

SUMMARY:

The City of Kelowna Revitalization Tax Exemption Program Bylaw sets out the requirements to establish a revitalization tax exemption program.

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CITY OF KELOWNA

BYLAW NO. 9561, 2006

REVISED: September 12, 2016

**CONSOLIDATED FOR CONVENIENCE TO INCLUDE:
BYLAW NO. 10566, 10674, 10974, 11269 & 11457**

Revitalization Tax Exemption Program Bylaw

BL10974 deleted all references to "Revitalization Tax Exemption Bylaw" and replaced it with "Revitalization Tax Exemption Program Bylaw":

WHEREAS Council may, by bylaw, establish a revitalization tax exemption program bylaw;

BL10566 amended preamble:

AND WHEREAS Council wishes to establish a revitalization tax exemption program in the City of Kelowna in order to encourage redevelopment of those areas, identified in Schedule "A" of this Bylaw, which are experiencing challenges in attracting investment and are not achieving their full potential to serve the residents of Kelowna as vital, animated urban spaces;

AND WHEREAS Council wishes that the following objectives of the program be known:

- To encourage new residential and commercial development to locate within urban centres in order to sustain and enhance the existing commercial centres, reduce greenhouse gas emissions associated with transportation, and promote healthy and pedestrian-oriented lifestyles,
- To promote a higher standard of urban design within urban centres in order to increase the attractiveness of these locations to existing and potential residents,
- And to generally reinforce the prominence and importance of urban centres within Kelowna;

AND WHEREAS Council has included within this Bylaw a description of the reasons for and the objectives of the program and a description of how the program is intended to accomplish the objectives, as required by the Community Charter;"

NOW THEREFORE, in open meeting assembled, the Council of the City of Kelowna enacts as follows:

1. This bylaw may be cited for all purposes as "City of Kelowna Revitalization Tax Exemption Program Bylaw No. 9561".

2. In this bylaw:

BL10974 added the following:

"Actual Value" will have the same meaning as set out in the Assessment Act;

"Agreement" means a Revitalization Tax Exemption Agreement between the owner of a Parcel and the City, substantially in the format of and with the content of Schedule "B" which is attached to and forms part of this bylaw;

"City" means the City of Kelowna;

"Council" means the Council of the City of Kelowna;

"Parcel" means a legal parcel, of which at least 50% of the parcel's land area is within one of the Revitalization Areas, upon which an owner proposes a Project;

"Project" means a revitalization project on a Parcel involving the construction of a new improvement or alteration of an existing improvement, which meets the requirements of this bylaw, and the construction of which is begun after an application for a Tax Exemption has been submitted to, and approved by, Council;

BL10974 added the following:

"Property" means the legally described land and improvements to which a Revitalization Tax Exemption is applied for and as legally described in the Agreement;

BL10674 & BL11457 amended the following:

"Purpose-Built Rental Housing" means a self-contained building(s) containing five or more Dwelling Units that are intended to be used for rental housing. Purpose-built rental housing meets an identified need for housing in the City and does not include buildings that are stratified, except those stratified buildings that are subject to operating agreements with the Provincial Rental Housing Corporation.

BL10974 added the following:

"Revitalization Amount" means the municipal portion of property tax calculated in relation to the increase in the assessed value of improvements on the property resulting from the construction or alterations as outlined in section 6 of this bylaw;"

"Revitalization Area" means one of the areas outlined on Schedule "A", which is attached to and forms part of this Bylaw;

"Tax Exemption" means a revitalization tax exemption pursuant to this bylaw;

"Tax Exemption Certificate" means a revitalization tax exemption certificate issue by the City pursuant to this bylaw, the relevant Agreement, and the provisions of section 226 of the *Community Charter*, in the form of Schedule "C", which is attached to and forms part of this bylaw.

3. There is hereby established a revitalization tax exemption program pursuant to the provisions of section 226 of the *Community Charter*.
4. The terms and conditions upon which a Tax Exemption Certificate may be issued are as set out in this bylaw, in the relevant Agreement entered into between the City and the Owner pursuant to this bylaw, and in the Tax Exemption Certificate in relation to a particular Parcel.

BL10566, BL10674, BL10974, BL11269 & BL11457 amended Section 5:

5. The amount of an annual Tax Exemption shall be equal to:
 - 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.);
 - i. 75% of the Revitalization Amount on the parcel which can be attributed to a residential land use, and/or 50% of Revitalization Amount on the parcel which can be attributed to a commercial land use, for a project with a 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, 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%;

but in any case shall not include an exemption from any local service tax.

BL10566, BL10674, BL10974 & BL11457 amended Section 6:

6. In order for a Project to be considered by Council for a Tax Exemption:
 - a. the Project must involve construction that results in floor space being added to an existing building or in a new building altogether, or a renovation of existing floor space;
 - b. the construction value of additional or new floor space of the Project, as determined based on the building permit(s) issued, must be \$50,000.00 or greater;

- c. the construction value of a renovation of the Project within 5a, 5b or 5d, as determined based on the building permit(s) issued, must be \$300,000.00 or greater;
 - d. the land use into which the Project is intended to fit must be one of the uses permitted in the applicable zone for the Parcel, as set out in City of Kelowna Zoning Bylaw No. 8000, as amended from time to time, and must be consistent with the future land use designation for the Parcel, as set out in *Kelowna 2030 – Official Community Plan* Bylaw No. 10500, as amended from time to time, and the Project must meet all other applicable City policies and bylaws;
 - e. the owner of the Parcel must enter into an Agreement with the City;
 - f. the form and character of the Project must be largely consistent with the applicable Development Permit Area Design Guidelines contained within Chapter 14 of the *Kelowna 2030 - Official Community Plan* Bylaw No. 10500; and
 - g. the property is located in a Revitalization Area shown on Schedule "A" attached hereto and forming part of this Bylaw.
- 7. Parcels currently receiving a municipal tax exemption shall not be considered by Council for a Tax Exemption.
 - 8. Projects involving Parcels with any unpaid property taxes in arrears shall not be considered by Council for a Tax Exemption.
 - 9. Projects involving proposals to alter buildings listed on the City of Kelowna Heritage Register shall not be considered by Council for a Tax Exemption.

BL10566 amended Section 10:

- 10. The maximum term of a Tax Exemption shall be ten years. The Tax Exemption is transferable to subsequent property owners within the term of the agreement.

BL10566 and BL10974 amended Section 11:

- 11. If an owner of a Parcel wishes Council to consider entering into an Agreement, the owner must apply to the Urban Planning Manager or designate, in writing and must submit the following with the application:
 - a. A certificate that all taxes assessed and rates, charges and fees imposed on the Parcel have been paid and, where taxes, rates or assessments are payable by instalments, that all instalments owing at the date of the application have been paid;

- b. A copy of the current Property Assessment Notice for the Parcel as issued by the British Columbia Assessment Authority;
 - c. A completed written application in a form prescribed by the City;
 - d. A description of the Project, including details regarding the extent and value of the Project, which will be confirmed via the building permit process;
 - e. An Agreement in executable form;
 - f. A Revitalization Tax Exemption fee in the amount of \$250.00.
12. If, pursuant to the terms and conditions specified in the Agreement or the Tax Exemption Certificate, the certificate is cancelled, 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 exemption received after the date of the cancellation.

BL10974 added new Sections 13, 14 & 15 and renumbered subsequent sections:

13. 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.
14. The maximum Revitalization Tax exemption authorized under this Bylaw must not exceed the Revitalization Amount on the Property between:
- i. the calendar year before the construction or alteration began, as outlined under Section 6 of this bylaw; and
 - ii. the calendar year in which the construction or alteration, as outlined under Section 6 of this bylaw, is completed.
15. 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.

BL10566 amended Section 16:

16. The Revenue Manager or designate, is designated the municipal officer for the purpose of section 226(12) of the Community Charter.

Read a first, second and third time by the Municipal Council this 12th day of June, 2006.

Reconsidered, finally passed and adopted by the Municipal Council of the City of Kelowna this 11th day of July, 2006.

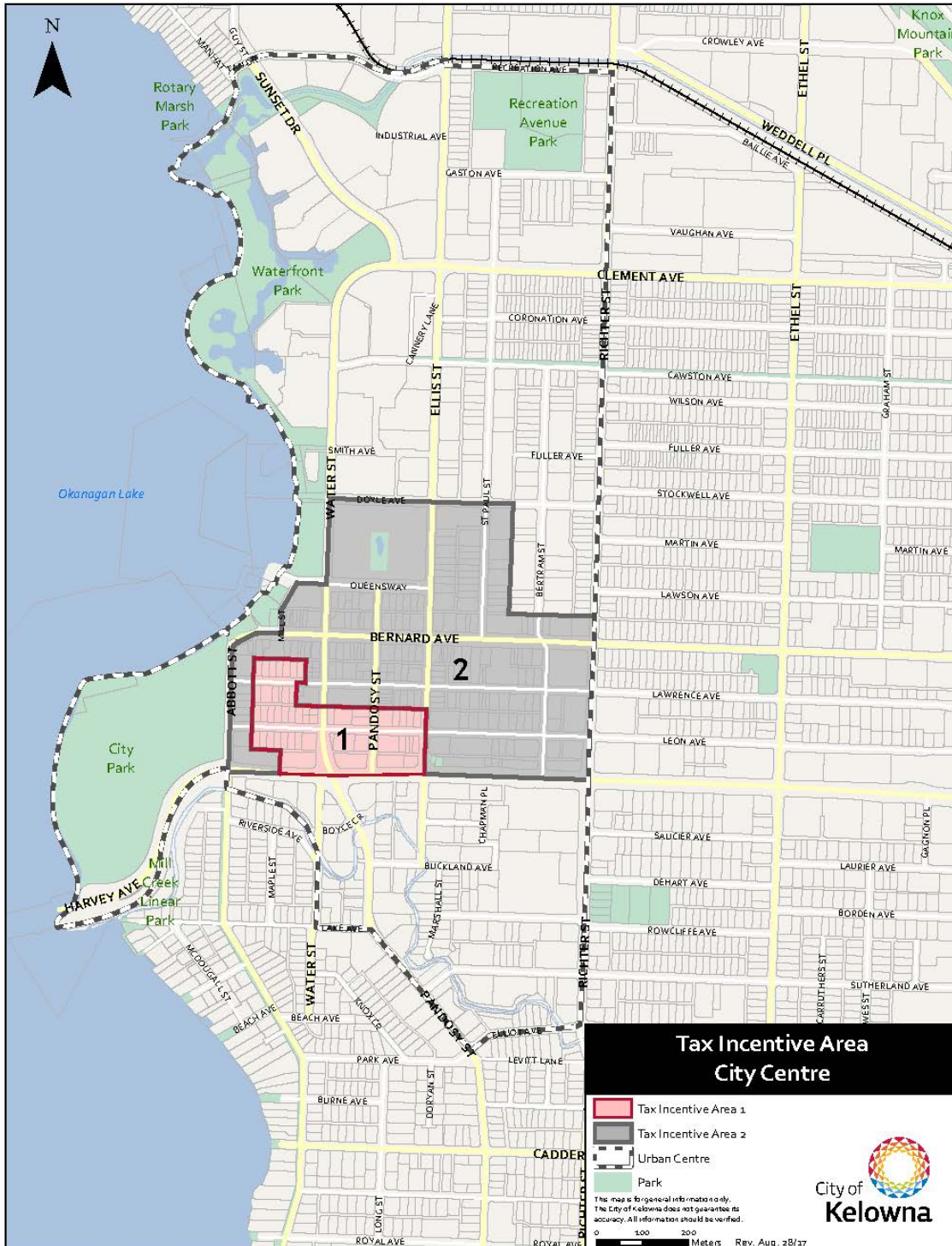
"Sharon Shepherd"

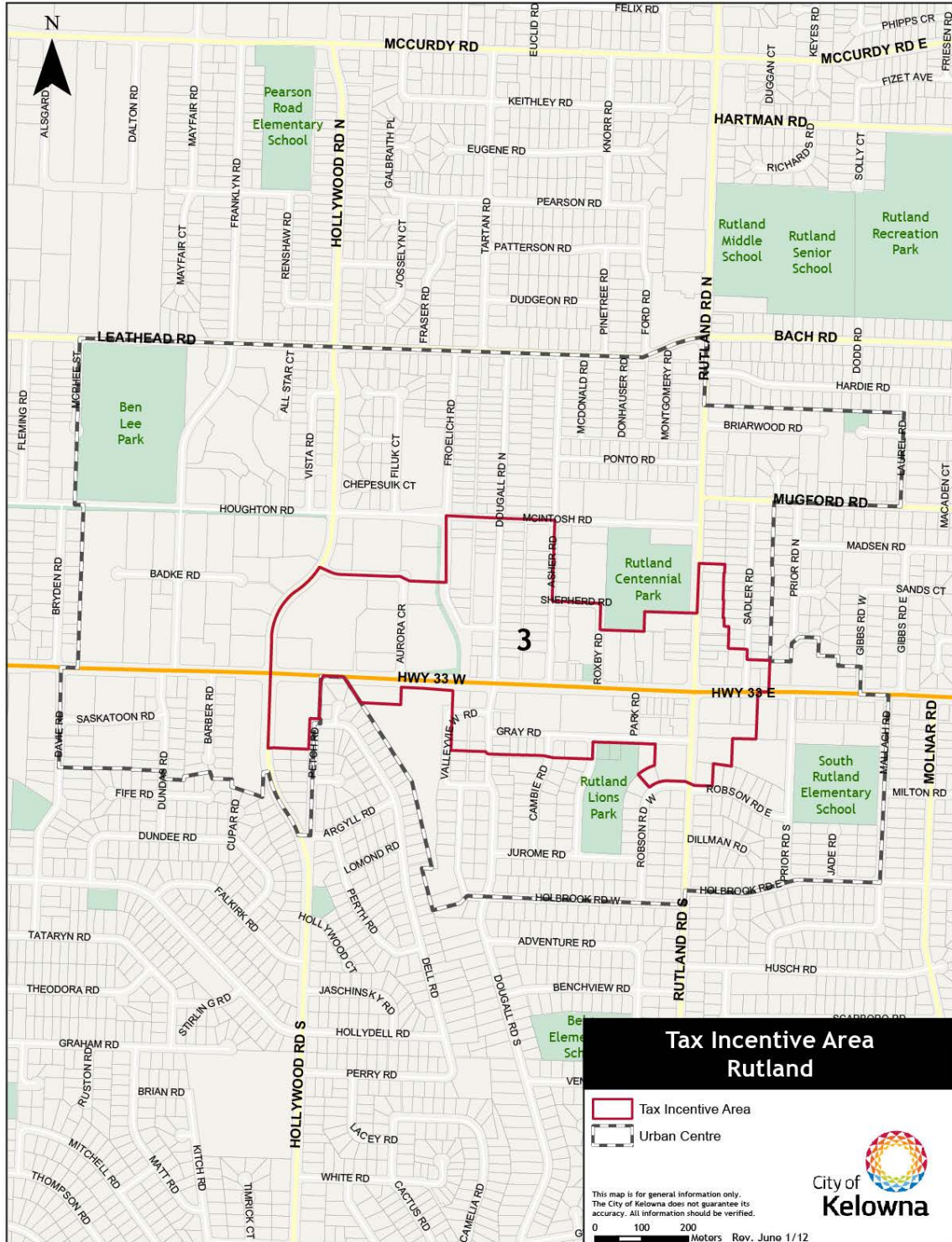
Mayor

"Allison Flack"

City Clerk

BL10566, BL10674 & BL11457 replaced Schedule "A": **SCHEDULE "A"**
Revitalization Areas





BL10566, BL10674 & BL11457 amended SCHEDULE "B" and BL10974 replaced SCHEDULE "B":

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 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 _____, 20____;
 - 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 *[describe permitted use]* _____ (the “Exempt Use”) and for no other use, by no later than July 15, 20____;
 - 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 *[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 the taxation years _____ to _____, 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:
Fax:

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

[Insert name and address of owner]

Attention:
Fax:

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

BL11269 & BL11457 amended SCHEDULE "C"

Schedule "C"

Tax Exemption Certificate

In accordance with the City of Kelowna Revitalization Tax Exemption Program 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 _____ (the "Owner"), the registered owner(s) of [insert legal description of property] _____ (the "Parcel):

This certificate certifies that the Parcel is subject to a Revitalization Tax Exemption, for each of the taxation years 20__ to 20__ inclusive, equal to [choose one from below and insert applicable wording]:

1. "Tax Incentive Area 1", 100% of the Revitalization Amount attributed to Building Permit No _____ between 20__ (the calendar year before the commencement of construction of the project) and 20__ (the calendar year in which the Revitalization Tax Exemption Certificate is issued);
2. "Tax Incentive Area 2,"
 - a. 100% of the Revitalization Amount attributed to Building Permit No _____ between 20__ (the calendar year before the commencement of construction of the project) and 20__ (the calendar year in which the Revitalization Tax Exemption Certificate is issued);
 - b. 75% of the Revitalization Amount attributed to Building Permit No _____ between 20__ (the calendar year before the commencement of construction of the project) and 20__ (the calendar year in which the Revitalization Tax Exemption Certificate is issued) which can be attributed to a residential land use,

and/or 50% of the Revitalization Amount attributed to Building Permit No _____ between 20__ (the calendar year before the commencement of construction of the project) and 20__ (the calendar year in which the Revitalization Tax Exemption Certificate is issued) which can be attributed to a commercial land use;
3. [deleted]
4. "Tax Incentive Area 3," 100% of the Revitalization Amount attributed to Building Permit No _____ between 20__ (the calendar year before the commencement of construction of the project) and 20__ (the calendar year in which the Revitalization Tax Exemption Certificate is issued);
5. Purpose-Built Rental Housing Project, 100% of the Revitalization Amount attributed to Building Permit No _____ between 20__ (the calendar year before the commencement of construction of the project) and 20__ (the calendar year in which the Revitalization Tax Exemption Certificate is issued).

Any construction of a new improvement or alteration of an existing improvement, on the Parcel described above, undertaken prior to the application for a Revitalization Tax Exemption will not be eligible for consideration;

The maximum Revitalization Tax Exemption authorized must not exceed the increase in the assessed value of

improvements on the property resulting from the construction or alterations attributed to Building Permit No _____ between 20__ (the calendar year before the commencement of construction of the project) and 20__ (the calendar year in which the Revitalization Tax Exemption Certificate is issued);

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.

The Revitalization 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 the Owner is subject to an operating agreement with the Provincial Rental Housing Corporation, it must be in compliance with the terms of the operating agreement with the Provincial Rental Housing Corporation.

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.