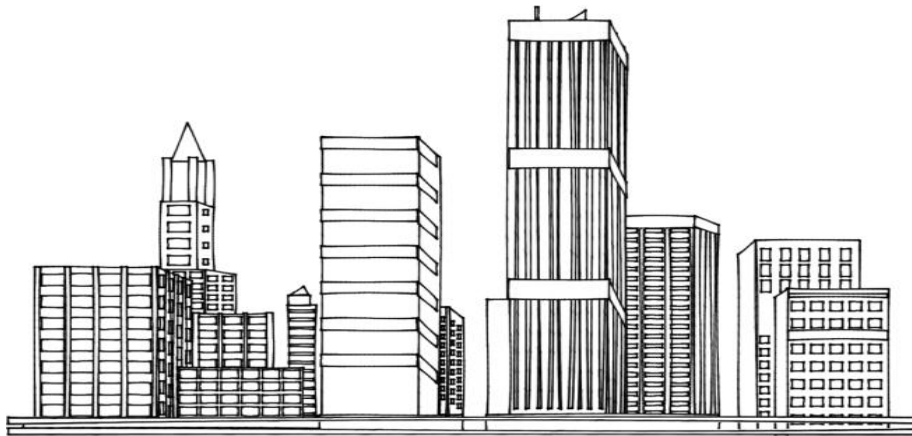


**What a Strata Corporation needs to know about:**

**AIR SPACE PARCEL AGREEMENTS**



This bulletin has been produced in partnership with the Real Estate Council of British Columbia. CHOA would like to extend a note of thanks to the Real Estate Council for sharing the funding costs and the Strata Management Advisory Group for research feedback.

With many thanks to the research contractor for the production of this bulletin:

Allyson Baker, Partner, Clark Wilson LLP

## Understanding an Air Space Parcel Agreement

### Introduction

When the concept of the “condominium” was first introduced in British Columbia in the 1960s, the first strata corporations tended to be simple residential developments. Since that time, however, and driven by a number of factors (including the increasing value of land and urban planning principles adopted by various municipalities), mixed-use developments have become a more common model for real estate development. Such mixed-use developments typically consist of residential and commercial units or various types of commercial units and/or residential units, or may be separated by air space boundaries into separate properties. The documents that determine how the intersected properties will function are typically entitled “**Reciprocal Easements**” but will be referred to in this publication as “**air space parcel agreements**” or “**ASP agreements**”.

An ASP agreement is a lengthy, complex document that sets out rights of access and use of property, as well as obligations as to maintenance, repairs, inspections, insurance and servicing for shared property or assets. The ASP Agreement will typically contain formulas that define how the costs are shared between parties; however, these agreements are made all the more confusing by references to various owners, the municipality, easements, reservations and Section 219 Covenants. It is impossible to address all of the possibilities that may arise in a single publication because each ASP agreement will be unique to each air space parcel arrangement and such agreements do not fall under the regulatory application of any specific legislation, such as the **Strata Property Act**. A strata corporation seeking to understand the air space parcel arrangement that it finds itself must start with gathering and reviewing all

of the applicable documents (being the ASP agreement(s), any assumption and alteration agreements (referred to in this publication as “**A&A agreements**”), any related reference or explanatory plans (which may be volumetric plans showing the applicable parcels in three-dimensions, as well as the as-built plans for the strata plan and the

other parcels that comprise the air space parcel arrangement). In order to fully understand the nature of the air space parcel arrangement, the strata corporation may have to seek the advice of appropriately qualified experts, such as legal counsel, engineers, surveyors and/or accountants. Ideally, this would be done in conjunction with the owners of the other parcels within the air space parcel arrangement; however, if the owners of the other parcels are not prepared to participate, the strata corporation should seek its own advice.

### A. What is an air space parcel and how does it differ from types and sections?

Where different property interests reside within one development, three different mechanisms are commonly employed to create varying measures of autonomy between the different types of property users:

1. **Creation of types** – Under section 6.4(1) of the **Strata Property Regulation**, a strata corporation is permitted to adopt bylaws to recognize a “**type**” of strata lot for the purposes of allocating the operating expenses incurred by the strata corporation in respect of that type to the strata lots of that “type” only. However, in the absence of a unanimous vote resolution, contingency reserve fund and

special levy contributions must still be contributed to by all strata lots, regardless

of type, based on relative unit entitlement. It is important to note that the creation of “types” pursuant to Section 6.4(1) only relates to the allocation of costs – unlike a section, a “type” is not a separate entity from the strata corporation.

2. **Creation of sections** – A **section** is a legal entity separate from the strata corporation with its own powers and duties as determined by Part 11 of the **Strata Property Act** and the bylaws of the strata corporation. Under section 193 of the **Strata Property Act**, a strata corporation is permitted to have sections only for the purpose of representing the different interests of:

- (a) owners of residential strata lots and owners of nonresidential strata lots,
- (b) owners of non-residential strata lots, if they are use their strata lots for significantly different purposes, or
- (c) to the extent permitted by the **Strata Property Regulation**, owners of different types of residential strata lots.

The existence of one or more sections in a strata corporation must be reflected in the bylaws so it is necessary to review the bylaws of the strata corporation as filed in the Land Title Office to determine whether any sections exist within a strata corporation or not. While the creation of sections does give some measure of autonomy to the different categories of strata lots reflected by the sections, all strata lots are still subject to the authority

of the strata corporation and the will of the owners collectively.

3. **Subdivision of land to create air space parcels** – In BC, the registered owner of a parcel of land owns not only the surface of the land but also what exists both above and below the surface of that land. As a result, the owner of land owns a three-dimensional space, the boundaries of which, while not identified on a plan of the parcel, are generally accepted to extend above and below the surface as may be necessary for the ordinary use and enjoyment of that parcel.

The subdivision of a parcel of land by filing a strata plan to create strata lots is one way to subdivide the three-dimensional space. The subdivision of land to create one or more air space parcels, which is permitted by Part 9 of the BC **Land Title Act**, is another way to divide the three dimensional space. However, unlike the relationship between a strata corporation and sections within that strata corporation, the relationship between the separate parcels of land created by an air space subdivision (which are called the “**air space parcel(s)**” and the “**remainder parcel**”, with the remainder parcel generally being the ground level parcel in the air space parcel arrangement) is governed entirely by the ASP agreement(s) between the parcel owners. Even if air space parcel arrangement involves one or more strata corporations, the **Strata Property Act** has no application to the relationship between or amongst the air space parcel(s) and the remainder parcel.

- B. **How do I know if my strata corporation is a party to an air space parcel arrangement?**

If a strata plan is subject to an air space parcel arrangement, this will be identified on the first page of the strata plan filed in the Land Title Office. Attached as **Schedule A [Sample Strata Plan Excerpt]** to this publication is the first page of a strata plan that is part of an air space parcel arrangement as confirmed by the notation on the upper left hand corner of the document.

A search of the **common property register** (which is the register in the Land Title Office that lists all of the agreements that have been filed in respect of the common property of a strata plan) will also confirm the presence of an air space parcel arrangement and will identify the agreement or agreements related to the arrangement. Attached as **Schedule B [Sample Common Property Register]** to this publication is the common property register for a strata corporation that is part of an air space parcel arrangement – the notations and charges related to this arrangement have been marked for identification. Depending on how the air space arrangement has been structured, there may be more than one ASP agreement that sets out the relationship between the parcels of land and their respective owners. It is therefore important to review the strata corporation's full common property register to ensure that the strata corporation has copies of all applicable agreements related to the air space parcel arrangement.

The existence of an air space parcel arrangement must be disclosed in the disclosure statement issued by a developer marketing the sale of residential strata lots. In some cases, this may be done by including a draft of any proposed ASP agreement(s) in the disclosure statement. In other cases, the developer will provide a summary only of the proposed air space parcel arrangement. As the version of any ASP agreement that is filed in the Land Title Office will govern the relationship between the parties, a strata corporation should not rely on the draft

form of agreement included in the disclosure statement as it is possible that provisions of the draft were amended before the ASP agreement was executed and filed in the Land Title Office.

### C. What is typically addressed in an air space parcel agreement?

As an ASP agreement defines the relationship amongst the air space parcel(s) and the remainder parcel, it is important for a strata corporation that exists within such an arrangement to have an understanding of what is typically addressed in these agreements. A typical ASP agreement will do the following:

- Identify the parties to the ASP agreement.
- Identify the areas of each of the air space parcel(s) and the remainder parcel that are subject to rights of support, access and/or use by the users of the another parcel within the air space arrangement. Areas that are subject to such rights of access or use could in theory form any part of the development but in practice tend to include the common areas of each parcel, such as the parking, mechanical services, electrical services, fire safety services and walkways.
- Identify the extent of the rights of access or use.
- Identify whether there is any obligation on the parties to share costs, and if so, identify how the costs will be shared.
- Identify any obligations to obtain insurance and to name the other parties to the air space parcel arrangement on any insurance policy.
- Identify any obligations to repair and maintain property.

This is not intended to be an exhaustive list of the types of matters that may be addressed in an ASP agreement as each agreement will have been drafted to address the needs of the particular air space parcel arrangement.

### ***1. Parties to an air space parcel agreement***

Ideally, the strata corporation would be named as a party to the ASP agreement. The reality however is that the strata corporation will rarely be a named party to the ASP agreement because of the timing of filing of the various subdivision plans. As noted above, when an air space subdivision occurs, one or more air space parcels and the remainder parcel will be created. As the filing of an ASP agreement will typically occur immediately following the filing of the subdivision plan and before any strata plan is filed, the owner developer (or a related company) will typically own all of the air space and remainder parcels created by the air space subdivision and will therefore be named in the agreement in various capacities (i.e. as an owner of each air space parcel and the remainder parcel).

The first step in identifying whether the right and obligations of the strata corporation and/or the strata lot owners under the ASP Agreement is to confirm whether the strata corporation was created out of an air space parcel (and if so, which one) or the remainder parcel. Many ASP agreements contain introductory clauses identifying the use of each of the air space parcels and the remainder parcel that may assist. Otherwise, it will be necessary to look at Land Title Office filings to be able to make this determination.

Let's assume for the purposes of this publication that Strata Plan EPS 000 was created out of the subdivision of the remainder parcel. When the owner developer transfers title to each of the strata lots in the strata corporation created out of the remainder parcel, all strata lot owners

become party to the ASP agreement, replacing the owner developer as the remainder owner. The strata corporation itself does not become a party to the ASP agreement unless an A&A agreement is executed between the owner developer and the strata corporation, pursuant to which the owner developer assigns benefits and the strata corporation assumes obligations under the ASP agreement. As A&A agreements cannot currently be registered in the Land Title Office, a strata corporation should obtain a copy of any A&A agreement applicable to the ASP Agreement from the owner developer or one of the other parties to the ASP Agreement, such as the applicable municipality.

If there is an A&A agreement, the strata council and the strata manager will need to be familiar with the terms of the A&A agreement to understand the rights and obligations that the strata corporation has directly assumed in respect of the ASP agreement.

Whether an A&A agreement has been executed or not, the strata corporation will nonetheless still have a significant role to fulfill in respect of the air space parcel arrangement. This role will be discussed further in this publication.

The strata corporation should also determine who the other parties to the ASP agreement are. In some cases, the owner developer may retain title to one or more of the parcels within the air space parcel arrangement – in other cases, title to the other parcel(s) may have been transferred to unrelated third parties. It is also possible that a strata plan may have been filed in respect of any of the other parcels, in which case our strata corporation EPS 000 may have to work with another strata corporation to implement the air space parcel arrangement.

In addition to the owners of the air space and remainder parcels, the municipality in which the parcels are located will also be a party to the ASP

agreement for the purpose of any Section 219 Covenants under the **Land Title Act** that were granted by the owner developer in respect of the development (Section 219 Covenants are discussed further below under heading 5. *What is a Section 219 Covenant?*).

## 2. Rights of Access, Use and/or Support

As noted above, an ASP agreement is often referred to as a reciprocal easement agreement, under which rights of access, use and support are granted by one parcel owner to other parcel owners in the air space parcel arrangement. The rights granted and obligations imposed are described as “reciprocal” in that all parcel owner(s) typically (but not necessarily) enjoy the same benefits with respect to the other parcel(s) as they have granted to the other parcel owner(s) and are subject to the same obligations as the other parcel owner(s).

Rights of access, use and support granted by the ASP agreement will vary by agreement, but may include:

- Rights to travel over a parcel of land, whether on foot or in vehicles
- Rights to access, construct, repair and maintain services, such as water, sewer, electricity, and fire safety systems
- Rights to park vehicles
- Rights to place or store construction materials or other objects
- Right of support, meaning the right to rely upon the structural support provided by structural elements of the building

The rights of access, use and/or support granted by an ASP agreement will rarely be unrestricted

and will typically be tempered by **reservations** identified in the ASP agreement, including such reservations as the ability of the granting parcel owner to temporarily interrupt the easement rights that have been granted in order to facilitate repair and maintenance and to adopt bylaws, rules and security arrangements as long as they apply equally to all parcel owners.

In order to understand what portion(s) of an air space or remainder parcel are subject to the rights of access, use and support, it may be necessary to refer not only to the ASP agreement itself but also to the following:

- Any reference or explanatory plans that may have been filed in respect of the ASP agreement as the boundaries of any easement areas may be limited by such plans
- The as-built construction drawings for the development to identify the location(s) of services
- An on-site inspection of the properties to confirm the physical location(s) of services

## 3. Cost Sharing Provisions and Other Covenants in an ASP Agreement

A common, but not mandatory, feature of an ASP agreement is an agreement amongst the air space and remainder parcel owners that they will share certain expenses as identified in the ASP agreement. These expenses typically relate to the repair, maintenance and insurance of property. In the absence of cost sharing provisions, there is no legal obligation on the part of a landowner who has the right to access and use another parcel of land (called the “**dominant tenement**” in the law of easements) to share the costs being incurred by the landowner granting the rights of access and use (called the “**servient tenement**”) with respect to the repair,

maintenance and insurance of the property that is subject to the easement. Furthermore, even if there are cost sharing provisions in the ASP agreement, there is nothing in law that requires that the cost sharing provisions reflect the actual usage of or benefit received by the dominant landowner in respect of the easement areas. As a result, a servient landowner may find itself paying all or significantly all of the costs associated with repairing, maintaining and insuring the easement areas even though the dominant landowner may be the primary user of the easement area without any entitlement to reimbursement from the dominant landowner.

In addition to provisions dealing with cost sharing, an ASP agreement will often include other obligations (typically referred to as “**covenants**” in the agreement), such as:

- A duty on a party to obtain and maintain specified insurance coverage.
- A duty on the servient landowner to repair and maintain the servient parcel generally or to a specific standard.
- A duty on the dominant landowner to indemnify the servient landowner for any damage caused by the dominant landowner.

***4. How does a party to an ASP parcel agreement collect amounts owing by another party to the same agreement?***

As noted above, an air space parcel agreement may include provisions that identify certain costs that are to be shared by the air parcel parties and the formulas to be used to determine each parcel owner’s share of those costs. Under a typical ASP agreement, the owner of the property for which the repair, maintenance or insurance is required (in our example, the EPS 000 strata corporation) must initially undertake the work and obtain the

insurance at its own cost, and then seek reimbursement of the amounts expended from the owner(s) of the other parcel(s).

Many ASP agreements will contain provisions that:

- identify how claims for reimbursement are to be made, including the format of any statement and provision of any invoices, the timing and frequency of statements, the timing and frequency of payments and interest on overdue amounts.
- limit the party incurring the expense to seeking contributions for only those expenses that are reasonably necessary.
- require the party incurring the expense to give notice to other parcel owners in advance of incurring the expense.

The cost reimbursement provisions of the ASP agreement should be carefully reviewed to ensure that the strata council and its strata manager understand the invoicing and payment process contemplated by the ASP agreement. A failure to comply with the provisions of the process, such as failing to deliver the statement within the required period of time or in the required format, may provide a defence to the other parcel owner with respect to the claim. A sample summary schedule of allocated costs and obligations from an ASP agreement is attached as **Schedule C [Sample Cost Sharing Summary Schedule]** to this publication. While this schedule sets out the obligations and cost sharing formulas for the relationships between the air space parcels and remainder, such schedules are frequently vague about the particulars of the allocation of responsibilities for maintenance, service, inspection, repair, renewal and insurance liabilities. As a result, in order to be able to effectively maintain the relationships and understand the responsibilities and liabilities of

each of the parties, a legal opinion that interprets and analyzes the ASP agreement, with input from technical consultants, may be necessary before the air space parcel arrangement is clearly understood and the parties are able to implement the cost sharing arrangements.

Strata corporations should also be aware that claims for reimbursement under the cost sharing provisions of the ASP agreement are subject to a 2-year limitation period under the BC **Limitation Act**. This means that, if the owner of any of the other parcels fails to pay its cost sharing contributions, the strata corporation must commence a lawsuit in BC Small Claims Court or BC Supreme Court against that parcel owner within 2 years of the date on which the unpaid amount became due and payable under the ASP agreement. If the strata corporation fails to start the lawsuit within the 2-year limitation period, the claim will become statute-barred and is no longer legally enforceable. As a result, if one parcel owner is refusing to make their cost sharing contributions, a strata corporation should seek legal advice in a timely manner and well within the limitation period about any available options to collect unpaid cost sharing contributions.

Given the cost of resolving legal disputes, a strata corporation may wish to deny the other parcel owner(s)'s the access, use and support rights granted by the ASP agreement as a means to try to force payment of the unpaid amounts. Any decision to deny another parcel owner the benefit of the rights of access, use and support should be carefully considered with the benefit of legal advice. The provisions of the ASP agreement (including the Section 219 Covenant) may prohibit a "self-help" remedy of this nature to collect unpaid contributions (or, indeed, as a means of resolving any dispute) and a strata corporation that attempts to deny access, use and support rights may find itself the subject of

an injunction application by the other parcel owner.

### ***5. What is a Section 219 Covenant?***

A **Section 219 Covenant** is an agreement between a landowner and a municipality related to the property that is the subject matter of the agreement and is adopted pursuant to section 219 of the **Land Title Act** (formerly section 215 of the **Land Title Act**). A municipality will typically require a Section 219 Covenant as a condition of allowing the owner developer to develop what will ultimately be separate parcels of land within a single development. **Section 219 Covenants** may address such issues as:

- The provision of access and use of the property of one parcel by the owners of other parcel(s) in the air space parcel arrangement
- Responsibility for the repair and maintenance of shared utility systems, including fire and life safety systems
- A duty to indemnify the municipality in respect of claims arising from the air space parcel arrangement

Section 219 Covenants are tailored to address the unique features of each development and must therefore be reviewed carefully to assess the obligations of the strata corporation and the owners. A Section 219 Covenant can only be enforced by the municipality and does not create any rights or obligations as between the owners of the various parcels in the air space parcel arrangement.

### ***6. Can an ASP agreement be cancelled or terminated?***

As the existence of an air space arrangement involving one or more air space parcels and the remainder parcel will have been material to the



applicable municipality's approval of the development, it is unlikely that air space parcel parties will be permitted to agree to cancel or terminate the ASP agreement without the agreement of the municipality. The provisions of the ASP agreement should be reviewed carefully to determine under what circumstances an ASP agreement may be cancelled or terminated. It should also be noted that, pursuant to the requirements of the Land Title Office, a strata corporation does not have the authority to give up the benefit of an easement in favour of the strata lot owners – the owners themselves must individually agree to the cancellation or termination. As a result of these various restrictions, the end of an ASP arrangement will only typically occur when the original development is redeveloped for a new project.

#### ***7. Can an ASP agreement be amended?***

In theory, any agreement can be amended, including an ASP agreement. However, in reality, the ability to amend a provision of the ASP agreement will depend on the nature of the provision itself:

- (a) Provisions of the ASP agreement granting the other parcel users the ability to access and use portions of the common property of the strata plan can be amended by way of a  $\frac{3}{4}$  vote resolution of the owners of strata corporation. However, if these access and use provisions are subject to a Section 219 Covenant, municipal approval will also likely be required for any amendment.
- (b) Provisions of the ASP agreement granting the strata corporation and its residents the ability to access and use portions of another parcel cannot be amended without the unanimous approval of the owners and financial chargeholders of the strata lots. In addition, if these access and

use provisions are subject to a Section 219 Covenant, municipal approval will also likely be required for any amendment.

- (c) Provisions of the ASP agreement creating obligations to contribute to expenses, to obtain insurance or to carry out some other act can generally be amended by approval of the strata council. However, if the amendment results in an increase in the strata corporation's share of expenses, the council may wish to seek the approval of the owners before agreeing to such an increase. All of this is subject to the proviso that, if the ASP agreement is subject to a Section 219 Covenant, the municipality may also be required to approve the amendment.

Any amendment of any grants of access, use and/or support must be filed in the Land Title Office to be enforceable. By contrast, an amendment of any obligations to contribute to costs or to obtain insurance may not have to be filed the Land Title Office to be enforceable. A strata corporation negotiating amendments to an ASP agreement should seek legal advice on the requirements for such amendments, including any Land Title Office filings that may be necessary.

#### ***8. Other issues that may arise in connection with an air space parcel arrangement***

##### ***(a) Annual Budgets and Contingency Reserve Funds***

The annual budget of a strata corporation that exists within an air space parcel arrangement should include line items that reflect any cost sharing arrangements within the ASP agreement, including:

- those expenses incurred by the strata corporation that are shared with the other parcel owner(s)
- the cost sharing contributions anticipated to be received by the strata corporation from the other parcel owner(s)
- the cost sharing contributions expected to be made by the strata corporation to the other parcel owner(s)

In addition, a strata corporation that is required to make cost sharing contributions to other parcel owner(s) regarding the repair and maintenance of the other parcel owner(s)'s lands will need to take this into account as part of its long term financial planning, including in respect of contributions to the strata corporation's own contingency reserve fund.

#### *(b) Depreciation Reports*

Section 94 of the **Strata Property Act** and Section 6.2 of the **Strata Property Regulation** set out the requirements for a strata corporation's depreciation report, including a requirement that a depreciation report "*include a description and estimated service life over 30 years of those items that comprise the common property, the common assets and those parts of a strata lot or limited common property, or both, that the strata corporation is responsible to repair and maintain under the Act, the strata corporation's bylaw or an agreement with an owner.*" The **Strata Property Act** and the **Strata Property Regulation** do not expressly state that the depreciation report must address any property owned by persons outside of the strata plan that the strata corporation is required to repair and maintain, or to which the strata corporation must make contributions to the cost of repair and maintenance, under an ASP agreement. Nonetheless, in order to obtain an informed understanding of a strata corporation's overall

long term financial obligations, a strata corporation within an air space parcel arrangement should consider the inclusion of such obligations within its depreciation report.

#### *(c) Dispute Resolution*

An ASP agreement may include a dispute resolution clause that identifies how disputes between two or parties to the air space agreement are to be resolved. Arbitration is often identified as the intended forum for dispute resolution. Alternatively, a claim may be initiated in BC Small Claims Court or BC Supreme Court. A strata corporation that is involved in a dispute with another parcel owner should seek legal advice in a timely manner to ensure that its interests are protected. If a claim is not brought in the correct venue or is not commenced within the time limits set by the ASP agreement or the **BC Limitation Act**, a strata corporation's claim against other parcel owner(s) may be compromised. Similarly, if a strata corporation finds itself the subject of a claim by other parcel owner (whether by arbitration, in court or a tribunal, such as the BC Human Rights Tribunal), the strata corporation should report the claim to its insurer (as there may be coverage for the claim under the strata corporation's insurance coverage) and its legal counsel in a timely manner to ensure that the legal interests of the strata corporation and its owners are properly protected.

#### *(d) Strata managers of a new strata corporation subject to an ASP agreement*

The initial strata manager of any new strata corporation plays a key role in assisting the strata corporation to "get up and running" in accordance with the requirements of the **Strata Property Act** and other applicable legislation, as well as any agreements to which the strata corporation is a party. Subject to the terms of the strata management agency agreement, if the new

strata corporation is subject to an air space parcel arrangement, the strata manager may be required to assist or advise the strata corporation in implementing the ASP agreement, including the following:

- Assembling all documents related to the ASP arrangement, including all agreements filed in the Land Title Office, all assignment and assumption agreements, any explanatory or reference plans and any as-built construction drawings – these documents should be retained as part of the strata corporation's records.
- Identifying operating costs incurred by the strata corporation that may be subject to cost sharing provisions in the ASP agreement, as well as those costs to which a strata corporation may have to contribute to that are incurred by other parcel owners.
- Understanding how claims for reimbursement are to be made under the ASP agreement and, where it forms part of the management retainer, issuing invoices on behalf of the strata corporation in accordance with the provisions of the ASP agreement. Budgets being issued as part of a disclosure statement for a new development should reflect the cost sharing arrangements in the ASP agreement contemplated by the disclosure statement.
- Considering whether the strata corporation may be obligated to comply with any insurance coverage requirements in the ASP agreement.
- Identifying any repair and maintenance obligations regarding property under the ASP agreement, including the Section 219 Covenant, whether within the strata plan or on one of the other parcels within the arrangement.
- Identifying warranty documents, warranty coverage and reporting periods for residential and mixed use strata corporations where the owner developer is required under the BC **Homeowner Protection Act** to provide third party warranty coverage for 2 years of the overall property, 5 years for the building envelope and 10 years for the structure of the building.

Where the air space parcel arrangement falls outside the strata manager's expertise or retainer scope, the agent should be advising the strata council to obtain advice from appropriate consultants (such as engineers, surveyors, lawyers, accountants and others) to ensure that the strata corporation obtains appropriate advice regarding the air space parcel arrangement and the strata corporation's rights and obligations under the applicable ASP agreement. Given the complex nature of ASP agreements, air space parcel arrangements are often ignored by strata councils and strata managers. As a result, a strata corporation may be losing out on cost sharing contributions that it would otherwise be entitled to receive. If the strata manager is directed not to take any steps by the strata corporations in respect of an ASP agreement, or the air space parcel arrangement falls outside of the strata manager's retainer, the strata manager should confirm these instructions to the strata corporation in writing.

*(e) Strata managers of an existing strata corporation subject to an ASP agreement*

All strata managers should have an understanding of the strata corporation that they are managing – that understanding includes identifying whether the strata corporation is part of an air space

parcel arrangement. Simply because a strata manager assuming management functions from another agent sees no reference to the air space parcel arrangement in the documents received from the previous agent, that new agent should not assume that no air space parcel arrangement exists. As part of the due diligence involved in assuming the management of a new strata client, a strata manager should obtain copies of the relevant land title documents, including the common property register of the strata plan. As noted above, a review of the common property register will identify whether or not the strata corporation exists within an air space parcel arrangement.

*(f) Shared managing agents/strata managers*

Where a strata manager acts for both the owner developer and the strata corporation, or for more than one parcel owner, the possibility of conflicts of interest arises. Managing agents/strata managers should carefully consider the duties that they owe to each of its clients, disclosure of any conflicts and whether or not they can continue to act where a conflict exists.

## **9. Conclusion**

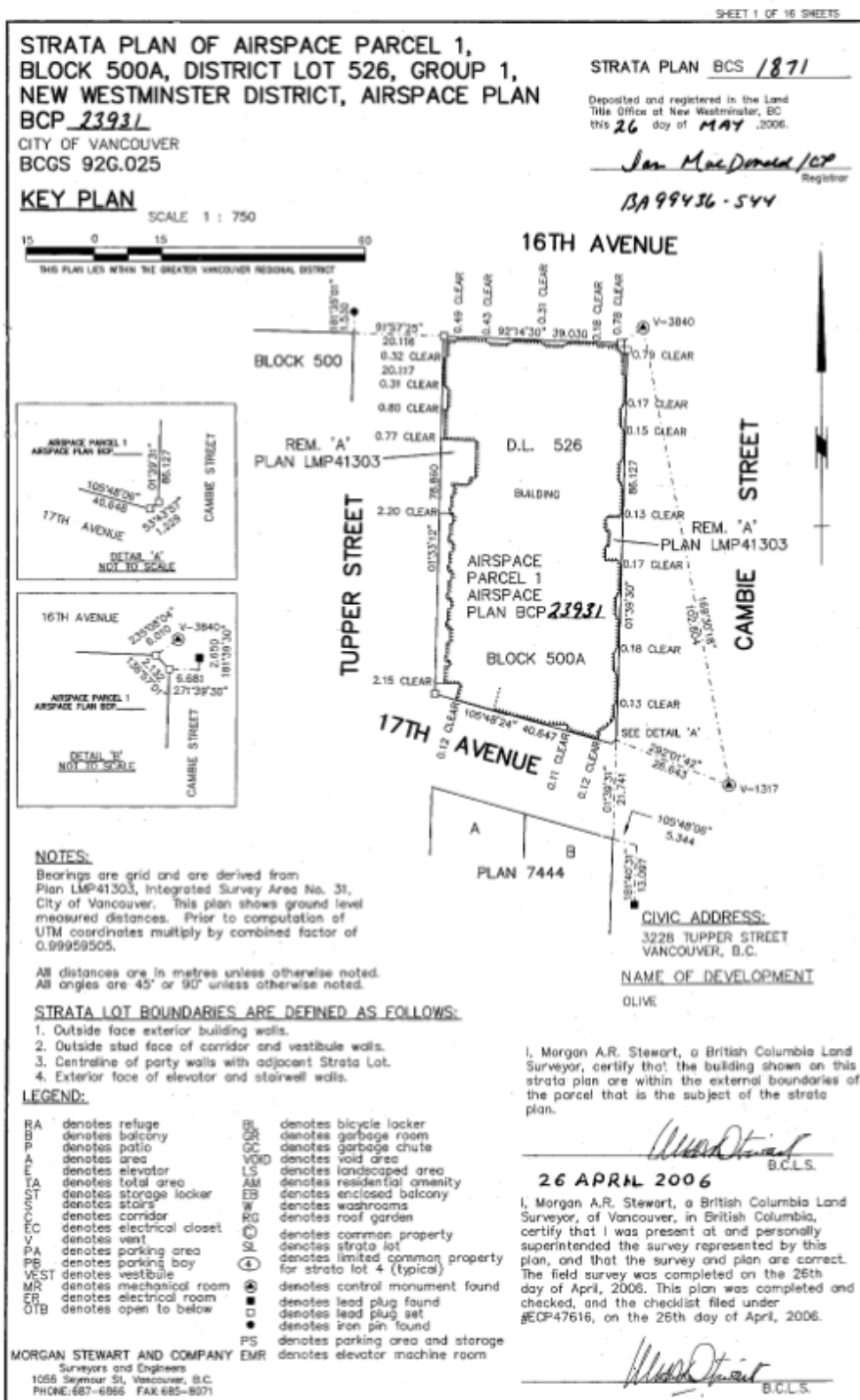
An ASP agreement is often a lengthy, complex document, made all the more confusing by references to various owners, the municipality, easements, reservations and Section 219 Covenants. The best place for the strata corporation to start is by collecting all of the filed Land Title documents that relate to the air space parcel arrangement. Once the documents have been obtained and reviewed, a cost sharing summary index of the shared costs should be created if one does not already exist, and the terms and conditions of the ASP agreement should be reviewed to confirm that the cost sharing summary index properly reflects those terms and conditions. It is likely that the strata corporation will still have questions regarding

conditions of the agreement that may be unclear or confusing. It is recommended that the strata corporation seek legal advice, with the assistance of technical advice, on the interpretation, application and implementation of the ASP agreement.

A failure to fully understand the ASP agreement may have a number of consequences for a strata corporation and its owners, including:

- Failure to properly account for shared costs and informing the other ASP partners of their obligation to pay the formulated shared costs if they exist
- Failing to receive or make contributions to shared cost items
- Failing to repair and maintain property as required by the ASP agreement
- Undertaking repair and maintenance that the strata corporation is not required to undertake under the ASP agreement
- Failing to obtain appropriate insurance or ensuring that another party to the arrangement has obtained appropriate insurance

SCHEDULE A – SAMPLE STRATA PLAN EXCERPT



SCHEDULE B - SAMPLE COMMON PROPERTY REGISTER

COMMON PROPERTY - VANCOUVER .TXT

Date: 09/03/11  
Requestor: (P034865)  
COMMON PROPERTY - VANCOUVER  
CLARK, WILSON LLP  
STRATA PLAN - BCS2555

LEGAL NOTATIONS:

HERETO IS ANNEXED EASEMENT B8296278 OVER AIR SPACE PARCEL 1 AIR SPACE  
PLAN BCP32770

HERETO IS ANNEXED EASEMENT B8296280 OVER AIR SPACE PARCEL 1 AIR SPACE  
PLAN BCP32770

HERETO IS ANNEXED EASEMENT B8296281 OVER PART (PLAN BCP32772) OF AIR  
SPACE PARCEL 1 AIR SPACE PLAN BCP32770

MISCELLANEOUS NOTES  
SRW PLAN BCP32769

HERETO IS ANNEXED EASEMENT BR89066 OVER LOT J PLAN LMP29893

CHARGES, LIENS AND INTERESTS:  
NATURE OF CHARGE  
CHARGE NUMBER DATE TIME

EASEMENT AND INDEMNITY AGREEMENT  
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REGISTERED OWNER OF CHARGE:  
CITY OF VANCOUVER  
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STATUTORY RIGHT OF WAY  
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REGISTERED OWNER OF CHARGE:  
CITY OF VANCOUVER

Page 1

COMMON PROPERTY - VANCOUVER .TXT

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STATUTORY RIGHT OF WAY  
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CITY OF VANCOUVER  
BK373644  
REMARKS: INTER ALIA

COVENANT  
BK373645 1996-11-22 13:47  
REGISTERED OWNER OF CHARGE:  
CITY OF VANCOUVER  
BK373645  
REMARKS: INTER ALIA  
SECTION 215, L.T.A.

CONTINUES ON PAGE 002

Date: 09/03/11  
Requestor: (P034865)  
COMMON PROPERTY - VANCOUVER  
CLARK, WILSON LLP  
STRATA PLAN - BCS2555

Time: 15:51:41  
Page: 002

STATUTORY RIGHT OF WAY  
BK373646 1996-11-22 13:47  
REGISTERED OWNER OF CHARGE:  
CITY OF VANCOUVER  
BK373646  
REMARKS: INTER ALIA

COVENANT  
BK373647 1996-11-22 13:47  
REGISTERED OWNER OF CHARGE:  
CITY OF VANCOUVER  
BK373647  
REMARKS: INTER ALIA  
SECTION 215, L.T.A.

EASEMENT  
BR89065 2001-04-18 14:42  
REMARKS: INTER ALIA  
APPURTENANT TO LOT J PLAN LMP29893

COVENANT  
BW48973 2004-02-04 11:27  
REGISTERED OWNER OF CHARGE:  
CITY OF VANCOUVER  
BW48973  
REMARKS: INTER ALIA

COVENANT  
BW381801 2004-08-18 13:21  
REGISTERED OWNER OF CHARGE:  
CITY OF VANCOUVER  
BW381801  
REMARKS: INTER ALIA

STATUTORY RIGHT OF WAY  
BW381803 2004-08-18 13:21  
REGISTERED OWNER OF CHARGE:

Page 2

COMMON PROPERTY - VANCOUVER (3).TXT

CITY OF VANCOUVER  
B#381803  
REMARKS: INTER ALIA

EQUITABLE CHARGE  
B#381805 2004-08-18 13:21  
REGISTERED OWNER OF CHARGE:  
CITY OF VANCOUVER  
B#381805  
REMARKS: INTER ALIA

STATUTORY RIGHT OF WAY  
B#262531 2007-05-24 08:54  
REGISTERED OWNER OF CHARGE:  
SHAW CALBESYSTEMS LIMITED  
INCORPORATION NO. A60221  
B#262531  
REMARKS: INTER ALIA

EASEMENT  
B#296279 2007-09-28 15:20  
REMARKS: INTER ALIA  
APPURTENANT TO AIR SPACE PARCEL 1 AIR SPACE  
PLAN BCP32770

EASEMENT  
B#296282 2007-09-28 15:20  
REMARKS: INTER ALIA  
APPURTENANT TO AIR SPACE PARCEL 1  
AIR SPACE PLAN BCP32770

COVENANT  
B#296285 2007-09-28 15:20  
REGISTERED OWNER OF CHARGE:  
CITY OF VANCOUVER  
B#296285  
REMARKS: INTER ALIA

EQUITABLE CHARGE

CONTINUES ON PAGE 003

Date: 09/03/11  
Requestor: (P034865)

COMMON PROPERTY - VANCOUVER  
CLARK, WILSON LLP  
STRATA PLAN - BCS2555

Time: 15:51:41  
Page: 003

B#296286 2007-09-28 15:20  
REGISTERED OWNER OF CHARGE:  
CIELO DEVELOPMENTS LTD.  
INCORPORATION NO. 652180  
B#296286  
REMARKS: INTER ALIA

PRIORITY AGREEMENT  
B#296289 2007-09-28 15:20  
REMARKS: INTER ALIA  
GRANTING B#296279 PRIORITY OVER B#481349,  
B#481350, B#481351 AND B#481352  
AS REGISTERED ON THE TITLES TO THE STRATA LOTS

PRIORITY AGREEMENT  
B#296292 2007-09-28 15:20

Page 3

COMMON PROPERTY - VANCOUVER .TXT  
REMARKS: INTER ALIA  
GRANTING B#296282 PRIORITY OVER B#481349,  
B#481350, B#481351 AND B#481352  
AS REGISTERED ON THE TITLES TO THE STRATA LOTS

PRIORITY AGREEMENT  
B#296293 2007-09-28 15:20  
REMARKS: INTER ALIA  
GRANTING B#296283 PRIORITY OVER B#481349,  
B#481350, B#481351 AND B#481352  
AS REGISTERED ON THE TITLES TO THE STRATA LOTS

PRIORITY AGREEMENT  
B#296294 2007-09-28 15:20  
REMARKS: INTER ALIA  
GRANTING B#296284 PRIORITY OVER B#481349,  
B#481350, B#481351 AND B#481352  
AS REGISTERED ON THE TITLES TO THE STRATA LOTS

PRIORITY AGREEMENT  
B#296295 2007-09-28 15:20  
REMARKS: INTER ALIA  
GRANTING B#296285 PRIORITY OVER B#481349,  
B#481350, B#481351 AND B#481352  
AS REGISTERED ON THE TITLES TO THE STRATA LOTS

PRIORITY AGREEMENT  
B#296296 2007-09-28 15:20  
REMARKS: INTER ALIA  
GRANTING B#296286 PRIORITY OVER B#481349,  
B#481350, B#481351 AND B#481352  
AS REGISTERED ON THE TITLES TO THE STRATA LOTS

MORTGAGE  
B#613363 2007-12-11 14:48  
REGISTERED OWNER OF CHARGE:  
INDUSTRIAL ALLIANCE PACIFIC INSURANCE AND FINANCIAL SERVICES INC.  
B#613363  
REMARKS: OF B#296286

"CAUTION - CHARGES MAY NOT APPEAR IN ORDER OF PRIORITY. SEE SECTION 28, L.T.A."  
\*\*\* CURRENT INFORMATION ONLY - NO CANCELLED INFORMATION SHOWN \*\*\*

Page 4

### SCHEDULE C – SAMPLE COST SHARING SUMMARY SCHEDULE

Shared Service Systems and Common Facilities	Owner Primarily Responsible for Maintenance	Remainder Owner's Share of Costs	Air Space Parcel Owner's Share of Costs
Commercial Pedestrian Access Routes and related areas, facilities, systems, and equipment	Remainder	100%	0%
Residential Pedestrian Access Routes and related area, facilities, systems, and equipment	Air Space Parcel	0%	100%
Loading Areas	Remainder	100%	0%
Vehicular Access Routes and related areas, facilities, systems, and equipment	Remainder	30%	70%
Parking Facilities and Areas	Air Space Parcel	33%	67%
Fire protection systems and all pumps within fire protection system, including jockey pump and main fire pump	Air Space Parcel	20%	80%
Sanitary sewage system	Air Space Parcel	10%	90%
Storm drainage system	Air Space Parcel	20%	80%
Life Safety and Emergency Systems	Air Space Parcel	20%	80%
Service Room Areas	Air Space Parcel	20%	80%
Electrical cables and devices supplying, and electrical usage to the Common Areas and Facilities	Air Space Parcel	0%	100%
Potable water lines and devices supplying, and potable water usage (as metered) by, the Common Areas and Facilities	Air Space Parcel	0%	100%
Service Connections	Air Space Parcel	20%	80%