

CITY OF KELOWNA

BYLAW NO. 11854

Amendment No. 6 to Revitalization Tax Exemption Program Bylaw No. 9561

The Municipal Council of the City of Kelowna, in open meeting assembled, enacts that the City of Kelowna Revitalization Tax Exemption Bylaw No. 9561 be amended as follows:

1. THAT Section 5, sub-paragraph e be deleted that reads:

"For Purpose-Built Rental Housing Projects throughout the City, 100% of the Revitalization Amount on the parcel, for projects that are subject to a Housing Agreement (for up to 10 years) and are in compliance with the OCP Future Land Use designation as at May 30, 2011. A tax incentive for rental housing will only be considered when the vacancy rate is at or below 3%,"

And replace it with:

"For Purpose-Built Rental Housing Projects throughout the City, 100% of the Revitalization Amount on the parcel, for projects that are subject to a Housing Agreement (for up to 10 years) and where the proposed project is in compliance with the Official Community Plan Future Land Use designation at the time of the Revitalization Tax Exemption application. A tax incentive for rental housing will only be considered when the vacancy rate is at or below 3%";

2. AND THAT Section 6., be amend by:

- a) deleting in sub-paragraph c "\$300.000.00" and replacing it with "\$300,000.00";
- b) deleting in sub-paragraph d and f the words "Kelowna 2030 Offical Community Plan Bylaw No. 10500" and replacing it with "Offical Community Plan";

3. AND THAT Section 11 be amended by deleting the title "Urban Planning Manager" and replace it with "Development Planning Manager";

4. AND THAT Section 16 be amended by deleting the title "Revenue Manager" and replacing it with "Director of Financial Services";

5. AND THAT **Schedule B Revitalization Tax Exemption Agreement** be deleted in its entirety and replaced with a new **Schedule B Revitalization Tax Exemption Agreement** as attached to and forming part of this bylaw;

6. AND THAT the title in that reads in Schedule C "**Tax Exemption Certificate**" be deleted and replaced with the following new title in Schedule C:

Revitalization Tax Exemption Agreement No. _____

Date of Issuance by Revenue Department _____

Tax Exemption Certificate

6. This bylaw may be cited for all purposes as "Bylaw No. 11854, being Amendment No. 6 to Revitalization Tax Exemption Program Bylaw No. 9561."
7. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first, second and third time by the Municipal Council this

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

SCHEDULE "B"
Revitalization Tax Exemption Agreement

THIS AGREEMENT dated for reference the ____ day of _____, 20____ is

BETWEEN:

XXXX
(the "Owner")

AND:

CITY OF KELOWNA
1435 Water Street,
Kelowna, B.C.
V1Y 1J4

(the "City")

GIVEN THAT:

- A. The Owner is the registered owner in fee simple of lands in the City of Kelowna at *[civic address]* legally described as *[legal description]* (the "Parcel");
- B. Council has established a revitalization tax exemption program and has included within the City of Kelowna Revitalization Tax Exemption Program Bylaw No. 9561 the designation of areas which include the Parcel as a revitalization area; and
- C. The Owner proposes to construct new improvements *[or alter existing improvements]* on the Parcel as described in Appendix "A" attached to and forming part of this agreement (the "Project") and has applied to the City to take part in the revitalization tax exemption program in respect of the Project and the City has agreed to accept the Project under the program;

THIS AGREEMENT is evidence that in consideration of the promises exchanged below, the Owner and the City covenant and agree each with the other as follows:

- 1. **The Project** – the Owner will use its best efforts to ensure that the Project is constructed, maintained, operated and used in a fashion that will be consistent with and will foster the objectives of the revitalization tax exemption program, as outlined in the City of Kelowna Revitalization Tax Exemption Program Bylaw No. 9561. Without limiting the generality of the foregoing, the Owner covenants to use its best efforts to ensure that the Project will:
 - a.
 - b.
 - c.
- 2. **Operation and Maintenance of the Project** – throughout the term of this agreement, the Owner shall operate, repair and maintain the Project and will keep the Project in a state of good repair as a prudent owner would do.
- 3. **Revitalization Amount** – In this agreement, "**Revitalization Amount**" means the municipal portion of property tax calculated in relation to the increase in the assessed value of improvements on the Parcel resulting from the construction of the Project as described in section 1;
- 4. **Revitalization Tax Exemption** – subject to fulfilment of the conditions set out in this agreement and in "City of Kelowna Revitalization Tax Exemption Program Bylaw No. 9561", the City shall issue a

revitalization tax exemption certificate (the "Tax Exemption Certificate") to the British Columbia Assessment Authority entitling the Owner to a property tax exemption in respect of the property taxes due (not including local service taxes) in relation to the Revitalization Amount on the Parcel (the "Tax Exemption") for the calendar year(s) set out in the Tax Exemption Certificate .

5. **Conditions** – the following conditions shall be fulfilled before the City will issue a Tax Exemption Certificate to the Owner in respect of the Project:
 - a. The Owner must complete or cause to be completed construction of the Project in a good and workmanlike fashion and in strict compliance with the building permit and the plans and specifications attached hereto as Appendix "A";
 - b. The completed Project must substantially satisfy the performance criteria set out in Appendix "B" hereto, as determined by the City's Development Planning Manager or designate, in their sole discretion, acting reasonably; and
 - c. The Owner must submit a copy of the Occupancy Permit and Title Certificate to the City of Kelowna's Revenue Branch within 48 months from the date the Agreement is executed by Council.
6. **Calculation of Revitalization Tax Exemption** – the amount of the Tax Exemption shall be equal to *[choose one from below and insert applicable wording]*:
 - a. For "Tax Incentive Area 1", 100% of the Revitalization Amount on the Parcel;
 - b. For "Tax Incentive Area 2,"
 - i. 100% of the Revitalization Amount on the Parcel, for a project with a minimum floor area of 3,716 m² (40,000 sq. ft.);
 - ii. 75% of the Revitalization Amount on the Parcel which can be attributed to a residential land use, and/or 50% of the Revitalization Amount on the Parcel which can be attributed to a commercial land use, for a project with a minimum floor area of less than 3,716 m² (40,000 sq. ft.);
 - c. [deleted]
 - d. For "Tax Incentive Area 3," 100% of the Revitalization Amount on the Parcel;
 - e. For Purpose-Built Rental Housing Projects throughout the City, 100% of the Revitalization Amount on the Parcel where the project is subject to a Housing Agreement (for up to 10 years) and is in compliance with the OCP Future Land Use designation as at May 30, 2011. A tax incentive for rental housing will only be considered when the vacancy rate is at or below 3%;
7. **Term of Tax Exemption** – provided the requirements of this agreement, and of the City of Kelowna Revitalization Tax Exemption Program Bylaw No. 9561, are met the Tax Exemption shall be for 10 years after the BC Assessment Authority validates the Tax Exemption Certificate issued by the City of Kelowna's Revenue Branch.,
8. **Compliance with Laws** – the Owner shall construct the Project and, at all times during the term of the Tax Exemption or any renewal term, use and occupy the Parcel and the Project in compliance with all statutes, laws, regulations and orders of any authority having jurisdiction and, without limiting the generality of the foregoing, all federal, provincial, or municipal laws or statutes or bylaws, including all the rules regulations policies guidelines criteria or the like made under or pursuant to any such laws.

9. **Effect of Stratification** – if the Owner stratifies the Parcel under the Strata Property Act, then the Tax Exemption shall be prorated among the strata lots in accordance with the unit entitlement of each strata lot for:
- a. the current and each subsequent tax year during the currency of this agreement if the strata plan is accepted for registration at the Land Title Office before May 1; or
 - b. for the next calendar year and each subsequent tax year during the currency of this agreement if the strata plan is accepted for registration at the Land Title Office after May 1;

so long as, if the Project is the subject of an operating agreement between the Owner and the Provincial Rental Housing Corporation, the Owner is in compliance with the operating agreement. The Owner agrees to provide written confirmation to the City regarding the Owner's compliance with the said operating agreement, satisfactory to the City, upon the City's reasonable inquiry.

10. **Termination of the agreement** - the revitalization tax exemption agreement will be valid for 48 months from the date the agreement is executed by Council. If the conditions for issuance of a Tax Exemption Certificate have not been met during this term, the owner may request a renewal term to this agreement or the agreement will be terminated.
11. **Cancellation** – the City may in its sole discretion cancel the Tax Exemption Certificate at any time:
- a. on the written request of the Owner; or
 - b. effective immediately upon delivery of a notice of cancellation to the Owner if at any time any of the conditions in the Tax Exemption Certificate are not met.
 - c. If the Owner is subject to an operating agreement with the Provincial Rental Housing Corporation and is not in compliance with the operating agreement.

If such cancellation occurs, the Owner of the Parcel for which the Tax Exemption Certificate was issued will remit to the City an amount equal to the value of any Tax Exemption received after the cancellation of the Tax Exemption Certificate.

12. **No Refund** – for greater certainty, under no circumstances will the Owner be entitled under the City's revitalization tax exemption program to any cash credit, any carry forward tax exemption credit or any refund for any property taxes paid.
13. **Notices** – any notice or other writing required or permitted to be given hereunder or for the purposes hereof to any party shall be sufficiently given if delivered by hand or posted on the Parcel, or if sent by prepaid registered mail (Express Post) or if transmitted by facsimile to such party:
- a. in the case of a notice to the City, at:

THE CITY OF KELOWNA
1435 Water Street,
Kelowna, B.C.
V1Y 1J4

Attention:
Phone: Email:

b. in the case of a notice to the Owner, at:

[Insert name and address of owner]

Attention:

Phone:

Email:

Or at such other address as the party to whom such notice or other writing is to be given shall have last notified the party giving the same.

14. **No Assignment** – the Owner shall not assign its interest in this agreement except to a subsequent owner in fee simple of the Parcel.
15. **Severance** – if any portion of this agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this agreement.
16. **Interpretation** – wherever the singular or masculine is used in this agreement, the same shall be construed as meaning the plural, the feminine or body corporate where the context or the parties thereto so require.
17. **Further Assurances** – the parties hereto shall execute and do all such further deeds, acts, things and assurances that may be reasonably required to carry out the intent of this agreement.
18. **Waiver** – waiver by the City of a default by the Owner shall be in writing and shall not be deemed to be a waiver of any subsequent or other default.
19. **Powers Preserved** – this agreement does not:
 - a. Affect or limit the discretion, rights or powers of the City under any enactment or at common law, including in relation to the use or subdivision of the Parcel;
 - b. Affect or limit any enactment relating to the use or subdivision of the Parcel; or
 - c. Relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Parcel and without limitation shall not confer directly or indirectly any exemption or right of set-off from development cost charges, connection charges, application fees, user fees or other rates, levies or charges payable under any bylaw of the City.
20. **Reference** – every reference to each party is deemed to include the heirs, executors, administrators, personal representatives, successors, assigns, servants, employees, agents, contractors, officers, licensees and invitees of such party, wherever the context so requires or allows.
21. **Enurement** – this agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
22. Any construction of a new improvement or alteration of an existing improvement as of this bylaw undertaken prior to the application for a Revitalization Tax Exemption will not be eligible for consideration
23. The maximum Revitalization Tax Exemption authorized under this Bylaw must not exceed the Revitalization Amount on the Property between:
 - a. the calendar year before the construction or alteration began, as outlined under Section 1 of this agreement; and

- a. the calendar year in which the construction or alteration, as outlined under Section 1 of this agreement, is completed.
24. The Property's assessed value of improvements must not be reduced below the amount assessed in the calendar year prior to construction or alteration, as a result of the Revitalization Tax Exemption.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the day and year first above written.

Executed by the CITY OF KELOWNA by
Its authorized signatories:

Mayor

City Clerk

Executed by _____ by its
Authorized signatories:

Name:

Name:
Appendix "A": Plans and Specifications
Appendix "B": Performance Criteria