

CITY OF SURREY

BYLAW NO. 19743

A bylaw 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 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 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 party:

Kelson Investments Ltd.
208 – 220 Fourth Avenue
Kamloops, BC V2C 3N5

and with respect to that certain parcels or 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: 023-684-976
Lot 2 Section 30 Block 5 North Range 1 West NWD Plan LMP31864

(14477 – 103 Avenue)

(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 "Kelson Investments Ltd. Housing Agreement Authorization Bylaw, 2018, No. 19743"

PASSED FIRST READING on the 3rd day of December, 2018.

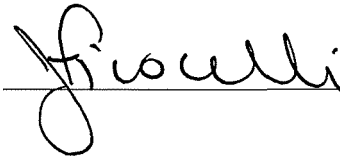
PASSED SECOND READING on the 3rd day of December, 2018.

PASSED THIRD READING on the 3rd day of December, 2018.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the 27th day of July, 2020.



MAYOR



CLERK

Schedule A

HOUSING AGREEMENT (Section 483, *Local Government Act*)

THIS AGREEMENT is made on the 27th day of July, 2020

AMONG:

KELSON INVESTMENTS LTD., a British Columbia company (Incorporation No. BC0754748), having an office at #208 – 220 Fourth Avenue, Kamloops, B.C. V2C 3N5

(the “**Owner**”)

AND:

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

(the “**City**”)

WHEREAS:

- A. The Owner is the legal and beneficial owner of the Lands (as hereinafter defined);
- B. The Owner submitted an application to the City to rezone the Lands (the “**Rezoning Application**”) from RMC-135 (Multiple Residential Commercial 135) to CD (Comprehensive Development) based on the current RM-70 (Multiple Residential 70) to permit a development on the Lands consisting of (i) one buildings (the “**Building**”) containing approximately 108 residential apartment dwelling units (collectively, the “**Market Rental Units**”) and amenity space all constructed over an underground parkade (the “**Parkade**”) and (ii) two separate building containing a combined total of 10 residential townhome dwelling units (the “**Townhomes**”), together with related improvements;
- C. The Owner must make arrangements to the satisfaction of the City to enter into a housing agreement pursuant to section 483 of the *Local Government Act* to ensure that, during the Term the Market Rental Units are used only for Market Rental Housing;
- D. Section 483 of the *Local Government Act* permits the City to enter into and, by legal notation on title, note on title to lands, housing agreements; and
- E. As a condition of the Rezoning By-law (defined herein) to permit the development of the Lands in the manner aforesaid, the Owner has agreed to enter into this Agreement with the City.

NOW THIS AGREEMENT WITNESSES that for good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge and agree to and will not be denied, the Owner and the City covenant and agree as follows:

ARTICLE I. DEFINITIONS

Section 1.01 Definitions

- (a) “**Agreement**” means this Housing Agreement;
- (b) “**Building**” has the meaning given to it in Recital B;
- (c) “**City Personnel**” means any and all of the elected and appointed officials, and officers, employees, agents, nominees, delegates, permittees, contractors subcontractors, and volunteers of the City from time to time;
- (d) “**Commencement Date**” means the date that is the first day of the month after the final inspection of the building has been issued by the City;
- (e) “**Development**” means the development of the on the Lands described in Recital B in accordance with the Development Permit;
- (f) “**Development Permit**” means any Development Permit issued by the City authorizing the Development, as amended from time to time;
- (g) “**Land Title Act**” means the *Land Title Act*, R.S.B.C., 1996, c. 250, as amended, replaced, restated, or re-enacted from time to time;
- (h) “**Lands**” means the lands and premises legally described as:
 - Parcel Identifier: 023-684-976
 - Lot 2
 - Section 30, Block 5, North Range 1
 - West New Westminster District Plan LMP31864
- (i) “**Land Title Office**” means the New Westminster Land Title Office;
- (j) “**Local Government Act**” means the *Local Government Act*, R.S.B.C. 2015, c. 1, as amended, replaced, restated, or re-enacted from time to time;
- (k) “**Market Rental Housing**” means Rental Housing that is rented at market rates, as the same may be determined from time to time by the Owner;
- (l) “**Market Rental Units**” has the meaning given to it in Recital B;
- (m) “**Notice**” has the meaning given to it in Section 2.02;
- (n) “**Occupancy Permit**” means a permit issued by the City authorizing the use and occupation of any building, development or partial development on the Lands, whether such permit is temporary, conditional or final;
- (o) “**Owner**” has the meaning ascribed to it on Page 3 hereof and such Owner’s respective successors in title from time to time as the registered or beneficial owner from time to time of any portion of the Lands;
- (p) “**Parkade**” has the meaning given to it in Recital B;

- (q) **“Rental Housing”** means a dwelling unit that is not occupied by the registered or beneficial owner of the same, but which is made available by such owner to the general public at arms’ length, for use as residential rental accommodation on a month-to-month or longer basis, excluding rentals for purposes of Tourism Accommodation (as such term is defined in the Zoning By-law) and excluding rentals for any less than 30 consecutive days, in accordance with this Agreement, reasonably prudent landlord-tenant practice for rental residential accommodation, and any and all laws applicable thereto, including, without limitation, residential tenancy and human rights legislation in British Columbia;
- (r) **“Residential Tenancy Act”** means the *Residential Tenancy Act*, S.B.C. 2002, c. 78, as amended, replaced, restated, or re-enacted from time to time;
- (s) **“Rezoning Application”** has the meaning given to it in Recital B;
- (t) **“Rezoning By-law”** means the City of Surrey Zoning Amendment Bylaw No. 11891 enacted as a result of the Rezoning Application;
- (u) **“Term”** has the meaning ascribed thereto in Section 2.01; and
- (v) **“Townhomes”** has the meaning given to it in Recital B; and
- (w) **“Zoning By-law”** means the City’s Zoning By-law 12000, as amended, replaced, or replaced from time to time.

ARTICLE II. TERM AND NOTICE

Section 2.01 Term

The term (the **“Term”**) of this Agreement will commence on the Commencement Date and will end on the earlier of (i) the date that is twenty (20) years from the date when an Occupancy Permit is issued for the originally constructed Market Rental Units.

Section 2.02 Notice of Housing Agreement

The Owner acknowledges that the City may file in the Land Title Office on title to the Lands a notice (the **“Notice”**) of this Agreement and any amendments made thereto from time to time in accordance with Section 5.07.

ARTICLE III. RESTRICTIONS ON AND CONDITIONS OF USE

Section 3.01 Owner’s Covenants

The Owner covenants and agrees that throughout the Term:

- (a) the Lands will not be used in any way that is inconsistent with the terms of this Agreement;
- (b) the Market Rental Units must be used only as Market Rental Housing in accordance with the Rezoning By-law, the Development Permit and the requirements of this Agreement;

- (c) throughout the Term, the Owner will not suffer, cause or permit the beneficial or registered title to or any interest in and to the Market Rental Units or any portion thereof, to be sold or otherwise transferred unless the transferee(s) of the registered and beneficial title or interest, as applicable to the interest transferred, prior to and as a condition of closing enters into an assumption agreement satisfactory to the City whereby such transferee agrees to be and thereafter remain bound by each and every term and condition of this Agreement applicable to the Owner;
- (d) the Owner will insure, or cause to be insured, the Building, and all parts thereof to the full replacement cost against perils normally insured against in the City by reasonable and prudent owners of similar buildings and lands;
- (e) unless and until the City consents otherwise in writing by way of an amendment to this Agreement on request of the Owner, the Owner will keep and maintain the Market Rental Units in good repair and in a safe, clean, neat and tidy condition, reasonable wear and tear excepted, and fit for human habitation and consistent with the general standards required by the *Residential Tenancy Act* and all other applicable statutes, regulations, bylaws, and rules in effect from time to time for residential rental buildings of similar age and character in the City of Surrey from time to time and will comply with the same, including health and safety standards applicable to the Market Rental Units; and
- (f) except as contemplated in Section 2.01, the Owner will not demolish the Building or any portion thereof without the prior written consent of the City and, in any case, without a demolition permit therefor issued by the City in the City's sole discretion.

ARTICLE IV. INDEMNITY, RELEASE, DEFAULT AND REMEDIES

Section 4.01 Indemnity

The Owner will and does hereby indemnify and save harmless the City and the City Personnel of and from all claims, demands, actions, 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 reasons of or arising out of failure of the Owner to comply with the terms and conditions of this Agreement.

Section 4.02 Release

Provided that the City is in compliance with the terms and conditions of this Agreement, the Owner hereby releases and forever discharges the City and the City Personnel of and from any and all claims, demands, actions, damages, economic loss, costs and liabilities which the Covenantor now has or hereafter may have with respect to or by reasons of or arising out of the fact that the Lands are encumbered by this Agreement.

Section 4.03 Remedies

The Owner covenants and agrees with the City that, in addition to any other remedies available to the City under this Agreement or at law or equity, if the Owner materially defaults under the terms of this Agreement, including without limitation omitting, failing or

neglecting to carry out any of its material obligations contained in this Agreement and doing or carrying out a material act contrary to the Owner's obligations contained in this Agreement:

- (a) the Owner shall rectify such material default within 45 days after receipt of written notice of such material default to the Owner by the City;
- (b) if the Owner fails to take such positive action as the City considers necessary to rectify any material default as provided for herein, the City may apply to court for a mandatory or prohibitive order requiring the Owner to take such action; and
- (c) the Owner shall pay to the City, on written demand, the costs (including actual solicitor's fees, disbursements and taxes thereon) incurred by the City to obtain a court order pursuant to Section 4.03(b), and if the Owner fails to pay such amounts to the City within 30 days from the date the Owner receives any such written demand from the City, any and all arrears will bear interest from the date of demand to the date of payment at the prime rate of the Royal Bank of Canada plus 3% per annum.

Section 4.04 Survival of Release and Indemnity

The release and indemnity in this Article IV will remain effective, and will survive any modification, discharge or partial discharge of any or all of the covenants created by this Agreement, and the termination of this Agreement, whether by fulfillment of the covenants contained in this Agreement or otherwise.

ARTICLE V. GENERAL PROVISIONS

Section 5.01 Interpretation.

In this Agreement:

- (a) Any reference to a party herein will be deemed to include the heirs, executors, administrators, successors, assigns, employees, servants, agents, officers, contractors, licensees and invitees of such parties wherever the context so permits or requires.
- (b) Wherever the singular or masculine or neuter is used in this Agreement, the same will be construed to mean the plural or the feminine or body corporate or politic, and vice versa as the context or the parties so require.
- (c) The captions and headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any of the provisions hereof.
- (d) References to the or this "Agreement" and the words "hereof", "herein" and similar words refer to this Agreement as a whole and not to any section or subsection or other subdivision hereof and any reference in this Agreement to a designated Recital, Article, Section, subsection or other subdivision is a reference to the designated Recital, Article, Section, subsection or subdivision hereof.

Section 5.02 Records

The Owner will keep accurate records pertaining to the use and occupancy of the Market Rental Units as necessary to reasonably demonstrate compliance by the Owner with the requirements of this Agreement, such records to be to the satisfaction of the City, acting reasonably. At the request of the City, from time to time, the Owner will make such records available for inspection and copying by the City. The City will comply with the Owner's statutory obligations with respect to privacy of such information.

Section 5.03 Legislation.

Any reference to a law or statute herein includes and is a reference to such law or statute and to the regulations made pursuant thereto, with all amendments made thereto and as in force from time to time, and to any law or statute or applicable regulation amending, replacing, or superseding any of the same.

Section 5.04 Time.

Time shall be of the essence of this Agreement and each part of it. If any party expressly or impliedly waives this requirement, that part may reinstate it by delivering notice to the other party(ies). If a time is specified in this Agreement for observing or performing any obligation, such time shall be Pacific Standard Time.

Section 5.05 No Effect on Rights.

Nothing contained or implied herein will prejudice the rights and powers of the City in the exercise of its functions under any public and private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and this Agreement does not impose on the City any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement, nor does this Agreement relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Lands.

Section 5.06 Benefit of City.

The City is a party to this Agreement for the purpose only of receiving the covenants, promises and agreements as provided in the terms of this Agreement and is not intended to protect the interests of the Owner, any tenant, or any future owner, lessee, occupier or user of the Lands, the Building, including the Market Rental Units or any portion thereof, and the City may at any time execute a release for the discharge of the Notice of this Agreement without liability to anyone for doing so, and without obtaining the consent of the Owner.

Section 5.07 Agreement Runs with the Lands.

Following the filing of the Notice in the Land Title Office, this Agreement and, if applicable, any amendments thereto, will be binding on all persons who acquire an interest in the land affected by this Agreement, as amended if applicable. It is further expressly agreed that this Agreement may be modified or amended from time to time, by

consent of the Owner and a bylaw duly passed by City Council and thereafter if an amendment is signed by the City and the Owner.

Section 5.08 Limitation on Owner's Obligations.

The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered and/or beneficial owner of the Lands or such applicable portions thereof, provided however that notwithstanding that the Owner is no longer the registered nor beneficial owner of the Lands or any portion thereof, the Owner will remain liable for breaches of this Agreement that occurred while the Owner was the registered and/or beneficial owner of the Lands or such portions thereof, as the case may be.

Section 5.09 Partial Discharge.

The Owner and the City acknowledge and agree that this Agreement and the Notice are only intended to apply to the Market Rental Units and not to any commercial space in the Building, the Townhomes, or the Parkade. The City covenants and agrees that concurrently with the registration of any subdivision plan (including an airspace subdivision plan, or a strata plans pursuant to the *Strata Property Act* (British Columbia)) that creates a separate legal parcel or parcels for any of the Building, the Townhomes, or the Parkade, the City will execute in registrable form and deliver to the Owner for filing in the applicable land title office, a discharge of this Agreement and the Notice from title to the parcel so created that does not include any of the Market Rental Units or any portion thereof.

Section 5.10 Enurement.

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

Section 5.11 Further Assurances.

The parties will do and cause to be done all things and execute and cause to be executed all documents which may be necessary to give proper effect to the intention of this Agreement.

Section 5.12 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.

Section 5.13 Severability.

If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, 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.

Section 5.14 Waiver.

An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach in respect of which the waiver is asserted. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.

Section 5.15 No Fiduciary Relationship.

Nothing contained in this Agreement will be deemed in any way, or for any purpose, to constitute the City a partner, agent or legal representative of the Owner in the conduct of any business or otherwise, or a member of a joint venture or joint enterprise with the Owner, or to create any fiduciary relationship between the City and the Owner.

Section 5.16 Joint and Several.

If the Owner consists of more than one person, firm, or corporation, from time to time, the Owner's obligations under this Agreement shall be joint and several.

Section 5.17 Survival.

Notwithstanding anything contained herein, the Owner covenants and agrees that the obligations of the Owner, including without limitation those set out in Article IV, shall survive termination or release of this Agreement.

Section 5.18 Notice.

Whenever it is required or desired that either party will deliver or serve a notice on the other, delivery or service will be deemed to be satisfactory if and deemed to have occurred when:

- (a) the Clerk of the City or the Owner, or its successor in title, or a director of the Owner or successor in title, if applicable, has been served personally, on the date of service; or
- (b) mailed by prepaid registered mail, on the date received or on the sixth day after receipt of mailing by any Canada Post office, whichever is the earlier, so long as the notice is mailed to, in the case of the City, at the address provided in this Agreement, or in the case of the Owner, or its successor in title, at the address noted on the Certificate of Title for the Lands, or to whatever address a party may from time to time provide to the other party.

Section 5.19 Owner's Representations and Warranties.

The Owner represents and warrants to and covenants and agrees with the City that:

- (a) the Owner has the full and complete power, authority, and capacity to enter into, execute, and deliver this Agreement and the bind all legal and beneficial interests in the title to the Lands with the interests in lands created hereby;


- (b) upon execution and delivery of this Agreement and the filing of the Notice, the interests in land created hereby will encumber all legal and beneficial interests to the title to the Lands;
- (c) this Agreement will be fully and completely binding upon the Owner in accordance with its terms and the Owner will perform all of its obligations under this Agreement in accordance with its terms; and
- (d) the foregoing representations, warranties, covenants, and agreements will have force and effect notwithstanding any knowledge on the part of the City whether actual or constructive concerning the status of the Owner with regard to the Lands or any other matter whatsoever.

Section 5.20 Counterparts.

This Agreement may be executed and delivered by the parties hereto in one or more counterparts.


IN WITNESS WHEREOF, each of the parties has duly executed this Agreement on the Form C – General Instrument to which this Agreement is attached as of the date first written above.

KELSON INVESTMENTS LTD., by its authorized signatory:


Name: Jason Farwell
Title: Vice President

Name:
Title:

CITY OF SURREY, by its authorized signatories:


Name: DOUG MCCALLUM
Title: MAYOR


Name: Jennifer Ficocelli
Title: CITY CLERK