

MUTUAL ACCESS EASEMENT AGREEMENT

THIS MUTUAL ACCESS EASEMENT AGREEMENT dated the 26 day of June, 2019

BETWEEN:

GATEWAY CONDOS (CALGARY) INC.

as registered owner of

Strata Lot 4; Block 53; Plan 191 1457

(the "Strata Lot 4 Owner")

- and -

GATEWAY CONDOS (CALGARY) INC.

as registered owner of

Strata Lot 5; Block 53; Plan 191 1457

(the "Strata Lot 5 Owner")

- and -

GATEWAY CONDOS (CALGARY) INC.

as registered owner of

Strata Lot 6; Block 53; Plan 191 1457

(the "Strata Lot 6 Owner")

- and -

GATEWAY CONDOS (CALGARY) INC.

as registered owner of

Strata Lot 7; Block 53; Plan 191 1457

(the "Strata Lot 7 Owner")

RECITALS:

- A. Gateway Condos (Calgary) Inc. ("**Gateway**") is the registered owner of an estate in fee simple, subject however to such encumbrances, liens and interests as are notified by memorandum underwritten and endorsed on the existing Certificate of Title, of the following lands:

STRATA LOT 4

BLOCK 53

PLAN 191 1457

("Strata Lot 4")

PLAN NUMBER INSERTED SEPT. 25, 2019
D. Slomski

STRATA LOT 5
BLOCK 53
PLAN 191 1457

("Strata Lot 5")

STRATA LOT 6
BLOCK 53
PLAN 191 1457

("Strata Lot 6")

STRATA LOT 7
BLOCK 53
PLAN 191 1457

("Strata Lot 7", and together with Strata Lot 4, Strata Lot 5, and Strata Lot 6 collectively the "Strata Lots");

- C. Gateway wishes to provide access easements between and among the Strata Lots and to further provide for the mutual use, maintenance, repair, replacement and cost allocation of certain expenses; and
- D. Section 68(1) of the *Land Titles Act* of Alberta provides that an owner may grant to itself an easement or restrictive covenant for the benefit of land which it owns and against land which it owns and the easement or restrictive covenant may be registered under the said Act.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the sum of Ten (\$10.00) Dollars paid to each other, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the provisions of this Agreement to be performed, kept and observed, the parties herein agree as follows:

1. **Definitions.** In this Agreement, unless a contrary intention is expressed, the following terms shall have the following meanings:
 - (a) "**Agreement**" shall mean this Mutual Access Agreement as amended, updated, restated or supplemented from time to time;
 - (b) "**City**" means The City of Calgary, a Municipal Corporation in its capacity as a development authority and subdivision authority under the Municipal Government Act;
 - (c) "**Easement Areas**" means collectively the Strata Lot 5 Easement Area and the Strata Lot 7 Easement Area;
 - (d) "**Municipal Government Act**" means the *Municipal Government Act*, R.S.A. 2000, c.M-26, as amended, and any regulations passed pursuant to it;
 - (e) "**Other Owners**" means all Owners other than the specified Owner providing the grant of easement, provided however, an Owner may be both an "Owner" and an "Other Owner" if it is concurrently an Owner of more than one Strata Lot;

RAW NUMBERS INSERTED SEPT 25, 2019
D. SUMSKIE

- (f) **“Owners”** means the owners of the Strata Lots together and **“Owner”** means the owner of a Strata Lot individually, as the context may require;
- (g) **“Strata Lot 5 Easement Area”** has the meaning given to it in subsection 3(a);
- (h) **“Strata Lot 7 Easement Area”** has the meaning given to it in subsection 3(b); and
- (i) **“Subdivision Authority”** means the City, in its capacity as a subdivision approving authority under the provisions of the Municipal Government Act.

2. **Term.** The Owners agree that this Agreement and the rights and privileges granted herein comes into full force and effect as of the date first written above and continues for as long as required by the Subdivision Authority in connection with approval of SB2017-0352. This Agreement may be extinguished with the consent of the Director of Transportation Planning which may be obtained through an application in writing to the Director of Transportation Planning accompanied by a registerable discharge of easement and a copy of the certificate of title downloaded or obtained from Alberta Land Titles within one week of submission of the application or such other process at the City that may be in place at the time of the requested discharge.

3. **Mutual Access Easement**

- (a) The Strata Lot 5 Owner on behalf of itself and every transferee from it and every person deriving title to Strata Lot 5, hereby grants, conveys, gives, transfers and sets over to the Other Owners, every transferee from them and every person deriving title from them, together with their tenants, contractors, subcontractors, servants and invitees, the non-exclusive right, privilege and easement in, across, through, over, from and to those exterior common areas and portions of the parkade shown and labelled as “Shared area for residential and commercial use shown thus (for the benefit of Strata Lot 4)” on the tentative plan attached hereto as Schedule “A” (the **“Strata Lot 5 Easement Area”**) at all times and from time to time, for the purpose of vehicular, bicycle, pedestrian and parking access to and from the Strata Lots.
- (b) The Strata Lot 7 Owner on behalf of itself and every transferee from it and every person deriving title to Strata Lot 7, hereby grants, conveys, gives, transfers and sets over to the Other Owners, every transferee from them and every person deriving title from them, together with their tenants, contractors, subcontractors, servants and invitees, the non-exclusive right, privilege and easement in, across, through, over, from and to those exterior common areas and portions of the parkade shown and labelled as “Shared area for residential and commercial use shown thus (for the benefit of Strata Lot 6)” on the tentative plan attached hereto as Schedule “B” (the **“Strata Lot 7 Easement Area”**) at all times and from time to time, for the purpose of vehicular, bicycle, pedestrian and parking access to and from the Strata Lots.
- (c) The Strata Lot 5 Owner shall retain a right of egress and ingress in, across, through, over, from and to the Strata Lot 5 Easement Area subject to any restrictions contained in this Agreement.
- (d) The Strata Lot 7 Owner shall retain a right of egress and ingress in, across, through, over, from and to the Strata Lot 7 Easement Area subject to any restrictions contained in this Agreement.

4. **Owners’ Covenants**

- (a) The Owners each covenant and agree that they shall:

- I. not do any act or thing that would damage the Easement Areas or infrastructure located thereon or which could interfere in any way with the Other Owners' rights pursuant to this Agreement;
 - II. not change or permit a change to be made to the existing surface grade of the Strata Lots in such a manner that could interfere in any way with the Other Owners' rights pursuant to this Agreement; and
 - III. not build, erect, plant or maintain or permit to be built, erected, planted or maintained on the Easement Areas any building, fence, structure, including a cafe and/or sign, tree, shrub, vegetation, landscaping or other works which could interfere in any way with the Other Owners' rights pursuant to this Agreement; and
 - IV. pay all municipal taxes and assessments which are levied against any Strata Lot for which they are the Owner, including that portion of the Strata Lot 5 Easement area and Strata Lot 7 Easement Area which lies in Strata Lot 5 or Strata Lot 7, as applicable.
- (b) The Strata Lot 5 Owner covenants and agrees that it shall keep the Strata Lot 5 Easement Area open at all times for the use of and access by the Other Owners and their nominees, appointees, contractors, subcontractors, officers, servants, tenants, agents, employees, assigns and invitees as contemplated herein.
- (c) The Strata Lot 7 Owner covenants and agrees that it shall keep the Strata Lot 7 Easement Area open at all times for the use of and access by the Other Owners and their nominees, appointees, contractors, subcontractors, officers, servants, tenants, agents, employees, assigns and invitees as contemplated herein.

5. **Maintenance of Easement Areas.**

- (a) The Strata Lot 5 Owner agrees that it shall be responsible for the operation and maintenance to a good operating condition, which includes snow removal, landscaping and repair and replacement, as necessary, of the Strata Lot 5 Easement Area and that it shall be responsible for all costs relating thereto, provided that nothing herein is intended to alter the terms of the Easements, Covenants and Restrictions Agreement dated _____, 2019 and made between the Strata Lot 4 Owner and the Strata Lot 5 Owner.
- (b) The Strata Lot 7 Owner agrees that it shall be responsible for the operation and maintenance to a good operating condition, which includes snow removal, landscaping and repair and replacement, as necessary, of the Strata Lot 7 Easement Area and that it shall be responsible for all costs relating thereto, provided that nothing herein is intended to alter the terms of the Easements, Covenants and Restrictions Agreement dated _____, 2019 and made between the Strata Lot 6 Owner and the Strata Lot 7 Owner.

6. **Strata Lot 4 and Strata Lot 6 Commercial Purpose.**

- (a) The Owners recognize and agree that the Strata Lot 4 Owner and the Strata Lot 6 Owner may use Strata Lot 4 and/or Strata Lot 6, as the case may be, for any lawful business or commercial purposes, including without limitation, retail, office, entertainment, food, restaurant, beverage, recreational, fitness and medical purposes. If any business activity of the Strata Lot 4 Owner and/or the Strata Lot 6 Owner, as the case may be, or their tenants is:

- I. operating within the normal course of such business, in their sole discretion; and
- II. is in accordance with the Strata Lot 4 Owner's and/or the Strata Lot 6 Owner's, as applicable, or their tenant's particular business license held from the City of Calgary, if same is required by the City of Calgary;

then the activity shall be conclusively deemed not to constitute a disturbance or nuisance and the Other Owners shall have no cause for complaint, action or damages in respect of same.

- (b) Further, and without limiting the generality of the foregoing, the Owners covenant, agree and grant to each of the Strata Lot 4 Owner and the Strata Lot 6 Owner the right, privilege and easement in, under, over, across through and against the Strata Lots to permit all odours, sounds, vibrations, emissions, lights and any other nuisances occurring in the normal course of business of the Strata Lot 4 Owner and/or the Strata Lot 6 Owner, as the case may be, or their tenants, to pass onto and through the Strata Lots, including without limitation any buildings erected thereon.

7. **General.**

- (a) If any provision of this Agreement or application thereto to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, other than such term, shall be valid and enforced to the extent permitted by law.
- (b) This Agreement shall be interpreted and enforced in accordance with the laws of the Province of Alberta.
- (c) No action shall lie against the Owners for damages for breach of any one or more of the covenants contained in this Agreement unless the Owner is the registered owner of the applicable Strata Lot at the time of the alleged breach and it is proven in a court of competent jurisdiction to be in breach of this Agreement. This covenant shall constitute an absolute defence to any such action and may be pleaded as such.
- (d) Throughout this Agreement, the singular shall include the plural and the masculine shall include the feminine as the case may be, and *vice versa*. Should the Owners at any time and from time to time comprise two or more persons, each such person shall be jointly and severally bound with the other and others for the performance of the obligations of the Owners under this Agreement.
- (e) The parties hereby acknowledge and agree that every obligations or duty imposed upon them under this Agreement shall constitute a covenant, whether expressed as a covenant or not.
- (f) All obligations and covenants contained herein, although they may not be expressly be stated as covenants, shall be deemed to be covenants running with the lands, and specifically, with each of the Strata Lots.
- (g) This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors, successors in title, and assigns.
- (h) The Parties acknowledge and agree that this Agreement is to be registered against the certificates of title for each of the Strata Lots.

- (i) The Owners acknowledge and agree that this Agreement shall not be discharged from title of Strata Lot 5 and Strata Lot 7 without the written consent of the Director of Transportation Planning obtained through an application in writing to the Subdivision Authority for consent to discharge this Mutual Access Easement Agreement which application must be accompanied by a registerable discharge of easement and a copy of the certificate of title downloaded or obtained within one week of submission of the application or such other process at the City that may be in place at the time of the requested discharge.

The Owners acknowledge that the failure to obtain the written consent of the Director of Transportation Planning before discharging this agreement from title Strata Lot 5 and Strata Lot 7 may result in enforcement procedures being taken. Request for such consent may be sent to the following address:

To the City: The City of Calgary
6th Floor, Municipal Building
800 Macleod Trail S.E.
Calgary, Alberta T2P 2M5
Fax: (403) 268-3636
Attention: Director of Transportation Planning

With a copy to: The City of Calgary
Law, Legal Services
12th Floor, 800 Macleod Trail S.E.
Calgary, Alberta T2P 2M3
Fax No.: (403) 268-4634
Attention: City Solicitor and General Counsel

- (j) The failure of the Owners at any time to require strict performance by the Other Owners of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the Owners of the performance of any obligation hereunder be taken or held to be a waiver of the performance of any other obligation herein.
- (k) Time shall be of the essence in this Agreement.

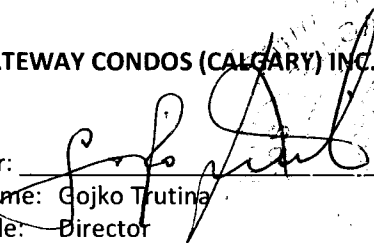
[signature page to follow]

(l) The above recitals and attached schedules shall form part of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

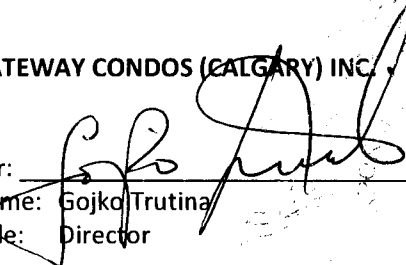
STRATA LOT 4 OWNER:

GATEWAY CONDOS (CALGARY) INC.

Per:  c/s
Name: Gojko Trutina
Title: Director

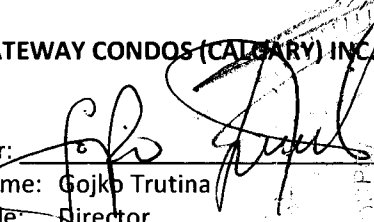
STRATA LOT 5 OWNER:

GATEWAY CONDOS (CALGARY) INC.

Per:  c/s
Name: Gojko Trutina
Title: Director

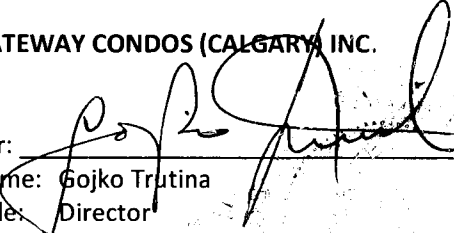
STRATA LOT 6 OWNER:

GATEWAY CONDOS (CALGARY) INC.

Per:  c/s
Name: Gojko Trutina
Title: Director

STRATA LOT 7 OWNER:

GATEWAY CONDOS (CALGARY) INC.

Per:  c/s
Name: Gojko Trutina
Title: Director

SCHEDULE "A"
STRATA LOT 5 TENTATIVE PLAN

[SEE ATTACHED]

CALGARY, ALBERTA TENTATIVE PLAN SHOWING HATCH CODES FOR MIXED USED DEVELOPMENT

AFFECTING

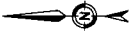
STRATA LOT 5, BLOCK 53, PLAN

ALL WITHIN THE

N.W. 1/4 Sec.9 Twp.24 Rge.1 W.5M.

BY: JODY E. CLARKE, A.L.S., 2019

SCALE = 1 : 100



- LEGEND:**
- SHARED AREA FOR RESIDENTIAL AND COMMERCIAL USE (SEE PLAN 508)
 - SHARED AREA FOR RESIDENTIAL USE (SEE PLAN 508)
 - SHARED AREA FOR COMMERCIAL USE (SEE PLAN 508)
 - COMMERCIAL STRATA AREA (SEE PLAN 508)
 - STRATA LOT 4
 - SHARED AREA FOR COMMERCIAL AND RESIDENTIAL USE (SEE PLAN 508)
 - STRATA LOT 3

Temporary Right of Way Plan 161 1339

BROADCAST AVENUE S.W.

CONDOMINIUM BUILDING UNITS 1 TO 24

54
PLAN 4740 A.L.

LOT 1
65
DESCRIPTIVE PLAN 001 2006

51
PLAN 4740 A.L.

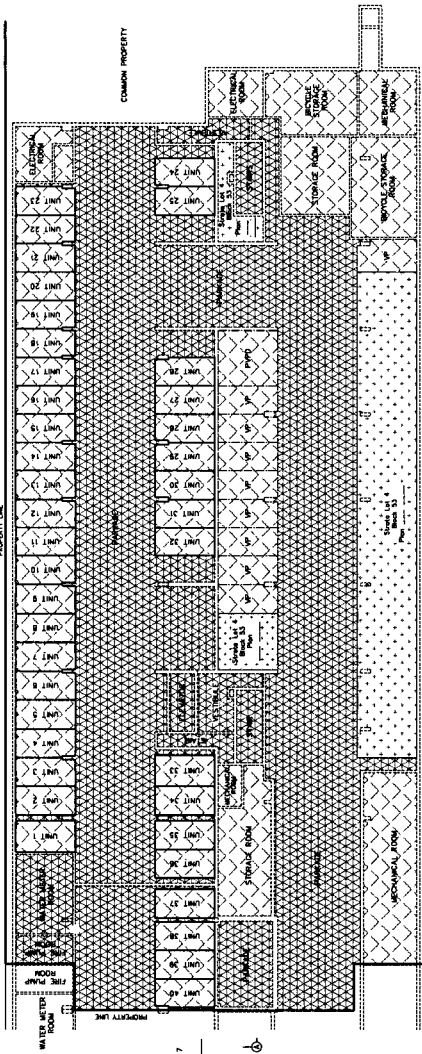
STRATA LOT 7
BLOCK 53
PLAN

CALGARY, ALBERTA TENTATIVE PLAN SHOWING HATCH CODES FOR MIXED USED DEVELOPMENT

AFFECTING
STRATA LOT 5, BLOCK 53, PLAN
ALL WITHIN THE
N.W. 1/4 Sec. 9 Twp. 24 Rge. 1 W. 5M.
BY: JODY E. CLARKE, A.L.S., 2019

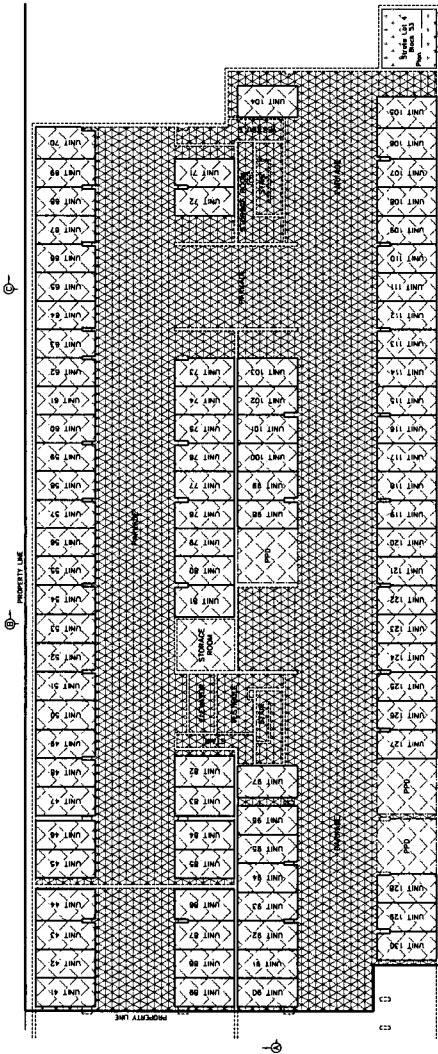


- LEGEND:**
- SHARED AREA FOR RESIDENTIAL AND COMMERCIAL USE, SHOWN THIS (FOR THE BENEFIT OF STRATA LOT 4)
 - RESIDENTIAL USE AREA, SHOWN THIS
 - COMMERCIAL STRATA, SHOWN THIS
 - EXTENDED PORTION OF STRATA LOT 4
 - SHARED AREA FOR COMMERCIAL AND RESIDENTIAL (FOR THE BENEFIT OF STRATA LOT 5)



LOWER FLOOR P1
SCALE = 1:100

Strata Lot 7
Block 53
Plan



LOWER FLOOR P2
SCALE = 1:100

Strata Lot 7
Block 53
Plan

SCHEDULE "B"
STRATA LOT 7 TENTATIVE PLAN

[SEE ATTACHED]

CALGARY, ALBERTA TENTATIVE PLAN SHOWING HATCH CODES FOR MIXED USED DEVELOPMENT

AFFECTING

STRATA LOT 7, BLOCK 53, PLAN

ALL WITHIN THE

N.W. 1/4 Sec. 9 Twp. 24 Rge. 1 W. 5M.

BY: JODY E. CLARKE, A.L.S., 2019

SCALE = 1 : 100



LEGEND:
SHARED AREA FOR RESIDENTIAL AND COMMERCIAL USE SHOWN THIS
(FOR THE BENEFIT OF STRATA LOT 6)

RESIDENTIAL USE AREA SHOWN THIS

COMMERCIAL STRATA AREA SHOWN THIS

EXTERIOR PORTION OF STRATA LOT 6

SHARED AREA FOR COMMERCIAL AND RESIDENTIAL
(FOR THE BENEFIT OF STRATA LOT 7)

BROADCAST AVENUE S.W.

CONDOMINIUM BUILDING
UNITS 1 TO 275

85 STREET S.W.

STRATA LOT 5
BLOCK 53
PLAN

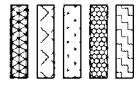
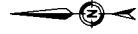
LOT 1
65
DESCRIPTIVE PLAN 091 2806

VISTA GEOMATICS LTD.

Map 1: 2019 - 2020 A.S. N.L.
Plan 1: 2019 - 2020 A.S. N.L.
Plan 1: 2019 - 2020 A.S. N.L.
Plan 1: 2019 - 2020 A.S. N.L.

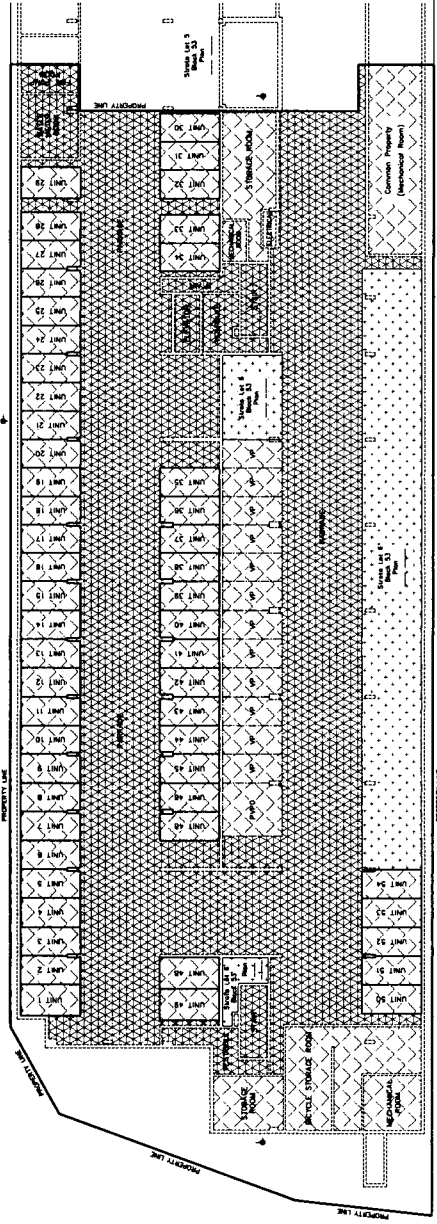
CALGARY, ALBERTA TENTATIVE PLAN SHOWING HATCH CODES FOR MIXED USED DEVELOPMENT AFFECTING

SIRATA LOT 7, BLOCK 53, PLAN
ALL WITHIN THE
N.W.1/4 Sec.9 Twp.24 Rge.1 W.5M.
BY: JODY E. CLARKE, A.L.S., 2019

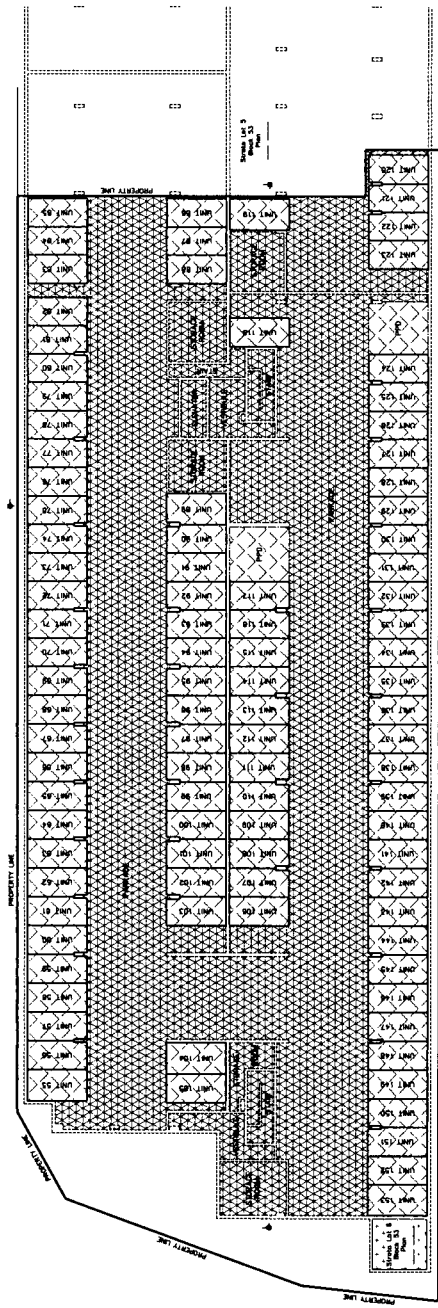


LEGEND:
SHARED AREA FOR RESIDENTIAL AND COMMERCIAL USE SHOWING THIS
(FOR THE BENEFIT OF STRATA LOT 6)
RESIDENTIAL USE AREA SHOWING THIS
COMMERCIAL STRATA AREA SHOWING THIS
EXTENDED PORTION OF STRATA LOT 6
SHARED AREA FOR COMMERCIAL AND RESIDENTIAL
(FOR THE BENEFIT OF STRATA LOT 7)

BROADCAST AVENUE SW.



LOWER FLOOR P1
SCALE = 1 : 100



LOWER FLOOR P2
SCALE = 1 : 100



191141378

191141378 REGISTERED 2019 07 12

EASE - EASEMENT

DOC 2 OF 4 DRR#: A0BC875 ADR/DSLUMSKI

LINC/S: 0038374914 +

*Rescan Sept 25, 2019
am*