



District of West Vancouver

Housing Agreement Authorization Bylaw No. 5014, 2021
(657 & 675 Marine Drive and 660 Clyde Avenue)

Effective Date: December 15, 2021

District of West Vancouver

Housing Agreement Authorization Bylaw No. 5014, 2021

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District of West Vancouver

Housing Agreement Authorization Bylaw No. 5014, 2021

A bylaw to enter into a housing agreement.

WHEREAS the Council of The Corporation of the District of West Vancouver and 0875410 B.C. 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. 5014, 2021.

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 0875410 B.C. Ltd. or its nominee, in respect of the land located at:
 - 3.1.1 657 Marine Drive, West Vancouver, BC and legally described as PID 014-020-840, Lot 52 Except, Firstly: Part in Reference Plan 2711, Secondly: Part on Highway Plan 30 District Lot 1039 Plan 2127;
 - 3.1.2 657 Marine Drive, West Vancouver, BC and legally described as: PID 014-020-858, Lot 53, Except, Firstly: Part in Reference Plan

2711, Secondly: Part on Highway Plan 30, District Lot 1039 Group 1 New Westminster District Plan 2127;

3.1.3 675 Marine Drive, West Vancouver, BC and legally described as: PID 009-125-680, Lot A District Lot 1039 Plan 11209; and

3.1.4 660 Clyde Avenue, West Vancouver, BC and legally described as: PID 014-020-785, Lot 44 District Lot 1039 Plan 2127.

3.2 The Mayor and Corporate Officer are authorized to execute and deliver the housing agreement.

Schedules

Schedule A – Housing Agreement

READ A FIRST TIME on September 13, 2021

READ A SECOND TIME on October 19, 2021

READ A THIRD TIME on October 19, 2021

ADOPTED by the Council on December 15, 2021.

[Original signed by Mayor]

Mayor

[Original signed by Deputy Corporate Officer]

Deputy 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 31st day of May, 2021 is

BETWEEN:

0875410 B.C. LTD., Inc. No. BC0875410
C/O EXECUTIVE PARK GP LTD.
800 1080 Howe Street
Vancouver BC V6Z 2T1

(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:

B.

Address:	PID:	Legal Description:
657 MARINE DRIVE	014-020-840	LOT 52, EXCEPT, FIRSTLY; PART IN REFERENCE PLAN 2711, SECONDLY; PART ON HIGHWAY PLAN 30 DISTRICT LOT 1039 PLAN 2127
657 MARINE DRIVE	014-020-858	LOT 53, EXCEPT, FIRSTLY; PART IN REFERENCE PLAN 2711, SECONDLY; PART ON HIGHWAY PLAN 30, DISTRICT LOT 1039 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 2127
675 MARINE DRIVE	009-125-680	LOT A DISTRICT LOT 1039 PLAN 11209
660 CLYDE AVENUE	014-020-785	LOT 44 DISTRICT LOT 1039 PLAN 2127

(together, the “Land”);

C. The Owner wishes to construct on the Land a development consisting of approximately eighty-nine (89) residential dwelling units, with the tenure of twenty-one (21) of the units being restricted to rental tenure (the “Rental

- Units”, as further defined below), and the Owner and the District wish to confirm that none of the Rental Units shall be sold separately from any of the other Rental Units;
- 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 subdivision of land 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 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, 2021, adjusted annually thereafter to the amount calculated by multiplying \$500.00 by the percentage change in the CPI since January 1, 2021, to January 1 of the year that a written notice is delivered to the Owner by the District pursuant to section 4.1 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) “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” is defined in section 2.1 of this Agreement;

- (e) “Residential Tenancy Act” means the Residential Tenancy Act (British Columbia), S.B.C 2002 ch. 78 as may be amended, superseded or replaced from time to time;
- (f) “Subdivide”, “Subdividing” or “Subdivision” 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) “Tenancy Agreement” means a tenancy agreement, lease, license or other written agreement granting rights to occupy a Dwelling Unit for residential purposes.

ARTICLE 2 USE, OCCUPANCY AND SUBDIVISION OF RENTAL UNITS

- 2.1 Designation by Owner** – The Owner shall, on or before the day the Owner applies for a building permit to construct any Dwelling Units on the Land, designate on the building permit drawings twenty-one (21) Dwelling Units as rental units (each, a “Rental Unit” and collectively, the “Rental Units”), and notify the District’s Director of Planning in writing of the designation.
- 2.2 No Construction** – Before the Owner designates the Rental Units under section 2.1 of this Agreement:
 - (a) the Owner shall not start any construction on the Land; and,
 - (b) notwithstanding that the Owner might otherwise be entitled to a building permit, the District shall not be obliged to issued any building permit authorizing construction on the Land until the Owner has designated the Rental Units under section 2.1 of this Agreement.
- 2.3 Use and Occupancy of Rental Units** – The Owner agrees that every Rental Unit shall be used and occupied only for residential accommodation, by way of a Tenancy Agreement for a term of not less than one (1) month, and only by a person or persons other than the Owner of the Rental Unit, pursuant to the terms of this Agreement.
- 2.4 Tenancy Agreement** – Every Tenancy Agreement the Owner enters into in respect of a Rental Unit shall include a clause entitling the Owner to terminate the Tenancy Agreement if:
 - (a) the Rental Unit is occupied other than for the purpose of residential accommodation;

- (b) the tenant or tenants under the Tenancy Agreement (each, a “Tenant” and collectively, the “Tenants”) makes a Rental Unit available to any other person or persons for any form of rental (by way of assignment, sublease or otherwise) with a term of less than one (1) month,

and in the case of each breach under subsection 2.4, the Owner hereby agrees with the District to forthwith provide to the Tenant a notice of default, subject to and in accordance with the Residential Tenancy Act. If the Tenant fails to cure the default as permitted under the Residential Tenancy Act, the Owner agrees that it shall take such actions as are appropriate to terminate the Tenant’s tenancy in accordance with the Residential Tenancy Act.

2.5 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 Rental Unit complies with section 2.3, provided that the District may make a request under this section no more than once in a calendar year.

2.6 Restriction on Subdivision – The Owner shall not subdivide the Land or any building on the Land unless concurrent with the subdivision the Owner registers as a charge on the title to each of the Rental Units a covenant under section 219 of the *Land Title Act* prohibiting the separate sale or transfer of any of the Rental Units. For greater certainty, nothing in this Agreement shall prevent the Owner from Subdividing the Land such that the Rental Units may be comprised as one or more strata lots of a strata corporation (with or without sections) under the *Strata Property Act* (British Columbia), one or more air space parcels or otherwise as one or more separate legal parcels, provided that the section 219 covenant referenced herein, prohibiting the separate sale of any Rental Unit, is registered as a charge against the title to each of the Rental Units.

2.7 Discharge of this Agreement – If the Owner has:

- (a) designated the Rental Units under section 2.1 of this Agreement;
 - (b) pursuant to one or more valid building permits issued by the District, completed the construction of and received occupancy permits for all of the Rental Units; and
 - (c) subdivided the Land under section 2.6 of this Agreement;
- then in relation to the remainder of the Dwelling Units (and any common property) 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 (and any common property) and the District shall promptly execute and deliver said discharge(s) to the Owner for filing.

ARTICLE 3 DEMOLITION OF BUILDING CONTAINING RENTAL 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 reasonably, 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, acting reasonably,

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. The District may not unreasonably decline to issue said demolition permit so long as the criteria under subsections (a) or (b) above have been satisfied and the Owner has provided the District with all other standard assurances necessary in connection with the demolition.

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; however, nothing in this Agreement shall obligate the Owner to construct such replacement building or Rental Units.

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, unless, after thirty (30) days from receipt of said notice, the Owner has not rectified the breach but has undertaken and continues to undertake good faith efforts to diligently rectify said breach or, in the case of a breach by the Tenant under

any Tenancy Agreement, if the Tenant has disputed said breach and such dispute has not been finally disposed of by any appellant court of competent jurisdiction or tribunal or final arbiter having jurisdiction to finally determine such dispute. Subject to the foregoing, the Daily Amount is due and payable within 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 4.1 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 without prejudice to any defences available to the Owner 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*, a covenant under section 219 of the *Land Title Act*, and integral to the covenant, a rent charge.
- 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.

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 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.
- 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 Rental Units, 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, and for clarity, this Agreement shall burden and remain as a charge on the title to each of the Rental Units, together with the “no separate sale” covenant required to be registered under section 2.6 of this Agreement. 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 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.
- 5.17 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.
- 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 COAST CAPITAL SAVINGS CREDIT UNION (the “Chargeholder”) is the holder the following charges all registered in the Vancouver Land Title Office:

Mortgage CA5010382
Assignment of Rents CA5010383

(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