

TERMS OF INSTRUMENT – PART 2

DEVELOPMENT COVENANT

(section 219 *Land Title Act*)

This Agreement dated for reference the ____ day of _____, 2018.

BETWEEN:

DISTRICT OF WEST VANCOUVER

750 17th Street
West Vancouver, BC V8V 3T3

(the “**District**”)

AND

DARWIN PROPERTIES (303 MARINE DRIVE) LTD.

Suite 404 – 197 Forester Street
North Vancouver, BC V7H 0A6

(the “**Owner**”)

GIVEN THAT:

- A.** The Owner is the owner of land located at 303 Marine Drive in the District of West Vancouver and more particularly described as:

PID: 011-279-567
LOT 15 DISTRICT LOT 790 PLAN 4918

(the “**Land**”);

- B.** The Owner wishes to construct a residential development on the Land consisting of one 26-storey building containing approximately 135 dwelling units (the “**Apartment Building**”) and one (1) townhouse building containing six (6) dwelling units (collectively, the “**Development**”).
- C.** The District’s Council is considering an amendment to the District’s Zoning Bylaw by way of Zoning Amendment Bylaw No. 4962, 2018 (the “**Amendment Bylaw**”) to permit the Development on the Land;
- D.** The Owner has offered to provide certain amenities to the District in conjunction with the Development, and has promised the District that no portion of the Development shall be constructed or occupied except generally in accordance with the plans submitted to the District in support of the Owner’s zoning amendment application;

- E. The Owner has asked the District to consider adopting the Amendment Bylaw before all of the proposed amenities are provided, in exchange for the Owner’s agreement to restrict the use and development of the Land until the Owner has provided the promised amenities;
- F. Section 219 of the *Land Title Act* of British Columbia permits the registration of a covenant of a negative or positive nature in favour of a municipality in respect of the use of land, the building on land, the subdivision of land, and the preservation of land or a specific amenity on land; and
- G. The Owner wishes to grant and the District wishes to accept these covenants over the Land restricting the use and subdivision of the Land in the manner herein provided.

THEREFORE in consideration of the mutual promises exchanged in this Agreement, the parties agree pursuant to s. 516 of the *Local Government Act* as follows:

1.0 DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement:

“**Amenities**” means the Pathways and the Works and Services.

“**Pathways**” means the areas shown outlined in bold on the Site Plan attached to this Agreement as Schedule A.

“**Townhouse Building**” means the building proposed to be constructed on the northern half of the Land, containing six (6) attached residential dwelling units having direct access from ground level, such Townhouse Building to be subdivided from the Land by an air space subdivision.

“**Works and Services**” means all of the infrastructure described in Schedule C.

2.0 SCHEDULES

2.1 The following Schedules are attached to and form part of this Agreement:

Schedule A - Site Plan (showing location and landscaping of Pathways)

Schedule B – SRW and covenant terms

Schedule C – Works and Services standards and requirements

3.0 APPLICATION

3.1 This Agreement applies to the Land, and to any parcel of land into which the Land may be subdivided, whether under the *Strata Property Act*, the *Land Title Act* or otherwise.

4.0 RESTRICTIONS ON USE, ALIENATION, DEVELOPMENT AND SUBDIVISION OF THE LAND

- 4.1 The Owner shall not start the construction of any building or structure on the Land, other than the construction of the sales centre for the Development, until the Owner has granted to the District, in priority over any financial charges registered on the title to the Land, a statutory right of way providing public access to the Pathways, together with a covenant to maintain, in perpetuity, the surface treatments and landscaping elements shown in **Schedule A**, which, for certainty, include but are not limited to all hard and soft landscaping features and furnishings and durable all-weather surfacing appropriate for pedestrian, bicycle and wheelchair use, and which right of way and covenant shall be substantially in the form attached to this Agreement as **Schedule B**.
- 4.2 The Owner covenants with the District that the Owner will not sell or transfer, or agree to sell or transfer, any strata lot in the Apartment Building, other than a full interest in the fee simple title to all of the strata lots in the Apartment Building, and to an agency, third party or individual that will assume the obligations set out in this Agreement.
- 4.3 Section 4.2 shall not apply if the Owner has, before marketing any strata lot in the Apartment Building, or subdividing the Apartment Building, filed a Form J: Rental Disclosure Statement for every strata lot in the Apartment Building, with a term of at least 75 years, in accordance with section 139 of the *Strata Property Act*.
- 4.4 The Owner shall not subdivide the Land by the deposit of a strata plan that designates parking stalls as limited common property for the exclusive use of residential strata lots and, following any subdivision of the Land by the deposit of a strata plan, the Owner shall not offer to any prospective purchaser or tenant of a strata lot in the Apartment Building the right to purchase or occupy a dwelling unit in the Apartment Building unless the Owner gives the prospective purchaser or tenant the option to take the dwelling unit in the Apartment Building with (subject to availability) or without access to a parking stall.
- 4.5 Other than as may be required to construct the Development, including the construction and occupancy of the sales centre for the Development, the Owner shall not use or occupy, nor permit the use or occupancy of, any portion of the Land or any building or structure located on the Land until and unless the Owner has:

- (a) completed construction of the Townhouse Building in accordance with Section 5.1, and transferred to the District fee simple ownership of the Townhouse Building as an air space parcel, together with an agreement reserving the use of six (6) parking spaces in the underground parking area to be located on the Land for the exclusive use of the occupants of the Townhouse Building; and
- (b) completed, to the satisfaction of the District's Manager of Land Development (the "District Approval), the installation of the Works and Services described in **Schedule C**, and provided the District with security in the form of cash or an irrevocable, automatically renewing letter of credit in the amount of _____ (being 10% of the estimated cost of the Works and Services) (the "Letter of Credit"), which security the District may hold, for 1 year from the date of the District Approval (the "Warranty Period"), pursuant to Sections 4.6 and 4.7.

4.6 The District's right to draw down the Letter of Credit:

- (a) The District may draw down the Letter of Credit during the Warranty Period to perform maintenance or correct any deficiencies in the Works and Services if the Owner fails to do so.
- (b) If the District draws down the Letter of Credit, the District may only hold and use the drawn down amount to maintain or correct any deficiencies in the Works and Services.

4.7 Within 15 days after the end of the Warranty Period the District will return the Letter of Credit (or the undrawn-down portion thereof) to the Owner together with any unused drawn down funds, without interest.

5.0 CONSTRUCTION STANDARDS

5.1 The Townhouse Building shall be designed and constructed to meet the International Passive House Standard and shall not be considered complete for the purpose of s. 4.3(a) until the Owner has provided to the District confirmation that the Townhouse Building has been designed and constructed to meet the Standard, with the intent that the Townhouse Building be certified with Passive House Canada.

5.2 All of the dwelling units in the Townhouse Building, and at least 20% of the dwelling units in the Apartment Building, shall be designed and constructed in accordance with Level 2 of the City of North Vancouver's Adaptable Design Guidelines, a copy of which is kept on file at the District's office, as much as reasonably feasible and to the satisfaction of the Director of Planning & Development Services.

6.0 INDEMNITY AND RELEASE

6.1 The Owner shall indemnify and keep indemnified the District from any and all claims, causes of action, suits, demands, fines, penalties, costs, deprivation, expenses or legal

fees whatsoever, whether based in law or equity, whether known or unknown, which anyone has or may have against the District or which the District incurs as a result of any loss, damage or injury arising out of or connected with or any breach by the Owner of this Agreement.

- 6.2 The Owner hereby releases, save harmless and forever discharges the District of and from any claims, causes of action, suits, demands, fines, penalties, costs, deprivation, expenses or legal fees whatsoever which the Owner can or may have against the District, whether based in law or equity, whether known or unknown, for any loss, damage or injury that the Owner may sustain or suffer arising out of or connected with this Agreement, including the restrictions and requirements of this Agreement, the provisions of the Amenities and the development of the Land as contemplated under this Agreement, or any breach by the Owner of any covenant in this Agreement, save and except as a result of any breach by the District of this Agreement.
- 6.3 The indemnity and release provisions of Sections 6.1 and 6.2 shall survive the expiry or termination of this Agreement.

7.0 OTHER

NOTICE

- (a) Any notice permitted or required by this Agreement to be given to either party must be given to that party at the address set out above, or to any other address provided in writing.

POWERS PRESERVED

- (b) Except as expressly set out in this Agreement, nothing in this Agreement shall prejudice or affect the rights and powers of the District in the exercise of its powers, duties or functions under the *Community Charter* or the *Local Government Act* or any of its bylaws, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement has not been executed and delivered to the Owner, subject only to section 516 of the *Local Government Act*.

BINDING EFFECT

- (c) This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees.

WAIVER

- (d) The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be

construed as a waiver of any future or continuing failure, whether similar or dissimilar.

CUMULATIVE REMEDIES

- (e) No remedy for a breach of this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.

SURVIVAL

- (f) All representations and warranties set forth in this Agreement and all provision of this Agreement, the full performance of which is not required prior to a termination of this Agreement, shall survive any such termination and be fully enforceable thereafter.

ENTIRE AGREEMENT

- (g) The whole agreement between the parties is set forth in this document and no representations, warranties or conditions, express or implied, have been made other than those expressed.

SEVERABILITY

- (h) Each article of this Agreement shall be severable. If any provision of this Agreement is held to be illegal or invalid by a Court of competent jurisdiction, the provision may be severed and the illegality or invalidity shall not affect the validity of the remainder of this Agreement.

COUNTERPARTS

- (i) This Agreement may be executed in counterpart with the same effect as if both parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement.

LIMITATION ON OWNER'S OBLIGATIONS

- (j) In accordance with Section 219(8) of the *Land Title Act* (British Columbia), a person is not liable for a breach of this Agreement occurring after that person has ceased to be an owner of the Land.

DISCHARGE OF THIS AGREEMENT

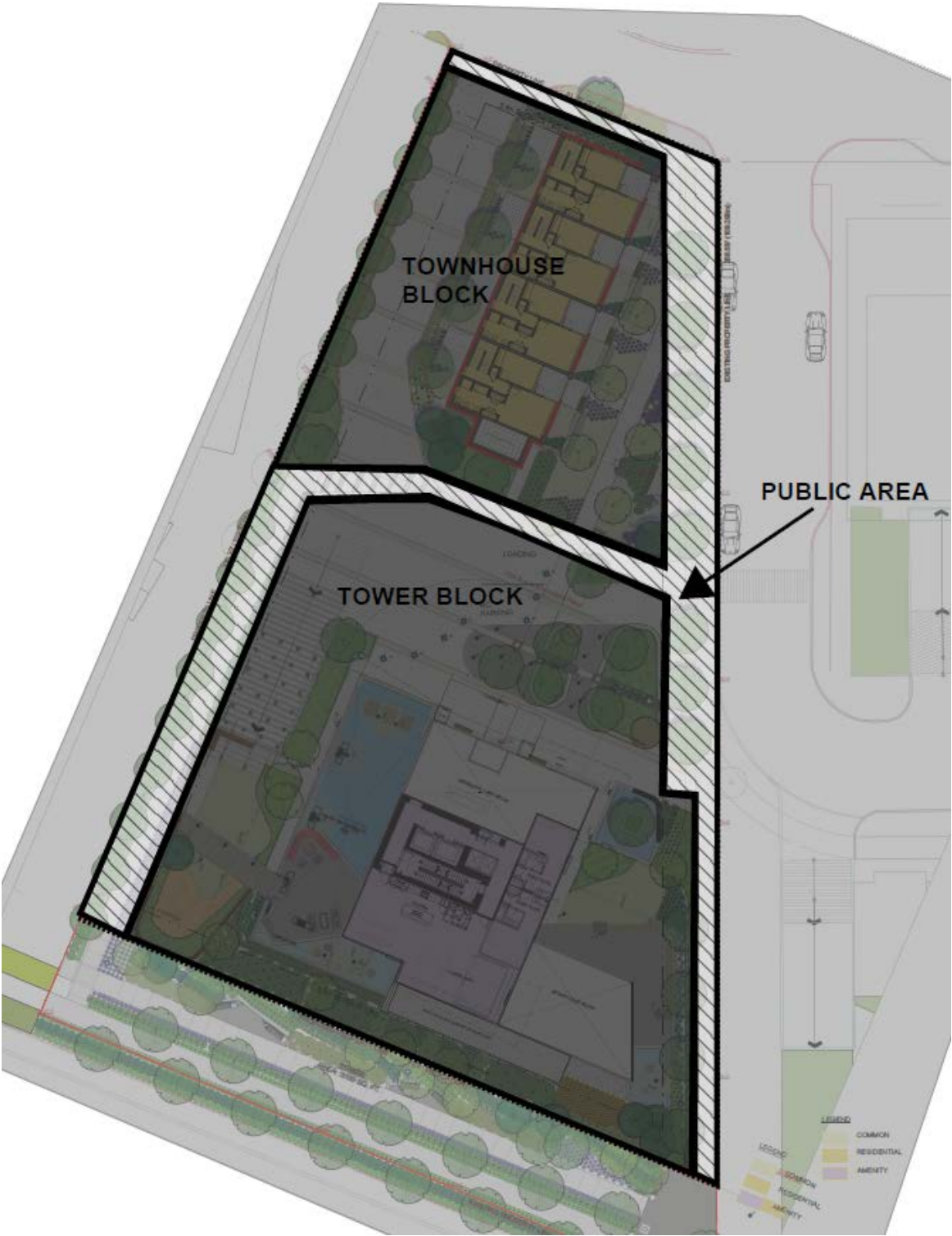
- (k) If the District's Council does not adopt the Amendment Bylaw by March 31, 2019, this Agreement shall terminate and, if the Owner delivers to the District a signed discharge of this Agreement, the District shall sign the discharge and return it to

- (l) the Owner within 10 days for filing in the Land Title Office.
- (m) The District shall execute and deliver a discharge of the covenant pursuant to Section 219 of the *Land Title Act*, R.S.B.C. 1996, Chapter 250 contained in Article 4.0 of this Agreement from title to any lot upon which a building is situated, upon the later of (i) an occupancy permit or permits for the whole of such approved building(s) having been issued and (ii) the completion of the installation of the Works and Services, to the satisfaction of the District's General Manager of Engineering, on the following basis:
 - a) The District shall have no obligation to execute and deliver such discharge until a written request for it from the Owner has been received by the District, which request shall include the form of discharge, in registrable form;
 - b) The cost of preparation of the discharge, and the cost of registration of the same shall be paid by the Owner; and
 - c) The District shall have a reasonable time within which to execute the discharge and return it to the Owner for registration.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the *Land Title Act* Form C and D which is attached to and forms part of this Agreement.

SCHEDULE "A"

STATUTORY RIGHT OF WAY AREA



SCHEDULE "B"

ASSUMPTION AGREEMENT

THIS AGREEMENT is dated for reference _____

BETWEEN:

THE OWNERS, STRATA PLAN _____

(the "Strata Corporation")

AND:

DISTRICT OF WEST VANCOUVER

(the "District")

AND:

DARWIN PROPERTIES (303 MARINE DRIVE) LTD.

(the "Owner")

WHEREAS:

- A. On the date that the application was made to the New Westminster Land Title Office for deposit of Strata Plan ____, the Owner was the registered owner of the freehold estate in the Land shown on the Strata Plan (the "Lands");
- B. The Owner has granted to the District a Statutory Right of Way and Section 219 Covenant for construction and maintenance of the certain works, which agreement is registered in the New Westminster Land Title Office under numbers _____ and _____ (the "Charges");
- C. It is a condition of the Charges that the Strata Corporation enter into this Assumption Agreement in respect of the Charges,

NOW THEREFORE IN CONSIDERATION of the premises and the sum of \$10.00 paid by each of the Owner and the District to the Strata Corporation and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the Strata Corporation), the Strata Corporation hereby covenants and agrees as follows:

1. The Strata Corporation covenants and agrees that the Strata corporation will be bound by and will observe and perform all of the covenants, restrictions and agreements contained in the Charges, including without limitation the covenant to indemnify the District and the covenant to construct and maintain the Pathways (as defined in the Charges).
2. The Strata Corporation agrees that the District is entitled to obtain an order for specific performance or a prohibitory or mandatory injunction in respect of any breach by the Strata Corporation of the Charges. The Strata Corporation agrees that this section is reasonable given the public interest in the need for effective maintenance and protection of the access from breaches of the Charges.
3. This Agreement will enure to the benefit of and will be binding upon the parties hereto and their heirs, executors, administrators, successor and assigns.
4. To evidence its agreement, the Strata Corporation has executed this Assumption Agreement as of the date set out above.

THE OWNERS, STRATA PLAN _____ by its)
 authorized signatory:)
)
) C/S
)
)
 _____)
 Authorized Signatory)

SCHEDULE "C"

WORKS AND SERVICES STANDARDS AND REQUIREMENTS

To be determined.

CONSENT AND PRIORITY AGREEMENT

WHEREAS Canadian Western Bank (the "Chargeholder") is the holder the following charges all registered in the Vancouver Land Title Office:

Mortgage CA3813258

Assignment of Rents CA3813259

(collectively the "Charge"), which Charge encumbers the lands (the "Lands") described in item 2 of the *Land Title Act* Form C attached hereto.

THEREFORE THIS CONSENT AND PRIORITY AGREEMENT IS EVIDENCE THAT IN CONSIDERATION OF \$1.00 AND OTHER GOOD AND VALUABLE CONSIDERATION PAID BY THE TRANSFEREE TO THE CHARGEHOLDER:

1. The Chargeholder hereby consents to the granting and registration of the Section 219 Covenant and Rent Charge attached hereto (together referred to as the "Covenant") and the Chargeholder hereby agrees that the Covenant shall be binding upon its interest in and to the Lands.
2. The Chargeholder hereby grants to the transferee described in item 6 of the *Land Title Act* Form C attached hereto priority for the Covenant over the Chargeholder's right, title and interest in and to the Lands, and the Chargeholder does hereby postpone the Charge and all of its right, title and interest thereunder to the Covenant as if the Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Charge.

IN WITNESS WHEREOF, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing the *Land Title Act* Form D above which is attached hereto and forms part of this Agreement.

END OF DOCUMENT