

Report to Council



Date: March 2, 2012
File: RTE11-0001
To: City Manager
From: Danielle Noble, Urban Land Use Manager
Subject: 596 Leon Ave - Revitalization Tax Exemption Agreement

Report Prepared by: Alec Warrender

Recommendation:

THAT Council approves the City of Kelowna entering into Revitalization Tax Exemption Agreement with Davara Holdings Ltd for Lot A, District Lot 139, ODYD, Plan 33185 in the form attached to the report form Land Use Management dated March 2, 2012.;

AND THAT the Mayor and City Clerk be authorized to execute the Revitalization Tax Exemption Agreement.

Purpose:

The applicant is applying to enter into a Revitalization Tax Exemption Agreement in accordance with Revitalization Tax Exemption Bylaw No. 9561.

Background:

The proposed office building addition is appropriate as the subject property is designated Mixed Use (Residential / Commercial) in the OCP and is zoned C7 - Central Business Commercial. A Development Permit for the project was recently approved by Council under DP11-0085. The site is located in Tax Incentive Area 2, therefore the commercial project qualifies for a 50% exemption on the incremental increase in assessed value (i.e. not including the assessed value of the existing building). The subject property is located within an area that is evolving as part of the downtown business district. Aided by the proposed Revitalization Tax Exemption Agreement, the proposed redevelopment of a private surface parking lot will support the continued revitalization of this area by introducing more uses into this part of the Downtown Urban Centre.

The applicant has proposed to construct a 3 storey addition / development at the rear of the subject property while retaining the existing one storey commercial building. The parking will be located under building with access from Bertram Street and the rear lane. A mix of exposed concrete and metal flashing will be applied to the exterior of the building. The existing commercial building will remain unchanged beyond the addition of a green roof.

A handwritten signature in blue ink, appearing to be the name "Alec Warrender", located at the bottom right of the page.

The Revitalization Tax Exemption Agreement will help to facilitate this project by providing the applicant with a Tax Exemption equal to 50% of the municipal share of the property tax due annually in relation to the improvements on the Parcel which can be attributed to a commercial land use. But in any case shall not be more than the incremental increase in the assessed value of improvements on the Parcel between the year before the commencement of construction of the Project, and the year following the year in which the Tax Exemption Certificate is issued, nor include an exemption from any local service tax payable. The Tax exemption will be for the 2015-2024 taxation years.

Internal Circulation:

Financial Services
Clerks Department

Existing Policy:

Revitalization Tax Exemption Bylaw No. 9561

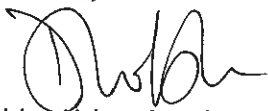
Financial/Budgetary Considerations:

The commercial project qualifies for a 50% exemption on the incremental increase in assessed value (i.e. not including the assessed value of the existing building). The Tax exemption will be for the 2015-2024 taxation years.

Considerations not applicable to this report:

Legal/Statutory Authority
Legal/Statutory Procedural Requirements
Personnel Implications
External Agency/Public Comments
Communications Comments
Alternate Recommendation

Submitted by:



D. Noble, Urban Land Use Manager

Approved for inclusion:



cc: George King, Financial Services

SCHEDULE "B"

Revitalization Tax Exemption Agreement

THIS AGREEMENT dated for reference the ____ day of _____, 2012 is

BETWEEN:

Davara Holdings Ltd.
1-911 Borden Ave,
Kelowna, B.C
V1Y 6A5
(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 596 Leon Ave legally described as Lot A District Lot 139 ODYD Plan 33185 P.I.D 003-237-371 (the "Parcel");
- B. Council has established a revitalization tax exemption program and has included within the City of Kelowna Revitalization Tax Exemption 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 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. Increase the attractiveness of the area to current and potential residents by promoting a higher level of urban design. This is achieved by following two basic concepts concerning modern design: truth to materials, and flexibility. The choice of materials is specific. The materials do not try to hide or distance themselves from construction, or from their own composition. Unlike many buildings that are composed of veneers, and

compromised construction techniques, the design of this building stays true to its core materials of concrete, steel, and glass: allowing them to provide their own unique character to the overall design. The building is meant to have stability and longitude in mind, but it is also intended to last in both composition and design.

b. Help act as a catalyst for investment to a district of the urban centre that has lost its prominence over the last decade. Introducing new life into a stagnate area to help create a sense of importance and discussion around why this area has been over looked for so long and what can be done to change that paradigm.

c. Enhance the existing 1 storey café building by incorporating into the design a fully accessible rooftop patio. This green roof becomes an urban garden for the occupants of the building to the north, and an important precedent for providing green renewal in urban areas. The south facing garden has access to light as well as to the streetscape below, allowing further animation of this particular urban context.

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 Tax Exemption** - subject to fulfilment of the conditions set out in this agreement and in "City of Kelowna Revitalization Tax Exemption 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 improvements on the Parcel (the "Tax Exemption") for the calendar year(s) set out in this agreement. The Tax Exemption Certificate shall be in the form of Appendix "B", which is attached to and forms part of this agreement.
4. **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 February 1, 2013;
 - 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 "C" and the Project must be officially opened for an *office and food primary with liquor licence* and for no other uses, by no later than July 15, 2014;
 - c. The completed Project must substantially satisfy the performance criteria set out in Appendix "D" hereto, as determined by the City's Land Use Management or designate, in their sole discretion, acting reasonably;
5. **Calculation of Calculation of Revitalization Tax Exemption** - As the subject property is located in "Tax Exemption Area 2" the amount of the Tax Exemption shall be equal to 50% of the municipal share of the property tax due annually in relation to the improvements on the Parcel which can be attributed to a commercial land use. *But in any case shall not be more than the incremental increase in the assessed value of improvements on the Parcel between the year before the commencement of construction of the Project, and the year following the year in*

which the Tax Exemption Certificate is issued, nor include an exemption from any local service tax payable.

6. **Term of Tax Exemption** - provided the requirements of this agreement, and of the City of Kelowna Revitalization Tax Exemption Bylaw No. 9561, are met the Tax Exemption shall be for the taxation years 2015 to 2024, inclusive.
7. **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.
8. **Effect of Stratification** - if the Owner stratifies the Parcel or the Project 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, where a Housing Agreement exists in relation to the Parcel or the Project which limits ability to stratify, the Housing Agreement is still complied with.

9. **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.

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.

10. **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.

11. **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: Land Use Management Department

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

Davara Holdings Ltd.
1-911 Borden Ave
Kelowna B.C
V1Y 6A5

Attention: D. Sargent
Fax: 250-868-1720

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.

12. **No Assignment** - the Owner shall not assign its interest in this agreement except to a subsequent owner in fee simple of the Parcel.
13. **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.
14. **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.
15. **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.
16. **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.

17. **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.

18. **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.

19. **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 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

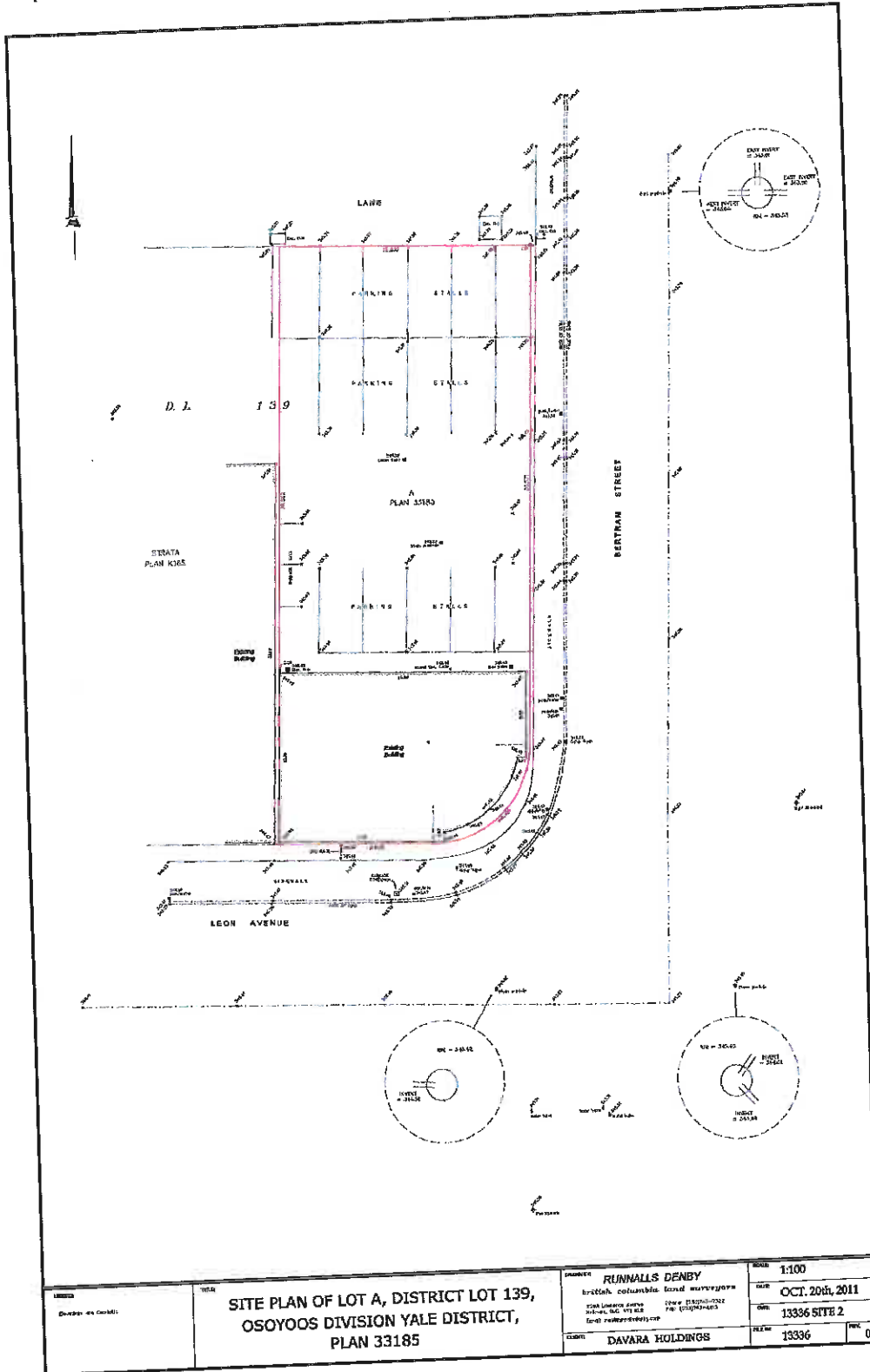
Executed by Davara Holdings Ltd. by its
Authorized signatories:

 _____
Name: DUSTIN SARGENT.

Name:

Appendix "A" to Revitalization Tax Exemption Agreement

Map of Affected Parcel



DRAWN: 44 (C/MSL)	TITLE: SITE PLAN OF LOT A, DISTRICT LOT 139, OSOYOOS DIVISION YALE DISTRICT, PLAN 33185	DRAWER: RUNNALLS DENBY <small>british columbia land surveyors</small> <small>2750 LINDSAY AVENUE</small> <small>VICTORIA, B.C. V8L 6L8</small> <small>(250) 383-2222</small> <small>(250) 383-2223</small>	SCALE: 1:100
		CLIENT: DAVARA HOLDINGS	DATE: OCT. 20th, 2011 JOB: 13336 SITE 2 SHEET: 13336 OF 0

Appendix "B" to Revitalization Tax Exemption Agreement

Tax Exemption Certificate

In accordance with the City of Kelowna Revitalization Tax Exemption Bylaw No. 9561 (the "Bylaw"), and in accordance with a Revitalization Tax Exemption Agreement dated for reference the ____ day of _____, 20__ (the "Agreement") entered into between the City of Kelowna (the "City") and Davara Holdings Ltd. (the "Owner"), the registered owner(s) of Lot A District Lot 139 ODYD Plan 33185 P.I.D 003-237-371 (the "Parcel"):

This certificate certifies that the Parcel is subject to a revitalization tax exemption equal to the following improvement portion(s) of the assessment value of the Parcel: Class 06 Business/Other _____: 50% multiplied by the municipal rate of tax in effect for Class 06 - Business/Other, for each of the taxation years 2015 to 2024 inclusive.

The Tax Exemption is provided under the following conditions:

1. The Owner does not breach any term, condition or provision of, and performs all obligations set out in, the Agreement and the Bylaw;
2. The Owner has not sold all or any portion of his or her equitable or legal fee simple interest in the Parcel without the transferee taking an assignment of the Agreement, and agreeing to be bound by it;
3. The Owner, or a successor in title to the Owner, has not allowed the property taxes for the Parcel to go into arrears or to become delinquent;
4. The Exempt Use (as defined in the Agreement) of the Project is not discontinued.

If any of these conditions are not met then the Council of the City of Kelowna may cancel this Revitalization Tax Exemption Certificate. If such cancellation occurs, the Owner of the Parcel, or a successor in title to the Owner as the case may be, shall remit to the City an amount equal to the value of the exemption received after the date of the cancellation of the certificate.

Appendix "D" to Tax Exemption Revitalization Agreement

Performance Criteria for the Project

- A) Addition of over 8,000.00 square feet of new office space;
- B) Construction value will exceed one million dollars;
- C) Development is consistent with the OCP future land use designation;
- D) Provision of 12 parking stalls
- E) Provision of 6 Class 1 bike stalls and 4 Class 2 bike stalls
- F) Provision of outdoor patio seating
- G) Construction of green roof on existing building

Bertram Elevation Material Examples

Parkade Screening Elements



Architectural Concrete Example



Overhead Parkade Gate Concept
Detail



Inset Lighting



Night Rendering of Bertram Elevation Showing Lighting and Screening Elements

