

TERMS OF INSTRUMENT – PART 2

DEVELOPMENT COVENANT

(section 219 *Land Title Act*)

This Agreement dated for reference the 4th day of April, 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 129 Dwelling Units and one (1) townhouse building containing approximately four (4) Dwelling Units (collectively, the “**Development**”), to a maximum Floor Area Ratio (FAR) of 3.25.
- C.** The District’s Council is considering an amendment to the District’s Zoning Bylaw by way of Zoning Bylaw No. 4662, 2010, 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. 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**.

"Works and Services" means all of the infrastructure described in Schedule C.

2. 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. 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. RESTRICTIONS ON USE, 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** 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 completed, to the satisfaction of the District's Manager of Land Development Engineering (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 \$60,000 (being 10% of the estimated cost of the Works and Services) (the "Letter of Credit"), which security the District may hold for a period of 1 year following the completion of the installation of the Works and Services, to the satisfaction of the District's Manager of Land Development Engineering, and which the District may use during that period to perform maintenance or correct any deficiencies in the Works and Services if the Owner fails to do so.
- 4.3** 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.
- 4.4** 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. INDEMNITY AND RELEASE

- 5.1** 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 equality, 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.

5.2 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.

5.3 The indemnity and release provisions of sections 5.1 and 5.2 shall survive the expiry or termination of this Agreement.

6. NOTICE

6.1 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.

7. POWERS PRESERVED

7.1 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*.

8. BINDING EFFECT

8.1 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.

9. WAIVER

9.1 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.

10. CUMULATIVE REMEDIES

10.1 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.

11. SURVIVAL

11.1 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.

12. ENTIRE AGREEMENT

12.1 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.

13. SEVERABILITY

13.1 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.

14. COUNTERPARTS

14.1 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.

15. LIMITATION ON OWNER'S OBLIGATIONS

15.1 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.

16. DISCHARGE OF THIS AGREEMENT

16.1 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 the Owner within 10 days for filing in the Land Title Office.

16.2 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 Section 2.1 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

SITE PLAN



SCHEDULE B

STATUTORY RIGHT OF WAY and SECTION 219 COVENANT

TERMS OF INSTRUMENT – PART 2

STATUTORY RIGHT OF WAY and SECTION 219 COVENANT

THIS AGREEMENT, dated for reference the _____ day of _____, 2018, is

BETWEEN:

DARWIN PROPERTIES (303 MARINE DRIVE) LTD.

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

(the “Grantor”)

AND:

DISTRICT OF WEST VANCOUVER

750 17th Street
West Vancouver, BC V8V 3T3

(the “District”)

GIVEN THAT:

- A. Darwin is the registered owner in fee simple of certain lands and premises located at 303 Marine Drive, West Vancouver, British Columbia, and more particularly described as:

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

(the “Land”);
- B. The Grantor intends to construct a residential development on the Land consisting of one 26-storey building containing approximately 129 dwelling units (the “Residential Tower”) and one (1) townhouse building containing approximately four (4) dwelling units (collectively, the “Development”), together with certain public realm amenities and landscaping improvements, including pathways on the Land open to the public for non-motorized transportation and recreation purposes (the “Pathways”);
- C. The Grantor, as part of and in connection with the Development on the Land, has agreed to construct the Pathways and maintain them in perpetuity;

- D. The Grantor has agreed to grant to the District a statutory right of way for the operation and use of the Pathways as areas open to the public in perpetuity, and this Statutory Right Of Way is necessary for the operation and maintenance of the District's undertaking; and
- E. Section 219 of the *Land Title Act* authorizes the registration of a covenant, whether of a negative or positive nature, in respect of the use of land, in favour of the District, as a charge against the title to that land, which covenant is enforceable against the owner and its successors in title, even if the covenant is not annexed to land owned by the District;

THIS AGREEMENT is evidence that, pursuant to ss. 218 and 219 of the *Land Title Act*, and in consideration of ONE DOLLAR (\$1.00) paid by the District to the Grantor and other good and valuable consideration (the receipt and sufficiency of which the Grantor hereby acknowledges), the Grantor grants to and covenants with the District as follows:

1. **Statutory Right of Way for Pathways** – The Grantor hereby grants, conveys and confirms to the District in perpetuity the full, free and uninterrupted right, liberty, easement and Statutory Right Of Way (the “Statutory Right of Way”) on, over and across that portion of the Land which is shown outlined in a heavy black line on the Statutory Right of Way Plan prepared by ● and certified correct on the ● day of ●, 2018, a reduced copy of which is attached hereto as Schedule “A” (the “Right of Way Area”) at all times after final occupancy permit or permits for the whole of the Residential Tower constructed on the Land has been issued by the District for the following purposes:
 - (a) to permit all members of the public, at their will and pleasure, 24 hours a day, 7 days a week, to pass, be or remain on, and repass along and across the surface of the Right of Way Area, or any portion thereof, for recreation and to provide public access to and from the streets, sidewalks and parks adjacent to the Land:
 - (i) on foot;
 - (ii) in wheelchairs or similar devices which afford mobility to injured or disabled pedestrians;
 - (iii) using baby carriages, children's strollers, or similar devices which afford mobility to young people and their parents/guardians; or
 - (iv) by bicycle, skateboard or similar non-motorized device or vehicle;
 - (b) to permit the District and the District's elected and appointed officials, officers, employees, and contractors (“District Personnel”), to enter on the Right of Way Area with works, vehicles, equipment, tools and materials for the purpose of inspecting the Right of Way Area and remove such structures, improvements, fixtures, and other obstructions as may be necessary to ensure safe and effective use and enjoyment of the Pathways; and
 - (c) to do all other things on the Right of Way Area as may be necessary, desirable or incidental to the ongoing use, operation, and enjoyment of the Pathways.

2. **Rights of Grantor** – Notwithstanding the foregoing the Grantor and those claiming authority through the Grantor, and their respective agents may eject from the Land, including the Right of Way Area, any member of the public who:
 - (a) acts in a disorderly or offensive manner, or interferes with, threatens or obstructs any other person, appears intoxicated or commits or appears to commit an illegal act;
 - (b) presents an apparent threat to the safety of others or to the security of any landscaping or any improvements on the Right of Way Area or the Land;
 - (c) takes up abode at any time by erecting a tent, shelter or other type of structure or accommodation in the Right of Way Area;
 - (d) lights any fires or burns any material in the Right of Way Area; or
 - (e) otherwise creates a nuisance.

3. **Section 219 Covenant to Construct and Maintain** – Notwithstanding the grant to the District of the rights enumerated in section 1, the Grantor further covenants and agrees as follows:
 - (a) the Grantor shall, at is own cost and as required by and pursuant to Development Permit No. 17-077 issued by the District, complete the design, construction, and installation of the Pathways, in a good and workmanlike manner;
 - (b) the Grantor will, at its own cost and in perpetuity, keep clean, repair, and maintain the Pathways in good, safe and sufficient repair and condition, to the satisfaction of the District;
 - (c) if the Grantor fails to keep, repair, and maintain the Pathways in good, safe and sufficient repair to the satisfaction of the District’s Director of Engineering, acting reasonably, the District shall be entitled to do such work after giving 20 days’ prior written notice to the Grantor (except in the case of an emergency, in which case no notice is required) specifying the default and requiring it to be remedied and the Grantor fails to carry out such work within such 20 day period, or if the work requires longer than 20 days to carry out, the Grantor has failed to commence carrying out the work and to diligently proceed with the work thereafter, and the Grantor shall pay the costs to the District incurred in doing such work forthwith upon receipt of an invoice from the District; and
 - (d) the Grantor 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 Grantor of this section 3. The Grantor agrees that this section is reasonable given the public interest in the need for effective maintenance and protection of the Pathways from breaches of this section 3;

4. **Grantor's Obligations** – The Grantor must:
 - (a) not do or permit to be done anything in the Right of Way Area which in the opinion of the District, acting reasonably, may interfere with, injure or impair the operating efficiency of, or obstruct access to or the use of the Right of Way Area, the Pathways, or the rights granted under this Statutory Right of Way;
 - (b) permit the District to peaceably hold and enjoy the rights hereby granted;
 - (c) permit the District to do all other things in the Right of Way Area which in the opinion of the District are reasonably necessary for the safe use and preservation of the Right of Way Area for the purposes of the Pathways and the Statutory Right of Way;
 - (d) not deposit or place garbage, debris or other material in the Right of Way Area, other than the parkade of the Development which will be constructed below the Right of Way Area; and
 - (e) at its own expense, do or execute or cause to be done or executed all such further and other lawful acts, deeds, things, conveyances and assurances whatsoever for better assuring to the District the rights, liberties, and right of way hereby granted.
5. **District's Obligations** – The District must do all things hereby authorized to be done by it over, through, and upon the Right of Way Area in a good and workmanlike manner so as to cause no unnecessary damage or disturbance to the Grantor, the Development (including any portions of the parkade of the Development, including the membrane to such parkade) the Land, or the Right of Way Area or to any improvements thereon.
6. **District's Rights** – The District:
 - (a) is entitled to peaceably hold and enjoy the rights, liberties and Statutory Right of Way hereby granted without hindrance, molestation or interruption by the Grantor or any person, firm or corporation claiming by, through, under or in trust for the Grantor;
 - (b) may remove anything placed on the Right of Way Area by the Grantor which may interfere with, injure or impair the operating efficiency of, or obstruct access to or the use of the Pathways or the rights granted by the Statutory Right of Way, but must promptly restore the Right of Way Area to substantially its original condition, but for the Pathways, so far as is reasonably practical; and
 - (c) on default by the Grantor of any of its obligations under this Agreement, the District may, but is not obliged to, rectify the default, provided that, except in the case of an emergency (in which case no notice is required), the District must first give 20 days' prior notice to the Grantor specifying the default and requiring it to be remedied and the Grantor fails to carry out such work within such 20 day

period, or if the work requires longer than 20 days to carry out, the Grantor has failed to commence carrying out the work and to diligently proceed with the work thereafter. The Grantor shall, forthwith upon receiving an invoice from the District, reimburse District for its reasonable, out of pocket expenses incurred in remedying such a default.

7. **Release** – The Grantor will not make any claims against the District or District Personnel and the Grantor hereby release and discharge the District and District Personnel from and against all damages, losses, costs, actions, causes of action, claims, demands, judgements, builders liens, liabilities, expenses, indirect or consequential damages (including loss of profits and loss of use and damages arising out of delays) and injuries (including personal injury and death) (collectively, “Losses”) which may, at any time, arise or accrue to the Grantor, in connection with this Agreement including, without limitation:

- (a) by reason of the District or District Personnel:
 - (i) review, accepting or approving the design, specifications, materials and methods for construction of the Pathways;
 - (ii) inspecting the Pathways;
 - (iii) performing any work in accordance with the terms of this Agreement or requiring the Grantor to perform any work pursuant to this Agreement;
 - (iv) exercising any of its rights under any statutory right of way granted to the District pursuant to this Agreement; or
 - (v) withholding any permits pursuant to this Agreement.
- (b) that arise out of, or would not have been incurred but for:
 - (i) the design, construction or installation (including any defective materials or faulty workmanship) of the Pathways;
 - (ii) this Agreement;

except to the extent such Losses are the result of the negligent acts or omissions on the part of the District or District Personnel. The release set out in this Section 7 will survive the expiration or earlier termination of this Agreement.

8. **Indemnity** –

- (a) The Grantor hereby covenants and agrees with the District to indemnify and save harmless and reimburse the District and District Personnel from and against all Losses which may arise or accrue to the Grantor any person, firm or corporation against the District or District Personnel or which the District or District Personnel

may pay, incur, sustain or be put to by reason of or which would not or could not have been sustained "but for" any of the following:

- (i) the construction, installation, existence, maintenance, repair, replacement, removal, use or occupation of the Pathways or the Right of Way Area;
- (ii) this Agreement, including the withholding of any permits by the District pursuant to this Agreement;
- (iii) any personal injury, property damage or death occurring in or upon the Right of Way Area in whole or part from the exercise of the statutory right of way in this Agreement by any party; or
- (iv) the release by the District of any or all of the District's rights under this Agreement or the loss of any rights purported to be granted hereby,
- (v) the District or District Personnel:
 - (A) reviewing, accepting or approving the design, specifications, materials and methods for construction of the Pathways;
 - (B) inspecting the Pathways;
 - (C) performing any work in accordance with the terms of this Agreement or requiring the Grantor to perform any work pursuant to this Agreement; or
 - (D) exercising any of its rights under any statutory right of way granted to the District pursuant to this Agreement; or
- (vi) any and all Losses which may arise or accrue to any person, firm or corporation including a member of the public against the District or any District Personnel or which the District or any District Personnel may, incur, sustain or be put to, by reason of:
 - (A) any negligent act or omission or wilful misconduct of the Grantor or any of their contractors, subcontractors, employees, agents, licensees, invitees and permittees in connection with the exercise of the obligations or responsibilities of the Grantor under this Agreement; or
 - (B) any default in the due observance and performance of the obligations or responsibilities of the Grantor under this Agreement,

except to the extent such Losses are the result of the negligent acts or omissions on the part of the District or District Personnel. This indemnity is both a personal covenant of the Grantor and an integral part of this Section 219 Covenant and will survive the expiration or earlier termination of this Agreement.

9. **No Waiver** – No waiver of default by either party is effective unless expressed in writing by the party waiving default, and no condoning, overlooking or excusing by either party of a previous default of the other is to be taken to operate as a waiver of any subsequent default or continuing default, or to in any way defeat or affect the rights and remedies of the non-defaulting party.
10. **Discretion** – Wherever in this Agreement the approval of the District is required, some act or thing is to be done to the District’s satisfaction, the District is entitled to form an opinion, or the District is given a sole discretion:
 - (a) the relevant provision is not deemed to have been fulfilled or waived unless the approval, opinion or expression of satisfaction is in writing signed by the District’s Director of Planning or any other person duly authorized by the Council of the District of West Vancouver to perform the functions of the Director of Planning;
 - (b) the approval, opinion or satisfaction is in the discretion of the Director of Planning acting reasonably in accordance with municipal engineering practice.
11. **No Effect on Powers** – This Agreement does not:
 - (a) affect or limit the discretion, rights, duties or powers of the District under the common law or any statute, bylaw, or other enactment;
 - (b) affect or limit the common law or any statute, bylaw or other enactment applying to the Lands; or
 - (c) relieve the Grantor from complying with the common law or any statute, bylaw or other enactment.
12. **Notice** – Any notice to be given pursuant to this Agreement must be in writing and must be delivered personally. The addresses of the parties for the purpose of notice are the addresses hereinbefore set out. Notice may be left at the relevant address in the same manner as ordinary mail is left by Canada Post and is to be deemed to have been given when delivered. Any party may at any time give notice in writing to the other of any change of address and from and after the receipt of notice the address therein specified is to be deemed to be the address of such party for the giving of notice.
13. **Severance** – If any section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion is to be severed and the decision that it is invalid does not affect the

validity of the remainder of this Agreement, the parties hereby agreeing that they would have entered into the Agreement without the severed provision.

14. **Entire Agreement** – No amendment of this Agreement, is valid or binding unless in writing and executed by the parties.
15. **Assumption by Strata Corporation** – If, as and when the Grantor subdivides the Lands or any building on the Lands by a strata plan under the *Strata Property Act* (British Columbia) the Grantor will forthwith, and in any event before the first conveyance of any strata lot, cause the strata corporation then created (the “Strata Corporation”) to assume the Grantor’s obligations hereunder to the same extent as if the Strata Corporation had been an original party to this Agreement by executing and delivering to the District an assumption agreement in all material respects in the form attached hereto as Schedule “B”. If the Grantor fails to comply with this section 15, the Grantor will remain liable for the performance of the obligations hereunder notwithstanding the strata subdivision of the Lands or any building on the Lands and notwithstanding the transfer of any portion of the Lands or any building on the Lands, including any strata lot, to a third party transferee. This section 15 does not limit or restrict the intent and meaning of section 18 herein.
16. **Joint and Several** - if there is more than one owner of the Lands then those owners are jointly and severally responsible for performance of the obligations in this Agreement.
17. **Schedules** – **Schedule A** being a statutory right of way plan showing the Statutory Right of Way Area and **Schedule B** being the assumption agreement, form part of this Agreement.
18. **Interest In Land and Enurement** – This Agreement runs with the Lands and each and every part into which the Lands may be subdivided or consolidated by any means (including subdivision plan, reference or explanatory plan, strata plan, bare land strata plan or lease), but no part of the fee of the Lands passes to or is vested in the District under or by this Agreement and the Grantor may fully use the Right of Way Area and Lands subject only to the common law and the rights, obligations and restrictions expressly set out in this Agreement. This Agreement enures to the benefit of and is binding on the parties notwithstanding any rule of law or equity to the contrary.
19. **Temporary Interruption** – The Grantor may, upon reasonable written notice to the District, temporarily interrupt the exercise of the rights of the District and its officers, employees, contractors, licensees and invitees (including members of the general public), during the course of construction of the Development and the Pathways, and for such temporary periods as are necessary from time to time to maintain or repair the Development or the Pathways, provided that any such interruption shall be as short as reasonably possible.

20. **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 Lands.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement by executing Part 1 of the *Land Title Act* Form C and D to which this Agreement is attached and which forms part of this Agreement.

CONSENT AND PRIORITY AGREEMENT

WHEREAS Canadian Western Bank (the "Chargeholder") is the holder of a Mortgage and Assignment of Rents (collectively, the "Charges") encumbering the lands (the "Lands") described in item 2 of the *Land Title Act* Form C attached hereto, which were registered in the Vancouver Land Title Office under numbers CA3813258 and CA3813259 respectively.

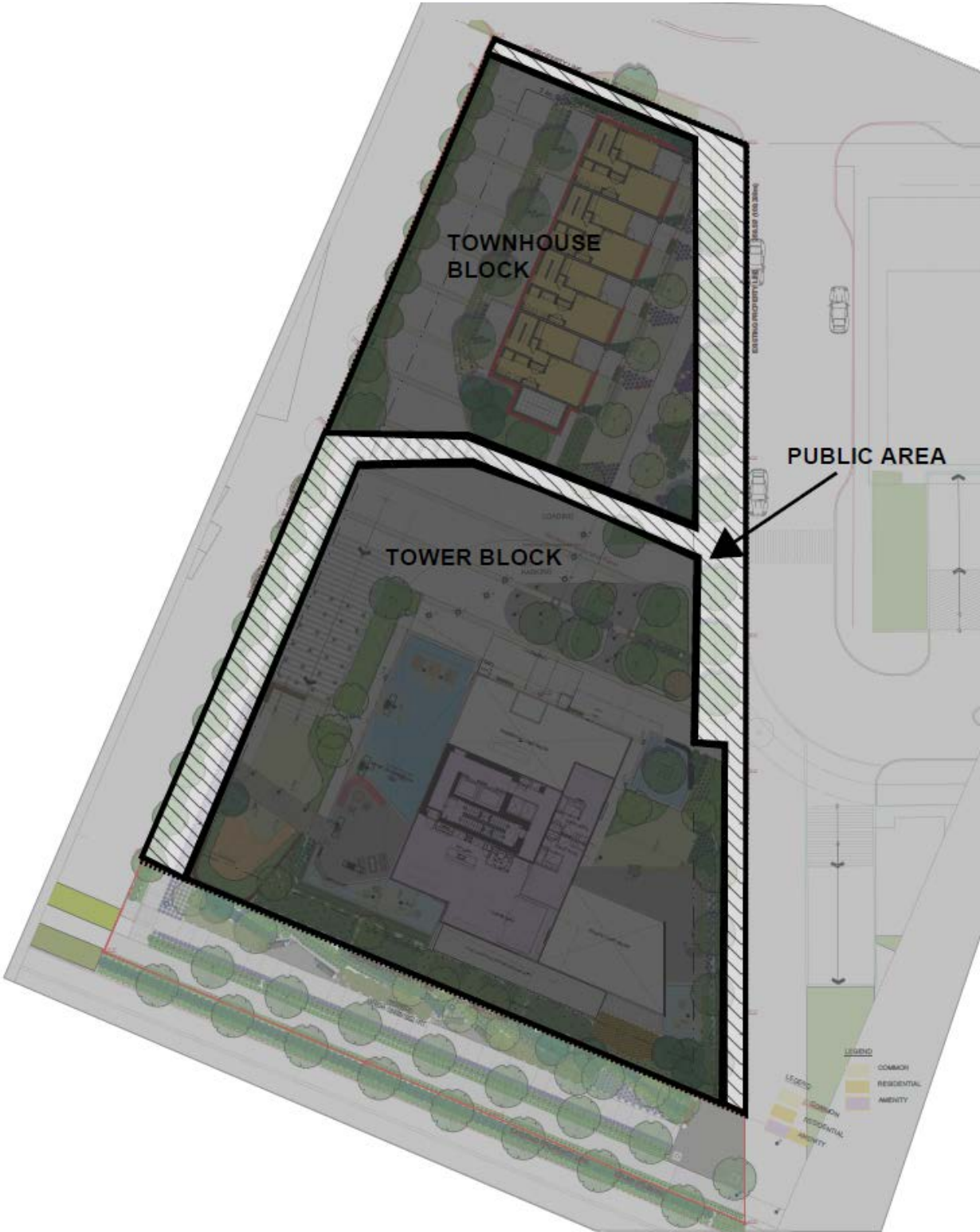
THEREFORE THIS CONSENT AND PRIORITY AGREEMENT IS EVIDENCE THAT IN CONSIDERATION OF \$1.00 AND OTHER GOOD AND VALUABLE CONSIDERATION PAID BY THE TRANSFEREE TO THE CHARGEHOLDER:

1. The Chargeholder hereby consents to the granting and registration of the Section 219 Covenant and Statutory Right of Way attached hereto (the "Covenant and SRW") and the Chargeholder hereby agrees that the Covenant and SRW 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 and SRW over the Chargeholder's right, title and interest in and to the Lands, and the Chargeholder does hereby postpone the Charges and all of its right, title and interest thereunder to the Covenant and SRW as if the Covenant and SRW had been executed, delivered and registered prior to the execution, delivery and registration of the Charges.

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.

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 application was made to the New Westminister 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 certain works, which agreement is registered in the New Westminister 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