in its sole discretion pursue any of the above remedies singularly or in combination with other remedies.
10. The remedy in subsection 8(a) may be combined by the District with its remedies under subsections 8(b) and 8(c), and for greater certainty these three remedies are cumulative and not exclusive, and the District may from time to time have recourse to one or more of these remedies.
11. The remedies of the District specified in subsections 8(b) to 8(f) are cumulative and in addition to any remedies of the District at law or equity. None of the District's remedies specified in subsections 8(b) to 8(f) will be deemed to be exclusive, and the District may from time to time have recourse to one or more or all of the available remedies specified in this Agreement or at law or equity.
12. The Developer will make no claim for compensation, in damages or otherwise, upon the lawful termination of this Agreement under section 5. The Developer acknowledges and agrees that termination of this Agreement will not in any way affect the validity of the Development Covenant or any of the land use restrictions contained therein all of which continue in full force and effect notwithstanding the expiry or earlier termination of this Agreement.

Bylaw Amendments Not to Apply

13. For the term of this Agreement, any amendment or repeal of the Specified Zoning Bylaw Provisions will not apply to the Land, except:
- (a) as provided in section 905.1(6) of the *Local Government Act* as amended, consolidated, re-enacted or replaced from time to time; or
 - (b) to the extent that the Developer agrees in writing that the amendment or repeal will apply.
14. Intentionally Deleted.

Amenities and Features of the Development

15. The Developer will design and construct the Community Centre Shell and Community Centre Parking Stalls and will provide security for said obligation all in the time and in the manner set out in this Agreement and in the Development Covenant.

16. The Developer will transfer to the District the fee simple interest in the Community Centre Air Space Parcel in the time and in the manner set out in this Agreement and in the Development Covenant.
17. The Developer will pay a \$2,500,000 cash community amenity contribution to the District in the time and in the manner set out in the Development Covenant, which said cash community amenity contribution to be used by the District in its discretion for projects benefitting the Lower Capilano Marine Village Centre including but not limited to interior finishing of the Community Centre provided that the Developer transfers the Community Centre Air Space Parcel to the District in the time and in the manner stipulated in this Agreement and in the Development Covenant.
18. The Developer will transfer to the District the fee simple interest in the Village Green and Public Plaza Air Space Parcel free and clear of all encumbrances other than those specifically agreed to in writing by the District in the time and in the manner set out in this Agreement and in the Development Covenant.
19. The Developer will construct and install market rental housing on Parcel 4 in the time and in the manner set out in the Rental Housing Agreement and in the Development Covenant.
20. The Developer will construct and install the Greenway Trail and will grant to the District a statutory right of way for the Greenway Trail in the time and in the manner set out in the Development Covenant and in the Servicing Agreement;
21. The Developer will ensure that buildings and structures on the Land, including all service infrastructure provided by or on behalf of the Developer, complies with the green building and building accessibility requirements as set out in the Development Covenant.
22. The Developer will install a hydronic source heating system in the buildings to be constructed on each of the Development Parcels. The said hydronic source system will be district energy ready.
23. The Developer agrees that at least 20% of all residential parking stalls will have electric plugs suitable for level one charging, and the Developer further agrees that electric conduit will be installed to facilitate the later installation of electric plugs for additional parking stalls.

Design and Construction Covenants - Community Centre Shell and Community Centre Parking Stalls

24. The Developer will, all at its sole cost and expense:
 - (a) design the Community Centre Shell and Community Centre Parking Stalls to meet or exceed all of the Performance Criteria and Requirements and all prevailing *British Columbia Building Code* requirements and standards and other Standards, and in accordance with this Agreement and the Development Covenant;

- (b) cause to be prepared the Detailed Plans and Specifications under the direction of, and to be sealed under the professional seal of, a registered architect or professional engineer retained by the Developer (“the Developer’s Consultant”);
- (c) ensure that the Detailed Plans and Specifications satisfy, are based on, and conform to the Performance Criteria and Requirements, the Standards and the requirements of the Development Covenant and this Agreement;
- (d) if required by the District’s Representative, cause to be prepared and delivered to the District’s Representative reports and professional certifications from the Developer’s Consultant with respect to all or any part of the Works or with respect to any one or more of the Performance Criteria and Requirements;
- (e) deliver to the District’s Representative for the District’s acceptance the Detailed Plans and Specifications immediately upon the Developer’s receipt of same from the Developer’s Consultant;
- (f) without limiting the land use and occupancy restrictions and prohibitions contained in the Development Covenant, the Developer will not commence the construction of any part of Phase 3 of the Development (including the Community Centre Shell and the Community Centre Parking Stalls) until the Detailed Plans and Specifications have been accepted in writing by the District’s Representative;
- (g) not make any amendments to the Detailed Plans and Specifications after they have been accepted by the District except with the District’s prior written approval;
- (h) construct the Works in a good and workman like fashion and in strict compliance with the Design, and work diligently and expeditiously to complete the Works within the time specified in the Development Covenant and in section 45 herein;
- (i) comply with any changes to the Detailed Plans and Specifications reasonably required by the District’s Representative as necessary to satisfy the District’s Representative that the Community Centre Shell and the Community Centre Parking Stalls will function and operate in a manner satisfactory to the District’s Representative, acting reasonably, and in accordance with the Performance Criteria and Requirements;
- (j) keep the District properly and adequately advised of the progress of the Works and of Phase 3 of the Development;
- (k) retain at all times a professional engineer or registered architect to act as the Developer’s Consultant and to provide competent survey, layout and on-site supervision to ensure that, and to provide written certification satisfactory to the District that, the Community Centre Shell and the Community Centre Parking Stalls strictly conforms to Detailed Plans and Specifications and to record the details of any field design or construction changes to the Detailed Plans and Specifications and to record all of the geometric information for preparation of

"as constructed" drawings. No works will be covered or trenches backfilled without inspection and approval by the Developer's Consultant and without adequate as-constructed information being obtained, including line and grade of buried works;

- (l) advise the District's Representative of the name and address of the Developer's Consultant and any other professional engineer or architect retained by the Developer and to ensure that such engineers and architects maintains professional liability and errors and omissions insurance of not less than \$2,000,000.00 per occurrence during the term of his or her engagement and general liability insurance of not less than \$5,000,000.00 per occurrence during the term of his or her engagement. The Developer will obtain and provide to the District proof of all such insurance before the Developer commences the construction and installation of the Community Centre Shell and the Community Centre Parking Stalls; and
- (m) obtain, and maintain in good standing, the Warranties and, to the extent assignable, provide copies of the Warranties to the District concurrently with the Community Centre Transfer.

Investigation

- 25. The District, and its officials, employees, agents and contractors may enter the Land at all reasonable times for the purposes of carrying out inspections, investigations, tests and surveys as it considers necessary or desirable, including to determine if the Works conform to the Design.

Design Acceptance

- 26. The Detailed Plans and Specifications must be prepared by the Developer's Consultant in consultation with the District's Representative.
- 27. The Developer will notify the District's Representative of any deviations in the Detailed Plans and Specifications from the Performance Criteria and Requirements, the Standards or other requirements set out herein or in the Development Covenant.
- 28. The District's Representative will accept the draft Detailed Plans and Specifications if the District's Representative determines, in his or her discretion, that the draft Detailed Plans and Specifications satisfy the Performance Criteria and Requirements and all other requirements set out herein and in the Development Covenant.
- 29. The District's Representative will notify the Developer if the Detailed Plans and Specifications are rejected, giving reasons in writing for the rejection.
- 30. The District will cause the District's Representative to review the proposed Detailed Plans and Specifications submitted by the Developer in a timely manner, and the District will accept, reject or require changes to be made to the proposed Detailed Plans and Specifications within 60 days of receipt from the Developer.

31. The Developer's Consultant will make all changes to the draft Detailed Plans and Specifications reasonably required by the District's Representative.
32. The District will cause the District's Representative to review any proposed Detailed Plans and Specifications resubmitted by the Developer in a timely manner, and the District will accept, reject or require further changes to be made to the resubmitted Detailed Plans and Specifications within 60 days of receipt from the Developer.
33. When the Detailed Plans and Specifications are accepted and signed by the District and the Developer such Detailed Plans and Specifications will become part of this Agreement.
34. The District's Representative's review and acceptance pursuant to this Agreement will not relieve the Developer of responsibility for errors or omissions in the Detailed Plans and Specifications (including design errors or inadequacies) or for meeting all requirements of this Agreement and the Development Covenant unless the District's Representative in writing expressly accepts a deviation from this Agreement.
35. For greater certainty, the District's acceptance of the design of the Community Centre Shell and Community Centre Parking Stalls pursuant to this Agreement is separate from and independent of the building permit process under the District of North Vancouver Building Bylaw.

Completion of the Works

36. The satisfactory completion of the Works pursuant to this Agreement (except for the Deficiencies pursuant to section 38) will be established only by confirmation by the District's Representative in writing that he or she has received and accepted a satisfactory Certificate of Completion from the Developer's Consultant.

District Not Responsible

37. For clarity, nothing in this Agreement, makes the District or the District's Representative in any way responsible or liable for the Design of the Community Centre Shell or the Community Centre Parking Stalls including with respect to the adequacy of, or any errors or omissions in, or the compliance of the Detailed Drawings and Detailed Specifications with the Performance Criteria and Requirements and Standards or any law of any authority having jurisdiction, and the Developer will, despite any act of the District or District's Representative under this Agreement, remain liable and responsible for the design and construction of the Works.

38. Deficiencies

- (a) The District's Representative and the Developer's Consultant, both acting reasonably in conjunction with their determination and certification of Total Completion of the Work pursuant to section 36, will make a list of incomplete work and defects in the Community Centre Shell and Community Centre Parking Stalls (the "Deficiencies") divide the Deficiencies into two categories:

Deficiencies that must be completed or remedied before Total Completion of the Work and Deficiencies that may be completed or remedied after Total Completion of the Work. Deficiencies that may be remedied after Total Completion of the Work will be remedied by the Developer within the period of time specified by the District's Representative and the Developer's Consultant. A sum equal to the greater of \$30,000.00 or two hundred percent (200%) of the cost to complete and remedy the Deficiencies as estimated by the District's Representative and the Developer's Consultant, both acting reasonably, will be drawn down from the Letter of Credit on the date that the Certificate of Completion is accepted by the District's Representative under section 36, and held in cash by the District (the "Deficiency Holdback"). The District will invest the Deficiency Holdback in an interest bearing trust account. Upon receipt of a report from the District's Representative and the Developer's Consultant certifying that the Deficiencies are complete the District will pay to the Developer the Deficiency Holdback plus interest, if any, accrued thereon, less any amount expended by the District to rectify or complete the Deficiencies.

- (b) If, for the purpose of subsection 38(a), the District's Representative and the Developer's Consultant cannot agree on the Deficiencies that may be completed or remedied after Total Completion of the Work, the period of time for completing or remedying the Deficiencies, the cost to complete and remedy the Deficiencies or the certification that the Deficiencies are completed and remedied then the disputed issue or issues will be settled in accordance with sections 80 and 81 herein.
- (c) The Developer covenants and agrees to complete all the Deficiencies to the satisfaction of the District's Representative and the Developer's Consultant, both acting reasonably, and within the time period specified by District's Representative and the Developer's Consultant or during such further period as the District's Representative and the Developer's Consultant may allow.

Warranty

- 39. The Developer warrants to the District that all of the Works will be of good workmanship and quality and compliant with the Detailed Plans and Specifications and that all materials, equipment, fittings and building elements will be suitable for the purposes for which they are intended. The Developer, at its own expense, will promptly repair or replace as appropriate in the opinion of the Director, any component of the Works which is defective, deficient or which otherwise does not satisfy the above warranty, except in respect of any repair or replacement that is covered by a third party supplier or sub-contractor warranty that has been duly and effectively assigned to the District by the Developer, in which case the Developer will co-operate with the District in the enforcement of such warranty.
- 40. As security for the Developer's warranty obligations under section 39, the Developer covenants and agrees to keep deposited with the District, by cash or letter of credit, the sum

of \$850,000.00, representing 10% of the initial amount of the Letter of Credit (the “Warranty Deposit”).

41. The District will release the Warranty Deposit, less any amount drawn down by District under section 73, at the end of the Warranty Period.
42. Nothing in this Agreement is intended to limit the liability of the Developer or the Developer’s head contractor and consultants to the District in tort.

Developer’s Phase 2 Subdivision Obligation

43. Without limiting the Developer’s obligations under the Development Covenant, the Developer will at its sole cost and expense do all things reasonably necessary to cause Parcel 2 to be subdivided into air space parcels compliant with the requirements set out in the Development Covenant, one of which air space parcels must be the Village Green and Public Plaza Air Space Parcel.

Developer’s Phase 3 Subdivision Obligation

44. Without limiting the Developer’s obligations under the Development Covenant, the Developer will at its sole cost and expense do all things reasonably necessary to cause Parcel 3 to be subdivided into air space parcels compliant with the requirements set out in the Development Covenant, one of which said air space parcels must be the Community Centre Air Space Parcel.

Timing

45. The Developer’s obligations under this Agreement to design and construct the Community Centre Shell and Community Centre Parking Stalls, create the Community Centre Air Space Parcel and transfer the Community Centre Air Space Parcel to the District must be fully performed and satisfied within the times set out in the Development Covenant, and, in any event, all of said obligations must be fully performed and satisfied, subject only to section 82, by no later than the date that is nine years and eleven months after the Commencement Date.
46. The Developer’s obligations under this Agreement to create the Village Green and Public Plaza Air Space Parcel and to transfer the Village Green and Public Plaza Air Space Parcel to the District must be fully performed and satisfied within the times set out in the Development Covenant.

Air Space Easements

47. The Development Covenant addresses the content of the Air Space Easements, the timing and manner of their registration at the LTO in favour of the Village Green and Public Plaza Air Space Parcel and the Community Centre Air Space Parcel, as the case may be, and the portions of the Land to be charged by the Air Space Easement.

Transfer of Air Space Parcels

48. The Developer agrees to transfer to the District its fee simple interest in the Village Green and Public Plaza Air Space Parcel on the Village Green and Public Plaza Closing Date free from all liens, charges, encumbrances, equities, claims, encroachments, and defects in titles, except for the Permitted Charges and on the terms and conditions set out herein.
49. The Developer agrees to transfer to transfer to the District its fee simple interest in the Community Centre Air Space Parcel on the Community Centre Closing Date free from all liens, charges, encumbrances, equities, claims, encroachments, and defects in titles, except for the Permitted Charges and on the terms and conditions set out herein.

District Conditions

50. Despite anything to the contrary in this Agreement, the transfers contemplated in sections 48 and 49 will not complete unless and until the following conditions are satisfied, either of which conditions may be waived at the sole discretion of the District:
 - (a) the Developer's representations in sections 51 and 52 with respect to the Village Green and Public Plaza Air Space Parcel will be true and correct on the Village Green and Public Plaza Closing Date; and
 - (b) the Developer's representations in sections 51 and 53 with respect to the Community Centre Air Space Parcel will be true and correct on the Community Centre Closing Date.

The conditions set out in this section 50 are not to be deemed as conditions precedent to the formation of this Agreement or its execution and delivery by each party to the other, and this Agreement will be and is deemed to be enforceable from the time of such execution and delivery.

Corporate Capacity

51. The Developer represents and warrants that on the date of signing this Agreement and on the Village Green and Public Plaza Closing Date and the Community Centre Closing Date the Developer is a corporation in good standing under the laws of British Columbia, has sufficient power, authority and capacity, and has taken all required corporate action to duly authorize it to execute and deliver this Agreement, to perform the Agreement in accordance with its terms and to transfer the Village Green and Public Plaza Air Space Parcel and the Community Centre Air Space Parcel to the District.

Village Green and Public Plaza Air Space Parcel Representations

52. The Developer represents and warrants that on the date of signing this Agreement and on the Village Green and Public Plaza Closing Date:
 - (a) the Developer is a resident of Canada within the meaning of the *Income Tax Act* (Canada) and under Part IX of the *Excise Tax Act* (Canada);

- (b) the Developer has good, safeholding and marketable title to the Land and on the Village Green and Public Plaza Closing Date will have good, safeholding and marketable title to the Village Green and Public Plaza Air Space Parcel free from all liens, charges, encumbrances, equities, claims, encroachments and defects in title, except the Permitted Charges;
- (c) by completing the transfer of the Village Green and Public Plaza Air Space Parcel to the District the Developer will not be in breach of any statute or bylaw or of any agreement by which the Developer is bound;
- (d) to the best of the Developer's knowledge Parcel 2 and the Village Green and Public Plaza Air Space Parcel are free of Hazardous Substances;
- (e) to the best of the Developer's knowledge Parcel 2 and the Village Green and Public Plaza Air Space Parcel comply with all Environmental Laws and are not subject to any outstanding or threatened notice of defect or non-compliance, work order, pollution abatement order, pollution prevention order, remediation order or any other order from any federal, provincial, municipal or other governmental authority;
- (f) there are no actions, proceedings, investigations or claims, pending or to the best of the Developer's knowledge threatened, that would interfere with the use and enjoyment of Parcel 2 or the Village Green and Public Plaza Air Space Parcel or that relate to the presence of Hazardous Substances in, on, under or migrating to or from Parcel 2 or the Village Green and Public Plaza Air Space Parcel;
- (g) the Developer has no knowledge that any person has taken, intends to take, or has threatened to take, any action, suit or proceeding which could adversely affect the Land, the Village Green and Public Plaza Air Space Parcel, the Developer's title thereto, or the Developer's right to transfer the Village Green and Public Plaza Air Space Parcel to the District; and
- (h) on the Village Green and Public Plaza Closing Date no improvements on the Land adjacent to the Village Green and Public Plaza Air Space Parcel encroach on the Village Green and Public Plaza Air Space Parcel.

Community Centre Air Space Parcel Representations

53. The Developer represents and warrants that on the date of signing this Agreement and on the Community Centre Closing Date:
- (a) the Developer is a resident of Canada within the meaning of the *Income Tax Act* (Canada) and under Part IX of the *Excise Tax Act* (Canada);
 - (b) the Developer has good, safeholding and marketable title to the Land and on the Community Centre Closing Date will have good, safeholding and marketable title to the Community Centre Air Space Parcel free from all liens, charges,

encumbrances, equities, claims, encroachments and defects in title, except the Permitted Charges;

- (c) by completing the transfer of the Community Centre Air Space Parcel to the District the Developer will not be in breach of any statute or bylaw or of any agreement by which the Developer is bound;
- (d) to the best of the Developer's knowledge Parcel 3 and the Community Centre Air Space Parcel are free of Hazardous Substances;
- (e) the Developer has not released, spilled, leaked, pumped, poured, emitted, emptied, discharged, dumped or disposed of any Hazardous Substances into the Land or its surrounding environment and to the best of the Developer's knowledge, no other person has done so;
- (f) to the best of the Developer's knowledge Parcel 3 and the Community Centre Air Space Parcel comply with all Environmental Laws and are not subject to any outstanding or threatened notice of defect or non-compliance, work order, pollution abatement order, pollution prevention order, remediation order or any other order from any federal, provincial, municipal or other governmental authority;
- (g) there are no actions, proceedings, investigations or claims, pending or to the best of the Developer's knowledge threatened, that would interfere with the use and enjoyment of Parcel 3 or the Community Centre Air Space Parcel or that relate to the presence of Hazardous Substances in, on, under or migrating to or from Parcel 3 or the Community Centre Air Space Parcel;
- (h) the Developer has no knowledge that any person has taken, intends to take, or has threatened to take, any action, suit or proceeding which could adversely affect the Land, the Community Centre Air Space Parcel, the Developer's title thereto, or the Developer's right to transfer the Community Centre Air Space Parcel to the District; and
- (i) on the Community Centre Closing Date no improvements on the Land adjacent to the Community Centre Air Space Parcel encroach on the Community Centre Air Space Parcel.

Title, Risk and Adjustments

- 54. The Developer will not enter into any contracts or do anything that will adversely affect the Community Centre Air Space Parcel or the Village Green and Public Plaza Air Space Parcel, or decrease their value, and will not amend any Permitted Charges, unless the Developer obtains the District's prior written consent.
- 55. Until the Community Centre Closing Date, the Developer will maintain in force such policies of insurance in connection with the Community Centre and the Community Centre Air Space Parcel as the District may reasonably require;

56. The Village Green and Public Plaza Air Space Parcel will be at the risk of the Developer until the transfer of the fee simple title to the Village Green and Public Plaza Air Space on the Parcel Village Green and Public Plaza Closing Date and thereafter will be at the risk of the District, except to the extent set out in the Development Covenant and in the Servicing Agreement.
57. The Community Centre Air Space Parcel will be at the risk of the Developer until the transfer of the fee simple title to the Community Centre Air Space Parcel on the Community Centre Closing Date and thereafter will be at the risk of the District, except to the extent set out in the Development Covenant and except in respect of:
 - (a) the Developer's warranty obligations in this Agreement;
 - (b) the Developer's obligations regarding Deficiencies; and
 - (c) the Developer's indemnity and release obligations in this Agreement.
58. The District will have the right to vacant possession of the Village Green and Public Plaza Air Space Parcel subject to the Permitted Charges on the Village Green and Public Plaza Closing Date, and the District will have the right to vacant possession of the Community Centre Plaza Air Space Parcel subject to the Permitted Charges on the Community Centre Closing Date.
59. The Developer will deliver to the District promptly such authorizations as the District may require to conduct due diligence searches with respect to the Developer, the Village Green Air Space Parcel and the Community Centre Air Space Parcel to ascertain that:
 - (a) from and after the Village Green and Public Plaza Closing Date the Village Green and Public Plaza Air Space Parcel will not be subject to liens, charges, encumbrances, equities or claims, except the Permitted Charges; and
 - (b) from and after the Community Centre Closing Date the Community Centre Air Space Parcel will not be subject to liens, charges, encumbrances, equities or claims, except the Permitted Charges.
60. The Developer and the District will adjust all items customarily the subject of adjustments in the sale and purchase of real property similar to the Village Green and Public Plaza Air Space Parcel on the Village Green and Public Plaza Closing Date and will adjust all items customarily the subject of adjustments in the sale and purchase of real property similar to the Community Centre Air Space Parcel on the Community Centre Closing Date, except that in no case will there be any adjustments made for real property taxes.
61. The Developer will be responsible for all costs of the transactions contemplated in this Agreement in accordance with the provisions of the Development Covenant. In addition, the Developer will pay the costs and expenses incurred and payments and expenditures made by the District in respect of design review and inspections for the Community

Centre Shell and Community Centre Parking Stalls, including the cost of consultants retained by the District of those purposes.

Closing

62. A minimum of seven Business Days before the Village Green and Public Plaza Closing Date the Developer will cause the Developer's solicitor to deliver to the District:
 - (a) all documents necessary to give effect to the transfer of the Village Green and Public Plaza Air Space Parcel, including a duly executed and registrable *Land Title Act* Form A transfer transferring the Village Green and Public Plaza Air Space Parcel to the District (the "Village Green and Public Plaza Transfer");
 - (b) an officer's certificate from the Developer certifying on behalf of the Developer that the Developer's representations set out in sections 52 and 53 are true as at the Village Green and Public Plaza Closing Date; and
 - (c) evidence satisfactory to the District that there are no financial charges registered or pending registration against title to the Village Green and Public Plaza Air Space Parcel.

63. A minimum of seven Business Days before the Community Centre Closing Date the Developer will cause the Developer's solicitor to deliver to the District:
 - (a) all documents necessary to give effect to the transfer of the Community Centre Air Space Parcel, including a duly executed and registrable *Land Title Act* Form A transfer transferring the Community Centre Air Space Parcel to the District (the "Community Centre Transfer");
 - (b) an officer's certificate from the Developer certifying on behalf of the Developer that the Developer's representations set out in sections 52 and 53 are true as at the Community Centre Closing Date;
 - (c) evidence satisfactory to the District that there are no financial charges registered or pending registration against title to the Community Centre Air Space Parcel;
 - (d) all Records and an assignment of all Warranties, to the extent assignable, and written authorization to use the Developer's name to enforce any unassignable Warranties, all in form and substance satisfactory to the District; and
 - (e) four complete reproducible hard copy sets and one electronic version of as-built drawings for the Community Centre Shell and Community Centre Parking Stalls, four hard copy sets of all applicable operations and maintenance manuals, all in form and content satisfactory to the Director, and such numbers of sets of keys as the District may request.

64. If any financial charges are registered against the Village Green and Public Plaza Air Space Parcel, the Developer will pay and discharge said financial charges before the

Village Green and Public Plaza Transfer is submitted for registration at the LTO on the Village Green and Public Plaza Closing Date, and if any financial charges are registered against the Community Centre Air Space Parcel, the Developer will pay and discharge said financial charges before the Community Centre Transfer is submitted for registration at the LTO on the Community Centre Closing Date.

65. The District may submit the Village Green and Public Plaza Transfer for registration at the LTO on the Village Green and Public Plaza Closing Date, and District may submit the Community Centre Transfer for registration at the LTO on the Community Centre Closing Date.

Letter of Credit

66. As security for the obligations of the Developer under this Agreement to design and construct the Works, deliver the Community Centre Shell and Community Centre Parking Stalls, and create and transfer to the District the Community Centre Air Space Parcel, the Developer will deliver to the District by the time set out in the Development Covenant a letter of credit in the amount of \$8,500,000 (the "Letter of Credit"), which Letter of Credit will:

- (a) be a clean unconditional irrevocable standby letter of credit without limitations and payable at site at an identified branch of the issuer;
- (b) be in favour of the District drawn on a Canadian chartered bank, trust company or credit union located in British Columbia and having an office or branch in Metro Vancouver,
- (c) be valid for a minimum of one year after the date that the letter of credit is delivered to the District (with provision for automatic renewals thereafter);
- (d) state that the issuer will not enquire as to whether or not the District has a right to make demand on the Letter of Credit, that the District may make partial as well as full drawings, and that the issuer will duly honour drafts drawn in conformity with the Letter of Credit if presented to the issuer on or before the expiry date of the Letter of Credit;
- (e) reference this Agreement;
- (f) require 60 days prior notice to the District in the event of non-renewal or cancellation by the issuing bank or other financial institution; and
- (g) otherwise be in a form acceptable to the Chief Financial Officer of the District.

67. The Developer and the District agree as follows with respect to the Letter of Credit:

- (a) the Developer will ensure that the Letter of Credit is replaced, and will provide evidence thereof satisfactory to the District's Representative, not later than 21 days prior to an expiry date of the Letter of Credit;

- (b) the District may draw upon the Letter of Credit at any time in the event of a default by the Developer of:
 - (i) its obligations under sections 66 or this section 67; or
 - (ii) its obligations to design and construct the Works, deliver to the District the Community Centre Shell and Community Centre Parking Stalls, and create and transfer to the District the Community Centre Air Space Parcel no later than the date stipulated in section 45;
 - (c) partial drawdowns are permitted by the District;
 - (d) no documentation is required for any drawdown;
 - (e) no interest will be paid to the Developer; and
 - (f) any return of the Letter of Credit will be made to the Developer only.
68. The obligations of the Developer under this Agreement to design and construct the Works, deliver the Community Centre Shell and Community Centre Parking Stalls, and create and transfer to the District the Community Centre Air Space Parcel will not be lessened or reduced by reason of the delivery of the Letter of Credit, and at all times the Developer will continue to be responsible for all costs and expenses of said obligations as contained in this Agreement.
69. The full amount of the Letter of Credit will under no circumstance be released by the District until the end of the statutory lien holdback period applicable to the construction of the Works. At the expiry of said statutory lien holdback period, the Developer must deliver to the District a title search of the Land showing that no builders' liens have been filed and a statutory declaration sworn by an authorized signatory of the Developer's head contractor or contractors substantially in the form attached as Schedule "B".
70. The Letter of Credit, less any amount drawn down by District, less the amount of the Deficiency Holdback and less the amount of the Warranty Holdback, will be returned to the Developer if:
- (a) all of the Works are satisfactorily completed (except for the Deficiencies pursuant to section 38) as herein provided;
 - (b) the Developer pays all invoices of the District as herein required;
 - (c) the certificate of Total Completion of the Work is issued and accepted by the District's Representative pursuant to section 36;
 - (d) the Community Centre Air Space Parcel has been transferred to the District in accordance with this Agreement;

- (e) the statutory lien holdback period applicable to the construction of the Works has expired and no liens are filed against the Land; and
- (f) the Developer has sworn and delivered the required statutory declaration in the form attached as Schedule “B”.

Use of Proceeds of Letter of Credit

71. If the District cashes the Letter of Credit pursuant to subsection 67(b)(i) the proceeds will continue to be held by the District as security of the Developer’s obligations to design and construct the Works, deliver the Community Centre Shell and Community Centre Parking Stalls, and create and transfer to the District the Community Centre Air Space Parcel. If the Developer subsequently defaults in its obligations to design and construct the Works, deliver to the District the Community Centre Shell and Community Centre Parking Stalls, and create and transfer to the District the Community Centre Air Space Parcel no later than the date stipulated in section 45, then the said proceeds may thereafter be retained by the District for its sole use and benefit absolutely and the Developer expressly waives and releases any right or entitlement to any compensation in respect thereof. For greater certainty, this section:
- (a) does not apply to the Warranty Deposit or the Deficiency Deposit, which will be used by the District only as set out in section 73; and
 - (b) does not limit the other remedies of the District under section 8.
72. If the District cashes the Letter of Credit pursuant to subsection 67(b)(ii), the proceeds will be retained by the District for its sole use and benefit absolutely and the Developer expressly waives and releases any right or entitlement to any compensation in respect thereof. For greater certainty, this section:
- (c) does not apply to the Warranty Deposit or the Deficiency Deposit, which will be used by the District only as set out in section 73; and
 - (d) does not limit the other remedies of the District under section 8.

Use of Warranty Deposit and Deficiency Deposit

73. If the Developer defaults in its warranty obligations hereunder, or fails to rectify the Deficiencies in accordance with this Agreement, then the District may at its sole discretion and without prejudice to any other remedy rectify the default of the Developer at the Developer's expense and without limiting the generality of the foregoing may:
- (a) enter onto the Land and do or caused to be done through its servants, contractors and others, all such things as may be required to fulfil the obligations of the Developer including without limitation, the maintenance of any Component of the Works, the remedying of any defects, and the completion of all deficiencies; and
 - (b) make any payments required to be made for and on behalf of the Developer;

and for such purposes may without notice or limitation deduct from the Warranty Deposit or the Deficiency Deposit (as the case may be) the costs and expenses incurred, payments and expenses made, and monies due and owing to the District, including an administration fee payable to the District in an amount of 20% of the costs incurred under Subsections 73(a) and (b).

Costs and Expenses in Excess of Deposits

74. If the District incurs any costs and expenses or makes payments as provided in section 73, and if the Warranty Deposit and Deficiency Deposit, as the case may be, is not sufficient to fully recompense the District, the Developer will forthwith upon receipt of an invoice from the District pay to the District the amount of such deficiency together with interest thereon at the Prime Rate plus 2% per annum calculated and compounded monthly from the date on which such cost or expense was incurred or payment or expenditure was made by the District. Such amounts required to be paid by the Developer will constitute a debt due and owing to the District.

Assignment of Agreement

75. The Developer may assign this Agreement if and only if:
- (a) the fee simple title to all of the Land (other than any part of the Land that has been fully developed or subdivided under the Strata Property Act in accordance with the Development Covenant) is transferred to the assignee;
 - (b) the assignee is a developer licensed to do business in the District;
 - (c) the assignee has executed and delivered to the District an assumption agreement, in form and content satisfactory to the District, assuming the Developer's obligations under this Agreement; and
 - (d) the assignee has entered into an assignment agreement with the Developer, in form and content satisfactory to the District, assigning this Agreement.
76. An assumption agreement entered into between the District and an Assignee pursuant to section 75 will not operate to release the Developer of its liability to the District for the fulfillment of all of the Developer's obligations under this Agreement.

Amendment of Agreement

77. The parties may in writing agree to minor amendments to this Agreement, and for that purpose a "minor amendment" is an amendment to section 1 or an amendment to the Development Covenant.

Indemnity and Release

78. The Developer:

- (a) will indemnify and save harmless the District, its elected and appointed officials, officers, employees, agents, contractors, licensees and invitees and others for whom the District is in law responsible (the “District Representatives”) from and against any and all actions, causes of action, liabilities, demands, losses (including loss of profits), damages, costs, expenses (including actual fees of professional advisors), remediation of contamination costs, fines, penalties and other harm of any kind whatsoever, whether related to death, bodily injury, property loss, property damage, property contamination or consequential loss or damage (the “Losses”), suffered or incurred by the District or any of the District Representatives; and
- (b) releases each of the District and the District Representatives from all Losses that the Developer, its officers, directors, employees, agents or contractors may incur or suffer,

directly or indirectly, arising from, resulting from, connected with or related to the entering into of this Agreement; death, bodily injury, damage to or loss of any property or other incident or occurrence during the construction or provision of the amenities and other development contemplated by this Agreement; any default or breach of this Agreement by the Developer; any wrongful act, omission or negligence of the Developer or their directors, officers, employees, agents, contractors, subcontractors, licensees, or others for whom they are responsible in law with respect to the covenants and obligations of the Developer pursuant to this Agreement; the inaccuracy, incompleteness or untruth of any representation of the Developer in this Agreement; any approval given or not given by the Director or the District’s Representative under this Agreement; or any Hazardous Substances on the Land or any part thereof, but excluding any Losses arising directly and solely from the negligence of the District or its employees, agents or contractors.

- 79. The foregoing indemnity and release will survive any conclusion or other termination of this Agreement, in relation to any matter arising prior to it.

Dispute Resolution

- 80. Either party may give written notice to the other party of any dispute between the District’s Representative and the Developer’s Consultant regarding the determination of any issue or thing required to be determined pursuant to section 38(a). Representatives of the District and the Developer will meet within three Business Days after the notice of dispute is given and will attempt in good faith, and using reasonable efforts, to resolve the matter equitably to the satisfaction of both parties.
- 81. If the representatives cannot resolve the dispute within 15 Business Days after the dispute has been referred to them, then the dispute will be referred for arbitration by a single arbitrator appointed and acting under the *Commercial Arbitration Act* (British Columbia).

Force Majeure

82. If the Developer is delayed from completing its obligations under section 45 within the time stipulated in that section by reason of an Event of Force Majeure then the date for completing said obligations will be extended for a period equivalent to such period of delay. Where there is an Event of Force Majeure, the Developer must immediately notify the District giving full particulars of the Event of Force Majeure and the reasons for the Event of Force Majeure delaying the Developer in performing its obligations under section 45 and the Developer must use its reasonable efforts to mitigate the effect of the Event of Force Majeure upon its performance of this Agreement and to fulfil its or their obligations under this Agreement.

General Terms and Conditions

83. Any notice, request or demand required or permitted to be given hereunder will be sufficiently given only if personally delivered (including by nationally recognized courier, with signature obtained upon delivery) or mailed by prepaid registered post as follows:

- (a) to the District at:

355 West Queens Street
North Vancouver, British Columbia
V7N 4N5

Attention: General Manager, Planning Properties and Permits__

- (b) to the Developer at:

332391 BC Ltd.
300 – 100 Park Royal
West Vancouver, BC V7T 1A2
Attention: President

Any notice sent by registered mail will be deemed to have been received four business days after the date of mailing, and any notice delivered personally will be deemed to have been received on the date of actual delivery if delivered before 4:00 p.m. on a business day and otherwise on the next business day. Any party may change its address for notices hereunder by giving notice of the new address to the other party in accordance with this section. If the postal service is interrupted or is substantially delayed, any notice, demand, request or other instrument must be personally delivered.

84. Except as expressly set out in this Agreement, nothing in this Agreement will prejudice or affect the rights and powers of the District in the exercise of its functions under the *Community Charter* or the *Local Government Act* or any of its bylaws or those of the District's approving officer under the *Land Title Act* or the *Strata Property Act*.

85. Any opinion, decision, act or expression of satisfaction or acceptance provided for in this Agreement may be taken or made by the Director, unless expressly provided to be taken or made by another official of the District.
86. No provision of this Agreement is to be considered to have been waived by the District unless the waiver is expressed in writing by the District. The waiver by the District of any breach by any of the other parties of any provision is not to be construed as or constitute a waiver of any further or other breach.
87. Whenever in this Agreement the District or the District's Representative is required or entitled to exercise any discretion in the granting of consent or approval, or is entitled to make any determination, take any action or exercise any contractual right or remedy, the District may do so in accordance with the contractual provisions of this Agreement and no public law duty, whether arising from the principles of procedural fairness or the rules of natural justice or otherwise, will have any application in the interpretation or implementation of this Agreement except to the extent that such duty arises as a matter of public law.
88. Time is of the essence of this Agreement and will remain of the essence notwithstanding the extension of any dates.
89. The obligations and covenants of the parties comprising the Developer (if more than one) will be several only, and not joint and several.
90. The Developer acknowledges and agrees that the District, acting reasonably, may, despite any public law limitations on the withholding of building permits and occupancy permits, withhold building permits and occupancy permits for the purpose of ensuring compliance with and administering the terms of this Agreement.
91. This Agreement may be executed in counterparts.

Executed the _____ day of _____, 2014 by
THE CORPORATION OF THE
DISTRICT OF NORTH VANCOUVER by its authorized signatories:

Executed the _____ day of _____, 2014 by
332391 BC LTD. by its authorized signatories:

SCHEDULE “A” TO PHASED DEVELOPMENT AGREEMENT

Description of Shell Building

To be inserted, based on the document entitled “Description of Shell Building for Lower Capilano Community Centre, Final Report prepared by Bruce Carscadden Architects Inc. and dated May 26, 2014

SCHEDULE "B" TO PHASED DEVELOPMENT AGREEMENT

Builders Lien Statutory Declaration

| | | |
|------------------|---|-------------------------------------|
| CANADA |) | IN THE MATTER OF THE BUILDER'S LIEN |
| |) | ACT AND IN THE MATTER OF A CONTRACT |
| BRITISH COLUMBIA |) | BETWEEN THE DISTRICT OF NORTH |
| |) | VANCOUVER AND HYNES DEVELOPMENTS |
| |) | INC. |
| |) | |
| |) | TO: |
| |) | |
| |) | IN THE MATTER OF: |

I, _____, of _____, British Columbia, DO SOLEMNLY DECLARE THAT:

1. I am the _____ of _____, the contractor with respect to construction of _____ at _____.
2. All claims for wages, services, and materials and otherwise due and payable with respect to the above contract to date have been fully paid and satisfied.
3. There are no persons entitled at this time to file a claim of builder's lien in respect of the above contract or to any such lien.
4. The amount required to complete the above contract will not exceed \$_____.
5. The construction of improvements under the above contract was not substantially complete as of _____.
6. I am authorized to, and do, make this declaration on behalf of the contractor named above.

AND I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act*.

SWORN BEFORE ME at the District of)
 ~~, in the Province of British Columbia,)
 this ~~ day of ~~, 2004.)
)
 _____)
 A Commissioner for Taking Affidavits in)
 the Province of British Columbia)

_____)
 ~)

| AGENDA INFORMATION | |
|---|----------------------------|
| <input checked="" type="checkbox"/> Regular Meeting | Date: <u>Sept 15, 2014</u> |
| <input type="checkbox"/> Workshop (open to public) | Date: _____ |



The District of North Vancouver REPORT TO COUNCIL

September 10, 2014

File: 3060-20-17.10

AUTHOR: Tamsin Guppy, Community Planner

SUBJECT: Rezoning Application - LARCO - Mixed Use Development
2035 Fullerton Avenue

RECOMMENDATION:

It is recommended that:

1. Bylaw 8041, which rezones the subject site from C5 to Comprehensive Zone 79 (CD79) to enable the development of a mixed use project with 451 residential units, be given FIRST Reading;
2. Bylaw 8042, which authorizes a Phased Development Agreement for the project, be given FIRST Reading;
3. Bylaws 8041, and 8042 be referred to a Public Hearing;
4. Bylaw 8043, which authorizes a Housing Agreement to ensure the seniors' building and the market rental building remain rental in perpetuity, be given FIRST Reading
5. Bylaw 8084, which authorizes a Housing Agreement to prevent future rental restrictions, be given FIRST Reading;
6. The Mayor and Clerk be authorized to execute all necessary documentation to implement the associated Housing Agreements.

REASON FOR REPORT:

This application was considered by Council on September 8, 2014 and referred back to staff for further negotiation with the applicant on the timing of the Community Amenity Contribution. Staff have negotiated receipt of the \$2.5 million dollar CAC cash amount prior to issuance of the first building permit in Phase 1 and receipt of the \$8.5 million Letter of Credit to secure delivery of the community centre shell prior to occupancy of Phase 1.



Bylaw 8041 is presented to Council for authorization to proceed to a Public Hearing. The purpose of the bylaw is to rezone the subject site from the existing Recreation Commercial Zone (C5) to a new Comprehensive Development Zone to permit a mixed use project which would include 451 residential units, a small amount of at grade commercial, a mini-storage operation, and a public community centre. LARCO is proposing to construct this project over four phases, accordingly a Phased Development Agreement (Bylaw 8042) is proposed to secure the community benefits package.

Bylaws 8043, and 8084 are Housing Agreements to ensure that future strata complexes do not restrict rental housing opportunities, and to ensure the proposed rental housing (a 45 unit seniors' building and a 74 unit market rental building) remain rental in perpetuity.

SUMMARY:

LARCO Investments has applied to rezone the former Winter Club site on Fullerton Avenue to allow for a mixed use project in accordance with the Lower Capilano Marine Village Centre Plan.

The proposal includes two residential towers (18 and 12 storeys), 4 low rise buildings (up to 6 storeys), a seniors building (4 storeys), some townhouse units, some commercial units and an underground mini-storage facility. In addition, the project will incorporate a public community centre, park and plaza.

The proposal is to build this project in four phases over ten years, with the community centre secured in Phase 1 and targeted to begin construction in year seven.

EXISTING POLICY:

After extensive public engagement, the Lower Capilano Marine Village Centre Plan was approved by Council on April 29, 2013 (Plan Map on the right).

The Plan designates the site for a mix of housing and commercial activity with a maximum density of up to 2.5 FSR, and building heights to include two towers of 18 and 12 storeys.

The Plan also designates the site for a community centre, public plaza and park space.



ANALYSIS

A - Subject Site:

The site is approximately 4.4 acres in size (17,709 m²) and is located between Fullerton Avenue and Curling Road, half a block west of Capilano Road. The site was a former private athletic club, and is now vacant.



B - Project Description:

The proposal is for a mixed use project that includes:

- A total of 451 residential units located in:
 - An 18 storey residential tower;
 - A 12 storey residential tower;
 - Three - 6 storey apartment buildings, one of which is a market rental building;
 - A 4 storey apartment building (two storeys over top of the community centre);
 - A 4 storey seniors' rental building; and
 - Twenty 2 and 3 storey townhouse units.
- A 26,550 sq. ft. community centre on the north side of the public plaza in the foot of the 12 storey tower;
- A public plaza in line with the future cross roads;
- A continuation of the open space with the village green park area next to the plaza;
- A new greenway trail along the western edge of the site;
- 4,200 sq. ft. of commercial space next to the public plaza; and
- A 125,000 sq. ft. underground mini-storage facility in the 3rd level of the basement.



Artist's Renderings



View from Curling Road, looking north west (above), and from Fullerton looking south west (below).



SITE PLAN AND DEVELOPMENT CONCEPT:

Larco Model, view from Capilano Road, looking west with the new north-south road in the foreground.



The centre of the development site is the heart of the Lower Capilano Marine Village Centre with the public plaza, and community centre located where they will be easily accessed by the neighbourhood.

Buildings have been laid out to ensure that the residential towers minimize their impact on the adjacent low density neighbourhoods and public open space. In this regard, the towers are located on the eastern edge of the site (furthest from adjacent single family homes), with the taller tower at Curling Road. (See Zoning – Height section below, for more information on building heights)

To maximize the feeling of life on the street and in the public plaza, buildings are designed with pedestrian connections linking to the main plaza, and with units overlooking and accessing off of the public spaces. Ground level retail units are also proposed for the south side of the plaza to provide some potential for village commercial and to help animate this public space.

Vehicle access will be along Curling Road and Fullerton Avenue as well as a new north-south road, along the eastern edge of the site. Access to the underground parking is on the west side of the site from both Fullerton Avenue and Curling Road. By having two access

points to the parkades the traffic volumes are split between both streets and their associated intersections. Some on-street parking will be available on all adjacent roadways.

PUBLIC OPEN SPACE:

The LARCO site is in the heart of the Capilano Village Centre and as such the new north-south road (also known by residents as the “woonerf”), the public plaza, and the village green, are key components of the Village’s open space network, creating a series interesting and lively public spaces where people will enjoy walking, sitting, meeting, hanging out, and playing. This vision for these spaces was illustrated as part of the Implementation Plan and is shown below:



The intent for each open space that is part of the LARCO project is as follows:

The Public Plaza – where the community comes together, this space will have:

- Space for markets, fairs, evening concerts, big screen events, community movies and general community events;
- Space for community centre activities to spread outdoors, including outdoor yoga, or outdoor community dinners;
- Outdoor café seating; and
- A water feature that allows for interaction and play.



The Village Green – as the public space moves west the space softens and becomes lush and will include:

- grass and lush planting;
- play equipment to provide outdoor activity for children coming to the community centre;
- Room for some community centre activities to spill outdoors; and
- A variety of seating.



The Greenway Trail – connecting the community:

- A bike and pedestrian trail that provides a quiet, car-free, trail to connect Fullerton to Curling Road.



The North-South Street (woonerf) - a quiet road that puts people first, this new type of street will include:

- A design that is coordinated with the plaza so that community events can spill out onto this street;
- Drop-off parking and access to the community centre and other buildings along the road;
- Access to the commercial properties on Capilano Road;
- Retail, live-work and residential uses side by side; and
- A space that provides alternative access to the community from the future Cross Roads connection.

In addition to these new spaces, the project will also provide:

- Widening of Curling Road (3.5 m dedication) for sidewalks and boulevards; and
- Widening of Fullerton Avenue (1.5 m dedication) for sidewalk improvements.



PHASING:



The applicant is proposing to construct this project in four phases over approximately ten years. Construction is intended to start at the south end of the site next to Curling Road, as shown on the phasing plan above. The community centre is targeted to begin construction in year seven. Both the market rental and seniors' market rental buildings are proposed for phase four. While the buildings will be in four phases, the basement levels will be built in two sections as shown by the dotted lines.

ZONING:

A - Density:

Bylaw 8041, proposes to rezone the subject property to a new comprehensive development zone. The maximum density is in keeping with the Official Community Plan and Lower Capilano Marine Village Centre Implementation Plan of 2.5 FSR. This equates to a maximum square footage of 476,572 square feet.

The potential number of residential units is capped at 460 units, which is a little over the current proposal of 451, recognizing that some unit sizes and designs may evolve at the detailed application stage, but still placing a limit that is in keeping with expectations around traffic volumes.

B - Land Use:

Bylaw 8041 is intended primarily to permit a mix of residential buildings, and the community centre, with a some potential for at grade commercial next to the public plaza to allow for a café, or retail and service uses. These uses are all in accordance with the Official Community Plan and the expectations of the Village Centre Plan.

In addition to these uses, the applicant is also proposing a mini-storage business in the third level underground. As this is a commercial operation, it is a permitted use under the general OCP designation, and therefore an OCP amendment is not required. While not anticipated, nor a key component of the success of the Village Centre, the proposal for an underground mini-storage facility is supportable as it will have minimal impact on traffic in the area and can be said to help relieve the public's demand for mini-storage without impacting commercial or industrial lands.

C - Building Height and Location:

CD 79 is structured to allow for the proposed buildings while also ensuring buildings step down towards the public open space and neighbours to the west.



Specifically, CD 79 permits:

- One 18 storey tower of 185 ft (Area A);
- One 12 storey tower of 135 ft (this includes the taller floor to ceiling heights of the community centre) (Area B);
- Four - 6 storey buildings (Areas C); and
- And areas where either the 6 storey buildings step down to 4 storeys, or there are townhouses or the 4 storey senior's building (Areas D).



D - Parking:

The applicant is proposing 1 ½ levels of underground parking with a total of 631 spaces. The provision of residential parking is in line with the requirements for town centres, which are incorporated into the requirements of the CD 79 Zone, outlined below.

A requirement of this development will be that at the Development Permit stage the applicant provide a robust traffic demand management strategy that links unit styles to parking needs and provides information on bike storage, car share options, and parking design.

| Building Type / Use | Parking Ratio |
|---|---|
| Residential unit in a mid rise, low rise, or high rise building | 1.1 space/ unit |
| Townhouse unit | 1.5 space/ unit |
| Rental units in an entirely rental building | 0.75 space/ unit |
| Residential Visitor Parking | 0.1 space / unit |
| Recreation/community centre | 66 spaces of which 15 may be set aside for red cross storage |
| Public parking | Visitor parking, recreation/community centre parking and commercial parking shall all be in a central area and available for shared use |
| Village Commercial | 1 space/ 30m ² |
| Mini-storage | 1 space/ 1,950 m ² and 1 loading space/ 1,300 m ² |

The applicant has agreed to provide 66 parking spaces for the community centre which may be used for parking or for the Red Cross lending centre which is currently anticipated for this site.

The applicant is also the owner of the Maple Leaf Self Storage business which has 10 locations in the Lower Mainland. As part of their application they included a study prepared by Bunt and Associates to illustrate what they believe is the true demand for parking and loading for mini-storage businesses. This study highlights that users of mini-storage require loading spaces more than they require standard parking spaces. CD 79 reflects this study's findings and with fewer standard parking spaces and more loading spaces.

E – Electric Vehicle Charging Stations

The applicant is meeting the District's targets for 20% level one electric vehicle charging stations (electric plugs), and will be providing electric conduit to facility a higher percentage of charging stations in the future.

COMMUNITY AMENITY CONTRIBUTION – THE COMMUNITY CENTRE:

LARCO's community amenity contribution will be the construction of the shell of 26,550 square foot (21,230 sq. ft. net area) community centre and provision of 66 parking stalls. The shell of the community centre has a value of \$8,500,000, which will be secured through a Letter of Credit provided prior to occupancy of Phase 1. In addition, LARCO will also contribute \$2,500,000 in a cash payment prior to the building permit for Phase 1.

It is anticipated that CAC's from other projects in Lower Capilano Village Centre will be directed towards the completion and outfitting of the community centre.

LARCO is targeting commencement of construction of the community centre within 7 years of Bylaw Adoption, and completion within ten years.



HOUSING:

A - Rental Housing:

The District supports and encourages opportunities to increase the rental housing stock in the municipality. This project is proposing two rental buildings in phase 4:

- A market rental 6 storey apartment building consisting of 74 one and two bedroom units; and
- A seniors' market rental building consisting of 45 one bedroom units.

Bylaws 8043 is a Housing Agreement Bylaw designed to ensure that these rental buildings remain rental in perpetuity.

In addition to these two rental buildings, Bylaw 8084 is a Housing Agreement which will prevent future stratas from introducing rental restrictions, thereby ensuring that future owners of private condominiums can rent their units.

B - Housing Mix:

The proposed housing mix includes:

- 10% seniors' - one bedroom units;
- 16% market rental - one and two bedroom units;

- 4% townhouse - three bedroom units; and
- 70% market condominiums consisting of:
 - 25% 1 bedroom strata apartment units;
 - 42% 2 bedroom strata apartment units; and
 - 3% 3 bedroom strata units.

Staff generally support this unit mix, as it has a larger percentage of one bedroom units (44% of the total project) than is typically seen in the local condominium market which tends to be oriented towards two bedroom units.

C - Adaptable Housing:

The proposal is required to include the following Adaptable Housing units:

- 50% Level 1B;
- 40% Level 2; and
- 10% Level 3.

As the District's approach to adaptable housing is under review, the applicant will have the choice to meet the above standards or meet new standards should they be adopted.

TRANSPORTATION ANALYSIS:

A - Background:

As part of the Lower Capilano Marine Village Centre work, the District worked with CTS Traffic Engineers to review the long term build out of the Village Centre and ensure that the local road network could accommodate the added vehicle load of the proposed change in land uses envisioned in the Village Centre Plan.

B - Traffic Volumes:

The applicant's transportation study, prepared by Bunt and Associates, delves further into the impacts of this specific development and reconfirms that the existing road network will accommodate the traffic volumes anticipated with this development. Engineering staff have reviewed this study and concur with the study's findings.

Change in traffic volumes has been studied both for the short term and the full build-out by 2026. Looking at the full build-out scenario (i.e. the highest number of vehicles) the morning rush hour would see 97 vehicles per hour leaving the site, spread equally between two exit points (Curling and Capilano Roads and Fullerton Avenue and Capilano Road), for approximately 50 cars per hour reaching each intersection with Capilano Road or one additional car per 1.2 minutes. Similarly, the afternoon peak rush hour would have approximately 93 cars per hour, which again would be split between Curling Road and Fullerton Avenue with approximately 1 additional car per minute travelling through these intersections as a result of this development.

C - Network Improvements:

In addition to the improvements already discussed (the new north-south road, the road dedication on Curling Road and Fullerton Avenue and the new Greenway Trail) the intersection of Capilano Road and Curling Avenue will also be improved and a new signal added prior to any construction taking place.

Staff are working closely with all applicants in this area to ensure that construction projects and road upgrades in this area are coordinated.

D - Transit:

The Lower Capilano Marine Village Centre is in a frequent transit development area which has some of the best transit service in the region. The subject site is within 150 feet of bus stops on Capilano Road and within 1000 feet, or a 5 minute walk, of bus stops on Hope Road and Marine Drive.

There are over 55 buses heading west and downtown from the Marine Drive bus stop between 7am and 9am. This equates to 27 or 28 buses per hour. Staff analysis of service along Marine Drive looked at the issue of buses passing by passengers, and while this does happen it usually occurs when there are more than one bus going to the same destination arriving at the bus stop at the same time (as shown on the photo on the left). Passengers were generally able to board within 5 minutes of their arrival at the stop during the morning rush hour.



E - Construction Management:

Each phase of the development will be responsible for establishing a detailed construction traffic management plan to minimize the impacts of development activity on traffic in the area. The requirement for this plan will be listed as a condition of the development covenant for the project.

GREEN BUILDING:

In keeping with the District's Green Building strategy this rezoning project will be required to meet LEED® Gold and energy baseline requirements of six credits in the energy and atmosphere category.

In addition, the project is required to be hydronic ready to allow for connection to a future district energy system.

ADVISORY DESIGN PANEL:

The Advisory Design Panel reviewed this rezoning proposal on July 11, 2013 and recommended approval of the project. The panel will review future Development Permit submissions and will expect that issues discussed at the rezoning stage will be addressed in future submissions as the designs continue to be refined.

PUBLIC INPUT:

The applicant has been involved in the community for the last few years, taking part in the District's planning process and holding their own meetings to discuss their proposal with residents including:

- A presentation to the Capilano Gateway Association on February 12, 2012;
- A community Meeting on July 17, 2012;
- A community meeting May 6, 2013; and
- The Public Information Meeting on January 12, 2014.

The applicant held a facilitated Public Information Meeting on January 12, 2014 at the Rugby Club in Lower Capilano. Notices were distributed to the entire Village Centre and to Woodcroft. Signs were placed on the Fullerton and Curling Road frontages, and advertisements were placed in the North Shore News. The meeting was attended by approximately 150 people.

During the Public Information Meeting discussion of the following key topics were raised:

- Transportation:
 - Expected traffic volumes;
 - Parking;
 - Lionsgate Bridge and existing traffic congestion at the bridgehead; and
 - Improvements to local roads and opportunities for on street parking.
- The Community Centre size and timing;
- Building design and questions about shading;
- Construction impacts;
- Lack of commercial space and the need for a grocery store in the village;
- The mini-storage business and whether mini-storage would generate traffic;

- Support for the Village Centre Plan and for this project as part of the implementation of that plan;
- Desire to see this project move forward quickly; and
- Desire for change.

Following the Public Information Meeting thirty-five written comment sheets were submitted to LARCO and an additional twenty comment sheets were submitted to the District. Key issues reflected discussion at the public meeting but also included:

- Support for a project that may rejuvenate the area and serve as a catalyst for change;
- A desire to see more green space;
- A desire to see more parking;
- A desire to see a larger community centre with a different mix of facilities (pool, ice rink etc);
- Concern about implications for local residents property values;
- Concern that Village Centre development may impact views for Woodcroft residents;
- Concern that the new north-south road be designed to be pedestrian friendly and minimize shortcutting.

With regards to concerns about view impacts for Woodcroft residents, the LARCO submission includes the view impact illustration shown below which is based on a photo taken from the Capilano Building at Woodcroft.



VIEW FROM THE 13TH FLOOR OF THE EXISTING RESIDENTIAL TOWERS TO THE NORTH

With regards to concerns related to the design of the public open spaces and the north-south road; District staff, in conjunction with the PWL Consulting team, have worked with the community on the design for the public streets and open spaces and this work has addressed residents' concerns.

IMPLEMENTATION:

The implementation of this project will require consideration of:

- Rezoning Bylaw 8041;
- Phased Development Agreement Bylaw 8042; and
- Housing Agreement Bylaws 8043, and 8084.

A legal framework will be required to support the project, and a development covenant will be used to secure items such as the details of the off-site servicing and air space parcel subdivision requirements. Anticipated legal documents for the project include:

- Subdivision plan showing land dedication;
- Statutory rights of way for the public path;
- A development covenant to ensure the following issues are addressed to the District's satisfaction:
 - All off site and on site servicing requirements;
 - Adaptable Housing;
 - Green Building requirements;
 - District Energy requirements for building hydronic ready;
 - Ensuring unsold parking spaces are turned over to each respective strata;
 - Ensuring visitor and public parking are combined and easy to access;
 - Provision of electric vehicle charging stations;
 - Provision of car share parking spaces;
 - Provision of bicycle parking;
- Registration of the housing agreements regarding prohibition of rental restrictions, and securing the rental buildings in perpetuity; and
- A storm water management covenant.

CONCLUSION:

The proposed land use, density and general building layout is in keeping with the Official Community Plan and Village Centre Implementation Plan. The project is also in keeping with municipal policy directions for housing mix, adaptable design, and green building.

The project is ready for Bylaw Introduction and referral to a Public Hearing.

OPTIONS:

Option One (Recommendation):

It is recommended that Bylaws 8041, 8042, 8043, and 8084 be given first reading, and that Bylaws 8041 and 8042 be referred to a Public Hearing, and that the Mayor and Clerk be authorized to execute all necessary documentation to implement the associated Housing Agreements.

OR

Option Two:

The project be referred back to staff for further consideration at Council's direction.

Respectfully submitted,



Tamsin Guppy
Community Planning

Attachments

Bylaw 8041 – Rezoning Bylaw with attached CD 79

Bylaw 8042 – Phased Development Agreement

Bylaw 8043 – Housing Agreement – Ensuring Rental Buildings Remain Rental in Perpetuity

Bylaw 8084 – Housing Agreement – Prohibiting Rental Restrictions

Drawings

| REVIEWED WITH: | | |
|---|---|--|
| <input type="checkbox"/> Sustainable Community Dev. _____ | <input type="checkbox"/> Clerk's Office _____ | External Agencies: |
| <input type="checkbox"/> Development Services _____ | <input type="checkbox"/> Communications _____ | <input type="checkbox"/> Library Board _____ |
| <input type="checkbox"/> Utilities _____ | <input type="checkbox"/> Finance _____ | <input type="checkbox"/> NS Health _____ |
| <input type="checkbox"/> Engineering Operations _____ | <input type="checkbox"/> Fire Services _____ | <input type="checkbox"/> RCMP _____ |
| <input type="checkbox"/> Parks & Environment _____ | <input type="checkbox"/> ITS _____ | <input type="checkbox"/> Recreation Com. _____ |
| <input type="checkbox"/> Economic Development _____ | <input type="checkbox"/> Solicitor _____ | <input type="checkbox"/> Museum & Arch. _____ |
| <input type="checkbox"/> Human resources _____ | <input type="checkbox"/> GIS _____ | <input type="checkbox"/> Other: _____ |

The Corporation of the District of North Vancouver

Bylaw 8041

A bylaw to amend the District of North Vancouver Zoning Bylaw 3210, 1965

The Council for The Corporation of the District of North Vancouver enacts as follows:

1. Citation

This bylaw may be cited as “District of North Vancouver Rezoning Bylaw 1307 (Bylaw 8041)”.

2. Amendments

The following amendments are made to the “District of North Vancouver Zoning Bylaw 3210, 1965”:

- (a) Part 2A, Definitions is amended as follows:

Definitions Applicable to the Employment Zones, Village Commercial Zones, Comprehensive Development Zones 65, 67, 68, 69, and 79.

The following definitions apply in the Employment Zones [Sections 750 (EZ-I), 770 (EZ-LI)], Village Commercial Zones [Sections 600-A (VC-G), 600-B (VC-DC)], and Comprehensive Development Zones 65, 67, 68, 69, and 79 [Sections 4B370 to 4B385 (CD 65), 4B402 to 4B410 (CD 67), 4B411 to 4B418 (CD 68), 4B420 to 4B435 (CD 69), and 4B 79 – 1 to 4B 79 – 10 (CD 79)] only:

- (b) Part 2A, Definitions is amended by adding in the following definition in alphabetic order:

“mini-storage use” means the use of land, buildings and structures for a business that provides individually controlled storage compartments primarily for the storage of personal articles. This use class does not include “warehouse use” and is not intended for the storage of merchandise or vehicles.

- (c) Part 2A, Definitions is amended as follows:

The following terms referred to in the Employment Zones and Village Commercial Zones have the meanings given to them in Part 2 of this Bylaw:

And replace with:

The following terms referred to in the Zones to which the forgoing definitions apply, have the meanings given to them in Part 2 of this Bylaw:

- (d) Section 301 (2) by inserting the following zoning designation:
"Comprehensive Development Zone 79 CD 79"
- (e) Part 4B Comprehensive Development Zone Regulations by inserting the following, inclusive of Schedule B:

4B79 Comprehensive Development Zone 79 CD 79

The CD 79 zone is applied to:

Lot H, Block 15, District Lot 764, Explanatory Plan LMP 11271,
PID: 018 -349-269

4B 79 – 1 Intent

The purpose of the CD 79 Zone is to permit a commercial and residential medium density mixed use development which also includes a community centre, public plaza and park space.

4B 79 – 2 Permitted Uses:

The following *principal* uses shall be permitted in the CD 79 Zone:

- a) Uses Permitted Without Conditions:
Not applicable.

- b) Conditional Uses:

The following *principal* uses are permitted when the conditions outlined in Section 4B 79-3 Conditions of Use, are met:

- live-work use;*
- mini-storage use;*
- office use;*
- personal service use;*
- recreation/community centre use;*
- restaurant use;*
- retail use; and*
- residential use.*

4B 79-3 Conditions of Use

- a) **All conditional uses:** All uses of land, buildings and structures are only permitted when the following condition of use is met:

- i) All aspects of the use are completely contained within an enclosed building except for:
 - (1) Parking and loading areas;
 - (2) *Outdoor customer services areas*;
 - (3) The display of goods;
 - (4) Outdoor amenity areas (plazas, roof decks, play areas, and private or semi-private outdoor space); and
 - (5) Public plazas and park areas.

- b) **Residential and live-work:** *Residential uses* and *live-work uses* are only permitted when the following conditions are met:
 - i) Each dwelling unit has access to private or semi-private outdoor space; and
 - ii) Each dwelling unit has exclusive access to a private storage space.

- c) **Live-work:** *Live-work use* is only permitted when the following condition is met:
 - i) An outside public entrance is provided; or
 - ii) An entrance onto a corridor that is open to the public, as in a commercial building.

- d) **Mini-storage:** Except as set out below, *mini-storage use* is only permitted when the following conditions are met:
 - i) Must be located on a basement level in a commercial, residential or mixed use building; and
 - ii) Must be entirely located below natural and finished grade.
 - iii) As an exception to the foregoing, a *mini-storage use* having a maximum gross floor area of 150m² (1,614 square feet) is permitted without meeting the foregoing conditions.

4B 79-4 Accessory Use

- a) *Accessory uses* customarily ancillary to the principal uses are permitted.
- b) *Home occupations* are permitted in *residential* dwelling units.
- c) The production of energy for use on site or as part of a District Energy program that they are part of is permitted as an *accessory use*.

4B 79 – 5 Density

- a) The maximum permitted density is 44,275 m² (476,572 sq. ft.) *gross floor area*, inclusive of any density bonus for energy performance.

- b) A minimum of 425 m² (4,575 sq. ft.) of the total permissible *gross floor area* must be used for commercial purposes located immediately adjacent to the public park and plaza as noted in Schedule B, where commercial purposes includes any of the following permitted uses singly or in combination: *personal service use, restaurant use, and retail use.*
- c) The maximum permitted number of dwelling units inclusive of both *residential* units and *live-work* units is 460 units.
- d) For the purpose of calculating *gross floor area* the following are exempted:
 - i) The public *recreation/ community centre* contemplated in Phased Development Agreement Bylaw 8042;
 - ii) Any areas completely below natural and finished grade;
 - iii) Bicycle storage located on the ground floor of up to 100 m² (1,076 sq. ft.) gross floor area for each residential building to a maximum of 400m² (4,305 sq.ft.) gross floor area in total in the CD 79 Zone;
 - iv) The area of balconies and covered patios up to 10% of the total residential floor area for the building they are part of;
 - v) Common amenity areas that are accessory to the residential buildings permitted in this zone of up to 200 m² (2,152 sq. ft.) gross floor area per residential building to a maximum of 500m² (5,382 sq.ft.) gross floor area in total in the CD 79 Zone.

4B79 – 6 Height

- a) The maximum permitted height for any building in the CD 79 Zone, shall be regulated as follows:

Development Area A: The maximum permitted height is 56.4 metres (185 feet) and 18 storeys.

Development Area B: The maximum permitted height is 41.2 metres (135 feet) and 12 storeys.

Development Area C: The maximum permitted height is 19.8 metres (65 feet) and 6 storeys.

Development Area D: The maximum permitted height is 13.7 metres (45 feet) and 4 storeys.

(Development Areas are delineated in Schedule B of this Bylaw, Bylaw 8041)

- b) For the purpose of measuring building *height*, the rules set out in the definition of *height* in Part 2 of this Bylaw apply, except that *height* will be measured to from the *finished grade*.
- c) In addition to Part 4 General Regulations, Section 407 Height Exceptions, the following height exceptions shall apply in the CD 79 zone: Elevator penthouses, heating, cooling, ventilation and other mechanical equipment required for building operations are permitted above the maximum height limit, provided they are completely screened and integrated into the building's design and do not extend more than 5.0 metres (16.4 feet) above the highest point of any roof surface.

4B 79 – 7 Setbacks

The intent of the following minimum setbacks is to ensure a 4.0 metre (13.1 foot) setback from public road or public trail to residential building face.

- a) North - Fullerton Avenue: The minimum building setback is 4.0 metres (13.1 feet).
- b) West - Greenway Trail: The minimum building setback from the west lot line is 7 metres (23 feet).
- c) South - Curling Road: The minimum building setback is 4.0 metres (13.1 feet);
- d) East - New Street: The minimum building setback is 4.0 metres (13.1 feet).

4B 79 – 8 Coverage

- a) Building Coverage: The maximum building coverage is 60%.
- b) Site Coverage: The maximum site coverage is 65%.

4B 79 – 9 Landscaping and Storm Water Management

- a) All land areas not occupied by buildings, and patios shall be landscaped in accordance with a landscape plan approved by the District of North Vancouver.

- b) A 2m (6.6. ft) high screen consisting of a solid wood fence, or landscaping or a combination thereof, with 90% opacity, is required to screen from view:
 - i) any utility boxes, vents or pumps that are not located underground and/ or within a building; and
 - ii) any solid waste (garbage, recycling, compost) or loading areas or facilities that are not located underground and / or within a building.

4B 79- 10 Parking, Loading and Servicing Regulations

a) Parking and loading are required as follows:

| Use | Parking Requirement |
|--|---|
| <i>Residential</i> Residential dwelling unit in a mid rise, low rise, or high rise building | 1.1 space/ unit |
| Residential townhouse dwelling unit | 1.5 space/ unit |
| Residential rental dwelling units in an entirely rental building | 0.75 space/ unit |
| Residential Visitor Parking | 0.1 space / unit |
| Recreation/community centre use | 66 spaces, of which up to 15 may be converted to Red Cross Storage |
| Public Parking | Visitor parking, recreation/community centre parking and commercial parking shall all be in a central area and available for shared use |
| Commercial including <i>office use, personal service use, restaurant use and retail use</i> | 1 space/ 30m ² |
| Mini-storage use | 1 space/ 1,950 m ² and 1 loading space/ 1,300 m ² |

- b) Bicycle storage for residents shall be provided on the basis of one space per unit.
- c) Except as specifically provided in 4B79-10 (a) and (b) Parking and Loading shall be provided in accordance with Part 10 of this Bylaw.
- (f) The Zoning Map is amended in the case of the lands illustrated on the attached map (Schedule A) by rezoning the land from the Recreation Commercial Zone (C5) to Comprehensive Development Zone CD 79.

READ a first time

PUBLIC HEARING held

READ a second time

READ a third time

Certified a true copy of Bylaw 8061 as at Third Reading

Municipal Clerk

APPROVED by the Ministry of Transportation and Infrastructure on

ADOPTED

Mayor

Municipal Clerk

Certified a true copy

Municipal Clerk

Bylaw 8041 Schedule A: Zoning Map



The Corporation of the District of North Vancouver

Bylaw 8042

A bylaw to authorize a phased development agreement

The Council for The Corporation of the District of North Vancouver enacts as follows:

1. Citation

This bylaw may be cited as "Phased Development Agreement Bylaw 8042, 2014".

2. Phased Development Agreement

The Mayor and Municipal Clerk may execute and deliver an agreement with 332391 B.C. Ltd. substantially in the form attached as Schedule A to this Bylaw.

READ a first time

PUBLIC HEARING held

READ a second time

READ a third time

ADOPTED

Mayor

Municipal Clerk

Certified a true copy

Municipal Clerk

Schedule A to Bylaw 8042

PHASED DEVELOPMENT AGREEMENT

This agreement dated for reference the ____ day of _____ 2014 is

BETWEEN:

THE CORPORATION OF THE DISTRICT OF NORTH VANCOUVER, a municipality incorporated under the *Local Government Act*, R.S.B.C. 1996, c.323 and having its office at 355 West Queens Road, North Vancouver, BC V7N 4N5

(the “District”)

AND:

332391 BC LTD. (Incorporation No. 332391) a corporation incorporated under the laws of the Province of British Columbia with an office at 300 – 100 Park Royal, West Vancouver, BC V7T 1A2

(the “Developer”)

WHEREAS:

- A. The Developer is the registered owner in fee simple of all the land in the District of North Vancouver legally described as PID: 018-349-269, Lot H, Block 15, District Lot 764 Group 1, NWD Explanatory Plan LMP11271 (the “Land”)
- B. The Developer has applied to the District for an amendment of the Zoning Bylaw (as defined in this Agreement) to permit the development on the Land of a range of residential and commercial uses and civic and community uses;
- C. The Developer wishes to provide certain amenities and features in the development of the Land, and the parties wish to ensure that the provisions of the Zoning Bylaw as amended by the Zoning Amendment Bylaw (defined in this Agreement) continue to apply to the Land for the period more particularly set out in this Agreement; and
- D. The Council of the District has given notice and held a public hearing and has, by Bylaw No. 8042, 2014, authorized the execution of this Agreement,

NOW THEREFORE in consideration of the mutual promises set out in this Agreement, the parties agree pursuant to section 905.1 through 905.5 of the *Local Government Act* as follows:

Definitions

- 1. In this Agreement:

- (a) *"Air Space Easements"* means the easements (reciprocal or otherwise) and statutory rights of way for access, repair, service, maintenance and support to be registered against title to the Land in connection with and in favour of the Village Green and Public Plaza Air Space Parcel and Community Centre Air Space Parcel all as reasonably required by the District;
- (b) *"Business Day"* means any day other than Saturdays, Sundays or statutory holidays in the Province of British Columbia;
- (c) *"Certificate of Completion"* means the certificate issued by the Developer's Consultant upon the satisfactory completion of the Works (except any deficiencies that may be completed or remedied after the Community Centre Closing Date pursuant to section 38), which said certificate must be accepted by the District's Representative pursuant to section 36;
- (d) *"Commencement Date"* has the meaning given to it in section 3;
- (e) *"Community Centre"* means a community centre having a Gross Floor Area of at least 26,550 square feet to be constructed on the Land in the location shown on the Master Development Plan meeting the Performance Criteria and Requirements;
- (f) *"Community Centre Air Space Parcel"* means:
 - (i) the air space parcel containing the Community Centre and the Community Centre Parking Stalls, which said airspace parcel is to be created by deposit of a subdivision plan to subdivide Parcel 3 in accordance with this Agreement and the Development Covenant; and
 - (ii) the Air Space Easements required by the District in connection therewith;
- (g) *"Community Centre Closing Date"* means the date that is 30 days after the latest of the following events:
 - (i) full registration in the LTO of a plan of subdivision of Parcel 3 creating, among other things, an indefeasible title to the Community Centre Air Space Parcel registered in the name of the Developer; or
 - (ii) Total Completion of the Works;
- (h) *"Community Centre Parking Stalls"* means the portion of level 1 in the Underground Parking Structure immediately beneath the Community Centre Shell as delineated in the Development Covenant containing sufficient floor area for 66 finished parking stalls and associated drive aisles, which said floor area may contain a room for a Red Cross lending center, to be designed and built by the Developer for the District in accordance with, and within the time stipulated in, this Agreement and the Development Covenant, and includes all structural

elements, access ramps, utilities and services required for the support and operation of the same;

- (i) "*Community Centre Shell*" means all building elements (structural and otherwise), equipment and fittings included in the core and shell of the Community Centre, which said building elements, equipment and fittings are to be constructed by the Developer in accordance with, and within the time stipulated in, this Agreement and the Development Covenant, and include, without limitation, the building elements, equipment and fittings comprising the core and shell of the Community Centre described in Schedule "A", all as required to meet the Performance Criteria and Requirements, and all as will be more particularly set out in the Detailed Plans and Specifications;
- (j) "*Community Centre Transfer*" has the meaning given to it in section 63(a);
- (k) "*Default Notice*" has the meaning given to it in section 5 herein;
- (l) "*Deficiencies*" has the meaning given to it in subsection 38(a) herein;
- (m) "*Deficiency Holdback*" has the meaning given to it in subsection 38(a) herein;
- (n) "*Design*" means the design for the Community Centre Shell and the Community Centre Parking Stalls consisting of the Performance Criteria and Requirements, the Standards and the Detailed Plans and Specifications;
- (o) "*Detailed Plans and Specifications*" means the construction drawings and construction specifications based on, conforming to, and satisfying the Performance Criteria and Requirements and the Standards for all components, structural and otherwise, of the Community Centre Shell and the Community Centre Parking Stalls, all to be prepared by or for the Developer and accepted by the District in accordance with this Agreement;
- (p) "*Developer's Consultant*" has the meaning given to it in section 24(b) herein;
- (q) "*Development Covenant*" means the covenant under section 219 of the *Land Title Act* dated for reference _____, 2014 granted by the Developer to the District and registered at the LTO against the Land under number _____;
- (r) "*Development Parcels*" has the meaning given to it in the Development Covenant;
- (s) "*Director*" means the District's General Manager of Planning, Properties and Permits and his or her designate;
- (t) "*District's Representative*" means the District's General Manager of Engineering, Parks and Facilities and his or her designate;

- (u) “*Environmental Laws*” means all federal, provincial, municipal or local laws, statutes or ordinances relating to environmental matters, including all rules, regulations, policies, guidelines, criteria or the like promulgated under or pursuant to any such laws;
- (v) “*Greenway Trail*” means a lighted public trail along the west perimeter of the Land having a width for its entire length of at least 3.0 metres, said trail to be designed, constructed and installed by the Owner pursuant to this Agreement, the Development Covenant and the Servicing Agreement;
- (w) “*Gross Floor Area*” means the floor area of the Community Centre measured to the exterior of its walls, but excludes Community Centre Parking Stalls and any portion of the Community Parking Stall that may be used by the District for the Red Cross lending center or other purpose;
- (x) “*Hazardous Substances*” means contaminants, pollutants, dangerous goods, waste, toxic substances, or hazardous substances as defined in or pursuant to any Environmental Law and coming into existence or migrating to or from the Land or any part or parts thereof;
- (y) “*Land*” has the meaning given to it in recital A;
- (z) “*Letter of Credit*” has the meaning given to it in section 66 herein;
- (aa) “*LTO*” means the Lower Mainland Land Title Office;
- (bb) “*Master Development Plan*” has the meaning given to it in the Development Covenant;
- (cc) “*Parcel 2*”, “*Parcel 3*” and “*Parcel 4*” have the meanings given to them in the Development Covenant;
- (dd) “*Performance Criteria and Requirements*” means all of the criteria and requirements contained in the document prepared by Bruce Carscadden Architects Inc. entitled “District of North Vancouver Bridging Report for Lower Capilano Community Centre” dated November 5, 2013 and all of the final appendices to that document [*note this definition may need some work*];
- (ee) “*Permitted Charges*” means any reservations, charges or encumbrances included in any grant from the Crown or approved in writing by the Director and any charges or encumbrances required to be granted to the District as a condition of adoption of the Zoning Amendment Bylaw;
- (ff) “*Phase 3 of the Development*” means the third phase of the proposed development on the portion of the Land comprising Parcel 3 as shown on the phasing plan attached to the Development Covenant;

- (gg) “*Prime Rate*” means the annual percentage rate of interest established from time to time by the Royal Bank of Canada, Main Branch, Vancouver, British Columbia as the base rate that will be used to determine rates of interest charged by it for Canadian dollar loans to customers in Canada and designated by the Royal Bank of Canada as the prime rate;
- (hh) “*Records*” means all records, documents, and plans which are or ought to be in the possession and control of the Developer pertaining to the Community Centre Shell and the Community Centre Parking Stalls, and their operation, and includes permits, licences, approvals, survey certificates, plans and specifications, “as-built” drawings, and environmental reports, investigations, assessments and audits;
- (ii) “*Rental Housing Agreement*” means the housing agreement pursuant to section 905 of the *Local Government Act* entered into between the Developer and the District and dated _____, 2014;
- (ij) “*Servicing Agreement*” has the meaning given to it in the Development Covenant;
- (kk) “*Specified Zoning Bylaw Provisions*” means sections 4B79-2 to 4B79-8 of the Zoning Bylaw;
- (ll) “*Standards*” means any and all laws, bylaws, statutes, regulations, rules, orders, permits, licences, codes, building codes, professional standards and specifications (including Canadian Standards Association standards) applicable to the Land, the Community Centre and the Community Centre Parking Stalls;
- (mm) “*Total Completion of the Works*” means total completion of all of the Works, except any deficiencies that may be completed or remedied after the Community Centre Closing Date pursuant to section 38, as evidenced by issuance by the Developer’s Consultant and acceptance by the District’s Representative of a Certificate of Completion pursuant to section 36 herein;
- (nn) “*Underground Parking Structure*” means the underground parking structure to be constructed on the Land in accordance with the Master Development Plan;
- (oo) “*Village Green and Public Plaza*” has the meaning given to it in the Development Covenant;
- (pp) “*Village Green and Public Plaza Air Space Parcel*” means:
 - (i) the air space parcel containing the three dimensional section of Parcel 2 containing the Village Green and Public Plaza and extending at least 40 feet into the air above the Village Green and Public Plaza, which said airspace parcel is to be created by deposit of a plan of subdivision of Parcel 3 in accordance with this Agreement and the Development Covenant; and

- (ii) the Air Space Easements required by the District in connection therewith;
- (qq) “*Village Green and Public Plaza Closing Date*” means the date that is 30 days after full registration in the LTO of a subdivision plan of Parcel 2 creating an the indefeasible title to the Village Green and Public Plaza Air Space Parcel registered in the name of the Developer;
- (rr) “*Village Green and Public Plaza Transfer*” has the meaning given to it in section 62(a);
- (ss) “*Warranties*” means all warranties, guarantees or contractual obligations of third persons which entitle the Developer to any rights against a contractor or supplier engaged in the construction of the Works or any part thereof;
- (tt) “*Warranty Deposit*” has the meaning given to it in section 40 herein;
- (uu) “*Warranty Period*” means the period commencing on the date that is the later of:
 - (i) the Community Centre Closing Date; and
 - (ii) the date that all Deficiencies have been rectified to the satisfaction of the District’s Representative,
 and ending on the first anniversary of that date; provided, however that if as at such anniversary date there are any warranty claims outstanding between the District and the Developer, the Warranty Period in respect of each item regarding which a warranty claim remains outstanding will be extended until all claims related to such item have been resolved to the satisfaction of the District;
- (vv) “*Works*” means everything to be constructed and installed by the Developer on the Land pursuant to the Developer’s construction obligations under this Agreement with respect to, and limited to, the Community Centre Shell and Community Centre Parking Stalls;
- (ww) “*Zoning Amendment Bylaw*” means District of North Vancouver Rezoning Bylaw 8041 (No. 1307, 2014); and
- (xx) “*Zoning Bylaw*” means the District of North Vancouver Zoning Bylaw No. 3210, 1965 as *modified* by the Zoning Amendment Bylaw and as further amended, consolidated, re-enacted or replaced from time to time.

Application of Agreement

- 2. This Agreement applies to the Land, including any parcels into which the Land may be subdivided. This Agreement applies to the Land and to no other land.

Term of Agreement

3. The term of this Agreement is 10 years, commencing on the date of execution of this Agreement by both parties (the “Commencement Date”). When this Agreement refers to the “term”, it means the duration of this Agreement until expiry or earlier termination.

Termination by Agreement

4. The parties may terminate this Agreement at any time by mutual agreement in writing.

Termination for Default

5. If the Developer does not comply with this Agreement, the District may at its option terminate this Agreement by providing notice of termination in writing to the Developer, provided that the District has, at least two months prior to giving such notice, advised the Developer in writing of any alleged failure to comply (the “Default Notice”) and the Developer has not corrected the default to the reasonable satisfaction of the District, or if such default reasonably requires longer than two months to remedy, the Developer has failed to substantially commence remedying such default within two months after receipt of the Default Notice to the reasonable satisfaction of the District or has failed to substantially complete remedying the default within six months after receipt of the Default Notice to the reasonable satisfaction of the District.
6. Despite the preceding section, if the default is one that cannot be remedied by the Developer, the District may give notice of termination at the same time as the Default Notice.
7. For certainty, the following are defaults that cannot be remedied by the Developer:
 - (a) if the Developer makes a general assignment for the benefit of creditors; or
 - (b) if the Developer institutes proceedings to be adjudicated bankrupt or insolvent or consents to the institution of bankruptcy or insolvency proceedings against the Developer or files an application or petition or answer or consent seeking re-organization or re-adjustment of the indebtedness of the Developer under the *Bankruptcy and Insolvency Act* or the *Companies’ Creditors Arrangement Act* or any law of Canada or any province of Canada relating to bankruptcy or insolvency, or consents to the filing of any such application or petition, or consents to the appointment of a receiver or receiver-manager; or
 - (c) if a receiver, interim receiver, receiver manager, trustee, liquidator, or custodian of all or substantially all of the property of the Developer or of the Developer’s interest in the Land is appointed or applied for by the Developer or appointed pursuant to an instrument or by order of a court and such appointment or order is not in good faith contested by the Developer; or
 - (d) if a judgment, decree, or order is entered by a court of competent jurisdiction adjudging the Developer a bankrupt or insolvent or subject to the provisions of

the *Bankruptcy and Insolvency Act* or determining that proceedings for re organization, arrangement, adjustment, composition, liquidation, or any similar relief under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* or any law of Canada or any province of Canada relating to bankruptcy or insolvency have been properly instituted otherwise than by the Developer, provided that such judgment, decree or order is not in good faith contested by the Developer; or

- (e) if any application or petition or certificate or order is made or granted for the winding-up or dissolution of the Developer, voluntary or otherwise and such appointment or order is not in good faith contested by the Developer.

Other Remedies

8. The parties covenant and agree each with the other that the District's remedies in the event of a default by the Developer under this Agreement include but are not limited to:
 - (a) termination of this Agreement in accordance with section 5;
 - (b) seeking an order for any and all damages suffered by the District as a result of the default;
 - (c) drawing on the letter of credit and applying the proceeds on account of damages suffered by the District as a result of the default as set out in sections 67(b), 71 and 72;
 - (d) seeking an order of specific performance with respect to the completion of the Community Centre Shell and Community Centre Parking Stalls, the creation of the Community Centre Air Space Parcel and the transfer of the Community Centre Air Space Parcel to the District in accordance with this Agreement;
 - (e) seeking an order of specific performance with respect to the creation of the Village Green and Public Plaza Air Space Parcel and transfer of Village Green and Public Plaza Air Space Parcel to the District in accordance with this Agreement; and
 - (f) enforcement of any covenants granted by the Developer pursuant to section 219 of the *Land Title Act*.
9. The District may in its sole discretion pursue any of the above remedies singularly or in combination with other remedies.
10. The remedy in subsection 8(a) may be combined by the District with its remedies under subsections 8(b) and 8(c), and for greater certainty these three remedies are cumulative and not exclusive, and the District may from time to time have recourse to one or more of these remedies.

11. The remedies of the District specified in subsections 8(b) to 8(f) are cumulative and in addition to any remedies of the District at law or equity. None of the District's remedies specified in subsections 8(b) to 8(f) will be deemed to be exclusive, and the District may from time to time have recourse to one or more or all of the available remedies specified in this Agreement or at law or equity.
12. The Developer will make no claim for compensation, in damages or otherwise, upon the lawful termination of this Agreement under section 5. The Developer acknowledges and agrees that termination of this Agreement will not in any way affect the validity of the Development Covenant or any of the land use restrictions contained therein all of which continue in full force and effect notwithstanding the expiry or earlier termination of this Agreement.

Bylaw Amendments Not to Apply

13. For the term of this Agreement, any amendment or repeal of the Specified Zoning Bylaw Provisions will not apply to the Land, except:
 - (a) as provided in section 905.1(6) of the *Local Government Act* as amended, consolidated, re-enacted or replaced from time to time; or
 - (b) to the extent that the Developer agrees in writing that the amendment or repeal will apply.
14. Intentionally Deleted.

Amenities and Features of the Development

15. The Developer will design and construct the Community Centre Shell and Community Centre Parking Stalls and will provide security for said obligation all in the time and in the manner set out in this Agreement and in the Development Covenant.
16. The Developer will transfer to the District the fee simple interest in the Community Centre Air Space Parcel in the time and in the manner set out in this Agreement and in the Development Covenant.
17. The Developer will pay a \$2,500,000 cash community amenity contribution to the District in the time and in the manner set out in the Development Covenant, which said cash community amenity contribution to be used by the District in its discretion for projects benefitting the Lower Capilano Marine Village Centre including but not limited to interior finishing of the Community Centre provided that the Developer transfers the Community Centre Air Space Parcel to the District in the time and in the manner stipulated in this Agreement and in the Development Covenant.
18. The Developer will transfer to the District the fee simple interest in the Village Green and Public Plaza Air Space Parcel free and clear of all encumbrances other than those specifically agreed to in writing by the District in the time and in the manner set out in this Agreement and in the Development Covenant.

19. The Developer will construct and install market rental housing on Parcel 4 in the time and in the manner set out in the Rental Housing Agreement and in the Development Covenant.
20. The Developer will construct and install the Greenway Trail and will grant to the District a statutory right of way for the Greenway Trail in the time and in the manner set out in the Development Covenant and in the Servicing Agreement;
21. The Developer will ensure that buildings and structures on the Land, including all service infrastructure provided by or on behalf of the Developer, complies with the green building and building accessibility requirements as set out in the Development Covenant.
22. The Developer will install a hydronic source heating system in the buildings to be constructed on each of the Development Parcels. The said hydronic source system will be district energy ready.
23. The Developer agrees that at least 20% of all residential parking stalls will have electric plugs suitable for level one charging, and the Developer further agrees that electric conduit will be installed to facilitate the later installation of electric plugs for additional parking stalls.

Design and Construction Covenants - Community Centre Shell and Community Centre Parking Stalls

24. The Developer will, all at its sole cost and expense:
 - (a) design the Community Centre Shell and Community Centre Parking Stalls to meet or exceed all of the Performance Criteria and Requirements and all prevailing *British Columbia Building Code* requirements and standards and other Standards, and in accordance with this Agreement and the Development Covenant;
 - (b) cause to be prepared the Detailed Plans and Specifications under the direction of, and to be sealed under the professional seal of, a registered architect or professional engineer retained by the Developer (“the Developer’s Consultant”);
 - (c) ensure that the Detailed Plans and Specifications satisfy, are based on, and conform to the Performance Criteria and Requirements, the Standards and the requirements of the Development Covenant and this Agreement;
 - (d) if required by the District’s Representative, cause to be prepared and delivered to the District’s Representative reports and professional certifications from the Developer’s Consultant with respect to all or any part of the Works or with respect to any one or more of the Performance Criteria and Requirements;
 - (e) deliver to the District’s Representative for the District’s acceptance the Detailed Plans and Specifications immediately upon the Developer’s receipt of same from the Developer’s Consultant;

- (f) without limiting the land use and occupancy restrictions and prohibitions contained in the Development Covenant, the Developer will not commence the construction of any part of Phase 3 of the Development (including the Community Centre Shell and the Community Centre Parking Stalls) until the Detailed Plans and Specifications have been accepted in writing by the District's Representative;
- (g) not make any amendments to the Detailed Plans and Specifications after they have been accepted by the District except with the District's prior written approval;
- (h) construct the Works in a good and workman like fashion and in strict compliance with the Design, and work diligently and expeditiously to complete the Works within the time specified in the Development Covenant and in section 45 herein;
- (i) comply with any changes to the Detailed Plans and Specifications reasonably required by the District's Representative as necessary to satisfy the District's Representative that the Community Centre Shell and the Community Centre Parking Stalls will function and operate in a manner satisfactory to the District's Representative, acting reasonably, and in accordance with the Performance Criteria and Requirements;
- (j) keep the District properly and adequately advised of the progress of the Works and of Phase 3 of the Development;
- (k) retain at all times a professional engineer or registered architect to act as the Developer's Consultant and to provide competent survey, layout and on-site supervision to ensure that, and to provide written certification satisfactory to the District that, the Community Centre Shell and the Community Centre Parking Stalls strictly conforms to Detailed Plans and Specifications and to record the details of any field design or construction changes to the Detailed Plans and Specifications and to record all of the geometric information for preparation of "as constructed" drawings. No works will be covered or trenches backfilled without inspection and approval by the Developer's Consultant and without adequate as-constructed information being obtained, including line and grade of buried works;
- (l) advise the District's Representative of the name and address of the Developer's Consultant and any other professional engineer or architect retained by the Developer and to ensure that such engineers and architects maintains professional liability and errors and omissions insurance of not less than \$2,000,000.00 per occurrence during the term of his or her engagement and general liability insurance of not less than \$5,000,000.00 per occurrence during the term of his or her engagement. The Developer will obtain and provide to the District proof of all such insurance before the Developer commences the construction and installation of the Community Centre Shell and the Community Centre Parking Stalls; and

- (m) obtain, and maintain in good standing, the Warranties and, to the extent assignable, provide copies of the Warranties to the District concurrently with the Community Centre Transfer.

Investigation

- 25. The District, and its officials, employees, agents and contractors may enter the Land at all reasonable times for the purposes of carrying out inspections, investigations, tests and surveys as it considers necessary or desirable, including to determine if the Works conform to the Design.

Design Acceptance

- 26. The Detailed Plans and Specifications must be prepared by the Developer's Consultant in consultation with the District's Representative.
- 27. The Developer will notify the District's Representative of any deviations in the Detailed Plans and Specifications from the Performance Criteria and Requirements, the Standards or other requirements set out herein or in the Development Covenant.
- 28. The District's Representative will accept the draft Detailed Plans and Specifications if the District's Representative determines, in his or her discretion, that the draft Detailed Plans and Specifications satisfy the Performance Criteria and Requirements and all other requirements set out herein and in the Development Covenant.
- 29. The District's Representative will notify the Developer if the Detailed Plans and Specifications are rejected, giving reasons in writing for the rejection.
- 30. The District will cause the District's Representative to review the proposed Detailed Plans and Specifications submitted by the Developer in a timely manner, and the District will accept, reject or require changes to be made to the proposed Detailed Plans and Specifications within 60 days of receipt from the Developer.
- 31. The Developer's Consultant will make all changes to the draft Detailed Plans and Specifications reasonably required by the District's Representative.
- 32. The District will cause the District's Representative to review any proposed Detailed Plans and Specifications resubmitted by the Developer in a timely manner, and the District will accept, reject or require further changes to be made to the resubmitted Detailed Plans and Specifications within 60 days of receipt from the Developer.
- 33. When the Detailed Plans and Specifications are accepted and signed by the District and the Developer such Detailed Plans and Specifications will become part of this Agreement.
- 34. The District's Representative's review and acceptance pursuant to this Agreement will not relieve the Developer of responsibility for errors or omissions in the Detailed Plans and Specifications (including design errors or inadequacies) or for meeting all

requirements of this Agreement and the Development Covenant unless the District's Representative in writing expressly accepts a deviation from this Agreement.

35. For greater certainty, the District's acceptance of the design of the Community Centre Shell and Community Centre Parking Stalls pursuant to this Agreement is separate from and independent of the building permit process under the District of North Vancouver Building Bylaw.

Completion of the Works

36. The satisfactory completion of the Works pursuant to this Agreement (except for the Deficiencies pursuant to section 38) will be established only by confirmation by the District's Representative in writing that he or she has received and accepted a satisfactory Certificate of Completion from the Developer's Consultant.

District Not Responsible

37. For clarity, nothing in this Agreement, makes the District or the District's Representative in any way responsible or liable for the Design of the Community Centre Shell or the Community Centre Parking Stalls including with respect to the adequacy of, or any errors or omissions in, or the compliance of the Detailed Drawings and Detailed Specifications with the Performance Criteria and Requirements and Standards or any law of any authority having jurisdiction, and the Developer will, despite any act of the District or District's Representative under this Agreement, remain liable and responsible for the design and construction of the Works.

38. Deficiencies

- (a) The District's Representative and the Developer's Consultant, both acting reasonably in conjunction with their determination and certification of Total Completion of the Work pursuant to section 36, will make a list of incomplete work and defects in the Community Centre Shell and Community Centre Parking Stalls (the "Deficiencies") divide the Deficiencies into two categories: Deficiencies that must be completed or remedied before Total Completion of the Work and Deficiencies that may be completed or remedied after Total Completion of the Work. Deficiencies that may be remedied after Total Completion of the Work will be remedied by the Developer within the period of time specified by the District's Representative and the Developer's Consultant. A sum equal to the greater of \$30,000.00 or two hundred percent (200%) of the cost to complete and remedy the Deficiencies as estimated by the District's Representative and the Developer's Consultant, both acting reasonably, will be drawn down from the Letter of Credit on the date that the Certificate of Completion is accepted by the District's Representative under section 36, and held in cash by the District (the "Deficiency Holdback"). The District will invest the Deficiency Holdback in an interest bearing trust account. Upon receipt of a report from the District's Representative and the Developer's Consultant certifying that the Deficiencies are complete the District will pay to the Developer

the Deficiency Holdback plus interest, if any, accrued thereon, less any amount expended by the District to rectify or complete the Deficiencies.

- (b) If, for the purpose of subsection 38(a), the District's Representative and the Developer's Consultant cannot agree on the Deficiencies that may be completed or remedied after Total Completion of the Work, the period of time for completing or remedying the Deficiencies, the cost to complete and remedy the Deficiencies or the certification that the Deficiencies are completed and remedied then the disputed issue or issues will be settled in accordance with sections 80 and 81 herein.
- (c) The Developer covenants and agrees to complete all the Deficiencies to the satisfaction of the District's Representative and the Developer's Consultant, both acting reasonably, and within the time period specified by District's Representative and the Developer's Consultant or during such further period as the District's Representative and the Developer's Consultant may allow.

Warranty

- 39. The Developer warrants to the District that all of the Works will be of good workmanship and quality and compliant with the Detailed Plans and Specifications and that all materials, equipment, fittings and building elements will be suitable for the purposes for which they are intended. The Developer, at its own expense, will promptly repair or replace as appropriate in the opinion of the Director, any component of the Works which is defective, deficient or which otherwise does not satisfy the above warranty, except in respect of any repair or replacement that is covered by a third party supplier or sub-contractor warranty that has been duly and effectively assigned to the District by the Developer, in which case the Developer will co-operate with the District in the enforcement of such warranty.
- 40. As security for the Developer's warranty obligations under section 39, the Developer covenants and agrees to keep deposited with the District, by cash or letter of credit, the sum of \$850,000.00, representing 10% of the initial amount of the Letter of Credit (the "Warranty Deposit").
- 41. The District will release the Warranty Deposit, less any amount drawn down by District under section 73, at the end of the Warranty Period.
- 42. Nothing in this Agreement is intended to limit the liability of the Developer or the Developer's head contractor and consultants to the District in tort.

Developer's Phase 2 Subdivision Obligation

- 43. Without limiting the Developer's obligations under the Development Covenant, the Developer will at its sole cost and expense do all things reasonably necessary to cause Parcel 2 to be subdivided into air space parcels compliant with the requirements set out in the Development Covenant, one of which air space parcels must be the Village Green and Public Plaza Air Space Parcel.

Developer's Phase 3 Subdivision Obligation

44. Without limiting the Developer's obligations under the Development Covenant, the Developer will at its sole cost and expense do all things reasonably necessary to cause Parcel 3 to be subdivided into air space parcels compliant with the requirements set out in the Development Covenant, one of which said air space parcels must be the Community Centre Air Space Parcel.

Timing

45. The Developer's obligations under this Agreement to design and construct the Community Centre Shell and Community Centre Parking Stalls, create the Community Centre Air Space Parcel and transfer the Community Centre Air Space Parcel to the District must be fully performed and satisfied within the times set out in the Development Covenant, and, in any event, all of said obligations must be fully performed and satisfied by no later than the date that is nine years and eleven months after the Commencement Date.
46. The Developer's obligations under this Agreement to create the Village Green and Public Plaza Air Space Parcel and to transfer the Village Green and Public Plaza Air Space Parcel to the District must be fully performed and satisfied within the times set out in the Development Covenant.

Air Space Easements

47. The Development Covenant addresses the content of the Air Space Easements, the timing and manner of their registration at the LTO in favour of the Village Green and Public Plaza Air Space Parcel and the Community Centre Air Space Parcel, as the case may be, and the portions of the Land to be charged by the Air Space Easement.

Transfer of Air Space Parcels

48. The Developer agrees to transfer to the District its fee simple interest in the Village Green and Public Plaza Air Space Parcel on the Village Green and Public Plaza Closing Date free from all liens, charges, encumbrances, equities, claims, encroachments, and defects in titles, except for the Permitted Charges and on the terms and conditions set out herein.
49. The Developer agrees to transfer to the District its fee simple interest in the Community Centre Air Space Parcel on the Community Centre Closing Date free from all liens, charges, encumbrances, equities, claims, encroachments, and defects in titles, except for the Permitted Charges and on the terms and conditions set out herein.

District Conditions

50. Despite anything to the contrary in this Agreement, the transfers contemplated in sections 48 and 49 will not complete unless and until the following conditions are satisfied, either of which conditions may be waived at the sole discretion of the District:

- (a) the Developer's representations in sections 51 and 52 with respect to the Village Green and Public Plaza Air Space Parcel will be true and correct on the Village Green and Public Plaza Closing Date; and
- (b) the Developer's representations in sections 51 and 53 with respect to the Community Centre Air Space Parcel will be true and correct on the Community Centre Closing Date.

The conditions set out in this section 50 are not to be deemed as conditions precedent to the formation of this Agreement or its execution and delivery by each party to the other, and this Agreement will be and is deemed to be enforceable from the time of such execution and delivery.

Corporate Capacity

- 51. The Developer represents and warrants that on the date of signing this Agreement and on the Village Green and Public Plaza Closing Date and the Community Centre Closing Date the Developer is a corporation in good standing under the laws of British Columbia, has sufficient power, authority and capacity, and has taken all required corporate action to duly authorize it to execute and deliver this Agreement, to perform the Agreement in accordance with its terms and to transfer the Village Green and Public Plaza Air Space Parcel and the Community Centre Air Space Parcel to the District.

Village Green and Public Plaza Air Space Parcel Representations

- 52. The Developer represents and warrants that on the date of signing this Agreement and on the Village Green and Public Plaza Closing Date:
 - (a) the Developer is a resident of Canada within the meaning of the *Income Tax Act* (Canada) and under Part IX of the *Excise Tax Act* (Canada);
 - (b) the Developer has good, safeholding and marketable title to the Land and on the Village Green and Public Plaza Closing Date will have good, safeholding and marketable title to the Village Green and Public Plaza Air Space Parcel free from all liens, charges, encumbrances, equities, claims, encroachments and defects in title, except the Permitted Charges;
 - (c) by completing the transfer of the Village Green and Public Plaza Air Space Parcel to the District the Developer will not be in breach of any statute or bylaw or of any agreement by which the Developer is bound;
 - (d) to the best of the Developer's knowledge Parcel 2 and the Village Green and Public Plaza Air Space Parcel are free of Hazardous Substances;
 - (e) to the best of the Developer's knowledge Parcel 2 and the Village Green and Public Plaza Air Space Parcel comply with all Environmental Laws and are not subject to any outstanding or threatened notice of defect or non-compliance, work order, pollution abatement order, pollution prevention order, remediation order or

any other order from any federal, provincial, municipal or other governmental authority;

- (f) there are no actions, proceedings, investigations or claims, pending or to the best of the Developer's knowledge threatened, that would interfere with the use and enjoyment of Parcel 2 or the Village Green and Public Plaza Air Space Parcel or that relate to the presence of Hazardous Substances in, on, under or migrating to or from Parcel 2 or the Village Green and Public Plaza Air Space Parcel;
- (g) the Developer has no knowledge that any person has taken, intends to take, or has threatened to take, any action, suit or proceeding which could adversely affect the Land, the Village Green and Public Plaza Air Space Parcel, the Developer's title thereto, or the Developer's right to transfer the Village Green and Public Plaza Air Space Parcel to the District; and
- (h) on the Village Green and Public Plaza Closing Date no improvements on the Land adjacent to the Village Green and Public Plaza Air Space Parcel encroach on the Village Green and Public Plaza Air Space Parcel.

Community Centre Air Space Parcel Representations

53. The Developer represents and warrants that on the date of signing this Agreement and on the Community Centre Closing Date:
- (a) the Developer is a resident of Canada within the meaning of the *Income Tax Act* (Canada) and under Part IX of the *Excise Tax Act* (Canada);
 - (b) the Developer has good, safeholding and marketable title to the Land and on the Community Centre Closing Date will have good, safeholding and marketable title to the Community Centre Air Space Parcel free from all liens, charges, encumbrances, equities, claims, encroachments and defects in title, except the Permitted Charges;
 - (c) by completing the transfer of the Community Centre Air Space Parcel to the District the Developer will not be in breach of any statute or bylaw or of any agreement by which the Developer is bound;
 - (d) to the best of the Developer's knowledge Parcel 3 and the Community Centre Air Space Parcel are free of Hazardous Substances;
 - (e) the Developer has not released, spilled, leaked, pumped, poured, emitted, emptied, discharged, dumped or disposed of any Hazardous Substances into the Land or its surrounding environment and to the best of the Developer's knowledge, no other person has done so;
 - (f) to the best of the Developer's knowledge Parcel 3 and the Community Centre Air Space Parcel comply with all Environmental Laws and are not subject to any outstanding or threatened notice of defect or non-compliance, work order,

pollution abatement order, pollution prevention order, remediation order or any other order from any federal, provincial, municipal or other governmental authority;

- (g) there are no actions, proceedings, investigations or claims, pending or to the best of the Developer's knowledge threatened, that would interfere with the use and enjoyment of Parcel 3 or the Community Centre Air Space Parcel or that relate to the presence of Hazardous Substances in, on, under or migrating to or from Parcel 3 or the Community Centre Air Space Parcel;
- (h) the Developer has no knowledge that any person has taken, intends to take, or has threatened to take, any action, suit or proceeding which could adversely affect the Land, the Community Centre Air Space Parcel, the Developer's title thereto, or the Developer's right to transfer the Community Centre Air Space Parcel to the District; and
- (i) on the Community Centre Closing Date no improvements on the Land adjacent to the Community Centre Air Space Parcel encroach on the Community Centre Air Space Parcel.

Title, Risk and Adjustments

- 54. The Developer will not enter into any contracts or do anything that will adversely affect the Community Centre Air Space Parcel or the Village Green and Public Plaza Air Space Parcel, or decrease their value, and will not amend any Permitted Charges, unless the Developer obtains the District's prior written consent.
- 55. Until the Community Centre Closing Date, the Developer will maintain in force such policies of insurance in connection with the Community Centre and the Community Centre Air Space Parcel as the District may reasonably require;
- 56. The Village Green and Public Plaza Air Space Parcel will be at the risk of the Developer until the transfer of the fee simple title to the Village Green and Public Plaza Air Space on the Parcel Village Green and Public Plaza Closing Date and thereafter will be at the risk of the District, except to the extent set out in the Development Covenant and in the Servicing Agreement.
- 57. The Community Centre Air Space Parcel will be at the risk of the Developer until the transfer of the fee simple title to the Community Centre Air Space Parcel on the Community Centre Closing Date and thereafter will be at the risk of the District, except to the extent set out in the Development Covenant and except in respect of:
 - (a) the Developer's warranty obligations in this Agreement;
 - (b) the Developer's obligations regarding Deficiencies; and
 - (c) the Developer's indemnity and release obligations in this Agreement.

58. The District will have the right to vacant possession of the Village Green and Public Plaza Air Space Parcel subject to the Permitted Charges on the Village Green and Public Plaza Closing Date, and the District will have the right to vacant possession of the Community Centre Plaza Air Space Parcel subject to the Permitted Charges on the Community Centre Closing Date.
59. The Developer will deliver to the District promptly such authorizations as the District may require to conduct due diligence searches with respect to the Developer, the Village Green Air Space Parcel and the Community Centre Air Space Parcel to ascertain that:
 - (a) from and after the Village Green and Public Plaza Closing Date the Village Green and Public Plaza Air Space Parcel will not be subject to liens, charges, encumbrances, equities or claims, except the Permitted Charges; and
 - (b) from and after the Community Centre Closing Date the Community Centre Air Space Parcel will not be subject to liens, charges, encumbrances, equities or claims, except the Permitted Charges.
60. The Developer and the District will adjust all items customarily the subject of adjustments in the sale and purchase of real property similar to the Village Green and Public Plaza Air Space Parcel on the Village Green and Public Plaza Closing Date and will adjust all items customarily the subject of adjustments in the sale and purchase of real property similar to the Community Centre Air Space Parcel on the Community Centre Closing Date, except that in no case will there be any adjustments made for real property taxes.
61. The Developer will be responsible for all costs of the transactions contemplated in this Agreement in accordance with the provisions of the Development Covenant. In addition, the Developer will pay the costs and expenses incurred and payments and expenditures made by the District in respect of design review and inspections for the Community Centre Shell and Community Centre Parking Stalls, including the cost of consultants retained by the District of those purposes.

Closing

62. A minimum of seven Business Days before the Village Green and Public Plaza Closing Date the Developer will cause the Developer's solicitor to deliver to the District:
 - (a) all documents necessary to give effect to the transfer of the Village Green and Public Plaza Air Space Parcel, including a duly executed and registrable *Land Title Act* Form A transfer transferring the Village Green and Public Plaza Air Space Parcel to the District (the "Village Green and Public Plaza Transfer");
 - (b) an officer's certificate from the Developer certifying on behalf of the Developer that the Developer's representations set out in sections 52 and 53 are true as at the Village Green and Public Plaza Closing Date; and

- (c) evidence satisfactory to the District that there are no financial charges registered or pending registration against title to the Village Green and Public Plaza Air Space Parcel.
63. A minimum of seven Business Days before the Community Centre Closing Date the Developer will cause the Developer's solicitor to deliver to the District:
- (a) all documents necessary to give effect to the transfer of the Community Centre Air Space Parcel, including a duly executed and registrable *Land Title Act* Form A transfer transferring the Community Centre Air Space Parcel to the District (the "Community Centre Transfer");
 - (b) an officer's certificate from the Developer certifying on behalf of the Developer that the Developer's representations set out in sections 52 and 53 are true as at the Community Centre Closing Date;
 - (c) evidence satisfactory to the District that there are no financial charges registered or pending registration against title to the Community Centre Air Space Parcel;
 - (d) all Records and an assignment of all Warranties, to the extent assignable, and written authorization to use the Developer's name to enforce any unassignable Warranties, all in form and substance satisfactory to the District; and
 - (e) four complete reproducible hard copy sets and one electronic version of as-built drawings for the Community Centre Shell and Community Centre Parking Stalls, four hard copy sets of all applicable operations and maintenance manuals, all in form and content satisfactory to the Director, and such numbers of sets of keys as the District may request.
64. If any financial charges are registered against the Village Green and Public Plaza Air Space Parcel, the Developer will pay and discharge said financial charges before the Village Green and Public Plaza Transfer is submitted for registration at the LTO on the Village Green and Public Plaza Closing Date, and if any financial charges are registered against the Community Centre Air Space Parcel, the Developer will pay and discharge said financial charges before the Community Centre Transfer is submitted for registration at the LTO on the Community Centre Closing Date.
65. The District may submit the Village Green and Public Plaza Transfer for registration at the LTO on the Village Green and Public Plaza Closing Date, and District may submit the Community Centre Transfer for registration at the LTO on the Community Centre Closing Date.

Letter of Credit

66. As security for the obligations of the Developer under this Agreement to design and construct the Works, deliver the Community Centre Shell and Community Centre Parking Stalls, and create and transfer to the District the Community Centre Air Space Parcel, the Developer will deliver to the District by the time set out in the Development

Covenant a letter of credit in the amount of \$8,500,000 (the "Letter of Credit"), which Letter of Credit will:

- (a) be a clean unconditional irrevocable standby letter of credit without limitations and payable at site at an identified branch of the issuer;
- (b) be in favour of the District drawn on a Canadian chartered bank, trust company or credit union located in British Columbia and having an office or branch in Metro Vancouver,
- (c) be valid for a minimum of one year after the date that the letter of credit is delivered to the District (with provision for automatic renewals thereafter);
- (d) state that the issuer will not enquire as to whether or not the District has a right to make demand on the Letter of Credit, that the District may make partial as well as full drawings, and that the issuer will duly honour drafts drawn in conformity with the Letter of Credit if presented to the issuer on or before the expiry date of the Letter of Credit;
- (e) reference this Agreement;
- (f) require 60 days prior notice to the District in the event of non-renewal or cancellation by the issuing bank or other financial institution; and
- (g) otherwise be in a form acceptable to the Chief Financial Officer of the District.

67. The Developer and the District agree as follows with respect to the Letter of Credit:

- (a) the Developer will ensure that the Letter of Credit is replaced, and will provide evidence thereof satisfactory to the District's Representative, not later than 21 days prior to an expiry date of the Letter of Credit;
- (b) the District may draw upon the Letter of Credit at any time in the event of a default by the Developer of:
 - (i) its obligations under sections 66 or this section 67; or
 - (ii) its obligations to design and construct the Works, deliver to the District the Community Centre Shell and Community Centre Parking Stalls, and create and transfer to the District the Community Centre Air Space Parcel no later than the date that is nine years and eleven months after the Commencement Date;
- (c) partial drawdowns are permitted by the District;
- (d) no documentation is required for any drawdown;
- (e) no interest will be paid to the Developer; and

- (f) any return of the Letter of Credit will be made to the Developer only.
68. The obligations of the Developer under this Agreement to design and construct the Works, deliver the Community Centre Shell and Community Centre Parking Stalls, and create and transfer to the District the Community Centre Air Space Parcel will not be lessened or reduced by reason of the delivery of the Letter of Credit, and at all times the Developer will continue to be responsible for all costs and expenses of said obligations as contained in this Agreement.
69. The full amount of the Letter of Credit will under no circumstance be released by the District until the end of the statutory lien holdback period applicable to the construction of the Works. At the expiry of said statutory lien holdback period, the Developer must deliver to the District a title search of the Land showing that no builders' liens have been filed and a statutory declaration sworn by an authorized signatory of the Developer's head contractor or contractors substantially in the form attached as Schedule "B".
70. The Letter of Credit, less any amount drawn down by District, less the amount of the Deficiency Holdback and less the amount of the Warranty Holdback, will be returned to the Developer if:
- (a) all of the Works are satisfactorily completed (except for the Deficiencies pursuant to section 38) as herein provided;
 - (b) the Developer pays all invoices of the District as herein required;
 - (c) the certificate of Total Completion of the Work is issued and accepted by the District's Representative pursuant to section 36;
 - (d) the Community Centre Air Space Parcel has been transferred to the District in accordance with this Agreement;
 - (e) the statutory lien holdback period applicable to the construction of the Works has expired and no liens are filed against the Land; and
 - (f) the Developer has sworn and delivered the required statutory declaration in the form attached as Schedule "B".

Use of Proceeds of Letter of Credit

71. If the District cashes the Letter of Credit pursuant to subsection 67(b)(i) the proceeds will continue to be held by the District as security of the Developer's obligations to design and construct the Works, deliver the Community Centre Shell and Community Centre Parking Stalls, and create and transfer to the District the Community Centre Air Space Parcel. If the Developer subsequently defaults in its obligations to design and construct the Works, deliver to the District the Community Centre Shell and Community Centre Parking Stalls, and create and transfer to the District the Community Centre Air Space Parcel no later than the date that is nine years and eleven months after the Commencement Date, then the said proceeds may thereafter be retained by the District

for its sole use and benefit absolutely and the Developer expressly waives and releases any right or entitlement to any compensation in respect thereof. For greater certainty, this section:

- (a) does not apply to the Warranty Deposit or the Deficiency Deposit, which will be used by the District only as set out in section 73; and
- (b) does not limit the other remedies of the District under section 8.

72. If the District cashes the Letter of Credit pursuant to subsection 67(b)(ii), the proceeds will be retained by the District for its sole use and benefit absolutely and the Developer expressly waives and releases any right or entitlement to any compensation in respect thereof. For greater certainty, this section:

- (c) does not apply to the Warranty Deposit or the Deficiency Deposit, which will be used by the District only as set out in section 73; and
- (d) does not limit the other remedies of the District under section 8.

Use of Warranty Deposit and Deficiency Deposit

73. If the Developer defaults in its warranty obligations hereunder, or fails to rectify the Deficiencies in accordance with this Agreement, then the District may at its sole discretion and without prejudice to any other remedy rectify the default of the Developer at the Developer's expense and without limiting the generality of the foregoing may:

- (a) enter onto the Land and do or caused to be done through its servants, contractors and others, all such things as may be required to fulfil the obligations of the Developer including without limitation, the maintenance of any Component of the Works, the remedying of any defects, and the completion of all deficiencies; and
- (b) make any payments required to be made for and on behalf of the Developer;

and for such purposes may without notice or limitation deduct from the Warranty Deposit or the Deficiency Deposit (as the case may be) the costs and expenses incurred, payments and expenses made, and monies due and owing to the District, including an administration fee payable to the District in an amount of 20% of the costs incurred under Subsections 73(a) and (b).

Costs and Expenses in Excess of Deposits

74. If the District incurs any costs and expenses or makes payments as provided in section 73, and if the Warranty Deposit and Deficiency Deposit, as the case may be, is not sufficient to fully recompense the District, the Developer will forthwith upon receipt of an invoice from the District pay to the District the amount of such deficiency together with interest thereon at the Prime Rate plus 2% per annum calculated and compounded monthly from the date on which such cost or expense was incurred or payment or

expenditure was made by the District. Such amounts required to be paid by the Developer will constitute a debt due and owing to the District.

Assignment of Agreement

75. The Developer may assign this Agreement if and only if:
- (a) the fee simple title to all of the Land (other than any part of the Land that has been fully developed or subdivided under the Strata Property Act in accordance with the Development Covenant) is transferred to the assignee;
 - (b) the assignee is a developer licensed to do business in the District;
 - (c) the assignee has executed and delivered to the District an assumption agreement, in form and content satisfactory to the District, assuming the Developer's obligations under this Agreement; and
 - (d) the assignee has entered into an assignment agreement with the Developer, in form and content satisfactory to the District, assigning this Agreement.
76. An assumption agreement entered into between the District and an Assignee pursuant to section 75 will not operate to release the Developer of its liability to the District for the fulfillment of all of the Developer's obligations under this Agreement.

Amendment of Agreement

77. The parties may in writing agree to minor amendments to this Agreement, and for that purpose a "minor amendment" is an amendment to section 1 or an amendment to the Development Covenant.

Indemnity and Release

78. The Developer:
- (a) will indemnify and save harmless the District, its elected and appointed officials, officers, employees, agents, contractors, licensees and invitees and others for whom the District is in law responsible (the "District Representatives") from and against any and all actions, causes of action, liabilities, demands, losses (including loss of profits), damages, costs, expenses (including actual fees of professional advisors), remediation of contamination costs, fines, penalties and other harm of any kind whatsoever, whether related to death, bodily injury, property loss, property damage, property contamination or consequential loss or damage (the "Losses"), suffered or incurred by the District or any of the District Representatives; and
 - (b) releases each of the District and the District Representatives from all Losses that the Developer, its officers, directors, employees, agents or contractors may incur or suffer,

directly or indirectly, arising from, resulting from, connected with or related to the entering into of this Agreement; death, bodily injury, damage to or loss of any property or other incident or occurrence during the construction or provision of the amenities and other development contemplated by this Agreement; any default or breach of this Agreement by the Developer; any wrongful act, omission or negligence of the Developer or their directors, officers, employees, agents, contractors, subcontractors, licensees, or others for whom they are responsible in law with respect to the covenants and obligations of the Developer pursuant to this Agreement; the inaccuracy, incompleteness or untruth of any representation of the Developer in this Agreement; any approval given or not given by the Director or the District's Representative under this Agreement; or any Hazardous Substances on the Land or any part thereof, but excluding any Losses arising directly and solely from the negligence of the District or its employees, agents or contractors.

79. The foregoing indemnity and release will survive any conclusion or other termination of this Agreement, in relation to any matter arising prior to it.

Dispute Resolution

80. Either party may give written notice to the other party of any dispute between the District's Representative and the Developer's Consultant regarding the determination of any issue or thing required to be determined pursuant to section 38(a). Representatives of the District and the Developer will meet within three Business Days after the notice of dispute is given and will attempt in good faith, and using reasonable efforts, to resolve the matter equitably to the satisfaction of both parties.
81. If the representatives cannot resolve the dispute within 15 Business Days after the dispute has been referred to them, then the dispute will be referred for arbitration by a single arbitrator appointed and acting under the *Commercial Arbitration Act* (British Columbia).

General Terms and Conditions

82. Any notice, request or demand required or permitted to be given hereunder will be sufficiently given only if personally delivered (including by nationally recognized courier, with signature obtained upon delivery) or mailed by prepaid registered post as follows:

- (a) to the District at:

355 West Queens Street
North Vancouver, British Columbia
V7N 4N5

Attention: General Manager, Planning Properties and Permits__

- (b) to the Developer at:

332391 BC Ltd.
300 – 100 Park Royal
West Vancouver, BC V7T 1A2
Attention: President

Any notice sent by registered mail will be deemed to have been received four business days after the date of mailing, and any notice delivered personally will be deemed to have been received on the date of actual delivery if delivered before 4:00 p.m. on a business day and otherwise on the next business day. Any party may change its address for notices hereunder by giving notice of the new address to the other party in accordance with this section. If the postal service is interrupted or is substantially delayed, any notice, demand, request or other instrument must be personally delivered.

83. Except as expressly set out in this Agreement, nothing in this Agreement will prejudice or affect the rights and powers of the District in the exercise of its functions under the *Community Charter* or the *Local Government Act* or any of its bylaws or those of the District's approving officer under the *Land Title Act* or the *Strata Property Act*.
84. Any opinion, decision, act or expression of satisfaction or acceptance provided for in this Agreement may be taken or made by the Director, unless expressly provided to be taken or made by another official of the District.
85. No provision of this Agreement is to be considered to have been waived by the District unless the waiver is expressed in writing by the District. The waiver by the District of any breach by any of the other parties of any provision is not to be construed as or constitute a waiver of any further or other breach.
86. Whenever in this Agreement the District or the District's Representative is required or entitled to exercise any discretion in the granting of consent or approval, or is entitled to make any determination, take any action or exercise any contractual right or remedy, the District may do so in accordance with the contractual provisions of this Agreement and no public law duty, whether arising from the principles of procedural fairness or the rules of natural justice or otherwise, will have any application in the interpretation or implementation of this Agreement except to the extent that such duty arises as a matter of public law.
87. Time is of the essence of this Agreement and will remain of the essence notwithstanding the extension of any dates.
88. The obligations and covenants of the parties comprising the Developer (if more than one) will be several only, and not joint and several.
89. The Developer acknowledges and agrees that the District, acting reasonably, may, despite any public law limitations on the withholding of building permits and occupancy permits, withhold building permits and occupancy permits for the purpose of ensuring compliance with and administering the terms of this Agreement.

90. This Agreement may be executed in counterparts.

**Executed the _____ day of _____, 2014 by
THE CORPORATION OF THE
DISTRICT OF NORTH VANCOUVER by its authorized signatories:**

**Executed the _____ day of _____, 2014 by
332391 BC LTD. by its authorized signatories:**

SCHEDULE “A” TO PHASED DEVELOPMENT AGREEMENT

Description of Shell Building

To be inserted, based on the document entitled “Description of Shell Building for Lower Capilano Community Centre, Final Report prepared by Bruce Carscadden Architects Inc. and dated May 26, 2014

SCHEDULE "B" TO PHASED DEVELOPMENT AGREEMENT

Builders Lien Statutory Declaration

| | | |
|------------------|---|-------------------------------------|
| CANADA |) | IN THE MATTER OF THE BUILDER'S LIEN |
| |) | ACT AND IN THE MATTER OF A CONTRACT |
| BRITISH COLUMBIA |) | BETWEEN THE DISTRICT OF NORTH |
| |) | VANCOUVER AND HYNES DEVELOPMENTS |
| |) | INC. |
| |) | |
| |) | TO: |
| |) | |
| |) | IN THE MATTER OF: |

I, _____, of _____, British Columbia, DO SOLEMNLY DECLARE THAT:

1. I am the _____ of _____, the contractor with respect to construction of _____ at _____.
2. All claims for wages, services, and materials and otherwise due and payable with respect to the above contract to date have been fully paid and satisfied.
3. There are no persons entitled at this time to file a claim of builder's lien in respect of the above contract or to any such lien.
4. The amount required to complete the above contract will not exceed \$ _____.
5. The construction of improvements under the above contract was not substantially complete as of _____.
6. I am authorized to, and do, make this declaration on behalf of the contractor named above.

AND I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act*.

| | | |
|---|---|-------|
| SWORN BEFORE ME at the District of |) | |
| ~, in the Province of British Columbia, |) | |
| this ~ day of ~, 2004. |) | |
| |) | |
| |) | |
| _____ |) | _____ |
| A Commissioner for Taking Affidavits in |) | ~ |
| the Province of British Columbia |) | |

The Corporation of the District of North Vancouver

Bylaw 8043

A bylaw to enter into a Housing Agreement (2035 Fullerton Ave)

The Council for The Corporation of the District of North Vancouver enacts as follows:

1. Citation

This bylaw may be cited as "Housing Agreement Bylaw 8043, 2014".

2. Authorization to Enter into Agreement

The Council hereby authorizes a housing agreement between The Corporation of the District of North Vancouver and 332391 B.C. Ltd. substantially in the form attached to this Bylaw as Schedule "A" with respect to the following lands: PID: 018-349-269, Lot H, Block 15, District Lot 764 Group 1, NWD Explanatory Plan LMP11271.

3. Execution of Documents

The Mayor and Municipal Clerk are authorized to execute any documents required to give effect to the Housing Agreement.

READ a first time

READ a second time

READ a third time

ADOPTED

Mayor

Municipal Clerk

Certified a true copy

Municipal Clerk

Schedule A to Bylaw 8043

SECTION 219 COVENANT – HOUSING AGREEMENT

THIS AGREEMENT dated for reference _____, 2014

BETWEEN:

332391 BC LTD. (Incorporation No. 332391) a corporation incorporated under the laws of the Province of British Columbia with an office at 300 – 100 Park Royal, West Vancouver, BC V7T 1A2

(the “Developer”)

AND:

THE CORPORATION OF THE DISTRICT OF NORTH VANCOUVER, 355 West Queens Road, North Vancouver, BC V7N 4N5

(the "District")

WHEREAS:

- A. The Developer is the registered owner in fee simple of lands in the District of North 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 “**Land**”);
- B. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the District in respect of the use of land, construction on land or the subdivisions of land;
- C. Section 905 of the *Local Government Act* permits the District to enter into a housing agreement with an owner of land, which agreement may include terms and conditions regarding the occupancy, tenure and availability of dwelling units located on the Land; and

The Developer and the District wish to enter into this Agreement to restrict the subdivision and use of, and construction on, the Land on the terms and conditions of this agreement, to have effect as both a covenant under section 219 of the *Land Title Act* and a housing agreement under section 905 of the *Local Government Act*.

NOW THEREFORE in consideration of the sum of \$10.00 now paid by the District to the Developer and other good and valuable consideration, the receipt and sufficiency of which the

Developer 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 and the recitals hereto:

- (a) "*Development Covenant*" means the covenant under section 219 of the *Land Title Act* dated for reference _____, 2014 granted by the Developer to the District and registered at the LTO against the Land under number _____;
- (b) "*Dwelling Unit*" means a room or set of rooms containing cooking and sanitary facilities and designed to be used for residential occupancy by one or more persons;
- (c) "*Eligible Person*" means a person of the age of at least 55 years;
- (d) "*Land*" has the meaning given to it in Recital A hereto;
- (e) "*LTO*" means the Lower Mainland Land Title Office and any successor of that office.
- (f) "*Master Development Plan*" has the meaning given to it in the Development Covenant;
- (g) "*Non-Age Restricted Rental Building*" means a 6 storey apartment building to be constructed on Parcel 4 generally as shown on the Master Development Plan containing the Non-Age Restricted Rental Dwelling Units;
- (h) "*Non-Age Restricted Rental Dwelling Units*" means all Dwelling Units on Parcel 4 that are not Seniors Rental Dwelling Units;
- (i) "*Parcel 4*" means the portion of the Land identified and defined in the Development Covenant;
- (j) "*Seniors Rental Building*" means a 4 storey apartment building to be constructed on Parcel 4 generally as shown on the Master Development Plan containing the Seniors Rental Dwelling Units;
- (k) "*Seniors Rental Dwelling Units*" has the meaning given to it in section 2;
- (l) "*Zoning Amendment Bylaw*" means District of North Vancouver Rezoning Bylaw 8041 (No. 1307, 2014); and
- (m) "*Zoning Bylaw*" means the District of North Vancouver Zoning Bylaw No. 3210, 1965 as modified by the Zoning Amendment Bylaw and as further amended, consolidated, re-enacted or replaced from time to time.

2. **Required Minimum Number of Market Rental Dwelling Units** – Any development on Parcel 4 must contain not less than 119 market rental dwelling units, of which 45 must be seniors market rental Dwelling Units (the “Seniors Rental Dwelling Units”).
3. **Rental Buildings** – The Seniors Rental Dwelling Units must be located in the Seniors Rental Building and the Non-Age Restricted Rental Dwelling Units must be located in the Non-Age Restricted Rental Building.
4. **Subdivision Restriction** – Once Parcel 4 is created a further subdivision to create 2 parcels (one for the Seniors Rental Building and one the Non-Age Restricted Rental Building) is not prohibited provided that said subdivision complies with the Zoning Bylaw and the terms and conditions set out in the Development Covenant, but Parcel 4 and any improvements from time to time thereon (including without limitation the Seniors Rental Building and the Non-Age Restricted Rental Building) may not be further subdivided by any means whatsoever, including, without limitation, by subdivision plan, strata plan, fractional interest, lease or otherwise.
5. **Rental Seniors Housing** – The Seniors Rental Dwelling Units and the Seniors Rental Building may not be used for any purpose whatsoever save and except for the purpose of rental housing for Eligible Persons pursuant to arm’s length month-to-month residential tenancy agreements or arm’s length residential tenancy agreement with terms not exceeding three (3) years in duration (including all periods in respect of which any rights or renewal, contingent or otherwise have been granted).
6. **Non-Age Restricted Rental Housing** – The Non-Age Restricted Rental Dwelling Units and the Non-Age Restricted Rental Building may not be used for any purpose whatsoever save and except for the purpose of rental housing pursuant to arm’s length month-to-month residential tenancy agreements or arm’s length residential tenancy agreement with terms not exceeding three (3) years in duration (including all periods in respect of which any rights or renewal, contingent or otherwise have been granted).
7. **Seniors Rental Building Occupancy Restriction** - – No Dwelling Unit in the Seniors Rental Building may be occupied except by the following
 - (a) an Eligible Person pursuant to a residential tenancy agreement that complies with section 5; and
 - (b) one other individual, not an Eligible Person, who is living in a single domestic unit with an Eligible Person referred to in section 7(a) above.
8. **Non Age Restricted Rental Building Occupancy Restriction** – No Dwelling Unit in the Non-Age Restricted Rental Building may be occupied except pursuant to a residential tenancy agreement that complies with section 6.
9. **Statutory Declaration** – Within three days after receiving notice from the District, the Developer must deliver to the District a statutory declaration, substantially in the form attached as Schedule “A”, sworn by the Developer under oath before a commissioner for

taking affidavits in British Columbia, containing all of the information required to complete the statutory declaration.

10. **Damages and Rent Charge**

- (a) The Developer acknowledges that the District requires Eligible Persons housing and rental housing for the benefit of the community. The Developer therefore agrees that for each day the Land is occupied in breach of this Agreement, the Developer must pay the District \$100.00 (the "Daily Amount"), as liquidated damages and not as a penalty, due and payable at the offices of the District on the last day of the calendar month in which the breach occurred. The Daily Amount is increased on January 1 of each year by the amount calculated by multiplying the Daily Amount as of the previous January 1 by the percentage increase between that previous January 1 and the immediately preceding December 31 in the Consumer Price Index. The Developer agrees that payment may be enforced by the District in a court of competent jurisdiction as a contract debt.
- (b) By this section, the Developer grants to the District a rent charge under section 219 of the *Land Title Act*, and at common law, securing payment by the Developer to the District of the amounts described in section 10(a). The District agrees that enforcement of the rent charge granted by this section is suspended until the date that is 30 days after the date on which any amount due under section 10(a) is due and payable to the District in accordance with section 10(a). The District may enforce the rent charge granted by this section by an action for an order for sale or by proceedings for the appointment of a receiver.

11. **Specific Performance** – The Developer 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 to obtain an order for specific performance of this agreement and a prohibitory or mandatory injunction in respect of any breach by the Developer of this Agreement. The Developer agrees that this is reasonable given the public interest in restricting occupancy of the Land in accordance with this Agreement.

12. **Notice of Housing Agreement** – For clarity, the Developer acknowledges and agrees that:

- (a) this Agreement constitutes both a covenant under section 219 of the *Land Title Act* and a housing agreement entered into under section 905 of the *Local Government Act*;
- (b) the District is required to file a notice of housing agreement in the LTO against title to the Land; and
- (c) once such a notice is filed, this Agreement, as a housing agreement under section 905 of the *Local Government Act*, binds all persons who acquire an interest in the Land in perpetuity.

13. **Compliance with Laws** – The Developer will at times ensure that the Land is used and occupied in compliance with all statutes, laws, regulations, bylaws, and orders of the District and other authorities having jurisdiction, including all rules, regulations, policies, guidelines and the like under or pursuant to them.
14. **Cost** – The Developer shall comply with all requirements of this Agreement at its own cost and expense, and shall pay the reasonable costs and expenses incurred and payment and expenditures made by the District, including without limitation, all survey, advertising, legal fees and disbursements and the District’s administration costs (as determined by the District’s charge out rate for District staff time) in connection with the preparation of this Agreement and all other covenants, agreements and statutory rights of way granted by the Developer to the District or entered into between the Developer to the District in respect of the development of the Land contemplated in this Agreement and ancillary documents and any modifications, discharges and partial discharges of them from time to time, and the costs of registration of such documents in the LTO.
15. **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 “Land” 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, referenced to any enactment is a reference to that enactment as consolidated, revised, amended, re enacted or replaced;
 - (h) time is of the essence;
 - (i) all provisions are to be interpreted as always speaking;

- (j) reference to a “party” is a reference to a party to this Agreement and the their respective heirs, executors, successors (including successors in title), trustees, administrators and receivers;
- (k) reference to the District is a reference also to is elected and appointed official, officer, employees and agents;
- (l) 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;
- (m) 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
- (n) any act, decision, determination, consideration, opinion, consent or exercise of discretion by a party or person as provided in this Agreement must be preformed, 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 preformed, made, formed or exercised by that party or person in the sole, unfettered and absolute discretion of that party or person.

16. **Notice** – Any notice, request or demand required or permitted to be given hereunder will be sufficiently given only if personally delivered (including by nationally recognized courier, with signature obtained upon delivery) or mailed by prepaid registered post as follows:

(a) to the District at:

355 West Queens Street
 North Vancouver, British Columbia
 V7N 4N5

Attention: General Manager, Planning Properties and Permits __

(b) to the Developer at:

332391 BC Ltd.
 300 – 100 Park Royal
 West Vancouver, BC V7T 1A2

Attention: President

Any notice sent by registered mail will be deemed to have been received four business days after the date of mailing, and any notice delivered personally will be deemed to have been received on the date of actual delivery if delivered before 4:00 p.m. on a business day and otherwise on the next business day. Any party may change its address for

notices hereunder by giving notice of the new address to the other party in accordance with this section. If the postal service is interrupted or is substantially delayed, any notice, demand, request or other instrument must be personally delivered.

17. **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 or the same or any other provision or default.
18. **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.
19. **Third Party Beneficiaries** – Except as may be expressly provided in this Agreement, this Agreement is not to be interpreted to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty or obligation created by this Agreement.
20. **No Effect on Laws or Powers** – This Agreement 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 Land;
 - (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 Land; or
 - (d) relieve the Developer from complying with any enactment, including in relation to the use, development, servicing or subdivision of the Land.
21. **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).
22. **Covenant Runs With the Land** - Every provision of this Agreement and every obligation and covenant of the Developer in this Agreement, constitutes a deed and a contractual obligation, and also a covenant granted by the Developer to the District in accordance with Section 219 of the *Land Title Act*, and this Agreement burdens the Land to the extent provided in this Agreement, and runs with it and binds the Developer's successors in title. This Agreement also burdens and runs with every parcel into which

the Land is or they are consolidated (including by the removal of interior parcel boundaries) by any means.

23. **Voluntary Agreement** - The Developer acknowledges that the Developer has entered into this Agreement voluntarily and has taken legal advice with regard to the entry of this Agreement and the development of the Land.
24. **Agreement for Benefit of District Only** – The Developer and the District agree that:
 - (a) this Agreement is entered into only for the benefit of the District;
 - (b) this Agreement is not intended to protect the interests of the Developer, any tenant, or any future owner, lessee, occupier or user of the property, the Land or the building or any portion thereof, including any Suite; and
 - (c) the District may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Developer.
25. **Limitation on Developer's Obligations** - The Developer is only liable for breaches of this Agreement that occur while the Developer is the registered owner of the Land.
26. **Further Acts** - The Developer must do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.
27. **Joint Obligations of Developer** - If two or more persons execute this Agreement as Developer, the liability of each such person to observe and perform all of the Developer's obligations pursuant to this Agreement will be deemed to be joint and several.
28. **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 and unaffected by that holding or by the severance of that part.
29. **No Joint Ventureship** - Nothing in this Agreement shall constitute the Developer as the agent, joint venturer or partner of the District or give the Developer any authority or power to bind the District in any way.
30. **Amendment** - This Agreement may be amended from time to time by agreement between the Developer 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 Developer and the District.
31. **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 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

The Corporation of the District of North Vancouver

Bylaw 8084

A bylaw to enter into a Housing Agreement (2035 Fullerton Ave)

The Council for The Corporation of the District of North Vancouver enacts as follows:

1. Citation

This bylaw may be cited as "Housing Agreement Bylaw 8084, 2014".

2. Authorization to Enter into Agreement

The Council hereby authorizes a housing agreement between The Corporation of the District of North Vancouver and 332391 B.C. Ltd. substantially in the form attached to this Bylaw as Schedule "A" with respect to the following lands: PID: 018-349-269, Lot H, Block 15, District Lot 764 Group 1, NWD Explanatory Plan LMP11271.

3. Execution of Documents

The Mayor and Municipal Clerk are authorized to execute any documents required to give effect to the Housing Agreement.

READ a first time

READ a second time

READ a third time

ADOPTED

Mayor

Municipal Clerk

Certified a true copy

Municipal Clerk

Schedule A to Bylaw 8084

SECTION 219 COVENANT – HOUSING AGREEMENT

This agreement dated for reference the ____ day of _____, 20__ is

BETWEEN:

THE CORPORATION OF THE DISTRICT OF NORTH VANCOUVER, a municipality incorporated under the *Local Government Act*, R.S.B.C. 1996, c.323 and having its office at 355 West Queens Road, North Vancouver, BC V7N 4N5

(the “District”)

AND:

332391 BC LTD. (Incorporation No. 332391) a corporation incorporated under the laws of the Province of British Columbia with an office at 300 – 100 Park Royal, West Vancouver, BC V7T 1A2

(the “Developer”)

WHEREAS:

- A. The Developer is the registered owner of the Lands;
- B. The Developer wishes to obtain development permissions with respect to the Lands and wishes to create a condominium development which will contain housing strata units on the Lands;
- C. Section 905 of the *Local Government Act* authorises the District, by bylaw, to enter into a housing agreement to provide for the prevention of rental restrictions on housing and provides for the contents of the agreement; and
- D. A covenant registrable under Section 219 of the *Land Title Act* may include provisions in respect of the use of land, the use of a building on or to be erected on lands; that land is to be built on in accordance with the covenant, is not to be built on except in accordance with that covenant or is not to be built on; that land is not to be subdivided unless in accordance with the covenant or is not to be subdivided.

NOW THEREFORE in consideration of the mutual promises contained in it, and in consideration of the payment of \$1.00 by the District to the Developer (the receipt and sufficiency of which is acknowledged by the Developer), the parties covenant and agree with each other as follows, as a housing agreement under Section 905 of the *Local Government Act*, and as a contract and a deed under seal between the parties and the parties hereto further covenant and agree that the Lands shall not be used or built on except in accordance with this Covenant as follows:

1. **DEFINITIONS**

Definitions

1.01 In this agreement:

- (a) “*Development Covenant*” means the covenant under section 219 of the *Land Title Act* dated for reference _____, 2014 granted by the Developer to the District and registered at the Lower Mainland Land Title Office against the Lands under number _____;
- (b) “*Lands*” means land described in Item 2 of the *Land Title Act* Form C to which this agreement is attached;
- (c) “*Proposed Development*” means the proposed development to be constructed on the Lands in accordance with the Development Covenant;
- (d) “*Unit*” means a residential dwelling strata unit in any building in the Proposed Development; and
- (e) “*Unit Owner*” means the registered owner of a Dwelling Unit in any building in the Proposed Development.

2. **TERM**

2.01 This Agreement will commence upon adoption by District Council of Bylaw 8084 and remain in effect until terminated by the District as set out in this Agreement.

3. **RENTAL ACCOMODATION**

Rental Disclosure Statement

3.01 No Unit in a building in the Proposed Development may be occupied unless the Developer has:

- (a) before the first Unit in the building is offered for sale, or conveyed to a purchaser without being offered for sale, filed with the Superintendent of Real Estate a Rental Disclosure Statement designating all of the Units in the building as rental strata lots and imposing a 99 year rental period in relation to all of the Units pursuant to the *Strata Property Act* (or any successor or replacement legislation); and
- (b) given a copy of the Rental Disclosure Statement to each prospective purchaser of any Unit in the building before the prospective purchaser enters into an agreement to purchase in respect of the Unit.

Notice

- 3.02 The Developer will provide notice of this Agreement to any person or persons intending to purchase a Unit prior to any such person entering into an agreement of purchase and sale, agreement for sale, or option or similar right to purchase as part of the Disclosure Statement for any part of the Proposed Development prepared by the Developer pursuant to the *Real Estate Development Marketing Act*.

4. **DEFAULT AND REMEDIES**

Notice of Default

- 4.01 The District may, acting reasonably, give to the Developer written notice to cure a default under this Agreement within 30 days of receipt of notice. The notice must specify the nature of the default. The Developer must act with diligence to correct the default within the time specified.

Costs

- 4.02 The Developer will pay to the District on demand by the District all the District's costs of exercising its rights or remedies under this Agreement, on a full indemnity basis.

Damages an Inadequate Remedy

- 4.03 The Developer acknowledges and agrees that in the case of a breach of this Agreement which is not fully remediable by the mere payment of money and promptly so remedied, the harm sustained by the District and to the public interest will be irreparable and not susceptible of adequate monetary compensation.

Equitable Remedies

- 4.04 Each party to this Agreement, in addition to its rights under this Agreement or at law, will be entitled to all equitable remedies including specific performance, injunction and declaratory relief, or any of them, to enforce its rights under this Agreement.

No Penalty or Forfeiture

- 4.05 The Developer acknowledges and agrees that it is entering into this Agreement to benefit the public interest in providing rental accommodation, and that the District's rights and remedies under this Agreement are necessary to ensure that this purpose is carried out, and the District's rights and remedies under this Agreement are fair and reasonable and ought not to be construed as a penalty or forfeiture.

Cumulative Remedies

- 4.06 No reference to nor exercise of any specific right or remedy under this Agreement or at law or at equity by any party will prejudice, limit or preclude that party from exercising any other right or remedy. No right or remedy will be exclusive or dependent upon any

other right to remedy, but any party, from time to time, may exercise any one or more of such rights or remedies independently, successively, or in combination. The Developer acknowledges that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a default by the Developer under this Agreement.

5. **LIABILITY**

Indemnity

- 5.01 Except for the negligence of the District or its employees, agents or contractors, the Developer will indemnify and save harmless each of the District and its elected officials, board members, officers, directors, employees, and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, actions, loss, damage, costs and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of any act or omission by the Developer, or its officers, directors, employees, agents, contractors, or other persons for whom at law the Developer is responsible or the Developer's ownership, operation, management or financing of the Proposed Development or any part thereof.

Release

- 5.02 Except to the extent such advice or direction is given negligently, the Developer hereby releases and forever discharges the District, its elected officials, board members, officers, directors, employees and agents, and its and their heirs, executors, administrators, personal representatives, successors and assigns from and against all claims, demands, damages, actions or causes of action by reason of or arising out of advice or direction respecting the ownership, operation or management of the Proposed Development or any part thereof which has been or hereafter may be given to the Developer by all or any of them.

Survival

- 5.03 The agreements of the Developer set out in Sections 5.01 and 5.02 will survive termination of this Agreement and continue to apply to any breach of the Agreement or claim arising under this Agreement during the ownership by the Developer of the Lands or any Unit therein, as applicable.

6. **GENERAL PROVISIONS**

District's Power Unaffected

- 6.01 Nothing in this Agreement:
- (a) affects or limits any discretion, rights, powers, duties or obligations of the District under any enactment or at common law, including in relation to the use or subdivision of land;

- (b) affects or limits any enactment relating to the use of the Lands or any condition contained in any approval including any development permit concerning the development of the Lands; or
- (c) relieves the Developer from complying with any enactment, including the District's bylaws in relation to the use of the Lands.

Agreement for Benefit of District Only

6.02 The Developer and District agree that:

- (a) this Agreement is entered into only for the benefit of the District:
- (b) this Agreement is not intended to protect the interests of the Developer, any Unit Owner, any Occupant or any future owner, occupier or user of any part of the Proposed Development including any Unit; and
- (c) The District may at any time execute a release and discharge of this Agreement in respect of the Proposed Development or any Unit therein, without liability to anyone for doing so.

Agreement Runs With the Lands

6.03 This Agreement burdens and runs with the Lands and any part into which any of them may be subdivided or consolidated, by strata plan or otherwise. All of the covenants and agreements contained in this Agreement are made by the Developer for itself, its successors and assigns, and all persons who acquire an interest in the Lands or in any Unit after the date of this Agreement.

Release

6.04 The covenants and agreements on the part of the Developer and any Unit Owner and herein set forth in this Agreement have been made by the Developer and any Unit Owner as contractual obligations as well as being made pursuant to Section 905 of the *Local Government Act* (British Columbia) and as such will be binding on the Developer and any Unit Owner, except that neither the Developer nor any Unit Owner shall be liable for any default in the performance or observance of this Agreement occurring after such party ceases to own the Lands or a Unit as the case may be.

Priority of This Agreement

6.05 The Developer will, at its expense, do or cause to be done all acts reasonably necessary to ensure this Agreement is registered against the title to each Unit in the Proposed Development, including any amendments to this Agreement as may be required by the Land Title Office or the District to effect such registration.

Agreement to Have Effect as Deed

- 6.06 The District and the Developer each intend by execution and delivery of this Agreement to create both a contract and a deed under seal.

Waiver

- 6.07 An alleged waiver by a party of any breach by another party of its obligations under this Agreement will be effective only if it is an express waiver of the breach in writing. No waiver of a breach of this Agreement is deemed or construed to be a consent or waiver of any other breach of this Agreement.

Time

- 6.08 Time is of the essence in this Agreement. If any party waives this requirement, that party may reinstate it by delivering notice to another party.

Validity of Provisions

- 6.09 If a Court of competent jurisdiction finds that any part of this Agreement is invalid, illegal, or unenforceable, 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.

Extent of Obligations and Costs

- 6.10 Every obligation of a party which is set out in this Agreement will extend throughout the Term and, to the extent that any obligation ought to have been observed or performed prior to or upon the expiry or earlier termination of the Term, such obligation will survive the expiry or earlier termination of the Term until it has been observed or performed.

Previous Housing Agreement

- 6.11 Intentionally deleted.

Notices

- 6.12 All notices, demands, or requests of any kind, which a party may be required or permitted to serve on another in connection with this Agreement, must be in writing and may be served on the other parties by registered mail, by facsimile transmission, or by personal service, to the following address for each party:

If to the District:

District Municipal Hall
355 West Queens Road
North Vancouver, BC V7N 4N5

Attention: Planning Department
Facsimile: (604) 984-9683

If to the Developer:

Attention:
Facsimile: (604)

If to the Unit Owner:

The address of the registered owner which appears on title to the Unit at the time of notice.

Service of any such notice, demand, or request will be deemed complete, if made by registered mail, 72 hours after the date and hour of mailing, except where there is a postal service disruption during such period, in which case service will be deemed to be complete only upon actual delivery of the notice, demand or request; if made by facsimile transmission, on the first business day after the date when the facsimile transmission was transmitted; and if made by personal service, upon personal service being effected. Any party, from time to time, by notice in writing served upon the other parties, may designate a different address or different or additional persons to which all notices, demands, or requests are to be addressed.

Further Assurances

- 6.13 Upon request by the District, the Developer will promptly do such acts and execute such documents as may be reasonably necessary, in the opinion of the District, to give effect to this Agreement.

Enuring Effect

- 6.14 This Agreement will enure to the benefit of and be binding upon each of the parties and their successors and permitted assigns.

7. **INTERPRETATION**

References

- 7.01 Gender specific terms include both genders and include corporations. Words in the singular include the plural, and words in the plural include the singular.

Construction

- 7.02 The division of this Agreement into sections and the use of headings are for convenience of reference only and are not intended to govern, limit or aid in the construction of any

provision. In all cases, the language in this Agreement is to be construed simply according to its fair meaning, and not strictly for or against either party.

No Limitation

7.03 The word “including” when following any general statement or term is not to be construed to limit the general statement or term to the specific items which immediately follow the general statement or term similar items whether or not words such as “without limitation” or “but not limited to” are used, but rather the general statement or term is to be construed to refer to all other items that could reasonably fall within the broadest possible scope of the general statement or term.

Terms Mandatory

7.04 The words “must” and “will” are to be construed as imperative.

Statutes

7.05 Any reference in this Agreement to any statute or bylaw includes any subsequent amendment, re-enactment, or replacement of that statute or bylaw.

Entire Agreement

7.06 This is the entire agreement between the District and the Developer concerning its subject, and there are no warranties, representations, conditions or collateral agreements relating to this Agreement, except as included in this Agreement.

7.07 This Agreement may be amended only by a document executed by the parties to this Agreement and by bylaw, such amendment to be effective only upon adoption by District Council of a bylaw to amend Bylaw 8054.

Governing Law

7.08 This Agreement is to be governed by and construed and enforced in accordance with the laws of British Columbia.

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

CAPWEST MIXED USE DEVELOPMENT

NORTH VANCOUVER, BRITISH COLUMBIA





SITE PLAN

CAPWEST MIXED USE DEVELOPMENT



VIEW LOOKING EAST

WA

WENSLEY ARCHITECTURE LTD

CAPWEST MIXED USE DEVELOPMENT

LARCO
INVESTMENTS



VIEW LOOKING WEST

WA

WENSLEY ARCHITECTURE LTD

CAPWEST MIXED USE DEVELOPMENT

LARCO
INVESTMENTS



VIEW OF COMMUNITY CENTRE

WA

WENSLEY ARCHITECTURE LTD

CAPWEST MIXED USE DEVELOPMENT

LARCO
INVESTMENTS



VIEW LOOKING NORTH

WA

WENSLEY ARCHITECTURE LTD

CAPWEST MIXED USE DEVELOPMENT

LARCO
INVESTMENTS



VIEW ANGLE FROM CAPILANO TOWER TOWARDS PROPOSED DEVELOPMENT



WENSLEY ARCHITECTURE LTD

CAPWEST MIXED USE DEVELOPMENT





AERIAL
VIEW LOOKING NORTHWEST



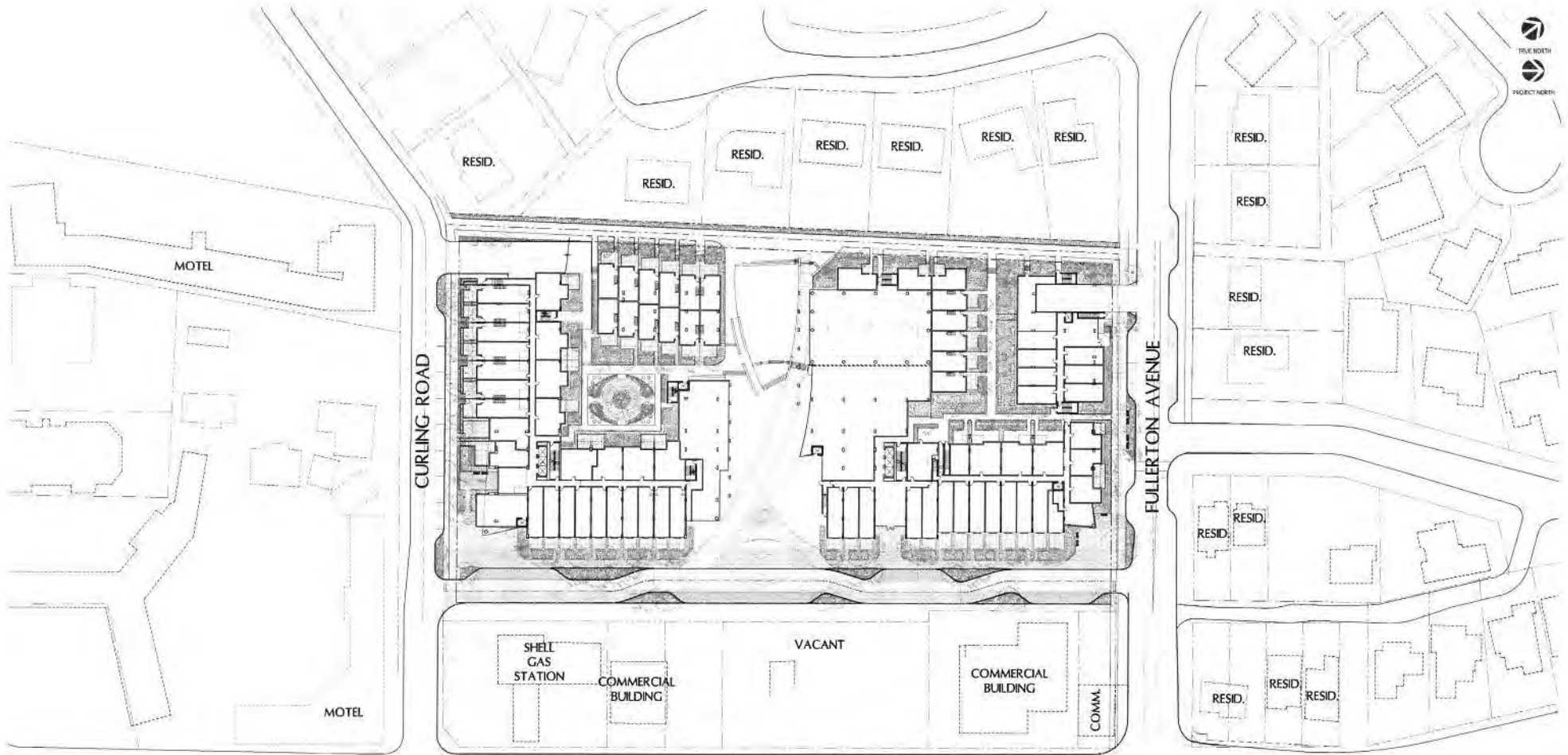
AERIAL
VIEW LOOKING EAST



AERIAL
VIEW LOOKING SOUTH EAST



VIEW FROM THE 13TH FLOOR OF THE EXISTING RESIDENTIAL TOWERS TO THE NORTH



CAPILANO ROAD

1 CONTEXT PLAN

FULLERTON AVENUE

CURLING ROAD

| | | |
|---|------------------|-----------------|
| 1 | DATE: 2014-07-11 | BY: [Signature] |
| 2 | DATE: 2014-07-11 | BY: [Signature] |
| 3 | DATE: 2014-07-11 | BY: [Signature] |

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Larco
Investments Ltd.

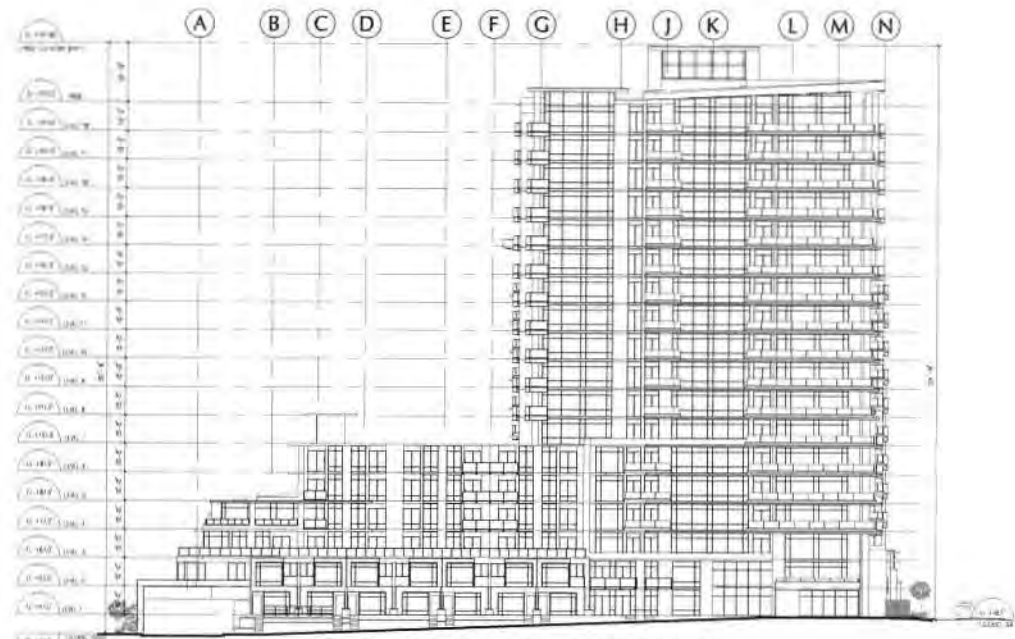
CAPWEST
MIXED-USE DEVELOPMENT
NORTH VANCOUVER, BC



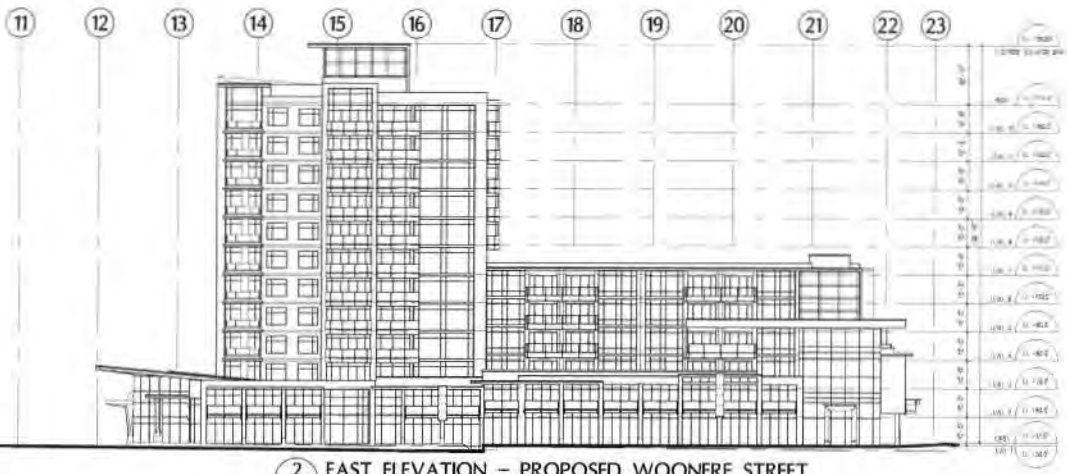
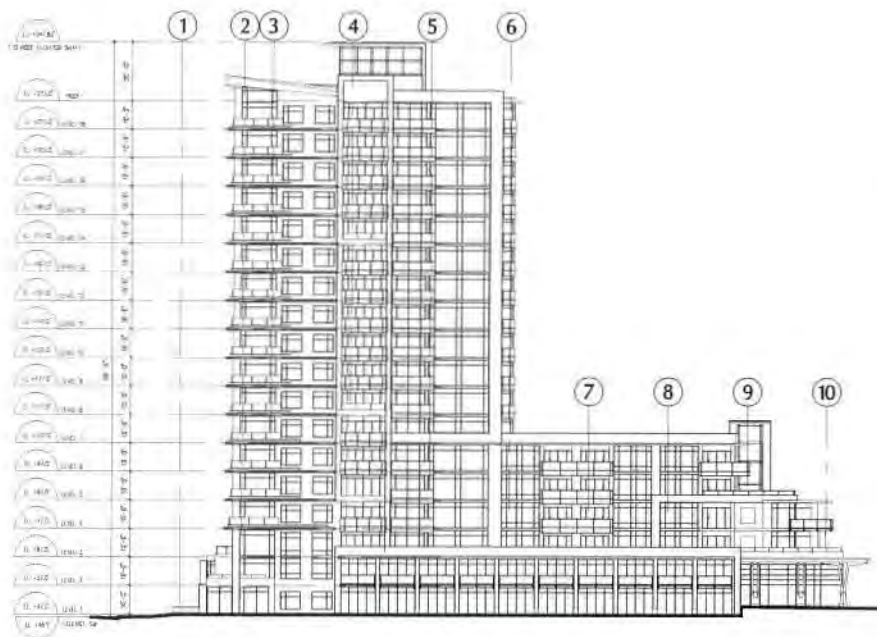
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| DATE: 2014-07-11 | BY: [Signature] |

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|------------------------------------|-------------------------|
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| PROJECT NO: 1041 | DRAWN BY: [Signature] |
| SCALE: 1" = 40' 0" | CHECKED BY: [Signature] |
| DATE: 10-04-2015 | DATE: 10-04-2015 |

A102



1 SOUTH ELEVATION - CURLING ROAD



2 EAST ELEVATION - PROPOSED WOONERF STREET

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|-----|------------|-------------------|
| NO. | DATE | DESCRIPTION |
| 1 | 2018.05.01 | ISSUED FOR PERMIT |
| 2 | 2018.05.01 | ISSUED FOR PERMIT |
| 3 | 2018.05.01 | ISSUED FOR PERMIT |
| 4 | 2018.05.01 | ISSUED FOR PERMIT |
| 5 | 2018.05.01 | ISSUED FOR PERMIT |
| 6 | 2018.05.01 | ISSUED FOR PERMIT |
| 7 | 2018.05.01 | ISSUED FOR PERMIT |
| 8 | 2018.05.01 | ISSUED FOR PERMIT |
| 9 | 2018.05.01 | ISSUED FOR PERMIT |
| 10 | 2018.05.01 | ISSUED FOR PERMIT |
| 11 | 2018.05.01 | ISSUED FOR PERMIT |
| 12 | 2018.05.01 | ISSUED FOR PERMIT |
| 13 | 2018.05.01 | ISSUED FOR PERMIT |
| 14 | 2018.05.01 | ISSUED FOR PERMIT |
| 15 | 2018.05.01 | ISSUED FOR PERMIT |
| 16 | 2018.05.01 | ISSUED FOR PERMIT |
| 17 | 2018.05.01 | ISSUED FOR PERMIT |
| 18 | 2018.05.01 | ISSUED FOR PERMIT |
| 19 | 2018.05.01 | ISSUED FOR PERMIT |
| 20 | 2018.05.01 | ISSUED FOR PERMIT |
| 21 | 2018.05.01 | ISSUED FOR PERMIT |
| 22 | 2018.05.01 | ISSUED FOR PERMIT |
| 23 | 2018.05.01 | ISSUED FOR PERMIT |

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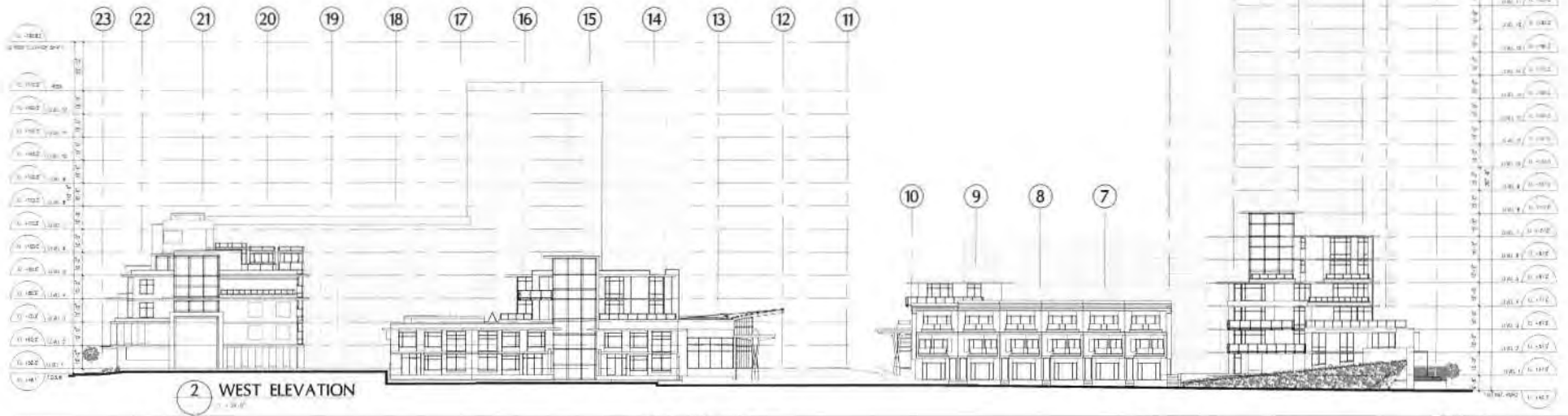
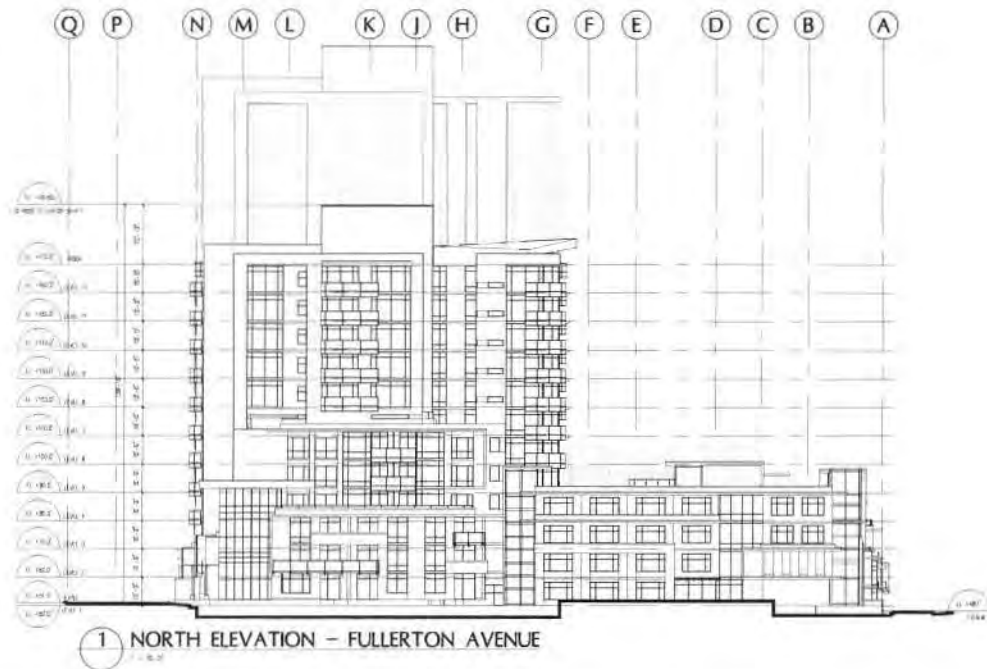
Larco
Investments Ltd.

CAPWEST
MIXED-USE DEVELOPMENT
NORTH VANCOUVER, BC

Wensley
Architecture Ltd

PROJECT NO: 1801
DATE: 2018.05.01
SCALE: 1/8" = 1'-0"

EXTERIOR ELEVATIONS



| | | | |
|---|-----------------------------|-----------|-------------|
| 1 | DATE OF REVISION (DD-MY-YY) | BY (I.D.) | DESCRIPTION |
| 2 | DATE OF REVISION (DD-MY-YY) | BY (I.D.) | DESCRIPTION |
| 3 | DATE OF REVISION (DD-MY-YY) | BY (I.D.) | DESCRIPTION |

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Investments Ltd.

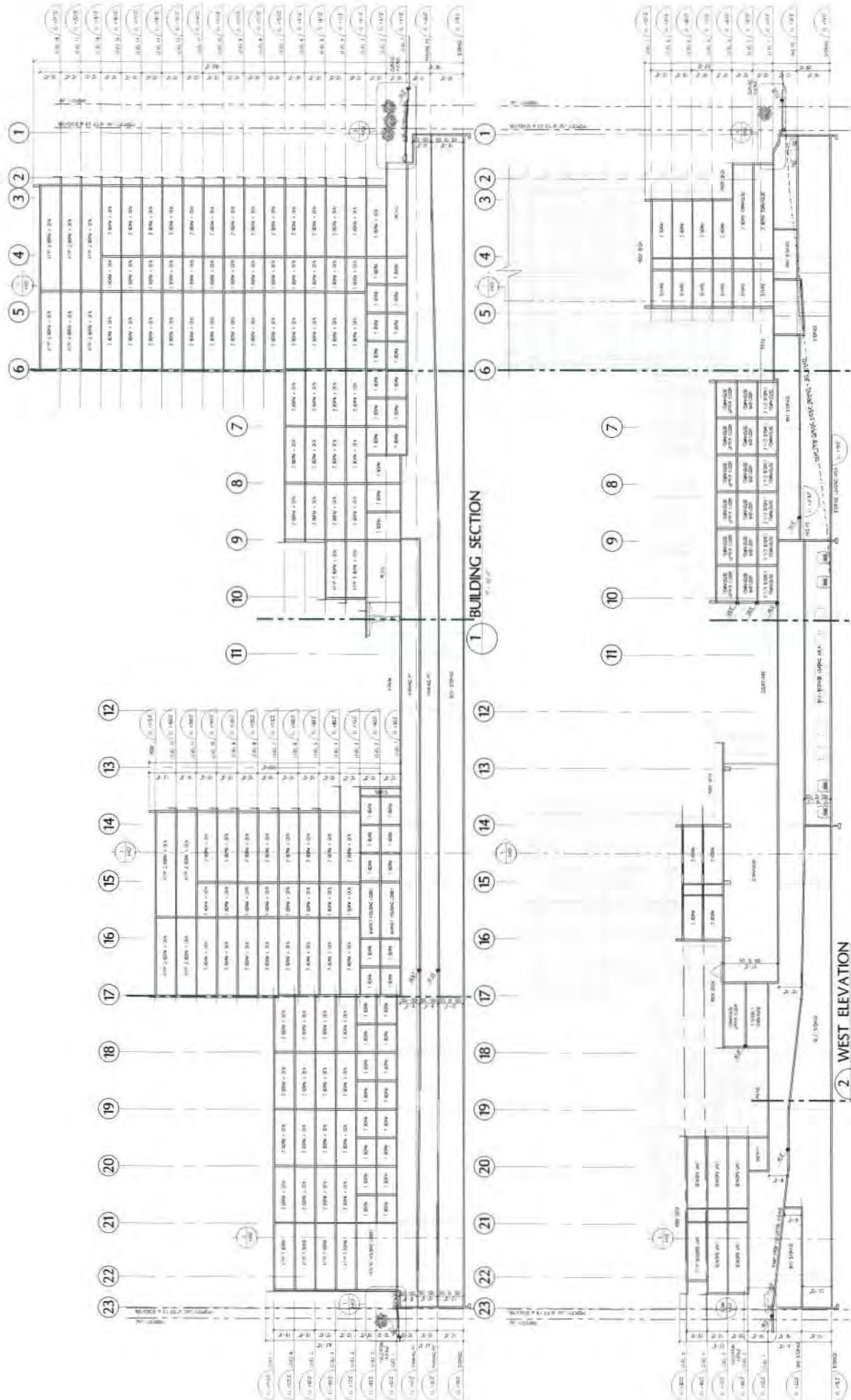
CAPWEST
MIXED-USE DEVELOPMENT
NORTH VANCOUVER, BC

Wensley
Architecture Ltd

DESIGN TEAM
ARCHITECT
ENGINEER
LANDSCAPE

| | | | |
|-------------|------------|----------------------------|---------------|
| SHEET NO: | | EXTERIOR ELEVATIONS | |
| PROJECT NO: | DATE: | SHEET NO: | TOTAL SHEETS: |
| 100-000-001 | 2014-07-22 | 108-4 | 108-4 |
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A302



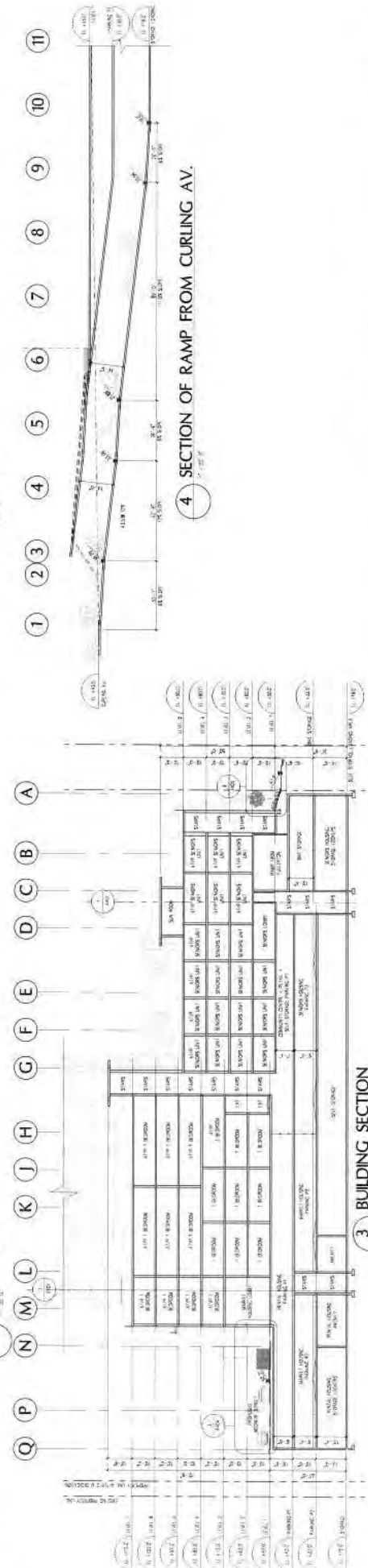
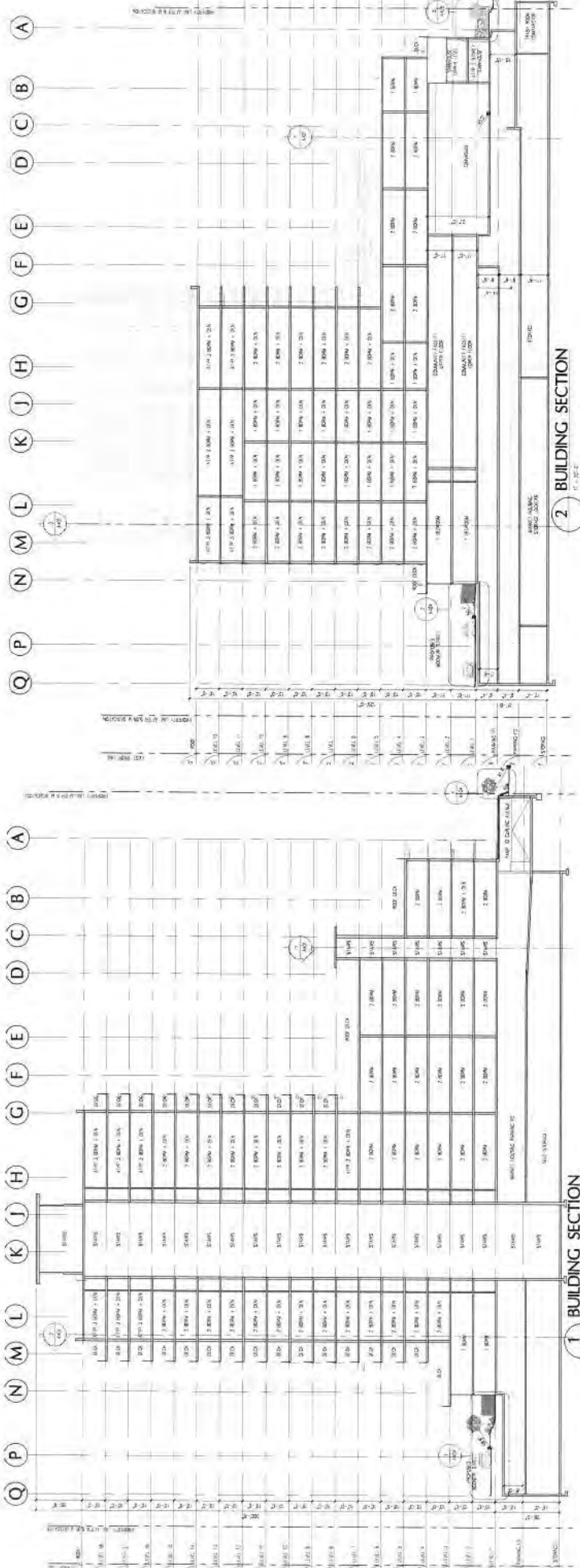
Wengley Architecture Ltd
 ARCHITECTS
 1000 WEST 10TH AVENUE, SUITE 100
 VANCOUVER, BC V6H 3G7
 TEL: 604.681.1111
 WWW.WENGLYARCHITECTURE.COM

Larco Investments Ltd.

CAPWEST MIXED-USE DEVELOPMENT NORTH VANCOUVER, BC

BUILDING SECTIONS

DATE: 11/11/2014
 DRAWN BY: J. L. LEE
 CHECKED BY: J. L. LEE
 PROJECT NO.: 14-001
 SHEET NO.: A-401



1 BUILDING SECTION
1" = 32' 0"

2 BUILDING SECTION
1" = 32' 0"

3 BUILDING SECTION
1" = 32' 0"

4 SECTION OF RAMP FROM CURLING AV.
1" = 32' 0"

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CapWest
MIXED-USE DEVELOPMENT
NORTH VANCOUVER, BC

Larco
Investments Ltd.

Wensley Architecture Ltd
ARCHITECTS
2150 BURNHAMTHORPE AVENUE
VANCOUVER, BC V2C 2P8
TEL: 604-271-7777
WWW.WENSLYARCHITECTURE.COM

PROJECT NO: 2017-001
DATE: 10/10/2020
SCALE: 1" = 32' 0"

PROJECT NO: 2017-001
DATE: 10/10/2020
SCALE: 1" = 32' 0"



CURLING ROAD

FULLERTON AVENUE



CAPWEST MIXED USE DEVELOPMENT



NORTH VANCOUVER
DISTRICT

PUBLIC HEARING

2035 Fullerton Avenue (LARCO)

What: Public Hearing for the proposed development of 2035 Fullerton Avenue. The proposed development consists of 451 residential units, a small amount of at grade commercial, a mini storage business, a public community centre and a public plaza and village green.

When: 7 pm, Tuesday, October 7, 2014

Where: Council Chambers, North Vancouver District Hall,
355 W. Queens Road

Proposed*



Site Map



* Provided by applicant for illustrative purposes only. The actual development, if approved, may differ.

What changes?

This proposal requires an amendment to the District's Zoning Bylaw and a phased development agreement.

Zoning Amendment:

Proposed Bylaw 8041 will amend the Zoning Bylaw by creating a new comprehensive development zone (CD79) to permit the proposed development.

Phased Development Agreement:

Proposed Bylaw 8042 will authorize the phased development agreement associated with the proposed development.

The developer is 332391 BC Ltd. The phased development agreement stipulates that the development rights in CD79 (sections 4B79-2 to 4B79-8) may not be amended or repealed for 10 years. It is anticipated that the development will be built-out over the 10 year period, during which time the phased development agreement requires the developer to provide the community amenities, which include a community centre shell, a public plaza and park space.

The developer is entitled to sell the property and assign its rights under the phased development agreement provided that the purchaser assumes all of the developer's obligations, including delivery of the community centre shell.

When can I speak?

We welcome your input **Tuesday, October 7, 2014 at 7 pm**. You can speak in person by signing up at the Hearing or you can provide a written submission to the Municipal Clerk at input@dnv.org or by mail before the conclusion of the Hearing.

Need more info?

Relevant background material and copies of the bylaws are available for review at the Municipal Clerk's Office, Monday to Friday 8 am to 4:30 pm or online at dnv.org/public_hearing.

Questions?

Tamsin Guppy, Community Planner, tguppy@dnv.org or 604-990-2387.



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dnv.org



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