RTE17-0010

SCHEDULE "B"
Revitalization Tax Exemption Agreement

THIS AGREEMENT dated for reference the 28th day of February, 2019 is

BETWEEN:

0904419 BC Ltd.
2000-77 Blooor Street West
Toronto, Ontario
M5S 1M2
(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 773 Glenmore Road legally described as Lot B Section 29 Township 26 Osoyoos Division Yale District Plan EP54061 (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. Provide additional 87 rental apartment units in a 4 storey building with 2 levels below grade parking

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 this agreement.

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 obtain a building permit from the City for the Project on or before July 1, 2017;

   b. 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" and the Project must be officially opened for use as *purpose-built renal housing* (the "Exempt Use") and for no other use, by no later than July 15, 2019;

   c. The Owner must submit a copy of the Occupancy Permit and Revitalization Tax Exemption Agreement to the City of Kelowna's Revenue Branch before the City will issue the Tax Exemption Certificate.

   d. The completed Project must substantially satisfy the performance criteria set out in Appendix "B" hereto, as determined by the City's Urban Planning Manager or designate, in their sole discretion, acting reasonably.

6. **Calculation of Calculation of Revitalization Tax Exemption** – the amount of the Tax Exemption shall be equal to:

   a) 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 the taxation years 2020 to 2029, inclusive.

8. **[deleted]**

9. **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.

10. **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.

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: Kelowna Revenue Branch
    250-469-8452
    Fax:

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

    0904419 BC Ltd.
    2000-77 Bloor Street West
    Toronto, ON
    M5S 1M2

    Attention: Matthew German
    Email: matthew.german@realstar.ca

    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

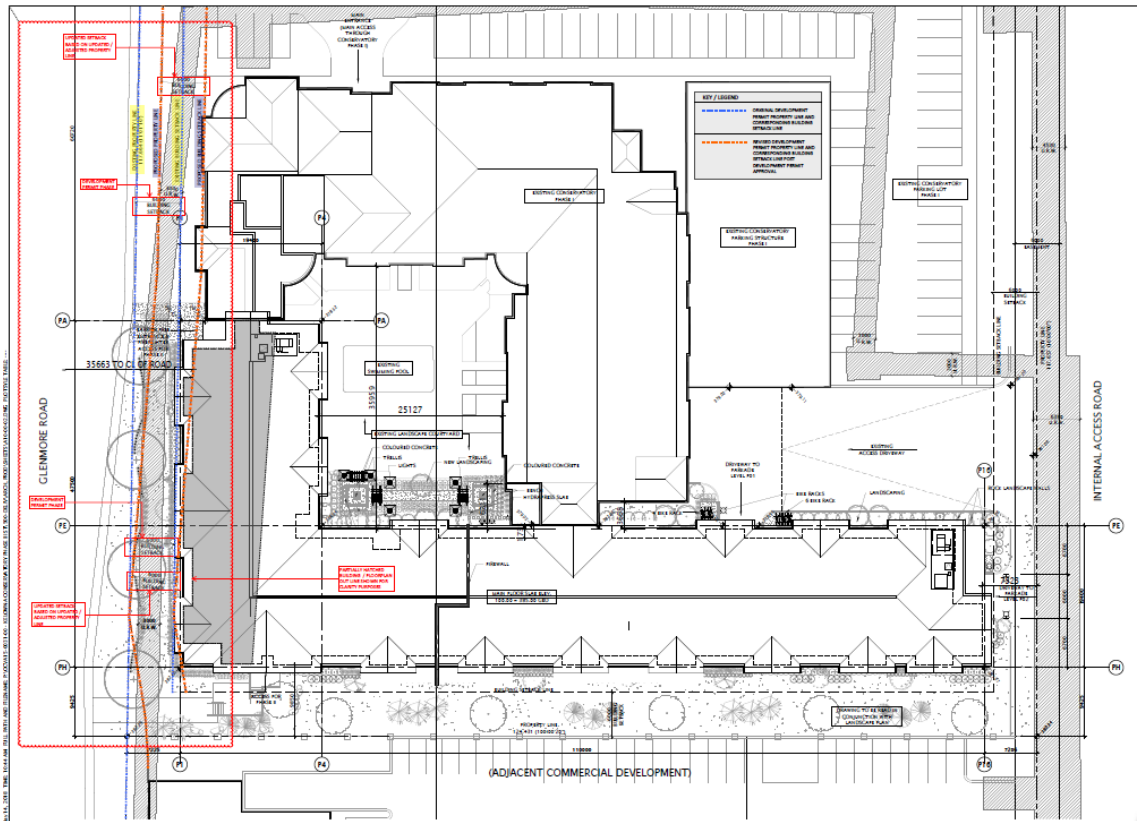
Executed by 0904419 BC Ltd. by its
Authorized signatories:

Name: G. Wayne Squibb

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

Appendix "A" RTE17-0010





Appendix "B" RTE17-0010

PURPOSE-BUILT RENTAL HOUSING AGREEMENT

THIS AGREEMENT dated for reference February 28, 2019 affects:

LEGAL DESCRIPTION OF PROPERTY SUBJECT TO THE AGREEMENT:

Lot 1 Section 29 Township 26 ODYD Plan EPP54061

("Land")

And is

BETWEEN: 0904419 B.C. Ltd.
2000 - 77 Bloor Street West
Toronto, ON
M5S 1M2

("Owner")

AND:

CITY OF KELOWNA, a local government incorporated pursuant to the *Community Charter* and having its offices at 1435 Water Street, Kelowna, B.C. V1Y 1J4

("City")

GIVEN THAT:

A. The Owner has applied to the City for rezoning of the Lands to permit the construction of a housing complex that will include purpose-built rental housing units, as defined in this Agreement, on certain lands more particularly described in this Agreement;

B. The City may, pursuant to section 483 of the *Local Government Act*, enter into an agreement with an owner of land that includes terms and conditions regarding the occupancy, tenure, and availability of the housing units on the land or construction on land;

C. The Owner and the City wish to enter into this Agreement to provide for purpose-built rental housing on the terms and conditions set out in this Agreement, and agree that this Agreement is a housing agreement under s. 483 of the *Local Government Act*; and

D. The City has, by bylaw, authorized the execution of this Agreement and the Owner has duly authorized the execution of this Agreement;

This Agreement is evidence that in consideration of $1.00 paid by the City to the Owner (the receipt of which is acknowledged by the Owner) and in consideration of the promises exchanged below, the City and Owner agree, as a housing agreement between the Owner and the City under s. 483 of the *Local Government Act*, as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions -

"Caregiver" means an individual who provides assistance with the performance of the personal functions and activities necessary for daily living that a person is unable to perform efficiently for himself or herself;

"City" means the City of Kelowna;

"Dwelling Unit" means accommodation providing sleeping rooms, washrooms, and no more than one kitchen, intended for domestic use, and used or intended to be used permanently or semi-permanently for a Household. This use does not include a room in a hotel or a motel.

"Household" means

(a) a person;

(b) two or more persons related by blood, marriage, or adoption; or associated through foster care, all living together in one dwelling unit as a single household using common cooking facilities;

(c) a group of not more than five persons, including boarders, who are not related by blood, marriage, or adoption, or associated through foster care, all living together in one dwelling unit as a single household using common cooking facilities; or

(d) a combination of (b) and (c), provided that the combined total does not include more than 3 persons unrelated by blood, marriage or adoption or associated through foster care; all living together in one dwelling unit as a single household using common cooking facilities.

In addition, a household may also include up to one Caregiver or nanny;

"Land" means the land described herein;

"LTO" means the Kamloops Land Title Office or its successor;

"Official Community Plan" means the City of Kelowna Official Community Plan Bylaw No. 10500, or its successor bylaw;

"Owner" means the registered owner of the Lands from time to time and any parcels into which the Lands are subdivided;

"Purpose-Built Rental Housing" means a Dwelling Unit that is intended to be used for rental housing; and

"Tenancy Agreement" means a tenancy agreement as defined in, and subject to, the *Residential Tenancy Act*.

1.2 Interpretation - In this Agreement:

(a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;

(b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;

(c) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;

(d) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;

(e) the word "enactment" has the meaning given in the *Interpretation Act* on the reference date of this Agreement;

(f) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;

(g) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;

(h) the provisions of s. 25 of the *Interpretation Act* with respect to the calculation of time apply;

(i) time is of the essence;

(j) all provisions are to be interpreted as always speaking;

(k) reference to a "party" is a reference to a party to this Agreement and to their respective successors, assigns, trustees, administrators and receivers;

(l) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided;

(m) the definitions given in the City of Kelowna Zoning Bylaw No. 8000, or its successor bylaw, and the Official Community Plan apply for the purposes of this Agreement; and

(n) any act, decision, determination, consideration, consent or exercise of discretion by a party, or other person, as provided in this Agreement will be performed, made or exercised acting reasonably.

1.3 Purpose of Agreement - The Owner and the City agree that:

(a) this Agreement is intended to serve the public interest by providing for occupancy of a certain number of Dwelling Units, of the kinds provided for in this Agreement, that are in demand in the City of Kelowna but that are not readily available;

(b) damages are not an adequate remedy to the City in respect of any breach of this Agreement by the Owner, such that the Owner agrees the City should be entitled to an order for specific performance, injunction or other specific relief respecting any breach of this Agreement by the Owner.

ARTICLE 2
HOUSING AGREEMENT AND LAND USE RESTRICTIONS

2.1 Land Use Restrictions - The Owner and the City herby covenant and agree as follows:

(a) The Land will be used only in accordance with this Agreement;

(b) The Owner will design, construct and maintain one or more buildings providing 87 Dwelling Units as Purpose-Built Rental Housing

(c) The Owner acknowledges that the City will not support applications to stratify the building(s) on the Land, thereby allowing the identified Purpose-Built Rental Housing Dwelling Units to be sold independently of each other, for a period of ten (10) years from the date of this Agreement.

ARTICLE 3
HOUSING AGREEMENT AND TRANSFER RESTRICTIONS

3.1 Purchaser Qualifications - The City and the Owner agree as follows:

(a) the Owner will not sell or transfer, or agree to sell or transfer, any interest in any building containing Purpose-Built Rental Housing Dwelling Units on the Land other than a full interest in the fee simple title to an agency or individual that will continue to ensure that the Purpose-Built Rental Housing Dwelling Units are available in accordance with this Agreement.

3.2 Use and Occupancy of Purpose-Built Rental Housing Dwelling Unit - The Owner agrees with the City as follows:

(a) the Owner will rent or lease each Purpose-Built Rental Housing Dwelling Unit on the Land in accordance with the *Residential Tenancy Act*, and in no event may the Owner itself occupy a Purpose-Built Rental Housing Dwelling Unit or use the Purpose-Built Rental Housing Dwelling Unit for short-term vacation accommodation; and

(b) the Owner will deliver a copy of the Tenancy Agreement for each Purpose-Built Rental Housing Dwelling Unit to the City upon demand.

ARTICLE 4
GENERAL

4.1 Notice of Housing Agreement - For clarity, the Owner acknowledges and agrees that:

(a) this Agreement constitutes a housing agreement entered into under s. 483 of the *Local Government Act;*

(b) the City is requiring the Owner to file a notice of housing agreement in the LTO against title to the Land;

(c) once such a notice is filed, this Agreement binds all persons who acquire an interest in the Land;

(d) in the event the parties agree to release this Agreement from the title of the Land, which may not occur before the tenth (10th) anniversary of the date of this Agreement, the Owner will repay the City for 100% of the amount of the rental grant received from the City. Such repaid funds will be directed to the City's Housing Opportunities Reserve Fund.

4.2 No Effect On Laws or Powers - This Agreement does not

(a) affect or limit the discretion, rights, duties or powers of the City under any enactment or at common law, including in relation to the use or subdivision of land,

(b) 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,

(c) affect or limit any enactment relating to the use or subdivision of land, or

(d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of land.

4.3 Management – The Owner covenants and agrees that it will furnish good and efficient management of the Dwelling Units and will permit representatives of the City to inspect the Dwelling Units at any reasonable time, subject to the notice provisions of the *Residential Tenancy Act.* The Owner further covenants and agrees that it will maintain the Dwelling Units in a satisfactory state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Land. Notwithstanding the foregoing, the Owner acknowledges and agrees that the City, in its absolute discretion, may require the Owner, at the Owner's expense, to hire a person or company with the skill and expertise to manage the Dwelling Units.

4.4 Notice - Any notice which may be or is required to be given under this Agreement will be in writing and either be delivered or sent by facsimile transmission. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery. Any notice which is sent by fax transmission is to be considered to have been given on the first business day after it is sent. If a party changes its address or facsimile number, or both, it will promptly give notice of its new address or facsimile number, or both, to the other party as provided in this section.

4.5 Agreement Runs With the Land - Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted by the Owner to the City in respect of the Land and this Agreement burdens the Land and runs with it and binds the Owner's successors in title and binds every parcel into which it is consolidated or subdivided by any means, including by subdivision or by strata plan under the *Strata Property Act.*

4.6 Limitation on Owner's Obligations - The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Land.

4.7 Release – The Owner by this Agreement releases and forever discharges the City and each of its elected

officials, officers, directors, employees and agents, and its and their heirs, executors, administrators, personal representatives, successors, and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of advice or direction respecting the ownership, lease, operation or management of the Land or the Dwelling Units which has been or at any time after the commencement of this Agreement may be given to the Owner by all or any of them. This clause will survive the termination of this Agreement.

4.8 **Joint Venture** – Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the City or give the Owner any authority to bind the City in any way.

4.9 **Waiver** - An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.

4.10 **Further Acts** - The Owner will do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.

4.11 **Severance** - 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.

4.12 **Equitable Remedies** – The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement.

4.13 **No Other Agreements** - This Agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other agreements and arrangements regarding its subject.

4.14 **Amendment** - This Agreement may be discharged, amended or affected only by an instrument duly executed by both the Owner and the City.

4.15 **Enurement** - This Agreement binds the parties to it and their respective successors, heirs, executors and administrators. Reference in this Agreement to the "City" is a reference also to the elected and appointed officials, employees and agents of the City.

416 **Deed and Contract** - By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

IN WITNESS WHEREOF the parties hereunto have executed this Agreement on the date and year first above written.

SIGNED, SEALED & DELIVERED in the presence of:

Signature of Witness

Print Name

Address

Occupation

"OWNER" 090419 B.C. Ltd.
by its authorized signatories:

per:

Print Name: Geoffrey Wayne Squibb, President

Print Name:

SIGNED, SEALED & DELIVERED in the presence of:

Signature of Witness

Pamela Munholland
Print Name

1435 Water St
Address Kelowna, B.C.

Legislative Services Clerk
Occupation

CITY OF KELOWNA
by its authorized signatories:

Mayor
Colin Basran, MAYOR

City Clerk
Karen Needham,
Deputy City Clerk