

SCHEDULE 7

LANDS

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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 against title to the Lands described in the land title searches attached as Appendix 7A [Description of Lands and Encumbrances] and any additional Charges against the Lands permitted under this Schedule;

“Lands” means the real property interests described in Appendix 7A [Description of Lands and Encumbrances], excluding the areas indicated in Attachment 1 [Excluded Areas] as “Excluded Daycare Areas” and “Excluded Hillside Centre Areas”; and

“Licence” has the meaning set out in Section 2.1(a) of this Schedule.

2. AUTHORITY’S OBLIGATIONS AND REPRESENTATIONS

2.1 Grant of Licence Over Site

- (a) From the Effective Date until the later of:
- (1) the Termination Date; and
 - (2) the date the Authority no longer requires Project Co to provide the transitional services described in Section 14.3(a) of the Agreement,

the Authority hereby grants, and will continuously, until the applicable date above, grant or cause to be granted to Project Co a non-exclusive licence of use and access to, on and over the Site and the Facility to the extent required by Project Co to allow Project Co to perform the Design, the Construction and the Services (the **“Licence”**).

- (b) In consideration for the licence granted in Section 2.1(a), Project Co will perform the obligations described in Section 4.1 of the Agreement subject to and in accordance with the Agreement.
- (c) 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.

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) Project Co’s rights are subject to the Encumbrances; and

- (d) subject to Section 6.12 of Schedule 2 [Design and Construction Protocols], 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), or payments in lieu of property taxes, 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 4.1 of this Schedule, Project Co accepts the Lands comprising the Site 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, and 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. Notwithstanding the foregoing, Project Co's obligation to observe and perform limitations, restrictions, obligations, liabilities and other terms and conditions set out in the Encumbrances is subject to:

- (a) Project Co being legally capable of performing such limitations, restrictions, obligations, liabilities and other terms and conditions for or on behalf of the Authority; and
- (b) Project Co being relieved from such obligation to the extent that the limitations, restrictions, obligations, liabilities and other terms and conditions set out in the Encumbrances are obligations for which the Authority is otherwise responsible under this Agreement.

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 14.2 (Transfer to the Authority of Assets, Contracts, etc.) of this Agreement,

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 lien or 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

ATTACHMENT 1
EXCLUDED AREAS