

CITY OF SURREY

BY-LAW NO. 16665

A by-law to authorize the City of Surrey to enter into a housing agreement
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WHEREAS the City of Surrey has received an application to enter into a housing agreement;

AND WHEREAS Section 905 of the Local Government Act, R.S.B.C. 1996 c. 323, as amended (the "Local Government Act"), empowers the Council or the City of Surrey to enter into a housing agreement;

NOW, THEREFORE, the Council of the City of Surrey, in open meeting assembled, ENACTS AS FOLLOWS:

1. The City of Surrey is hereby authorized and empowered to enter into a housing agreement in the form attached hereto as Schedule A and forming part of this By-law (the "Housing Agreement") with the following parties:

Manor Care (White Rock) Inc. (Inc. No. BCo768331)
2900 - 595 Burrard Street
Vancouver, BC V7X 1J5

and with respect to the following real property:

ALL AND SINGULAR that certain parcel of tract of lands and premises, situate lying and being in the City of Surrey, in the Province of British Columbia and being more particularly known and described as:

Parcel Identifier: 003-985-954
Lot 11 Section 23 Township 1 New Westminster District Plan 17534

2567 King George Highway

(the "*Lands*")


2. The Mayor and Clerk are hereby empowered to execute the Housing Agreement on behalf of the City of Surrey.


2. The Mayor and Clerk are hereby empowered to execute the Housing Agreement on behalf of the City of Surrey.
3. The City of Surrey shall file in the Land Title Office a notice against the Lands in accordance with Section 905 of the *Local Government Act*, that the Lands are subject to the Housing Agreement.
4. This By-law shall be cited for all purposes as "Manor Care Housing Agreement, Authorization By-law, 2008, No. 16665."

PASSED 1ST AND 2ND READINGS on the 12th day of May, 2008.

PASSED THIRD READING on the 26th day of May, 2008.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the 25th day of July, 2011.


Acting
MAYOR


CLERK

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HOUSING AGREEMENT

THIS AGREEMENT is made as of the 7th day of ~~November, 2007.~~
25th JULY 2011

BETWEEN:

MANOR CARE (WHITE ROCK) INC. (Inc. No. BC0768331)
2900 -595 Burrard Street
Vancouver, B.C. V7X 1J5(the "**Owner**")

OF THE FIRST PART

AND:

CITY OF SURREY, a municipal corporation under the *Local Government Act* of the Province of British Columbia, and having its City Offices at 14245 – 56th Avenue, Surrey, British Columbia, V3X 3A2

(the "**City**")

OF THE SECOND PART

WHEREAS:

A. The Owner is the registered owner of those lands and premises in the City of Surrey, in the Province of British Columbia, which is located at 2567 King George Highway, and more particularly known and described as:

PID 003-985-954
Lot 11, Section 23, Township 1, New Westminster District Plan 17534

(the "**Lands**");

B. The Owner proposes to re-develop the Lands with a special facility comprised of a residential care facility (of up to 146 beds/units) (the "Residential Care Facility"), plus 78 residential assisted living rental units (the "Assisted Living Facility") for occupancy by Qualified Occupants as hereinafter defined, including a Resident Manager as hereinafter defined), (collectively the "**Development**");

C. The Owner has requested the City to issue a Development Permit for the Lands and to rezone the Lands to a Comprehensive Development (CD) zone based on RMS-2 and RM-45 to permit a seniors residential care and assisted living facility, and it is a condition of approving the relevant Development Permit that the parties enter into this Agreement in order to restrict the occupancy of every Housing Unit as hereinafter defined to be constructed on the Lands;

D. Section 905 of the *Local Government Act*, R.S.B.C. 1996, Chapter 323, as amended, authorizes the City, by by-law, to enter into a housing agreement and file a notice of same in the Land Title Office, following which the housing agreement is binding on all persons who acquire an interest in the land affected by that agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH in consideration of the premises, the respective covenants and agreements of the Parties as hereinafter set out and the sum of \$1.00 and other good and valuable consideration paid by the City to the Owner (the receipt and sufficiency of which is hereby acknowledged), the Parties hereto covenant and agree each with the other as follows:

1. DEFINED TERMS AND SCHEDULES

1.1 In and for the purposes of this Agreement, the following terms shall have the following respective meanings:

- a) **“Care-giver”** means a person, other than a spouse of a Qualified Occupant, who resides in a Housing Unit primarily for the purpose of providing ongoing living assistance and care to a Qualified Occupant and **“Care-givers”** means all persons who qualify as a Care-giver;
- b) **“Housing Unit”** means the 78 units of the Assisted Living Facility constructed by the Owner upon the Lands but does not include the Resident Manager’s Housing Unit nor the Residential Care Facility;
- c) **“Qualified Occupant”** means Seniors (as hereinafter defined), a Care-giver and all persons who qualify as a Spouse of a Qualified Occupant with respect to a Housing Unit;
- d) **“Resident Manager”** means a person employed by the Owner to manage the Housing Units, who resides in a Resident Manager’s Housing Unit and his or her spouse and children;
- e) **“Resident Manager’s Housing Unit”** means a dwelling unit to be occupied by a person employed by the Owner with his or her spouse and children, to manage the Housing Units;
- f) **“Senior”** means a person who is at least 65 years of age or a person who is deemed to be physically disabled by a doctor and therefore requires the same type of assisted living facility as if 65 years of age or older; or a spouse of a person who is at least 65 years of age; and a person who resides with a person who is at least 65 years of age;
- g) **“Spouse of a Qualified Occupant”** means a person living in a spousal relationship with a Qualified Occupant and includes a person who was the spouse of a Qualified Occupant who resided in a Housing Unit at the time of the

Qualified Occupant's death and "**Spouses of Qualified Occupants**" means all persons who qualify as a Spouse of a Qualified Occupant;

- h) "**Term**" means the period commencing on the date of this Agreement and continuing in full force and effect in perpetuity or until this Agreement is set aside by the mutual consent, in writing, of the Parties or by the operation of law; and
- i) "**this Agreement**" means this Housing Agreement and any amendments or modifications of same.

1.2 The captions, section numbers and article numbers appearing in this Agreement are inserted for convenience of reference and shall in no way define, limit, construe or describe the scope or intent of this Agreement or in any way affect this Agreement.

1.3 Words importing the singular number only shall include the plural and vice versa, words importing the masculine gender shall include the feminine and neuter genders and words importing persons shall include firms and corporations and vice versa.

1.4 Unless otherwise stated, a reference in this Agreement to a numbered or lettered article, section, paragraph or clause refers to the article, section, paragraph or clause bearing that number or letter in this Agreement.

1.5 The words "hereof" "hereunder", and similar expressions used in any section, paragraph or clause of this Agreement shall relate to the whole of this Agreement and not to that section, paragraph or clause only unless otherwise expressly provided.

2. OCCUPANCY OF UNITS RESTRICTED TO QUALIFIED OCCUPANTS

2.1 During the Term, no Housing Unit (other than one Housing Unit used as a Resident Manager's Housing Unit) may be occupied by any person who is not a Qualified Occupant, a Spouse of a Qualified Occupant or a Care-giver. The City may from time to time request the Owner to provide written proof of compliance with this paragraph and the Owner agrees to provide the City with such proof in a form reasonably satisfactory to the City.

2.2 If the Owner fails to enforce compliance with terms and conditions of paragraph 2.1, then it is specifically understood and agreed that the City shall be entitled, but shall not be obliged, to enforce the terms and conditions of this Agreement as against the Owner or against any person who is not a Qualified Occupant of a Housing Unit. For the purpose of this Agreement, the Owner, without the need of further authorization, writings or documents, hereby irrevocably appoints the City as its agent with respect to the enforcement of this Agreement as against any person who is not a Qualified Occupant of a Housing Unit and with respect to exercising all remedies set out in this Agreement and all other remedies available at law to the Owner as against such person or persons.

3. LIABILITY

3.1 The Owner will indemnify and save harmless the City and each of its elected officials, board members, officers, directors, employees and agents and their respective administrators, successors and assigns, of and from all claims, demands, actions, loans, damages, costs and liabilities, which all or any of them shall or may be liable for or suffer or incur or be put to by reason of or arising out of the failure of any person to comply with the terms and conditions of this Agreement including but not limited to allowing or acquiescing to the occupancy of a Housing Unit by a person other than a person or persons qualified to occupy a Housing Unit under the terms of this Agreement.

3.2 Provided the City is in compliance with the terms and conditions of this Agreement, the Owner hereby releases and forever discharges the City and each of its elected officials, board members, officers, directors, employees and agents and their respective administrators, successors and assigns, of and from any and all claims, demands, loans, damages, economic loss, costs and liabilities which any of them now has or hereafter may have with respect to or by reason of or arising out of the fact that the Lands are encumbered by and affected by this Agreement.

4 NOTICES

4.1 Any notices or other documents to be given or delivered pursuant to this Agreement will be addressed to the proper party as follows:

a) as to the City:

14245 – 56th Avenue
Surrey, British Columbia V3X 3A2

Attention: General Manager of Planning and Development Department

b) as to the Owner:

Manor Care (White Rock) Inc.
2900 -595 Burrard Street
Vancouver, B.C. V7X 1J5

or such other address as such party may direct by five (5) business days notice in writing to the other party. Any notice or other document to be given or delivered pursuant to this Agreement will be sufficiently given or delivered if delivered to the particular party at its address set out or determined in accordance with this paragraph and shall be deemed complete two (2) days after the day of delivery.

It is specifically agreed that for any notice or document to be validly given or delivered pursuant to this Agreement such document or notice shall be delivered and not mailed.

5. GENERAL

5.1 Nothing in this Agreement:

- a) affects or limits any discretion, rights, powers, duties or obligations of the City under any enactment or at common law, including in relation to the use or subdivision of land; or
- b) relieves the Owner, Qualified Occupants, Spouses of Qualified Occupants, Care-givers and Resident Managers from complying with any enactment, including the City's by-laws, in relation to the use or subdivision of the Lands, save as excepted in this Agreement.

5.2 An alleged waiver by a party of any breach by another party of its obligations under this Agreement will be effective only if it is an express waiver of the breach in writing. No waiver of a breach of this Agreement is deemed or construed to be a consent or waiver of any other breach of this Agreement.

5.3 Time is of the essence in this Agreement. If any party waives this requirement, that party may reinstate it by delivering notice to another party.

5.4 This Agreement shall be construed in accordance with and governed by the law of the Province of British Columbia.

5.5 If a court of competent jurisdiction finds that any part of this Agreement is invalid, illegal or unenforceable, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.

5.6 Upon request by the City, the Owner, Qualified Occupants, Spouses of Qualified Occupants, Care-givers, Resident Managers will promptly do such acts and execute such documents as the City may reasonably require, in the reasonable opinion of the City, to give effect to this Agreement.

5.7 This is the entire Agreement between and among the parties concerning the subject matter of this Agreement and there are no warranties, representations, conditions or collateral agreements relating to this Agreement, except as included in this Agreement.

5.8 This Agreement may be enforced by prohibitory and mandatory court order of the Court. In any action to enforce this Agreement, the City shall be entitled to Court costs on a solicitor and own client basis.

5.9 This Agreement shall enure to the benefit of and be binding upon the Owner and its successors, trustees and assigns and all parties claiming through them and this Agreement shall ensure to the benefit of and be binding upon the City and its administrators, successors and assigns.

5.10. From and after such time as the Owner ceases to have a legal interest in the Lands, the personal liability of the Owner shall likewise cease with respect to all liability arising by reason of an act or omission, whether by breach, default or otherwise with respect to the provisions of this Agreement, occurring after the Owner ceases to have any further interest in the relevant Lands, but the terms of this Agreement shall run with the Lands and be binding on each and every legal and beneficial owner of the Lands from time to time.

AS EVIDENCE OF THEIR AGREEMENT the parties have executed this Agreement as of the date and year first above written.

MANOR CARE (WHITE ROCK) INC.

by its authorized signatory(ies):



Annamae Clarke

CITY OF SURREY

by its authorized signatory(ies):



~~Marg Jones~~, City Clerk

JANE SULLIVAN



~~MARTIN HIDE~~, ACTING MAYOR
J. VILLENEUVE

