



District of West Vancouver

Housing Agreement Authorization
Bylaw No. 4964, 2018
(303 Marine Drive)

Effective Date: July 23, 2018

District of West Vancouver

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District of West Vancouver

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A bylaw to enter into a housing agreement.

WHEREAS the District of West Vancouver and Darwin Properties (303 Marine Drive) Ltd. are to enter into a housing agreement under section 483 of the *Local Government Act* to restrict the use of some of the land; and

NOW THEREFORE, the Council of The Corporation of the District of West Vancouver enacts as follows:

Part 1 Citation

- 1.1 This bylaw may be cited as “Housing Agreement Authorization Bylaw No. 4964, 2018.”

Part 2 Severability

- 2.1 If a portion of this bylaw is held invalid by a Court of competent jurisdiction, then the invalid portion must be severed and the remainder of this bylaw is deemed to have been adopted without the severed section, subsection, paragraph, subparagraph, clause or phrase.

Part 3 Housing Agreement

- 3.1 The District of West Vancouver is authorized to enter into a housing agreement under section 483 of the *Local Government Act*, substantially in the form attached to this bylaw as Schedule A, with Darwin Properties (303 Marine Drive) Ltd. or its nominee, in respect of the land located at 303 Marine Drive, West Vancouver, BC and legally described as: PID: 011-279-567, LOT 15 DISTRICT LOT 790 PLAN 4918.
- 3.2 The Mayor and Municipal Clerk are authorized to execute and deliver the housing agreement.

Schedules

Schedule A – Housing Agreement

READ A FIRST TIME on May 28, 2018

READ A SECOND TIME on June 25, 2018

READ A THIRD TIME on June 25, 2018

ADOPTED by the Council on July 23, 2018

Mayor

Corporate Officer

Schedule A – HOUSING AGREEMENT

PART 2 – TERMS OF INSTRUMENT

HOUSING AGREEMENT AND COVENANT (Section 483 Local Government Act and Section 219 Land Title Act)

THIS AGREEMENT dated for reference the 24th day of May, 2018 is

BETWEEN:

DARWIN PROPERTIES (303 MARINE DRIVE) LTD.

Suite 404 – 197 Forester Street
North Vancouver, BC V7H 0A6
(the “Owner”)

AND:

DISTRICT OF WEST VANCOUVER

750 17th Street
West Vancouver, BC V7V 3T3

(the “District”)

WHEREAS:

- A. The Owner is the registered 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”);

The Owner wishes to construct, *inter alia*, a 26-storey residential building on the Land containing approximately 135 Dwelling Units (the “Apartment Building”) and to permit the construction of the Apartment Building and other related developments, including a building on the northern half of the Land, containing six (6) attached residential dwelling units having direct access from ground level (the “Townhouse Building”), such Townhouse Building to be subdivided from the Land by an air space subdivision.

- B. The Owner has applied to the District for an amendment to the District’s zoning bylaw;
- C. The Owner has agreed that in order to increase the availability of rental housing in the District the tenure of at least 48 of the Dwelling Units within the Apartment Building should be restricted to rental, and although those rental units may have individual titles following the deposit of a strata plan, none of them should be sold separately;

- D. Section 483 of the *Local Government Act* permits the District to enter into and note on title to land, housing agreements which may include, without limitation, conditions respecting the form of tenure of housing units and the availability of housing units to classes of persons;
- E. Section 219 of the *Land Title Act* permits the registration of a covenant prohibiting the separate sale of the units that are subject to the covenant; and,
- F. The Owner and the District wish to enter into this Agreement, which shall be a housing agreement and a covenant, to provide long-term market rental housing on the terms and conditions the parties have agreed to.

In consideration of \$10.00 and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by both parties), and in consideration of the promises exchanged below, the Owner and the District covenant and agree pursuant to section 483 of the *Local Government Act* and section 219 of the *Land Title Act* as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions – In this Agreement, the following words have the following meanings:

- (a) “Daily Amount” means \$500.00 per day as of January 1, 2019 adjusted annually thereafter by adding thereto an amount calculated by multiplying \$500.00 by the percentage change in the CPI since January 1, 2019, to January 1 of the year that a written notice is delivered to the Owner by the District pursuant to section 5.1 of this Agreement. In the absence of obvious error or mistake, any calculation by the District of the Daily Amount in any particular year shall be final and conclusive;
- (b) “Dwelling Unit” means a self-contained area or set of rooms, located within the Apartment Building proposed to be constructed on the Land, that contains sleeping, cooking and washroom facilities, and is suitable and intended to be used for residential accommodation, and for clarity, does not include any dwelling units in the Townhouse Building;
- (c) “Owner” means the party described on page 1 of this Agreement as the Owner and any subsequent owner of the Land or of any part into which the Land is Subdivided, and includes any person who is a registered owner in fee simple of a Dwelling Unit from time to time, and any person who has a legal ownership interest in the entity which is the registered owner in fee simple of a Dwelling Unit or the Land from time to time;
- (d) “Rental Unit” means a Dwelling Unit that is used and occupied only as a permanent residence, by way of a Tenancy Agreement, and only by a person or persons other than the Owner of the Dwelling Unit, pursuant to the terms of this Agreement.

- (e) “Subdivide” means to divide, apportion, consolidate or subdivide the Land or any building on the Land, or the ownership or right to possession or occupation of the Land or any building on the Land, into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization or development of “cooperative interests” or a “shared interest in land” as defined in the *Real Estate Development Marketing Act*;
- (f) “Tenancy Agreement” means a tenancy agreement, lease, license or other agreement granting rights to occupy a Dwelling Unit.

ARTICLE 2 RENTAL UNITS

2.1 Use and Occupancy – The Owner agrees that at least 48 of the Dwelling Units constructed on the Land shall be Rental Units.

2.2 Tenancy Agreement – Every Tenancy Agreement the Owner enters into in respect of a Rental Unit shall:

- (a) include a clause entitling the Owner to terminate the Tenancy Agreement if:
 - (i) the Rental Unit is occupied other than as a Rental Unit by a person or persons other than a tenant or tenants under the Tenancy Agreement (a “Tenant” or “Tenants”);
 - (ii) the Rental Unit is occupied by more than the number of people the District’s building inspector determines can reside in a Rental Unit given the number and size of bedrooms in the Rental Unit and in light of any relevant standards set by the District in any bylaws of the District;
 - (iii) the Tenant makes a Rental Unit available to any person or persons for any form of rental with a term of less than 30 days,

and in the case of each breach, the Owner hereby agrees with the District to forthwith provide to the Tenant a notice of termination. The notice of termination shall provide that the termination of the tenancy shall be effective thirty (30) days following the date of the notice of termination; and

- (b) identify all occupants of the Rental Unit and will stipulate that anyone not identified in the Tenancy Agreement will be prohibited from residing at the Rental Unit for more than thirty (30) consecutive days or more than forty-five (45) days total in any calendar year.

2.3 Annual Verification – No later than January 15 of each year beginning the year after the District has issued a final occupancy permit for all of the Dwelling Units in the Apartment

Building the Owner will provide to the District a written statement of the Owner confirming the occupancy of every Rental Unit on the Land complies with section 2.1, above.

- 2.4 No Separate Sale** – The Owner covenants with the District that the Owner will not sell or transfer, or agree to sell or transfer any Rental Unit, other than a full interest in the fee simple title to all of the Rental Units, and to an agency, third party or individual that will assume the obligations set out in this Agreement.
- 2.5 Discharge and Amendment of this Agreement** – If the Owner has, pursuant to one or more valid building permits issued by the District, completed the construction of and received occupancy permits for no fewer than 48 Dwelling Units on the Land, then in relation to the Townhouse Building and any Dwelling Units that are not required to be Rental Units, this Agreement, including the Rent Charge set out in Section 4.2 of this Agreement, shall cease to apply, and the Owner may provide to the District a discharge of this Agreement from those Dwelling Units, the Townhouse Building and the common property of the strata corporation (the “Discharge”). If, in addition to the aforementioned discharge, the Owner provides to the District:

- (a) a registrable application to amend this Agreement such that:
- (i) this Agreement, as amended, will be solely registered in the LTO against title to each and every Rental Unit (the “Rental Unit Land”); and,
 - (ii) every Dwelling Unit on the Rental Unit Land must be a Rental Unit and none of them shall be sold separately
- (the “Amendment”); and,
- (b) an undertaking not to file the Discharge except together with the Amendment,

the District shall execute and return the documents to the Owner within ten business days of the day the District has received both. Notwithstanding the foregoing, once the Owner has confirmed with the District in writing the allocation of at least 48 Rental Units within the Apartment Building, the District will provide the Owner with a letter confirming the District’s approval of such allocation.

ARTICLE 3 DEMOLITION OF BUILDING CONTAINING DWELLING UNITS

- 3.1 Demolition** – The Owner will not demolish a Rental Unit unless:

- (a) the Owner has obtained the written opinion of a professional engineer or architect who is at arm’s length to the Owner and who has been approved in writing by the District, acting in its sole discretion, that it is no longer reasonable or practical to repair or replace any structural component of the building containing the Rental

Unit, and the Owner has delivered to the District a copy of the engineer's or architect's report; or

- (b) the building containing the Rental Unit is damaged or destroyed, to the extent of 40% or more of its value above its foundations, as determined by the District, in its sole discretion,

and, in each case, a demolition permit for the building containing the Rental Unit has been issued by the District and the building containing the Rental Unit is demolished under that permit.

- 3.2 Post-Demolition** -- Following demolition, the Owner will use and occupy any replacement building and Rental Unit in compliance with this Agreement to the same extent and in the same manner as this Agreement applies to the original Rental Unit.

ARTICLE 4 DEFAULT AND REMEDIES

- 4.1 Payment of Daily Amount** – The Owner agrees that, in addition to any other remedies available to the District under this Agreement or at law or in equity, if a Rental Unit is used or occupied in breach of this Agreement or the Owner is otherwise in breach of any of its obligations under this Agreement, and the Owner fails to rectify such breach within thirty (30) days of receipt of written notice from the District setting out the details of such breach, the Owner will pay the Daily Amount to the District for every day that the breach continues after receipt of the District's notice. The Daily Amount is due and payable five (5) business days following receipt by the Owner of an invoice from the District for the same.
- 4.2 Rent Charge** – The Owner hereby grants to the District a perpetual rent charge against the Land securing payment by the Owner to the District of any amount payable by the Owner pursuant to section 5.1 of this Agreement. The Owner agrees that the District, at its option, may enforce payment of such outstanding amount in a court of competent jurisdiction as a contract debt, by an action for and order for sale, by proceedings for the appointment of a receiver, or in any other method available to the District at law or in equity. This rent charge is created both under section 219(6) of the *Land Title Act* as an integral part of the statutory covenant created by this Agreement and as a fee simple rent charge at common law. Enforcement of this rent charge by the District does not limit, or prevent the District from enforcing, any other remedy or right the District may have against the Owner.

ARTICLE 5 MISCELLANEOUS

- 5.1 Nature of Agreement** – The Owner acknowledges and agrees that this Agreement includes a housing agreement entered into under section 483 of the *Local Government Act* and a covenant under section 219 of the *Land Title Act*;

5.2 Indemnity – The Owner will indemnify and save harmless the District and each of its elected officials, officers, directors, and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, actions, loss, damage, costs and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of:

- (a) any negligent act or omission of the Owner, or its officers, directors, agents, contractors or other persons for whom at law the Owner is responsible relating to this Agreement;
 - (b) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Land or any Dwelling Unit or the enforcement of any Tenancy Agreement;
- or
- (c) without limitation, any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.

5.3 Release – The Owner hereby releases and forever discharges the District and each of its elected officials, officers, directors, and agents, and its and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of or which would or could not occur but for the:

- (a) construction, maintenance, repair, ownership, lease, license, operation or management of the Land or any Dwelling Unit under this Agreement; or
- (b) the exercise by the District of any of its rights under this Agreement.

5.4 Survival – The indemnity and release set out in this Agreement will survive termination or discharge of this Agreement.

5.5 Priority – The Owner will do everything necessary, at the Owner's expense, to ensure that this Agreement will be noted and registered against title to the Land in priority to all financial charges and financial encumbrances which may have been registered or are pending registration against title to the Land save and except those specifically approved in advance in writing by the District or in favour of the District, and that a notice under section 483(5) of the *Local Government Act* will be filed on the title to the Land.

5.6 District's Powers Unaffected – This Agreement does not:

- (a) affect, fetter or limit the discretion, rights, duties or powers of the District under any enactment or at common law, including in relation to the use or subdivision of the Land;

- (b) impose on the District any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;
- (c) affect or limit any enactment relating to the use or subdivision of the Land; or
- (d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.

5.7 Agreement for Benefit of District Only – The Owner and the District agree that:

- (a) this Agreement is entered into only for the benefit of the District;
- (b) this Agreement is not intended to protect the interests of the Owner, any Tenant, or any future owner, lessee, occupier or user of the Land or the building or any portion thereof, including any Dwelling Unit; and
- (c) the District may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.

5.8 No Public Law Duty – Where the District is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the District is under no public law duty of fairness or natural justice in that regard and agrees that the District may do any of those things in the same manner as if it were a private party and not a public body.

5.9 Notice – Any notice required to be served or given to a party herein pursuant to this Agreement will be sufficiently served or given if delivered, to the postal address of the Owner set out on title to the Land in the records at the LTO, and in the case of the District at the address listed above, to the attention of the Director of Planning or to the most recent postal address provided in a written notice given by each of the parties to the other. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery.

5.10 Enuring Effect – This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

5.11 Severability – If any provision of this Agreement is found to be invalid or unenforceable, such provision or any part thereof will be severed from this Agreement and the resultant remainder of this Agreement will remain in full force and effect.

5.12 Waiver – All remedies of the District will be cumulative and may be exercised by the District in any order or concurrently in case of any breach and each remedy may be exercised any number of times with respect to each breach. Waiver of or delay in the District exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.

- 5.13 Whole Agreement** – This Agreement, and any documents signed by the Owner contemplated by this Agreement, represent the whole agreement between the District and the Owner respecting the use and occupation of the Dwelling Unit, and there are no warranties, representations, conditions or collateral agreements made by the District except as set forth in or contemplated by this Agreement.
- 5.14 Further Assurance** – Upon request by the District the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the District to give effect to this Agreement.
- 5.15 Agreement Runs with Land** – This Agreement burdens and runs with the Land and every parcel into which it is Subdivided in perpetuity. All of the covenants and agreements contained in this Agreement are made by the Owner for itself, its personal administrators, successors and assigns, and all persons who after the date of this Agreement acquire an interest in the Land.
- 5.16 Equitable Remedies** – The Owner acknowledges and agrees that damages would be an inadequate remedy for the District for any breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement.
- 5.17 No Joint Venture** – Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the District or give the Owner any authority to bind the District in any way.
- 5.18 Applicable Law** – The laws of British Columbia (including, without limitation, the *Residential Tenancy Act*) will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia.
- 5.19 Deed and Contract** – By executing and delivering this Agreement the Owner intends to create both a contract and a deed executed and delivered under seal.
- 5.20 Joint and Several** – If the Owner is comprised of more than one person, firm or body corporate, then the covenants, agreements and obligations of the Owner shall be joint and several.
- 5.21 No liability after transfer** – In accordance with sections 218(4) and 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.

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.

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