

## SCHEDULE 16

### ENCUMBRANCES

- (a) For the purposes of this Schedule 16, the defined term “Lands” shall include any portion of the Lands.
- (b) Each of the following, to the extent affecting the interest (whether real property interest or contractual interest) of the City in the Lands or any other person who owns the Lands (or any part thereof), is, in each case, considered to be an encumbrance for the purposes of the Project Agreement (each, an “**Encumbrance**”):
- (i) all encumbrances, pledges, liens, charges, security agreements, security interests, leases, subleases, title retention agreements, mortgages, easements, encroachments, rights-of-way, restrictive covenants, work orders, options or adverse claims of any kind or character whatsoever relating to the title to the Lands disclosed or noted on the land registry office parcel registers or abstract indices for the Lands from time to time, including (but not limited to) those that may have been included in the Background Information as of the date of the Project Agreement, those described or contemplated in Schedule 20 - Lands and including those referred to in the legal descriptions for the Lands available in the applicable land registry office, in each case as assigned, amended, extended, supplemented, substituted and replaced from time to time;
  - (ii) liens, charges or prior claims for taxes (which term includes charges, rates and assessments) or utilities (including levies or imposts for sewers and other municipal utility services) not yet due or if due, the validity of which is being contested in good faith, and liens or charges for the excess of the amount of any past due taxes or utilities charges for which a final assessment or account has not been received over the amount of such taxes or utilities charges as estimated and paid by the City;
  - (iii) inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Lands or of which notice in writing shall not at the time have been given to the City pursuant to the CA or otherwise or any lien or charge, a claim for which, although registered, or notice of which, although given, relates to obligations not overdue or delinquent and in respect of any of the foregoing cases, the City has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts;
  - (iv) the rights reserved to or vested in the public or any municipality or governmental or other public authority by any statutory provision;
  - (v) any subsisting reservations, limitations, provisions and conditions contained in any grants from the Crown of any land or interests therein, including reservations of under-surface rights to mines and minerals of any kind including rights to enter, prospect and remove the same;
  - (vi) any encroachments, easements, rights-of-way, rights to use or similar interests revealed by any survey of the Lands or which would be revealed by an up-to-date survey of the Lands;

- (vii) any rights in favour of or accruing to holders of under-surface rights which could be ascertained by a review of registered title or other public records, or, if unregistered, which do not materially interfere with the use of the Lands for the purposes of the Works;
- (viii) unregistered agreements with any municipal, provincial or federal governments or authorities and any public utilities or private suppliers of services, provided such unregistered agreements have been disclosed to DB Co, are described in Schedule 20 - Lands or could be ascertained by commercially standard off-title searches, or, if not so disclosed, described, or ascertainable, which do not materially interfere with the use of the Lands for the purposes of the Works, and further provided that such agreements have been complied with up to Financial Close, or, if not complied with (excluding non-compliance by DB Co and DB Co Parties), that any non-compliance does not materially interfere with the use of the Lands for the purposes of the Works;
- (ix) unregistered agreements, authorizations, consents, postponements, subordinations, licences or instruments entered into provided that they have been disclosed to DB Co, are described in Schedule 20 – Lands or could be ascertained by commercially standard off-title searches, or, if not so disclosed, described or ascertainable, which do not materially interfere with the use of the Lands for the purposes of the Works, and further provided such agreements, authorizations, consents, postponements, subordinations, licences or instruments have been complied with up to Financial Close, or, if not complied with (excluding non-compliance by DB Co and DB Co Parties), that any non-compliance does not materially interfere with the use of the Lands for the purposes of the Works;
- (x) unregistered easements, rights-of-way, rights to use, restrictions, restrictive covenants and similar rights in real property or any interest therein provided that they have been disclosed to DB Co, are described in Schedule 20 – Lands or which could be ascertained by commercially standard off-title searches, or if not so disclosed, described or ascertainable, which do not materially interfere with the use of the Lands for the purposes of the Works, and further provided such easements, rights of way, rights to use, restrictions, restrictive covenants and similar rights or interests have been complied with up to Financial Close, or, if not complied with (excluding non-compliance by DB Co and DB Co Parties), that any non-compliance does not materially interfere with the use of the Lands for the purposes of the Works;
- (xi) zoning (including, without limitation, airport zoning regulations), land use, property standards and building by-laws and ordinances, and federal, provincial or municipal by-laws and regulations;
- (xii) minor imperfections of title;
- (xiii) statutory exceptions to title and any rights reserved to or vested in any person by any statutory provision;
- (xiv) the right of any prior owner, occupant or tenant of any portion of the Lands to occupy any portion of the Lands or to remove buildings, fixed machinery, equipment, fittings or other fixtures located on such portion of the Lands; and
- (xv) the rights of any person entitled to any portion of the Lands through length of adverse possession or prescription.