

SCHEDULE 7

LANDS

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APPENDIX 7A DESCRIPTION OF LANDS AND ENCUMBRANCES

SCHEDULE 7

LANDS

1. DEFINITIONS

In this Schedule, in addition to terms defined in Schedule 1 of this Agreement:

“Charge” means any charge, mortgage, lien, pledge, judgment, execution, security interest, restriction, claim or encumbrance of any nature whatsoever, including any claims of the Workers’ Compensation Board, Canada Revenue Agency, Employment Standards Branch or other Governmental Authority;

“Encumbrances” means those Charges described in Appendix 7A and any additional Charges against the Lands permitted under this Schedule;

“KGH Lands” means the real property interests at KGH described in Appendix 7A;

“Lands” means the KGH Lands and the VJH Lands; and

“Licence” has the meaning set out in Section 2.1 of this Schedule;

“VJH Lands” means the real property interests at VJH described in Appendix 7A.

2. AUTHORITY’S OBLIGATIONS AND REPRESENTATIONS

2.1 Grant of Licence Over Lands

- (a) From the Effective Date until the Transfer Date, the Authority hereby grants, and will continuously, until the Transfer Date, grant or cause to be granted to Project Co a non-exclusive licence of use and access to, on and over the Site and Facility to the extent required by Project Co to allow Project Co to perform the Design, the Construction and the Services (the **“Licence”**).
- (b) Project Co may for the same purposes described in Section 2.1(a), grant sub-licences to any Project Co Person, provided that any such grant will be subject to, and terminate upon, termination of the Licence.
- (c) In consideration for the Licence, Project Co will provide the Design, the Construction and the Services subject to and in accordance with this Agreement.

2.2 Terms Affecting Licence Grant

Without limiting the other provisions of this Schedule and this Agreement, the following terms and conditions apply to the Licence:

- (a) no legal demise or other interest in land, and no interest in the Facility or any other improvements, is granted to Project Co or created by this Agreement;
- (b) the Licence is non-exclusive and no right to exclusive possession of the Lands or the Facility is granted to Project Co;

- (c) the Licence for Construction will not exceed the area shown outlined in red in Appendix 2D [Construction Site Plan], subject to the Authority's consent, not to be unreasonably withheld or delayed, extending this grant of License so as to permit Project Co to perform Construction outside such area upon receipt of reasonable prior notice by Project Co;
- (d) Project Co's rights are subject to the Encumbrances; and
- (e) the Authority will be entitled at any time and from time to time to grant to Authority Persons and any other persons, including contractors and the general public, access to the Lands and the Facility.

2.3 Property Taxes

The Authority will be responsible for property taxes (if any) payable in respect of the Lands and the Facility, or the occupation thereof by the Authority, Project Co or any Project Contractor or Sub-Contractor.

3. PROJECT CO'S OBLIGATIONS AND ACKNOWLEDGMENTS

3.1 "As Is Where Is"

Subject to the provisions of Section 2.3 of this Schedule, Project Co accepts the Lands and the Licence on an "as is, where is" basis.

3.2 Encumbrances

Project Co acknowledges that it has reviewed the Encumbrances in effect as of the Effective Date, Project Co will fully and punctually observe and perform (to the same extent as if Project Co were the owner of the Lands and bound by the Encumbrances) any limitations, restrictions, obligations, liabilities and other terms and conditions set out in the Encumbrances and Project Co assumes all risks arising therefrom. Project Co will fully and punctually observe and perform all of the terms and conditions of any interest included in the Lands and any Encumbrance. The Authority may without restriction modify, add or remove any Encumbrances, provided that the foregoing will not limit Project Co's entitlements under the Agreement if such modification, addition or removal results in a Change.

3.3 Project Co Not To Encumber

Project Co will not, without the consent of the Authority:

- (a) grant or permit any Charge affecting or against the Lands or the Facility; or
- (b) do or omit to do, or cause, suffer or permit to be done or omitted to be done by any Project Co Person anything that would result in any Charge against or affecting the Lands, the Facility or any asset, matter or thing that may be required to be delivered or transferred to the Authority on the Termination Date pursuant to Section 14.3 (Transfer to the Authority of Assets, Contracts, etc.),

and will at its own expense promptly discharge and remove or cause to be discharged and removed any such encumbrance.

3.4 No Restriction on Authority Use or Development

Project Co acknowledges that the Authority may from time to time without restriction use, develop or re-develop, or permit the use, development or re-development of, the Lands, the Facility or any portion thereof (including by way of subdivision) for any purpose and by any Person. To the extent such use, development or re-development adversely interferes with the Licence or adversely interferes with Project Co's ability to carry out the Design, the Construction and the Services, the Authority will, to address such interference, initiate a Change.

3.5 No Registration

Project Co will not register in any land title office this Agreement, the Licence or any instrument, claim or notice in respect of the Licence or any other rights of Project Co under this Agreement.

3.6 Builders Liens

Project Co will, at its own cost and expense, cause any and all builders liens and other liens and claims of lien for labour, services or materials furnished or alleged to have been furnished with respect to the Design, the Construction or the Services that are registered against or otherwise affect the Lands or the Facility or any part thereof, to be paid, satisfied, released or vacated forthwith after the Authority has sent Project Co written notice of any such lien or claim. If there is a bona fide dispute of the validity or correctness of any such lien or claim, Project Co will be entitled to defend against the lien or claim in any proceedings if Project Co first:

- (a) pays into Court, or provides sufficient security for, the amount claimed and costs as the Court may direct, as may be required to obtain a Court Order for the discharge of such lien or claim from title to the Lands, and obtains such discharge and registers such discharge in the Land Title Office to cancel such lien; or
- (b) provides such other reasonable security in respect of such claim as the Authority may in writing, and in its discretion, approve.

3.7 Title to Improvements

Project Co will not acquire any property interest in or title to the Facility or any other improvements to the Lands. As between Project Co and the Authority, title to and ownership of the Facility and all other improvements to the Lands will at all times be vested in the Authority.

4. HAZARDOUS SUBSTANCES

4.1 Responsibility

Notwithstanding any other provision of this Agreement or this Schedule, Project Co will not be responsible for any Hazardous Substances in, on, below or adjacent to the Lands or any cost, expense or claim arising therefrom, other than:

- (a) any Hazardous Substances brought onto, or adjacent to, the Lands by Project Co or any Project Co Person during the Term; and

- (b) those Hazardous Substances for which Project Co has agreed to accept responsibility in Schedule 3 [Design and Construction Specifications].

4.2 Restrictions on Use

Unless otherwise expressly required or permitted under this Agreement, Project Co will not install, use or store on the Lands or adjacent property any materials, equipment or apparatus, the installation, use or storage of which is likely to cause or in fact causes the generation, accumulation or migration of any Hazardous Substance in contravention of any applicable Laws. Without limiting the generality of the foregoing, Project Co will not use the Lands to dispose of, handle or treat any Hazardous Substances, in a manner that would cause the Lands, or any adjacent property, to become a contaminated site under applicable Laws.

APPENDIX 7A

DESCRIPTION OF LANDS AND ENCUMBRANCES

Note: If pending applications result in any changes to the KGH Lands or the VJH Lands or the Encumbrances, then after registration of such pending applications this Appendix will be deemed to be amended to reflect such changes.

A. KGH – Description of KGH Lands and Encumbrances

1. Lot A, Plan KAP87113 (see full legal description below)

(a) Legal Description

Parcel Identifier: 027-585-123

Lot A District Lot 14 Osoyoos Division Yale District Plan KAP87113

(b) Encumbrances

(1) Legal Notations

- (A) Subject to the Hospital Act, See DF F8, F9 and J6627 (As to part former Lot 1 Plan 32797)
- (B) For restrictions on dealings, see Hospital Act, DF T11454 (As to part former Lot 1 Plan 32797)
- (C) Restriction Hospital Act Sec 41 (1) (C), DF 43879, July 6, 1962 (As to part former Lot 14 Plan 186 except (1) the North 33 feet (DD 245027F) (2) the South 7 feet of the North 40 feet (DD 39454F) (3) Plan B7087 (DD 155386F) (4) Plans 1838 and 2466)
- (D) This Title may be affected by a permit under Municipal Act Part 29 (see DF KC38549) (As to part former Lot 14 Plan 186 except (1) the North 33 feet (DD 245027F) (2) the South 7 feet of the North 40 feet (DD 39454F) (3) Plan B7087 (DD 155386F) (4) Plans 1838 and 2466)
- (E) Restrictions, Hospital Act Sec. 41 (1) (C) DF 43878 filed 6/7/82 (As to part former South 7 feet of the North 40 feet of Block 14 Plan 186 except Plans 2466 and B7087)
- (F) This Title may be affected by a permit under Part 29 of the Municipal Act, See KK26344 (As to part former Lot A Plan KAP61932)
- (G) This Title may be affected by a permit under Part 26 of the Municipal Act, see KL127185 (As to part former Lot A Plan KAP60581)
- (H) This Title may be affected by a permit under Part 26 of the Municipal Act, see KL127186 (As to part former Lot A Plan KAP60581)

- (I) This Title may be affected by a permit under Part 26 of the Municipal Act, see KM102259 (As to part former Lot A Plan KAP61932)
 - (J) This Title may be affected by a permit under Part 26 of the Municipal Act, see KM91328 (As to part former Lot A Plan KAP61932)
 - (K) Hereto is annexed easement KP86765 over that part Lot A Plan KAP60581 except Plan KAP67528 shown on Plan KAP67530
- (2) Charges, Liens and Interests
- (A) Restrictive Covenant 39960E (Remarks: see 1800D part former Lot 2 Plan 535)
 - (B) Covenant W47733, Registered Owner of Charge – City of Kelowna (Remarks: Inter Alia Sec. 215 LTA Part Former Lots 1, 2, 3 and 4 Plan 535)
 - (C) Covenant KL127676, Registered Owner of Charge – City of Kelowna (Remarks: Inter Alia Part Former Lot A Plan KAP60581)
 - (D) Covenant KM46567, Registered Owner of Charge – City of Kelowna KM46567 (Remarks: Inter Alia Part Former Lot A Plan KAP60581)
 - (E) Statutory Right of Way KM50116, Registered Owner of Charge – City of Kelowna (Remarks: Inter Alia Part Former Lot A Plan KAP60581)
 - (F) Covenant KM50980, Registered Owner of Charge – City of Kelowna (Remarks: Part Shown as Parcel “A” on Plan KAP61933)
 - (G) Covenant KM50981, Registered Owner of Charge – City of Kelowna (Remarks: Parts Shown as Parcels “A” & “B” on Plan KAP61933)
 - (H) Statutory Right of Way KM50982, Registered Owner of Charge – City of Kelowna (Remarks: Part Former Lot A Plan KAP61932)
 - (I) Statutory Right of Way KM50983, Registered Owner of Charge – City of Kelowna (Remarks: Part Former Lot A Plan KAP61932)
 - (J) Statutory Right of Way KN23786, Registered Owner of Charge – Shaw Cablesystems Ltd. Incorporation No. A45967 (Remarks: Inter Alia Part Former Lot A Plan KAP60581)
 - (K) Statutory Right of Way KN79431, Registered Owner of Charge – City of Kelowna (Remarks: Part Former Lot A Plan KAP61932)
 - (L) Covenant KP56297, Registered Owner of Charge – City of Kelowna (Remarks: Part Former Lot A Plan KAP61932)

- (M) Easement KP86764, (Remarks: Part Shown on Plan KAP67529 Appurtenant to Lot A Plan KAP60581 Except Plan KAP67528)
- (N) Covenant LB223013, Registered Owner of Charge – City of Kelowna (Remarks: Part shown on Plan KAP87114)
- (O) Covenant LB223014, Registered Owner of Charge – City of Kelowna (Remarks: Part shown on Plan KAP87115)

(3) Pending Applications

None

(4) Miscellaneous Notes

- (A) CG 1631F
- (B) SRW PL KAP65132
- (C) SRW PL KAP61932
- (D) SRW PL KAP61933
- (E) COV PL KAP61934
- (F) EASE PL KAP67529
- (G) COV PL KAP52775
- (H) SRW PL KAP61935

2. Lot 30, Plan 535 (see full legal description below)

(a) Legal Description

Parcel Identifier: 012-272-507

Lot 30 District Lot 14 Osoyoos Division Yale District Plan 535

(b) Encumbrances

(1) Legal Notations

None

(2) Charges, Liens and Interests

None

(3) Pending Applications

None

- (4) Miscellaneous Notes

None

- 3. Lot 31, Plan 535 (see full legal description below)

- (a) Legal Description**

- Parcel Identifier: 010-659-552

- Lot 31 District Lot 139 Osoyoos Division Yale District Plan 535

- (b) Encumbrances**

- (1) Legal Notations

- None

- (2) Charges, Liens and Interests

- None

- (3) Pending Applications

- None

- (4) Miscellaneous Notes

- None

- 4. Lot 29, Plan KAP77381 (see full legal description below)

- (a) Legal Description**

- Parcel Identifier: 012-272-493

- Lot 29 District Lot 14 Osoyoos Division Yale District Plan 535 Except Plan KAP77381

- (b) Encumbrances**

- (1) Legal Notations

- None

- (2) Charges, Liens and Interests

- None

- (3) Pending Applications

None

- (4) Miscellaneous Notes

Road Plan KAP77381

- 5. Lot 2, Plan 3451(see full legal description below)

(a) Legal Description

Parcel Identifier: 010-853-065

Lot 2 District Lot 14 Osoyoos Division Yale District Plan 3451

(b) Encumbrances

- (1) Legal Notations

None

- (2) Charges, Liens and Interests

None

- (3) Pending Applications

None

- (4) Miscellaneous Notes

None

B. VJH – Description of VJH Lands and Encumbrances

1. Lot A, Plan KAP85364 (see full legal description below)

(a) Legal Description

Parcel Identifier: 027-313-301

Lot A Section 34 Township 9 Osoyoos Division Yale District Plan KAP85364

(b) Encumbrances

(1) Legal Notations

(A) Subject to Reservations, Covenants and Restrictions contained in DD 25058 (Part Former Lot 4 Plan 550 “Parkview”)

(B) This Title may be affected by a permit under Part 26 of the Local Government Act, See KX184151

(C) For restrictions on dealings see Hospital Act DF’S S64490, S91685, T44901 and V28677

(2) Charges, Liens and Interests

(A) Undersurface Rights C155, Registered Owner of Charge - Her Majesty the Queen in right of the Province of British Columbia (Remarks: Inter Alia Part DDB30673 not including those excepted by the Crown; Part Former Lot 1 Plan 33884 except Plan KAP76911)

(B) Statutory Right of Way W15031, Registered Owner of Charge – British Columbia Hydro and Power Authority (Remarks: Part Former Lot 1 Plan 33884 except Plan KAP76911)

(3) Pending Applications

None

(4) Miscellaneous Notes

None