



District of West Vancouver

Housing Agreement Authorization
Bylaw No. 4969, 2018
(752 Marine Drive)

Dated for Reference: May 14, 2018

Effective Date: June 25, 2018

District of West Vancouver

Housing Agreement Authorization Bylaw No. 4969, 2018

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District of West Vancouver

Housing Agreement Authorization Bylaw No. 4969, 2018

A bylaw to enter into a housing agreement.

WHEREAS the Council of The Corporation of the District of West Vancouver and Park Royal Shopping Centre Holdings Ltd. are to enter into a housing agreement under section 483 of the *Local Government Act* to restrict the use of the land;

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. 4969, 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 Park Royal

Shopping Centre Holdings Ltd. or its nominee, in respect of the land located at:

- 3.1.1 752 Marine Drive, West Vancouver, BC and legally described as: PID 009-122-494, BLOCK F DISTRICT LOT 1040 PLAN 11252;
 - 3.1.2 756 Marine Drive, West Vancouver, BC and legally described as: PID 011-062-525, LOT C (SEE 585835L) BLOCK 6 DISTRICT LOT 1040 PLAN 5848; and
 - 3.1.3 764 Marine Drive, West Vancouver, BC and legally described as: PID: 011-062-096, LOT B EXCEPT: PART ON HIGHWAY PLAN 30; BLOCK 6 DISTRICT LOT 1040 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 5848.
- 3.2 The Mayor and Municipal Clerk are authorized to execute and deliver the housing agreement.

Schedule

Schedule A – Housing Agreement

READ A FIRST TIME on April 9, 2018

AMENDED on May 14, 2018

READ A SECOND TIME AS AMENDED on May 14, 2018

READ A THIRD TIME on May 14, 2018

ADOPTED by the Council on June 25, 2018

Mayor

Municipal Clerk

SCHEDULE A

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 19th day of March, 2018 is

BETWEEN:

PARK ROYAL SHOPPING CENTRE HOLDINGS LTD.

3rd Floor
100 Park Royal
West Vancouver, BC V7T 1A2

(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 in the District of West Vancouver and more particularly described as;

Address:	PID:	Legal Description:
752 MARINE DRIVE	009-122-494	BLOCK F DISTRICT LOT 1040 PLAN 11252
756 MARINE DRIVE	011-062-525	LOT C (SEE 585835L) BLOCK 6 DISTRICT LOT 1040 PLAN 5848
764 MARINE DRIVE	011-062-096	LOT B EXCEPT: PART ON HIGHWAY PLAN 30; BLOCK 6 DISTRICT LOT 1040 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 5848

(collectively, the “Land”);

- B. The Owner wishes to construct on the Land a development consisting of, among other things, 49 Rental Units (as defined below), and the Owner and the District wish to confirm that none of the Rental Units shall be subdivided from any of the other Rental Units;
- C. 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;
- D. Section 219 of the *Land Title Act* permits the registration of a covenant prohibiting the subdivision of land subject to the covenant; and
- E. 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 set out herein.

In consideration of \$10.00 and other good and valuable consideration (the receipt and sufficiency of which are 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 to the 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 3.1 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 that contains sleeping, cooking and washroom facilities, and is suitable and intended to be used for residential accommodation;
- (c) “Occupancy Date” means, in relation to a Dwelling Unit, the date the District issues an Occupancy Permit for the Dwelling Unit;
- (d) “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;

- (e) “Rental Unit” means a Dwelling Unit that is used and occupied only as a permanent residence, and only by a person or persons other than the Owner of that Dwelling Unit;
- (f) “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*; and,
- (g) “West Block” means the building proposed to be constructed on the land in the location shown on the Site Plan attached to this Agreement as **Schedule A**.

ARTICLE 2 USE, OCCUPANCY AND SUBDIVISION OF RENTAL UNITS

- 2.1 Use and Occupancy** – The Owner agrees that, subject to sections 2.4 and 2.5, every Dwelling Unit on the Land shall be a Rental Unit.
- 2.2 Occupancy Verification** – Within two weeks of the District delivering to the Owner, in writing, a request for occupancy verification, the Owner will provide to the District a written statement of the Owner confirming that the occupancy of every Dwelling Unit on the Land complies with section 2.1, provided that the District may make a request under this section no more than once in a calendar year.
- 2.3 Restriction on Subdivision** – Except:
 - (a) to create an air space parcel comprising at least 49 Dwelling Units located on levels 3, 4, 5 and 6 of the West Block; and
 - (b) in conjunction therewith or thereafter, to Subdivide the remainder of the Land;

and subject to section 2.4, the Owner shall not Subdivide the Land.

2.4 Discharge of this Agreement – If the Owner has:

- (a) pursuant to one or more valid building permits issued by the District, completed the construction of and received occupancy permits for no fewer than 100 Dwelling Units on the Land; and
- (b) Subdivided the Land under section 2.3(a) of this Agreement;

then in relation to the remainder of the Dwelling Units on the Land this Agreement shall cease to apply, and the Owner may provide to the District a discharge of this Agreement from the title to those remainder Dwelling Units, which discharge the District shall sign and return to the Owner and, for clarity, the parties agree that thereafter this Agreement shall charge and bind only the 100 Dwelling Units that are to remain Rental Units, and shall charge and run with the title to those units only.

2.5 Further Discharge After 20 Years – In relation to no more than 51 of the 100 Dwelling Units which remain Rental Units after the discharge under section 2.4, which Dwelling Units the Owner may designate at any time by giving written notice to the District, then 20 years after the applicable Occupancy Date, this Agreement shall cease to apply to the applicable Dwelling Units and, if the Owner provides a registrable discharge of this Agreement to the District, then the District will sign the discharge and return it to the Owner within 21 days of receiving it.

2.6 Regardless whether this Agreement is discharged under section 2.4 or 2.5, or both, in no event will the District seek to enforce its rights under this Agreement in respect of more than 100 Dwelling Units for the first 20 years after the Occupancy Date, or in respect of more than 49 Dwelling Units thereafter.

ARTICLE 3 DEFAULT AND REMEDIES

3.1 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 Dwelling 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 provided the rectification of the breach is within the Owner's control, 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 fourteen (14) business days following receipt by the Owner of an invoice from the District for the same.

- 3.2 No Penalty** – The Owner agrees that in the case of a Dwelling Unit being occupied other than as a Rental Unit in accordance with this Agreement, payment of the Daily Amount pursuant to section 3.1 represents a genuine pre-estimate of damages for the breach of this Agreement and the Owner agrees to waive any claim it might otherwise make that such payment is an unenforceable penalty.

ARTICLE 4 MISCELLANEOUS

- 4.1 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*.
- 4.2 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.
- 4.3 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.
- 4.4 Survival** – The indemnity and release set out in this Agreement will survive termination or discharge of this Agreement.
- 4.5 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.

4.6 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.

4.7 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.

4.8 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.

4.9 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 Land Title Office, 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.

- 4.10 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.
- 4.11 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.
- 4.12 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.
- 4.13 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.
- 4.14 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.
- 4.15 Agreement Runs with Land** – Subject to Section 2.5, 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.
- 4.16 Equitable Remedies** – The Owner acknowledges and agrees that damages alone would be an inadequate remedy for the District for any breach of this Agreement and that in addition to payment of the daily amount or any other monetary relief to which the District may be entitled, the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief.
- 4.17 No Joint Venture** – Nothing in this Agreement will constitute the Owner as the agent, joint venture, or partner of the District or give the Owner any authority to bind the District in any way.
- 4.18 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.

- 4.19 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.
- 4.20 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.
- 4.21 Effective Date of Agreement** – Although the Owner may deliver an executed copy of this Agreement to the District before the District adopts Zoning Amendment Bylaw No. 4662, 2010, Amendment Bylaw No. 4967, 2018 (the “Bylaw”), this Agreement shall not come into effect until the later of:
- (a) the date the Council of the District adopts the Bylaw; or,
 - (b) the date the Council of the District adopts a Bylaw authorizing the District to enter into this Agreement.

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 (ATTACHED)

END OF DOCUMENT

SCHEDULE A

