

ATTACHMENT B
Revitalization Tax Exemption Agreement

THIS AGREEMENT dated for reference the _____ day of December, 2020 is

AMONG:

1141872 B.C. LTD.
1200 Waterfront Centre,
200 Burrard Street,
Vancouver, B.C.
V7X 1T2

(the "Bare Trustee")

AND:

PEG NANAIMO INVESTORS, GP LTD., in its capacity as the general partner of
PEG NANAIMO INVESTORS, LIMITED PARTNERSHIP
1200 Waterfront Centre,
200 Burrard Street,
Vancouver, B.C.
V7X 1T2

(the "Beneficial Owner")

AND:

CITY OF NANAIMO
455 Wallace Street,
Nanaimo, B.C.
V9R 5J6

(the "City")

GIVEN THAT:

- A. The Bare Trustee is the registered owner in fee simple of lands in the City of Nanaimo, 100 Gordon Street, legally described as Lot A, Section 1, Nanaimo District and of the Bed of the Public Harbour of Nanaimo, Plan EPP30518 (the "Parcel").
- B. The Parcel is held by the Bare Trustee in trust for the benefit of the Beneficial Owner pursuant to a bare trust agreement made as of December _____, 2020;
- C. Council has established a revitalization tax exemption program and has included within the City of Nanaimo "REVITALIZATION TAX EXEMPTION BYLAW 2011 NO. 7143" the designation of a land use zone which includes the Parcel as a revitalization area; and
- D. The Bare Trustee and Beneficial Owner (together, the "Owner") proposes to construct new 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. In this Agreement, the following words have the following meanings:
 - a. "Assessed Value" means the BC Assessment Authority land and improvements assessed value of the parcel subject to an Agreement for the purposes of calculating property taxes;
 - b. "Baseline Assessment" means the BC Assessment Authority's last published land and improvements assessed value immediately before the commencement of the Project;
 - c. "Bylaw" means City of Nanaimo "REVITALIZATION TAX EXEMPTION BYLAW 2011 NO. 7143" as amended from time to time or including any subject amendments thereto;
 - d. "Project" means a revitalization project on a Parcel involving the construction of a new improvement which meets the requirements of the Bylaw, and the construction of which is begun after an application for a Tax Exemption has been submitted to, and approved by, Council;
 - e. "Tax Exemption" means a revitalization tax exemption determined in accordance with the Bylaw;
 - f. "Tax Exemption Certificate" means a revitalization tax exemption certificate issued by the City of Nanaimo pursuant to the Bylaw and the *Community Charter*.
2. The Project – the Owner will use its best efforts to ensure that the Project will be built in accordance with the submitted plans as approved for a Development Permit (DP001076) for 100 Gordon Street authorized by City Council of the City of Nanaimo on November 6, 2017 and modified with drawings received on August 1, 2018.
3. 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.
4. Revitalization Tax Exemption – subject to fulfillment of the conditions set out in this agreement and in the Bylaw, the City shall issue a revitalization 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 substantially in the form of Appendix "B", which is attached to and forms part of this Agreement.

5. Conditions – the owner must fulfill the following conditions 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 November 27, 2019;
 - 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
 - c. the Project must be officially opened and available for use as a hotel of 172 hotel rooms (the “Exempt Use”) and for no other use, by no later than October 31, 2022.
6. Calculation of Revitalization Tax Exemption – the amount of the Tax Exemption in each year shall be equal to that part of the municipal portion of property taxes calculated by deducting the Baseline Assessment from the current Assessed Value and applying the difference to the current municipal tax rate.
7. Term of Tax Exemption – provided the requirements of this Agreement, and of the City of Nanaimo Revitalization Tax Exemption Bylaw No. 7143, are met the Tax Exemption shall be for 10 years as of the date of the Occupancy Permit granted but no later than October 31, 2022.
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 forming part of the Project in compliance with all statutes, laws, regulations, bylaws 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. Subdivision under Strata Property Act – if the Owner deposits a strata plan in the Land Title Office under the *Strata Property Act* that includes an improvement on the Parcel included in the Project, 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 of the current year; 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 of the current year;

provided that any strata subdivision must comply with the terms of any Housing Agreement in relation to the Parcel or the Project which limits ability to subdivide the Parcel or a building on the Parcel under the *Strata Property Act*.

10. Representations and Warranties – The Owner represents and warrants to the City that the Owner is the Owner of the Parcel for the purpose of property assessment and taxation.
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.
12. If such cancellation occurs, the Owner of the Parcel for which the Tax Exemption Certificate was issued will pay to the City within 30 days of cancellation an amount equal to the percentage of the amount of any Tax Exemption equivalent to the percentage of the year remaining from the date of cancellation.
13. If the amount is not paid by the date required under section 12, any amount unpaid will bear interest at a rate of 12% annually, compounded 1% per month.
14. 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.
15. 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 NANAIMO
455 Wallace Street,
Nanaimo, B.C., V9R 5J6
Fax:
 - b. in the case of a notice to the Owner, at:
1141872 B.C. Ltd. and PEG Nanaimo Investors, GP Ltd., in its capacity as the
general partner of PEG Nanaimo Investors, Limited Partnership
Attention: Eric Peterson
200 - 180 North University Avenue
Provo, Utah, USA
84601
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.
16. No Assignment – the Owner shall not assign its interest in this agreement except to a subsequent registered or beneficial owner in fee simple of the Parcel.

17. 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.
18. 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.
19. 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.
20. 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.
21. 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.
22. 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.
23. 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 NANAIMO by its authorized signatories:

Mayor

Corporate Officer

Executed by 1141872 B.C. LTD. by its authorized signatory:

Name:

Executed by PEG NANAIMO INVESTORS, GP LTD. by its authorized signatory in its capacity as the general partner of PEG NANAIMO INVESTORS, LIMITED PARTNERSHIP:

Name:

APPENDIX "B"

Revitalization Tax Exemption Certificate

In accordance with the City of Nanaimo "REVITALIZATION TAX EXEMPTION BYLAW 2011 NO. 7143" (the "Bylaw"), and in accordance with a Revitalization Tax Exemption Agreement dated for reference the _____ day of December, 2020 (the "Agreement") entered into among the City of Nanaimo (the "City") and 11441872 B.C. Ltd. and PEG Nanaimo Investors, GP Ltd., in its capacity as the general partner of PEG Nanaimo Investors, Limited Partnership (the "Owner"), the registered and beneficial owner of Lot A, Section 1, Nanaimo District and of the Bed of the Public Harbour of Nanaimo, Plan EPP30518 (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 01 Residential: _____ and Class 06 Business/Other: _____ multiplied by the municipal rate of tax in effect for Class 01 – Residential and/or Class 06 – Business/Other, for each of the taxation years 20__ to 20__ 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;
5. The Agreement is not otherwise terminated.
6. After written notice to the Owner of any breach of the above conditions the Owner shall have 30 days to remedy such breach before the Revitalization Tax Exemption Certificate is cancelled.

If any of these conditions are not met then the Council of the City of Nanaimo 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.