

NO: **R008**

COUNCIL DATE: **January 28, 2013**

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **January 21, 2013**

FROM: **President/CEO of the Surrey City
Development Corporation
City Solicitor**

FILE: **2480-20-Cloverdale
Bulb**

SUBJECT: **Transfer to the Surrey City Development Corporation of the Beneficial Interest in
City-owned Property at 17565 – 58 Avenue**

RECOMMENDATION

The President of the Surrey City Development Corporation ("SCDC") and the Legal Services Division recommend that Council instruct City staff to take all necessary actions to transfer to the SCDC the beneficial interest in the City-owned lot known as 17565 – 58 Avenue (Parcel Identifier No. 027-221-911) (the "Subject Site") in Cloverdale as illustrated in Appendix "A", which transfer is necessary to facilitate the development of this lot by the SCDC.

INTENT

The purpose of this report is to obtain Council approval to transfer beneficial interest in City-owned land to the SCDC in support of its on-going business activities.

BACKGROUND

In 2011, the beneficial interest related to the Cloverdale Mall site at 5710 – 175 Street (the "Mall Site") was transferred by the City to the SCDC in support of the redevelopment of that site. The redevelopment of the Mall Site was approved by Council as part of SCDC's 2012 Business Plan. As SCDC has progressed through the preparation of development plans for the Mall Site, the opportunity to successfully develop the Subject Site at 17565 – 58 Avenue in a manner that is consistent with the Cloverdale Town Centre Plan and in conjunction with the Mall Site has become apparent. The Subject Site is directly north of the Mall Site on the north side of 58A Avenue as illustrated in Appendix "A" attached to this report.

DISCUSSION

To support the business activities of the SCDC the transfer to the SCDC of the beneficial interest in the Subject Site is considered reasonable for both the City and the SCDC. The transfer will facilitate the development of the Subject Site by the SCDC and will support the financial reporting requirements of both the City and the SCDC including the filing of annual income tax returns by the SCDC. The development of the Subject Site is consistent with the business objectives for which the City established the SCDC.

A Declaration of Bare Trust and Agency Agreement, a sample of which is attached as Appendix "B", will be executed between the City of Surrey and the SCDC as part of the transfer of the Subject Site.

City Interest Served

Although beneficial interest in the Subject Site is being recommended for transfer to the SCDC, the City as sole shareholder of the SCDC will be the beneficiary of any gains that result from the SCDC business activities related to the development of the Subject Site.

CONCLUSION

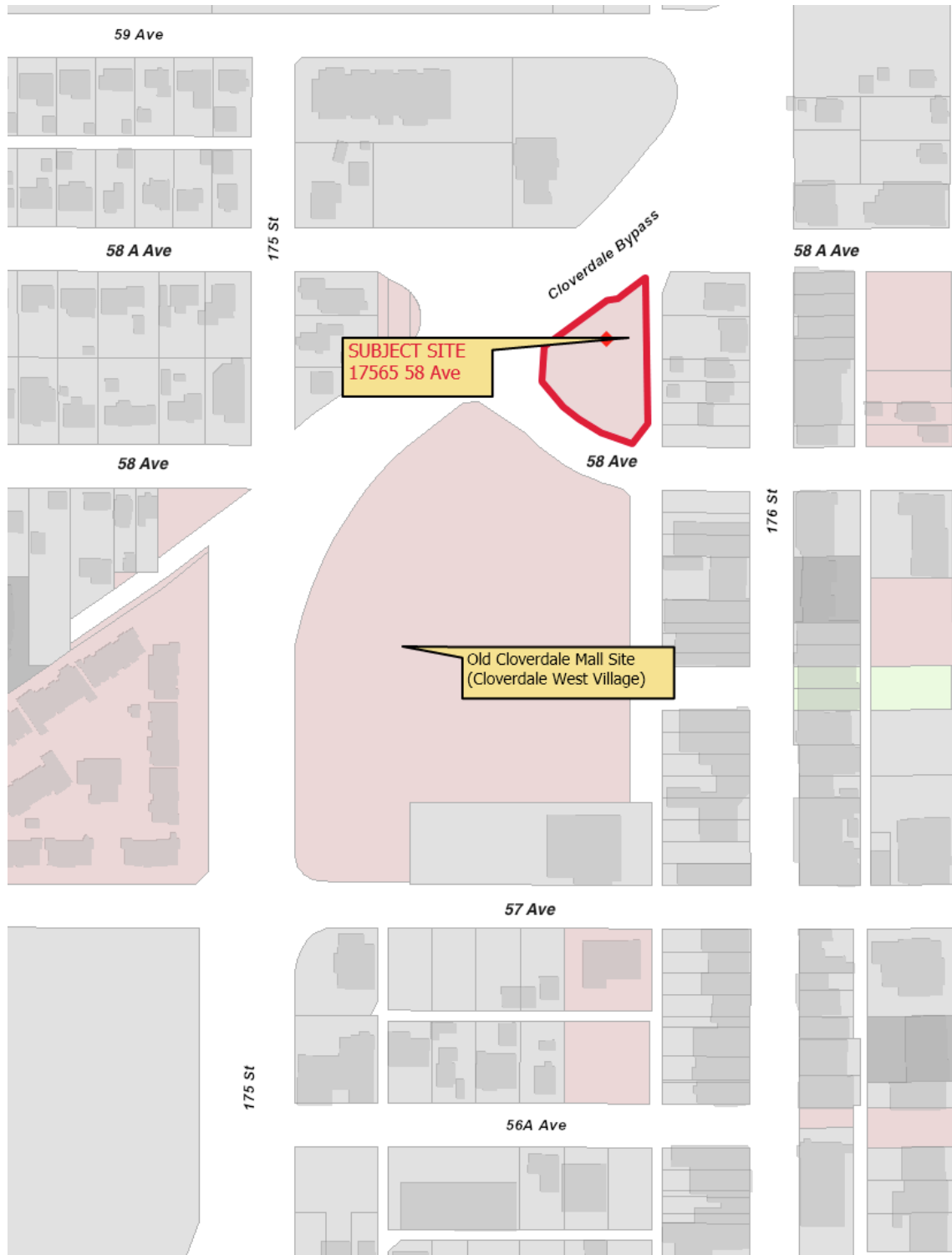
The transfer of the City-owned lot located at 17565 – 58 Avenue will support the achievement by the SCDC of its business objectives, which ultimately will serve the interests of the City in relation to both economic development and new revenue streams. On this basis, it is recommended that Council instruct City staff to take all necessary actions to transfer to the Surrey City Development Corporation the beneficial interest in the City-owned lot known as 17565 – 58 Avenue (Parcel Identifier No. 027-221-911) as illustrated in Appendix "A" attached to this report.



CRAIG MacFARLANE
City Solicitor

JIM COX
President and CEO,
Surrey City Development Corporation

Map Illustrating the Lot known as 17565 - 58 Avenue



DECLARATION OF BARE TRUST AND AGENCY AGREEMENT

THIS AGREEMENT is made effective as of the _____ day of _____, ____

BETWEEN:

CITY OF SURREY
14245 – 56th Avenue
Surrey, BC V3X 3A2

(the “**Nominee**”)

AND:

SURREY CITY DEVELOPMENT CORPORATION
Inc. #BC0789162
1870 – 13450 – 102 Avenue
Surrey, BC V3T 5X3

(the “**Beneficial Owner**”)

WHEREAS:

- A. The Nominee transfer to the Beneficial Owner effective the date of this Agreement the lands located at _____, Surrey, BC, legally described as follows:

PID: _____

(the “**Lands**”)

- B. Legal title to the Lands has been registered in the name of the Nominee and the Nominee will effective from the date of this Agreement hold legal title to the Lands, as nominee, agent and bare trustee for the sole benefit and account of the Beneficial Owner as principal and beneficial owner, in accordance with this Agreement.

THEREFORE in consideration of the premises and \$1.00 now paid by the Beneficial Owner to the Nominee, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Appointment

The Beneficial Owner hereby appoints the Nominee as its nominee, agent and bare trustee to hold legal title to the Lands for and on behalf of the Beneficial Owner in accordance with this Agreement with full power to manage and deal with the Lands and execute any instrument, documents or encumbrance in respect of the Lands for the sole benefit and account of the Beneficial Owner, all at the direction of the Beneficial Owner as principal and beneficial owner and strictly in accordance with this Agreement, and the Nominee accepts such appointment.

2. Nominee’s Agreements

The Nominee acknowledges and agrees that:

- (a) the Nominee has acquired and will hold the legal title to the Lands as nominee, agent and bare trustee for the sole benefit and account of the Beneficial Owner as principal and beneficial owner and the Nominee will have no equitable or beneficial interest in the Lands, and the equitable and beneficial interest in the Lands will be vested solely and exclusively in the Beneficial Owner;
- (b) the Nominee will hold legal title to the Lands as nominee, agent and bare trustee for the sole benefit and account of the Beneficial Owner as principal and beneficial owner subject to and in accordance with this Agreement and subject to the terms and conditions of any transfer, deed, lease, sublease, mortgage, debenture, security agreement, easement, right-of-way, licence, restrictive covenant or other instrument, documents or encumbrance pertaining to the Lands;
- (c) any benefit, interest, profit or advantage arising out of or accruing from the Lands is and will continue to be a benefit, interest, profit or advantage of the Beneficial Owner and if received by the Nominee will be received and held by the Nominee for the sole use, benefit and advantage of the Beneficial Owner and the Nominee will account to the Beneficial Owner for any money or other consideration paid to or to the order of the Nominee in connection with the Lands as directed in writing by the Beneficial Owner;
- (d) the Nominee will, upon the direction of the Beneficial Owner, deal with the Lands and do all acts and things in respect of the Lands at the expense of and as directed by the Beneficial Owner from time to time and will assign, transfer, convey, lease, mortgage, pledge, charge, or otherwise deal with the Lands or any portion of the Lands at any time and from time to time in such manner as the Beneficial Owner may determine, to the extent permitted under all relevant laws. Without limiting the generality of the foregoing, the Nominee will transfer legal title to the Lands to or as directed by the Beneficial Owner forthwith upon the written demand of the Beneficial Owner;
- (e) the Nominee will, upon and in accordance with the direction of the Beneficial Owner, act as the agent of the Beneficial Owner, as undisclosed principal, in respect of any matter relating to the Lands or the performance or observance of any contract or agreement relating to the Lands;
- (f) acting under this Agreement at the direction of the Beneficial Owner, the Nominee will have the full right and power to execute and deliver, under seal and otherwise, any transfer, deed, statement of adjustments, plan, lease, sublease, easement, right-of-way, licence, restrictive covenant, building scheme, release or other instrument or document pertaining to the Lands without delivering proof to any person (including, without limitation, any other party to any such instrument or document of the Registrar of any land title office) of its authority to do so and any person may act in reliance on any such instrument or documents and for all purposes any such instrument or documents will be binding on the Beneficial Owner;
- (g) acting under this Agreement at the direction of the Beneficial Owner, the Nominee will have the full right and power to borrow money from time to time and to covenant to repay money borrowed by the Beneficial Owner either alone or with others from time to time and to secure repayment of any and all indebtedness and liabilities with respect to any amounts so borrowed by the grant of any charge or encumbrance (both fixed and floating) on, or security interest in, the Lands or any part thereof, by way of debenture, mortgage, assignment of rents, assignment of sale proceeds, security agreement or other instrument or document without delivering proof to any person (including, without limitation, any other party to any such instrument or document of the Registrar of any land title office) of its

authority to do so and any person may act in reliance on any such instrument or document and for all purposes any such instrument or document will be binding on the Beneficial Owner;

- (h) the Nominee will not deal with the Lands in any way or execute any instrument, document or encumbrance in respect of the Lands without the prior consent or direction of the Beneficial Owner; and
- (i) the Nominee will notify the Beneficial Owner forthwith upon receipt by the Nominee of notice of any matter or thing in respect of the Lands or any portion of the Lands, including, without limitation, in respect of any tax, lien, charge or encumbrance in respect of the Lands.

3. Reimbursement of Expenses

Any payments of disbursements made by the Nominee in respect of the Lands in accordance with this Agreement will be made as the agent of and for the account of the Beneficial Owner, as principal, and the Beneficial Owner will reimburse the Nominee for any amount reasonably and properly expended by the Nominee in connection with the Lands with the consent or direction of the Beneficial Owner, but the Nominee will not receive any fee or remuneration from the Beneficial Owner for acting under this Agreement.

4. Indemnity by the Beneficial Owner

The Beneficial Owner agrees to indemnify and save harmless the Nominee and its representatives and their respective successors and assigns against any and all liabilities, demands, losses, costs, actions, proceedings, claims or expenses of whatsoever nature or kind including without limitation, any income, capital gains, land transfer, property transfer or other taxes arising out of or resulting from the Nominee's holding of title to or dealing with the Lands as directed by the Beneficial Owner from time to time, except to the extent that the same results from a dishonest, fraudulent or negligent act or omission of the Nominee or its employees or agents.

5. Notices

Any notice given pursuant to or in connection with this Agreement will be in writing and delivered personally to the party for whom it is intended to be addressed at the address of such party last known to the other party.

6. Further Assurances

The Nominee will perform all such other acts and things and execute all such other documents as are necessary or desirable in the reasonable opinion of the Beneficial Owner to evidence or carry out the terms or intent of this Agreement.

7. Gender and Number

Words importing the masculine gender include the feminine and neuter genders and words in the singular include the plural, and vice versa.

8. Governing Law

This Agreement and all matters arising under it will be governed by and construed in accordance with the laws of British Columbia, which will be deemed to be the proper law of this Agreement.

9. No Waiver

No failure or delay on the part of either party in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Except as may be limited in this Agreement, either party may, in its sole discretion, exercise any and all rights, powers, remedies and recourses available to it under this Agreement or any other remedy available to it and such rights, powers, remedies and recourses may be exercised concurrently or individually without the necessity of making any election.

10. Amendment

This Agreement may be altered or amended only by an agreement in writing signed by the parties.

11. Enurement

This Agreement enures to the benefit of and is binding upon the respective successors, legal representatives and assigns of the parties.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

CITY OF SURREY
by its authorized signatories

Dianne Watts, Mayor

Jane Sullivan, City Clerk

SURREY CITY DEVELOPMENT CORPORATION
by its authorized signatories

Jim Cox, President