

CITY OF SURREY

BYLAW NO. 20409

A bylaw to authorize the City of Surrey to enter into a Housing Agreement
.....

WHEREAS the City of Surrey has received an application to enter into a housing agreement;

AND WHEREAS Section 483 of the Local Government Act, R.S.B.C. 2015 c.1, 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, enacts as follows:

1. The City of Surrey is hereby authorized to enter into a housing agreement in the form attached as Schedule A and forming part of this Bylaw for Tower 3 Development (the "Housing Agreement") with the following party:

Bluesky Properties (Brightside) 2020 Inc.
1101 - 838 West Hastings Street
Vancouver, BC V6C 0A6

and with respect to that certain parcel of lands and premises, in the City of Surrey, more particularly known and described as:

Parcel Identifier: 004-780-876
Lot 154 Section 22 Block 5 North Range 2 West NWD Plan 25520 Except Plan EPP30775
(13583 - 104 Avenue)

Parcel Identifier: 017-097-550
Parcel "M" (AD282491) Except: Part Dedicated Road On Plan LMP1736; Section 22 Block 5
North Range 2 West NWD Plan 15002
(13550 - 105 Avenue)

Said Lands to be consolidated and registered under New Westminister District Plan EPP105465

(hereafter referred to as the "Lands");

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 483 of the *Local Government Act*, that the Lands are subject to the Housing Agreement.
4. This Bylaw shall be cited for all purposes as "The Bluesky Properties (Brightside) 2020 Inc. Housing Agreement, Authorization Bylaw, 2021, No. 20409".

PASSED FIRST READING on the 12th day of July, 2021.

PASSED SECOND READING on the 12th day of July, 2021.

PASSED THIRD READING on the 12th day of July, 2021.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the 22nd day of November 2021.


_____ MAYOR


_____ CLERK

CITY OF SURREY
HOUSING AGREEMENT
(Residential Only)
Brightside (Tower 3)

THIS HOUSING AGREEMENT made the 22ND day of November, 2021.

BETWEEN:

CITY OF SURREY, a municipal corporation having its
offices at 13450 – 104 Avenue, Surrey, B.C. V3T 1V8

(the “City”)

OF THE FIRST PART

AND:

BLUESKY PROPERTIES (BRIGHTSIDE) 2020 INC., a
corporation having its offices at 1101 – 838 West Hastings
Street, Vancouver, B.C. V6C 0A6

(the “Owner”)

OF THE SECOND PART

WHEREAS:

- A. The Owner is the registered owner of those certain lands and premises located in the City of Surrey, in the Province of British Columbia, legally described as:

Parcel Identifier: 031-463-444
Lot 3 Section 22 Block 5 North Range 2 West
New Westminster District Plan EPP105465

(the “Lands”);

- B. The Owner intends to construct on the Lands a development which includes a 51-storey residential building (“**Tower 3**”) containing approximately 562 Dwelling Units and shown as “Tower 3” on the plan attached as Appendix 1 to the Agreement, the Amenity Building and an underground parking facility for the Project (collectively, the “**Development**”), as generally shown in heavy black dash outline on the plan attached as Appendix I to this Agreement;
- C. Upon or prior to completion of construction of the Development, the Owner intends to subdivide the Lands by way of air space parcel subdivision under the *Land Title Act* (British Columbia), in order to create one air space parcel and the remainder parcel, which are anticipated to contain the following components:

- (i) the Rental Units to be located on the lower levels of Tower 3 and associated portions of the underground parking facility, to be contained within a separate air space parcel; and
 - (ii) approximately 363 market strata lots, to be located in Tower 3 directly above the Rental Component, together with common property areas and facilities including, without limitation, associated portions of the underground parking facility and the stand-alone amenity building for certain residential components of the Project (the "**Amenity Building**") (collectively, the "**Market Strata Component**"), to be contained within the remainder parcel;
- D. The Owner has voluntarily agreed to enter into a housing agreement pursuant to Section 483 of the *Local Government Act*, R.S.B.C. 2015, Chapter 1, as amended, to ensure that the Rental Units are rented in accordance with this Agreement.

NOW THEREFORE in consideration of the premises herein and of the mutual covenants and agreements hereinafter set forth and contained herein and \$1.00 now paid by the City to the Owner (the receipt of which is hereby acknowledged), the parties hereto covenant and agree each with the other as follows:

DEFINED TERMS

- 1.1 In and for the purpose of this Agreement, in addition to the definitions on the first page of this document, the following terms shall have the following meanings:
- (a) "**Agreement**" means this housing agreement and any amendments to or modifications of the same;
 - (b) "**Amenity Building**" means as defined in recital C(ii);
 - (c) "**City**" means the City of Surrey and any person authorized by the City of Surrey, including assigns of whole or partial interest in this Agreement or of any of the rights conferred upon the City of Surrey by this Agreement;
 - (d) "**City Personnel**" means all of the City's elected and appointed officials, officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors, invitees and the Approving Officer;
 - (e) "**Claims and Expenses**" means all actions, causes of actions, suits, judgments, proceedings, demands, and claims, whether at law or in equity, losses, damages, expenses and costs (including legal fees and disbursements on an indemnity basis) of any kind or nature whatsoever, at law or in equity, for any damages, losses, injuries or death;
 - (f) "**Development**" means as defined in Recital B;
 - (g) "**Dwelling Unit**" means each of the approximately 562 dwelling units to be constructed within the Development;

- (h) “**Lands**” means the parcel of land situated in the City of Surrey, British Columbia and legally described in Recital A, and includes any parcel into which such land is consolidated or further subdivided (including a subdivision pursuant to the *Land Title Act*;
- (i) “**Market Strata Component**” means as defined in recital C(ii);
- (j) “**Owner**” means the person named on the first page of this Agreement and the registered owner at any given time and any successors in title of the Lands;
- (k) “**Project**” means the master-planned community to be constructed on the Project Lands, currently anticipated to be comprised of, without limitation, four residential towers with certain office/commercial/retail premises, a stand-alone commercial building and the Amenity Building, all of which will be constructed over a shared underground parking facility for the benefit of the owners, residents, tenants, guests and visitors of the community;
- (l) “**Project Lands**” means the Lands, together with: (i) PID 031-463-428, Lot 1 Section 22 Block 5 North Range 2 West New Westminster District Plan EPP105465; (ii) PID 031-463-436, Lot 2 Section 22 Block 5 North Range 2 West New Westminster District Plan EPP105465; and (iii) PID 031-463-452 Lot 4 Section 22 Block 5 North Range 2 West New Westminster District Plan EPP105465;
- (m) “**Rental Units**” means 199 of the Dwelling Units which must be made available by the Owner to the general public at arms’ length for use as residential rental accommodation on a month-to-month or longer basis in accordance with all applicable laws including, without limitation, the *Residential Tenancy Act*, S.B.C. 2002, Chapter 78, as amended, and any regulations pursuant thereto;
- (n) “**Term**” means 20 years, commencing on the first day of the month after the City issues an occupancy permit for the Development; and
- (o) “**Tower 3**” means as defined in Recital B.

2. RESTRICTION ON OCCUPANCY OF DWELLING UNITS

- 2.1 During the Term the Rental Units must be made available for rent in accordance with this Agreement.
- 2.2 The City may, from time to time, during the Term request the Owner to provide written proof of compliance with section 2.1 and the Owner agrees to provide, or cause an operator of the Rental Units to provide, the City with such proof in a form reasonably satisfactory to the City.
- 2.3 During the Term, the portion of the Lands containing the Rental Units shall not be

stratified.

- 2.4 All of the Rental Units must be owned by the same owner(s).
- 2.5 Throughout the Term, the Owner shall not sell or transfer, or permit to be sold or transferred, the beneficial or registered title or any interest in and to the Rental Units, unless the Owner obtains from the transferee an agreement in writing from the transferee to assume and perform all of the obligations of the Owner arising under this Agreement. For greater certainty, this section does not apply to any prospective purchaser or transferee of the Market Strata Component, or any portions thereof.

3. LIABILITY

- 3.1 **Indemnity.** The Owner shall indemnify and save harmless the City and City Personnel from all Claims and Expenses which the City and City Personnel may suffer, or incur, or be put to, arising out of or in connection with any breach or default of any covenants or agreements on the part of the Owner contained in this Agreement or arising out of the fact that the Lands are encumbered by and affected by this Agreement, except to the extent caused by the negligence or wilful misconduct of the City and/or the City Personnel.
- 3.2 **Release.** The Owner does hereby remise, release and forever discharge the City and City Personnel from all Claims and Expenses which the Owner may have against the City and City Personnel, which the Owner now has or hereafter may have with respect to or by reasons of, or arising out of, or in connection with the Development or arising out of the fact that the Lands are encumbered by and affected by this Agreement, except to the extent caused by the negligence or wilful misconduct of the City and/or the City Personnel.
- 3.3 **Obligations Continue.** The Owner covenants and agrees that the indemnity and release in Sections 3.1 and 3.2 will remain effective and survive the expiration or termination of this Agreement whether by fulfilment of the covenants contained in this Agreement or otherwise.

4. NOTICE

- 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:

- City of Surrey
 - 13450 – 104 Avenue
 - Surrey, BC V3T 1V8

- Attention: General Manager, Planning and Development Department

(b) As to the Owner:

BlueSky Properties (Brightside) 2020 Inc.
1101 – 838 West Hastings Street
Vancouver, BC V6C 0A6

Attention: Director, Development

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

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

5. GENERAL

5.1 **Joint and Several.** Where the Owner consists of more than one person, each such person will be jointly and severally liable to perform the Owner's obligations under this Agreement.

5.2 **Assignment by City.** This Agreement or any of the rights conferred by this Agreement upon the City may be assigned in whole or in part by the City without the consent of the Owner.

5.3 **City's Other Rights Unaffected.** Nothing contained or implied herein will derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Local Government Act* and the *Community Charter*, as amended from time to time and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.

5.4 **Agreement for Benefit of City.** The Owner and the City hereby acknowledge, agree and declare that this Agreement is entered into for the sole purpose of benefitting the City and, in particular, acknowledge, agree and declare that this Agreement is not designed to protect or promote the interests of the Owner or any mortgagee of the Owner, or any future owner or occupier of the Lands and any improvements on the Lands or any other person and the City may, at its sole option, execute a release of this Agreement at any time without liability to any person for so doing.

5.5 **No Waiver.** The Owner acknowledges and agrees that no failure on the part of the City to exercise and no delay in exercising any right under this Agreement will

operate as a waiver thereof, nor will any single or partial exercise by the City of any right under this Agreement preclude any other or future exercise thereof of the exercise of any other right.

- 5.6 **City Not Required to Prosecute.** The Owner agrees that the City is not required or is under no obligation in law or equity to prosecute or enforce this Agreement in any way whatsoever.
- 5.7 **Remedies.** The remedies provided for in this Agreement will be cumulative and not exclusive of any other remedies provided by law or in equity. In addition to any remedies which are available under this Agreement or at law, the City will be entitled to all equitable remedies, including, without limitation, specific performance, injunction and declaratory relief, or any combination thereof, to enforce its rights under this Agreement. The Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a default by the Owner under this Agreement.
- 5.8 **Severability.** All the obligations and covenants in this Agreement are severable, so that if any one or more of the obligations or covenants are declared by a court of competent jurisdiction to be void and unenforceable, the balance of the obligations and covenants will remain and be binding.
- 5.9 **City Court Costs.** In an action to enforce this Agreement in respect of which the court determines that the position of the City will prevail, the City will be entitled to court costs on a solicitor-client basis.
- 5.10 **Personal Representatives and Successors.** This Agreement shall enure to the benefit of and be binding upon the parties hereto and their personal representatives, respective heirs, executors, administrators, successors, and assigns.
- 5.11 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia.
- 5.12 **Priority.** The Owner shall at the sole expense of the Owner, do or cause to be done all acts reasonably necessary to grant priority to this Agreement over all charges and encumbrances which may have been registered against the title to the Lands at the Land Title Office save and except those specifically approved in writing by the City.
- 5.13 **Further Assurances.** The Owner shall do, or cause to be done, all things and execute or cause to be executed all documents and give such further and other assurances which may be reasonably necessary to give proper effect to the intent of this Agreement.
- 5.14 **Subdivision.** The Owner and the City acknowledge and agree that this Agreement is only intended to apply to the Rental Units and not to any other portion of the Lands including, without limitation, the Market Strata Component. The City covenants and agrees that concurrently with the registration of any

subdivision plan (including one or more airspace subdivision plans, or a strata plan pursuant to the *Strata Property Act*) that subdivides the Lands, the City will, without delay, execute in registrable form and deliver to the Owner for filing in the applicable land title office, a discharge of any notice of this Agreement from title to the parcel(s) so created that do not contain the Rental Units or any portions thereof. Such discharge is to be prepared and registered at the sole cost of the Owner.

- 5.15 **Limitation.** The covenants of the Owner contained herein shall be personal and be binding upon the Owner only during its ownership of any interest in the Lands herein described.
- 5.16 **Counterparts.** This Agreement may be executed in any number of counterparts and delivered via facsimile or e-mail, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument, provided that any party delivering this Agreement via facsimile or e-mail will deliver to the other party any originally executed copy of this Agreement forthwith upon request by the other party.

[Remained of the page intentionally left blank]

5.17 **Entire Agreement.** This Agreement represents the entire agreement between the City and the Owner regarding the matters set out in this Agreement and supersedes all prior agreements, letters of intent or understandings about these matters.

IN WITNESS WHEREOF the City of Surrey and the Owner have executed this Agreement under seal of their duly authorized officers as of the references of this Agreement.

CITY OF SURREY

By: 
Authorized Signatory

Doug McCallum,
Mayor
City of Surrey

By: 
Authorized Signatory

Jennifer Ficocelli,
City Clerk
City of Surrey

BLUESKY PROPERTIES (BRIGHTSIDE) 2020 INC.

By: 
Authorized Signatory

Name: **DALE BOSHA**
Title: **DIRECTOR / SEC RETARY**

APPENDIX I

PLAN OF THE DEVELOPMENT

