

RTE19-0003

Revitalization Tax Exemption Agreement

THIS AGREEMENT dated for reference the 11th day of November, 2019 is

BETWEEN:

SIMPLE PURSUITS INC.

340 West Avenue
Kelowna, BC
V1Y 4Z1

(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 2080 Benvoulin Court, Kelowna, BC legally described as PID: 027-080-153, Lot B District Lot 128 ODYD Plan KAP83889 (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 82 reasonably priced long term rental units; and
 - (b) Managed and run in a responsible way to create an overall benefit to the neighbourhood.
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:
 - (a) For Purpose-Built Rental Housing Projects within the Core Area, Glenmore Valley Village Centre and University South Village Centre as defined by the OCP, 100% of the Revitalization Amount on the parcel, for projects that are subject to a Housing Agreement (for a minimum of 10 years) and where the proposed project is in compliance with the OCP Future Land Use designation at the time of Revitalization Tax Exemption application.
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 electronic means to such party:

(a) in the case of a notice to the City, at:

THE CITY OF KELOWNA
1435 Water Street
Kelowna, BC
V1Y 1J4

Attention: Revenue Branch
Phone: 250-469-8757
Email: revenue@kelowna.ca

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

SIMPLE PURSUITS INC.
340 West Avenue
Kelowna, BC
V1Y 4Z1

Attention: Shane Worman
Phone: 250-762-0040
Email: Shane@Worman.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
 - (b) 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 SIMPLE PURSUITS INC. by its Authorized signatory:



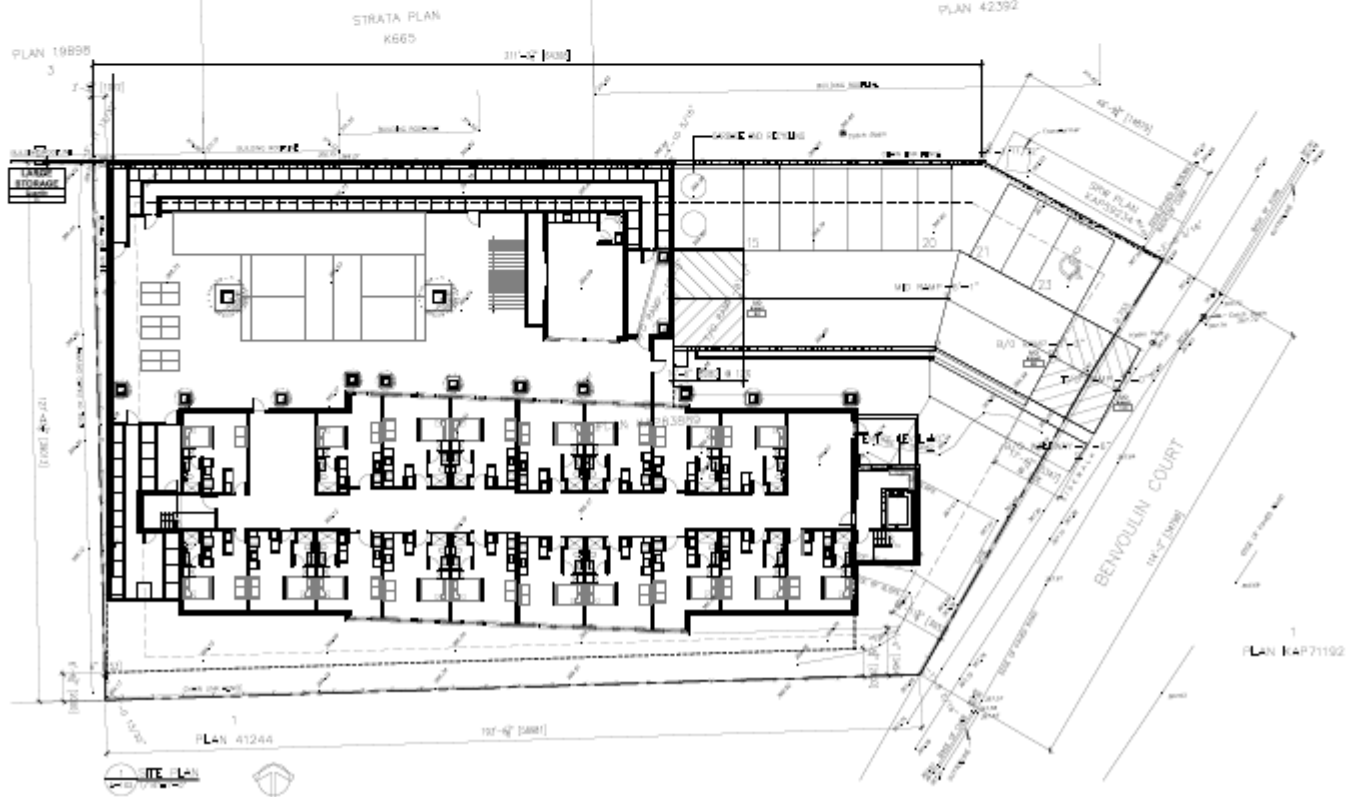
Shane Worman

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

RTE19-0003

Appendix "A"

2080 Benvoulin CT., Kelowna, BC



LAND TITLE ACT
FORM C (Section 233) CHARGE

Jul-26-2019 15:53:59.001

CA7647931

GENERAL INSTRUMENT - PART 1 Province of British Columbia

PAGE 1 OF 6 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

Christopher
Paul Tonita
MP85GS

Digitally signed by
Christopher Paul Tonita
MP85GS
Date: 2019.07.26 15:51:10
-07'00'

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

PUSHOR MITCHELL LLP, Lawyers

Phone 250-762-2108 Client No. 10332
RTS 30337.140

301 - 1665 Ellis Street

Kelowna

BC V1Y 2B3

Document Fees: \$74.16

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

027-080-153 LOT B DISTRICT LOT 128 ODYD PLAN KAP83889

STC? YES

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Covenant

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) Filed Standard Charge Terms D.F. No.

(b) Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

SIMPLE PURSUITS INC. (INC. NO. BC1206854)

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION

SUITE 1701 - 4555 KINGSWAY

BURNABY

BRITISH COLUMBIA

V5H 4V8

CANADA

7. ADDITIONAL OR MODIFIED TERMS:

N/A

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

Execution Date

Transferor(s) Signature(s)

Curtis L. Darmohray

Barrister & Solicitor

and Notary Public

Pushor Mitchell LLP

301 - 1665 Ellis Street

Kelowna, BC Canada V1Y 2B3

Phone: 250-869-1125

Y	M	D
19	07	22

SIMPLE PURSUITS INC. by its
authorized signatory:

Shane Worman

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

**LAND TITLE ACT
FORM D
EXECUTIONS CONTINUED**

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

Tiesha Marie Jordan

Y	M	D
19	07	26

Commissioner for Taking Affidavits in British Columbia

BC Housing Management Commission
203 - 4555 Kingsway
Burnaby, BC V5H 4T8
Tel: 604-646-7063
Exp date: 04/30/2022

BRITISH COLUMBIA HOUSING
MANAGEMENT COMMISSION by its
authorized signatories:

Wendy Acheson
VP & Registrar

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

TERMS OF INSTRUMENT - PART 2
SECTION 219 COVENANT

BETWEEN:

SIMPLE PURSUITS INC.
340 West Avenue
Kelowna, BC V1Y 4Z1

(the "Owner")

AND:

**BRITISH COLUMBIA HOUSING MANAGEMENT
COMMISSION**, a Crown Corporation having its offices at
Suite 1701 - 4555 Kingsway, Burnaby BC V5H 4V8
(the "BCHMC")

WHEREAS:

- A. The Owner is the registered owner of the property (the "Lands") situated, lying and being in the Municipality of Kelowna, in the Province of British Columbia, described in Item 2 of Form C to which this Terms of Instrument (the "Agreement") is attached;
- B. Section 219 of the *Land Title Act*, R.S.B.C. 1996, c.250, and amendments thereto (the "*Land Title Act*"), states that a covenant in favour of a Crown Corporation may be registered as a charge against the title to land and is enforceable against the covenantor and its successors in title even if the covenant is not annexed to land owned by the Crown Corporation;
- C. The Owner wishes to develop the Lands and construct on the Lands a multi-unit building (the "Development"), which is to be held for Rental Purposes and owned by the Owner;
- D. It is a condition of the BCHMC that the Owner, to be exempt from certain provisions of the *Homeowner Protection Act* (the "Act") and the Homeowner Protection Act Regulation (the "Regulations"), must register this covenant against the Lands and Development;
- E. The Owner has agreed to grant this Agreement which charges the Development and Lands;

NOW THEREFORE, pursuant to Section 219 of the *Land Title Act* and in consideration of One Dollar (\$1.00) now paid by the BCHMC to the Owner, the receipt and sufficiency of which is hereby acknowledged, and of the premises herein contained, the parties covenant and agree as follows:

- 1. In this Agreement, the terms and words used, the first letters of which are capitalized, have the meanings set out in the Act and Regulations, unless specifically defined in this Agreement.
- 2. The Owner, for itself and its successors and assigns, covenants and agrees with BCHMC, as a covenant running with the Lands, that the Owner will not:

- (a) sell or otherwise dispose of any Dwelling Unit in the Development to be constructed on the Lands for a period of 10 years from the date that the first Dwelling Unit in the Development constructed on the Lands is first occupied, except together with all Dwelling Units in the Development constructed on the Lands;
 - (b) during the 10-year period set out in paragraph 2(a), use the Dwelling Units and Common Property in the Development constructed on the Lands, or allow them to be used, except for Rental Purposes.
- 3. Nothing contained in or implied by this Agreement shall prejudice or affect the rights and powers of the BCHMC in the exercise of its functions under the Act, the Regulations, or any public or private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands and Development as if this Agreement had not been executed and delivered by the Owner.
- 4. The Owner hereby agrees to indemnify and save harmless the BCHMC, and its appointed directors, officials, officers, employees, and agents from and against any loss, damage, debts, claims, liabilities, obligations, costs (including solicitor and own client costs incurred by the BCHMC in the enforcement of the Owner's obligations under this Agreement) or causes of action which the BCHMC and its appointed directors, officials, officers, employees and agents, or any of them, may suffer, incur, or be put arising whether directly or indirectly, out of a breach of any covenant or condition of this Agreement by the Owner or its directors, officers, employees, or agents, or any other person for whom it is legally responsible.
- 5. The Owner agrees to cause the registrable interest in the Lands expressly agreed to be granted pursuant to this Agreement to be registered in the Land Title Office as a first registered charge against the Lands, save only for:
 - (a) any reservations, liens, charges or encumbrances contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;
 - (b) any non-financial easements and restrictive covenants in favour of third parties over which, in the sole opinion of the Registrar of the BCHMC, priority for this Agreement is not required.
- 6. If the Land Title Office rejects the registration of this Agreement, then the parties will re-execute and the Owner will re-register the same in a form and style acceptable to the Land Title Office.
- 7. The Owner represents and warrants to and covenants and agrees with the BCHMC that:
 - (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement and to bind all legal and beneficial interests in the title to the Lands and Development with the interest in land created hereby;

- (b) upon execution and delivery of this Agreement and registration therefor, the interest in land created hereby will encumber all legal and beneficial interests in the title to the Lands and Development;
 - (c) this Agreement will be fully and completely binding on the Owner in accordance with the terms hereto and the Owner will perform all of its obligations under this Agreement in accordance with the terms hereof; and
 - (d) the foregoing representations, warranties, covenants and agreements will have force and effect notwithstanding any knowledge on the part of the BCHMC, whether actual or constructive, concerning the status of the Owner, the Development or the Lands, or any other matter.
8. In any action or proceeding concerning this Agreement, including any application seeking the specific performance of the Owner's obligations under this Agreement, the BCHMC will be entitled to be indemnified for its costs on a solicitor-and-own-client basis.
 9. The Owner agrees that damages are not an adequate remedy for the BCHMC for any breach by the Owner of its obligations under this Agreement and that the BCHMC is entitled to an order for specific performance or a prohibitory or mandatory injunction to compel performance of the Owner's obligations.
 10. The parties to this Agreement will do the things and execute the documents as may reasonably be necessary to perfect the intention of the Agreement as prescribed by the Act and Regulations.
 11. All obligations and covenants in this Agreement are severable, so that if any are held or declared by a court of competent jurisdiction to be void or unenforceable, the balance of the obligations and covenants will remain and be binding.
 12. No alleged waiver of any breach of this Agreement is effective unless it is an express and specific waiver in writing, which will not operate as a waiver of any other breach of this Agreement.
 13. The covenants set forth in this Agreement shall charge the Lands pursuant to Section 219 of the *Land Title Act* and shall be covenants, the burden of which shall run with the Lands. It is further expressly agreed that the benefit of all covenants made by the Owner herein shall accrue solely to the BCHMC and that this Agreement may only be modified or discharged by agreement of the BCHMC, pursuant to the provisions of Section 219(9) of the *Land Title Act*. If requested by the Owner following the expiration of the 10-year period set out in Section 2, or if the Owner submits to the BCHMC evidence of home warranty coverage as required under the Act, such evidence to be in a form acceptable to the BCHMC, the BCHMC will execute and deliver a registrable release of the covenants set forth in this Agreement but the owner shall bear the preparation and registration costs.
 14. Notwithstanding anything in this Agreement, the Owner shall not be liable under any of the covenants and agreements contained herein where such liability arises after the Owner ceases to have any further interest in the Lands.

15. Wherever the singular or masculine is used herein, the same shall be construed as meaning the plural, feminine or body corporate or politic where the context of the parties so requires.

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

IN WITNESS WHEREOF the parties have executed this Agreement on Form C, to which this Agreement is attached and which forms a part of this Agreement, effective as of the date first above written.