

## THE BELLEVUE

### SUMMARY OF AN INTEREST IN THE BELLEVUE

The Bellevue is a 40 unit residential complex (the "Bellevue") located at 2150 Bellevue Avenue, West Vancouver, B.C. No. 85 Seabright Holdings Ltd. has a contractual right to purchase the entire building and is offering up to 40 separate interests in the complex to individual purchasers. This document summarizes the title and ownership structure for sale to purchasers, and highlights the co-ownership arrangement that will govern the rights and obligations of all owners of the Bellevue.

### TITLE AND OWNERSHIP

Registered title to the lands and building has been separated into 40 fractional interests. Each interest corresponds to a particular residential Apartment in the Bellevue. The relative size of each interest is determined by the relative size of the Apartment. So, for example, an Apartment with an area of  $\frac{1}{40}$ th of the total area of all apartments would correspond to a  $\frac{1}{40}$ th interest in the lands and building. These interests are expressed as a fraction of 10,000, so the apartment which makes up  $\frac{1}{40}$ th of the total of all apartments would carry an interest of  $\frac{250}{10,000}$ . By way of further example an apartment which represented  $\frac{1}{38}$ th of the total area would carry a fractional interest of  $\frac{263}{10,000}$ ths, and so on. All 40 purchasers with their individual fractional interests will, collectively, own 100 % (or  $\frac{10,000}{10,000}$ ths) of all of the lands and buildings comprising the Bellevue.

A purchaser's interest has two components - a "Land Interest" and a "Contractual Interest". The Land Interest is transferred and registered in the Land Title Office in the same way as other land in the Province of British Columbia. The Contractual Interest is a contract among all persons who are registered owners of Land Interests. The registered Land Interest and the contract with the other co-owners of the Bellevue define the "bundle" of benefits and obligations which purchasers acquire when they purchase an interest in the Bellevue. Each of those interests are described in more detail below.

#### **A. Land Interest**

The Land Interests are simply a division of the entire registered title to the land and building comprising the Bellevue. The Land Interest of each purchaser consists of a fractional fee simple interest in the entire title, registered in the name of the purchaser in the Land Title Office. Using the example of the Apartment representing  $\frac{1}{40}$ th or  $\frac{250}{10,000}$ ths of the total of all apartments, the purchaser would become the registered owner of a  $\frac{250}{10,000}$ ths undivided interest in the entire registered title as one of 40 owners. This title would be registered in the same fashion as title to single family houses or strata titles in that the Land Title Office records will show the name of the purchaser as the owner and will specify the fractional interest. The difference in this case is that the purchaser will not own the entire title to the land and buildings, only an undivided  $\frac{250}{10,000}$ ths. Unless a purchaser chooses to finance the acquisition of an interest, the title acquired by that purchaser will be free and clear of financial charges other than a mortgage in favour of the Manager. The Manager is a British Columbia company beneficially owned by all of the owners of the Bellevue for the purpose of carrying out the various administrative and management duties connected with the land and buildings. If the purchaser chooses to use financing to acquire his or her interest, the lender may register a mortgage against the purchaser's title in the same fashion as a mortgage can be registered against single family or strata title property.

## **B. Contractual Interest**

By becoming the registered owner of a Land Interest, every purchaser also becomes a party to an Owners' Agreement, which is a contract among all owners of the Bellevue governing their relationship in the management and administration of the lands and building. The Owners' Agreement is simply a contract among all owners of the lands and building setting out their agreement on using the lands and building in the best interests of all co-owners. The Owners' Agreement simply records the agreement between 40 owners on how they will share, use and enjoy the Bellevue and how they will manage their related affairs such as payment of taxes, maintenance and other issues common to all owners.

At the time of acquiring a Land Interest, each purchaser is required to agree in writing to be bound by the Owners' Agreement. All 40 owners of the Bellevue are bound by the same agreement and the Manager is authorized to enforce the agreement on behalf of all owners. At the time any individual purchaser sells his or her interest, that purchaser will transfer the land interest in a conventional manner and will assign his or her rights and obligations under the Owners' Agreement as well. It is the obligation of a selling owner to make sure that his or her purchaser agrees to be bound by the Owners' Agreement.

### **FEATURES OF CO-OWNERSHIP**

Under the features of Co-Ownership, the Owners' Agreement is a comprehensive contract among all 40 owners of the Bellevue and sets out the various rights and obligations of each owner in connection with the use and enjoyment of the Bellevue. What follows is a summary of the principal features of the Owners' Agreement.

**This summary is not an exhaustive list of the provisions of the Owners' Agreement - it is the responsibility of each prospective purchaser to read the entire Owners' Agreement carefully and to obtain whatever independent advice may be required for a proper understanding of how the Owners' Agreement will affect each purchaser.**

The Owners' Agreement establishes a Manager which is a British Columbia company incorporated for the purpose of assisting all owners in the management of the Bellevue. These include collection from all owners of their respective shares of common expenses, payment of all common expenses including taxes and maintenance as well as engaging consultants, trades or other professional services on behalf of the owners.

Every owner will be concerned that all owners comply with the Owners' Agreement and, in particular, that all other owners pay their share of taxes and expenses when they become due. In order to ensure that all owners make their proportionate contributions as and when required, each purchaser grants to the Manager a mortgage which will be registered against each purchaser's registered Land Interest. This Owners' Mortgage stands as continuing security for the full and prompt payment of all amounts required to be paid by all owners in connection with the Bellevue. If any particular purchaser is delinquent in any such payments, the amount of the payment is automatically added to the amount secured by the mortgage as a lien and charge against the delinquent purchaser's title. The Manager is also authorized to enforce the Owners' Agreement against any particular owner on behalf of all owners for specified violations of the Owners' Mortgage. These features are to protect the common interest of all owners and the Manager is required at all times to act in accordance with the best interests of all owners, collectively, without favouring the interest of any particular owner over another. This Owners' Mortgage will remain registered as a first financial charge against the title of every purchaser. It

is up to each individual purchaser to determine whether subsequent financing from a conventional lender is required. If a purchaser finances the acquisition of an interest, the mortgage of that conventional lender will be registered after the Owners' Mortgage.

The Owners' Agreement establishes 40 separate "Designated Apartments". At the time of purchasing an interest, the purchaser is entitled to the Designated Apartment corresponding with his or her interest. The right to use a Designated Apartment is determined by the Owners' Agreement to mean use and enjoyment free from disturbance or interference from any other owner of the Manager, subject to certain limitations which are necessary for the common ownership and administration of the Bellevue. The limitations include compliance with rules and regulations applicable to all owners, the Manager's right to enter the Apartment in the case of emergency and any leases or tenancies which existed at the time the purchaser acquired the interest. Under the Owners' Agreement, every owner not only acquires undisturbed use of his or her Designated Apartment, but also agrees to respect and uphold the undisturbed use of all other Apartments by the other owners. An owner's undisturbed use of his or her Designated Apartment is not a lease of that apartment, it is simply an agreement between all owners to allocate all available suites among themselves as co-owners.

Any owner may lease or rent out his or her Designated Apartment subject to any existing leases or tenancies which existed at the time the owner acquired the interest. An owner who rents out his or her Designated Apartment remains responsible for the conduct of the tenants and must comply with the *Residential Tenancy Act* of British Columbia and all similar legislation or regulations dealing with the rights and liabilities of landlords and tenants generally.

The Owners' Agreement requires all owners to elect a Management Committee from among themselves. This Management Committee will also serve as the directors and officers of the Manager for administrative purposes on behalf of all owners and will make decisions from time to time on the administration and maintenance of the Bellevue. Among other things, the Management Committee will call general meetings of owners from time to time at which decisions affecting all owners will be considered. Subject to the decision of all owners at any general meeting, the Management Committee will be primarily responsible for managing the day to day affairs of the Bellevue on behalf of all owners and for causing the Manager to carry out its various duties and responsibilities to the owners.

Like other models of co-ownership involving common property, the best use and enjoyment of the lands and building depends on the cooperation and contribution of all owners. The Owners' Agreement contains a number of provisions which set out certain specific rights and obligations of each owner and of all owners collectively to ensure that the maximum use and enjoyment is available by all owners at all times. However, the Owners' Agreement ultimately leaves control of the Bellevue in the hands of all owners acting together at general meetings. At these general meetings, the owners may decide to change many of these existing provisions of the agreement or to add new ones. The main restrictions on the ability of the owners to change the Owners' Agreement are included to protect the position of conventional lenders who have provided mortgage financing to individual purchasers. Decisions of the owners which require the approval of these lenders are called "Major Decisions" and include the borrowing of money on behalf of all owners, changes to legal title of the Bellevue and amendments of the Owners' Agreement which may reasonably be regarded as adverse to the security position of those lenders. These provisions to protect lenders are included in the Owners' Agreement to make the interest of each purchaser more suitable for conventional financial which, in turn, makes the interest easier to sell or transfer.

As mentioned earlier, the Owners' Agreement contains a number of specific provisions which are important to each purchaser. The Owners' Agreement is in "plain English" and includes a detailed table of contents.

It is the responsibility of each prospective purchaser to read the Owners' Agreement fully and carefully in order to understand the rights and obligations included in the bundle of interests in the Bellevue acquired by the purchaser.