

SCHEDULE A

This forms part of application
RTE21-0004

Planner Initials **AJ**



City of
Kelowna
DEVELOPMENT PLANNING

Heritage Building Tax Exemption Agreement

THIS AGREEMENT made this ___ day of _____, 20__

BETWEEN:

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

(hereafter “the City”)

OF THE FIRST PART

AND:

DAVARA HOLDINGS LTD.
1-911 Borden Avenue
Kelowna, BC V1Y 6A5

(hereafter “the Applicant”)

OF THE SECOND PART

WHEREAS

- A. The City as a municipality under section 225 of the *Community Charter SBC 2003, c. 26* is authorized to enter into an agreement with an owner of property respecting the provision of a tax exemption that is eligible for such exemption.
- B. The Applicant owns property at 1781 Abbott Street in Kelowna (the “Property”) which is the subject of a heritage revitalization agreement.
- C. The Applicant has submitted a proposal for the development of the Property.
- D. The City has determined that the eligible costs (as defined in the City Council’s Heritage Tax Incentive Program Policy No. 318 (the “Policy”)) in connection with the restoration of the Property are \$582,573.04. The Policy provides that the maximum tax incentive to an owner is 75% of the eligible costs, which, in the case of this Property, is \$436,929.78.

NOW THEREFORE IN CONSIDERATION OF THE MUTUAL PREMISES AND AGREEMENTS CONTAINED HEREIN THE CITY AND APPLICANT AGREE AS FOLLOWS:

1. **Maximum Tax Exemption** - The maximum amount of the Tax Exemption available in respect of the Property is \$436,929.78. The Tax Exemption is applicable only in respect of the municipal property tax imposed pursuant to section 197(1)(a) of the *Community Charter*.
2. **Term of Exemption** - The term of the Heritage Building Tax Exemption is 10 years, commencing the calendar year following the Applicant's submission of a Comprehensive Heritage Tax Exemption application (the "Application"). The Application must be submitted no later than July 15 of the calendar year preceding the year in which the first installment of the Tax Exemption is applied. The Application may not be submitted before final inspection and approval by the City of the restoration work. For greater certainty, the term of the Tax Exemption is not extended as a result of any breach of the agreement or the Applicant losing its entitlement to the Tax Exemption.
3. **Compliance with Heritage Revitalization Agreement** - The granting of the Tax Exemption under this agreement is subject to the Applicant complying with all provisions of the Heritage Revitalization Agreement ("HRA"), being Schedule A to Bylaw No. 12275, including that construction on the Property must comply with the schedules to Bylaw No. 12275, and all criteria specified in section 3 of the Policy.
4. **Annual Application** – The Applicant must submit a Heritage Tax Exemption Annual Renewal application (the "Annual Application") no later than July 15th of the calendar year in which the Tax Exemption will be applied, confirming that the Applicant is in current compliance with the provisions of section 3 herein.

5. **Certification of Eligible Costs** – Following completion of the restoration of the Property in accordance with the HRA, the Applicant must submit to the City a certification (the “Certification”) of the costs of the Property restoration project, based on the final inspection and approval of the City, from either a public accountant or professional quantity surveyor. If the final costs are less than the original estimate, the Tax Exemption will be reduced to reflect the lesser amount. Should the final costs exceed the original estimate; the original exemption approved by Council will apply unless the applicant wishes to return to Council to alter the amount.
6. **Calculation of Annual Tax Exemption** –
 - (a) The amount of the Tax Exemption is based on the annual review of the assessed value of the property. In order to adjust the tax incentive to work towards achieving the desired amount – 75% of the project’s eligible cost as defined in 1. The revised annual calculation will then be: (dollar value of approved exemption – dollar value of exemption received to date)/(number of years of exemption remaining). After the term has ended, the property shall be fully taxable.
7. **Payment to City** - In the event of a failure to comply with the terms of the HRA during a calendar year in which the Property has received a Tax Exemption, the Applicant must pay to the City an amount equal to the Tax Exemption provided in that calendar year. The requirement for payment under this section applies in addition to any disentitlement to a Tax Exemption in subsequent years by reason of failure to comply with the HRA.
8. **No Refund** – For greater certainty, under no circumstances will the Applicant be entitled under or pursuant to this agreement or under or pursuant to the revitalization tax exemption program to any cash credit, any carry forward tax

exemption credit or any refund for any property taxes paid.

9. **Condition Precedent of Bylaw Adoption** – This agreement shall only take effect if the Council of the City adopts a bylaw pursuant to section 225(3) of the *Community Charter* in relation to the Property. This agreement will only take effect in the first calendar year if the bylaw came into force on or before October 31 in the preceding year. If the bylaw comes into force after October 31, this agreement takes effect in the second calendar year following the year in which the bylaw comes into effect.

10. **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 Property, 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:

CITY OF KELOWNA
1435 Water Street
Kelowna, BC V1Y 1J4
Attention: Revenue Supervisor
Phone: 250-469-8542

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

Attention: David Sargent
Phone: 250-575-2994
Email: dave.sargent@davara.ca

or at such other address or addresses as the party to whom such notice or other writing is to be given shall have last notified the party giving the same in the manner provided in this section.

Any notice or other writing sent in compliance with this section shall be deemed to have been given and received on the day it is given unless that day is not a Business Day, in which case the notice shall be deemed to have been given and received on the next day that is a Business Day. In this section, "Business Day" means any day other than Saturday, Sunday, any statutory holiday in the Province of British Columbia or any day on which banks generally are not open for business in Vancouver, British Columbia.

11. **No Assignment** – The Applicant may not assign its interest in this Agreement except to a subsequent owner in fee simple of the Property.
12. **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.
13. **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 required.
14. **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.
15. **Waiver** - Waiver by the City of a default by the Property Owner shall be in writing and shall not be deemed to be a waiver of any subsequent or other default.
16. **Powers Preserved** - This Agreement does not
 - (a) affect or limit the discretion, rights or powers of the City under any

enactment (as defined in the *Interpretation Act*, on the reference date of this Agreement) or at common law, including in relation to the use or subdivision of the Property;

- (b) affect or limit any enactment relating to the use or subdivision of the Property, or
- (c) relieve the Applicant from complying with any enactment, including in relation to the use or subdivision of the Property, 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 and charges payable under any bylaw of the City.

- 17. **References** - 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.
- 18. **Enurement** - This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

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

CITY OF KELOWNA by its authorized signatories:

, MAYOR

, CITY CLERK

DAVARA HOLDINGS LTD. by its authorized signatories:

DocuSigned by:
David Sargent
A083B618F8EB439...

Authorized Signatory

Authorized Signatory