

## **AMENDMENT OF DESIGNATION and DESIGNATION**

### **BACKGROUND:**

- A. Duck Lake Indian Reserve No. 7 (the "**Reserve**") in the Province of British Columbia is a reserve within the meaning of the *Indian Act* and has been set apart for the use and benefit of the Okanagan Indian Band ("**Okanagan**"), a band within the meaning of the *Indian Act*.
- B. By Designation dated October 31, 1996, and accepted by the Governor in Council under Order in Council P.C. 1997-1178 on August 28, 1997 (the "**1997 Designation**") Lot 1 in the Reserve, as shown on CLSR Plan 56119 ("**Lot 1**") was designated by Okanagan for leasing purposes.
- C. Okanagan wants to designate Lot 13-1, Plan 101195 CLSR Save and Except Lot 158 shown on Plan 111414 CLSR, and Lot 14, Plan 731 RSBC, in the Reserve and amend the 1997 Designation so that the Designated Lands are designated on the same terms (collectively, the amendment of the 1997 Designation and the new designation of Lot 13-1, Plan 101195 CLSR Save and Except Lot 158 shown on Plan 111414 CLSR, and Lot 14, Plan 731 RSBC , are referred to as this "**Designation**").
- D. By Resolution dated August 6, 2019, Okanagan's Band Council ("Council") requested that the Minister of Indigenous Services order a referendum to determine if the majority of Okanagan's electors voting at the referendum are in favour of the proposed Designation.
- E. The Minister of Indigenous Services ordered a referendum under section 3(1) of the *Indian Referendum Regulations* on October 13, 2020 to determine if the majority of Okanagan's electors voting at the referendum are in favour of the proposed Designation.
- F. On \_\_\_\_\_, a majority of Okanagan's electors voting at the referendum assented to this Designation in accordance with the *Indian Act* and the *Indian Referendum Regulations*.

### **TERMS OF THE DESIGNATION:**

#### ***Amendment of the 1997 Designation***

- 1. The term "(the "Lands")" in the first paragraph of the 1997 Designation is replaced by the term "(Lot 1)" and the remaining paragraphs of the 1997 Designation are replaced by paragraphs 2 to 20 of this Designation.

#### ***Lands Being Designated***

2. Under Subsection 38(2) of the *Indian Act*, Okanagan hereby designates by way of surrender that is not absolute, to Canada, all of the rights and interests of Okanagan and its members required to carry out the purposes of this Designation in those parts of the Reserve described as follows:

In the Province of British Columbia  
In the Osoyoos Division of Yale District  
In Duck Lake Indian Reserve No. 7

Firstly, Lot 13-1, Plan 101195 CLSR Save and Except that part of Lot 158 shown on Plan 111414 CLSR, a copy of which plan is recorded in the Canada Lands Survey Records in Ottawa, containing about 5.876 hectares;

Secondly, all of Lot 14 shown on Plan 731 RSBC, a copy of which plan is recorded in the Canada Land Survey Records in Ottawa, containing about 1.53 hectares

Together, the 2 parcels contain about 7.406 hectares (18.30 acres).

(“**Lot 13-1 and 14**”, which collectively with Lot 1 are referred to as the “**Designated Lands**”).

3. The Designated Lands exclude all mines and minerals, whether precious or base, solid, liquid or gaseous.
4. The Designated Lands are subject to all third party encumbrances on them at the date of this Designation, which include:
  - (a) a permit dated November 13, 1984 between Canada and the B.C. Telephone Co. to operate and maintain aerial and underground telecommunication cables on Duck Lake Indian Reserve No. 7 for the benefit of Okanagan for so long as B.C. Telephone Co. maintains the work, ILRS #100351; and
  - (b) a lease dated July 31, 1998 between Canada and SRI Homes Inc. to construct, operate, and maintain a manufacturing plant for the manufacture and related storage of residential, commercial, or industrial buildings and all related products and subassemblies and light industrial use on Duck Lake Indian Reserve No. 7, ILRS #263529

### ***Duration of Designation and Leases***

5. This Designation will start on the date that Canada accepts it and will continue until it is revoked or otherwise ends by operation of law.

***Projects on the Designated Lands***

6. Any portion of the Designated Lands may be leased by Canada for the following purposes:
- (a) Lease with SRI for a manufacturing facility of modular homes;
  - (b) The following: commercial, industrial, tourism, institutional, recreational uses:
    - amusement arcades, major
    - amusement arcades, minor
    - animal clinics, major
    - animal clinics, minor
    - animal grooming
    - auctioneering establishments
    - autobody repair and paint shops
    - automotive and equipment repair shops
    - automotive recreation vehicle services
    - brewing or distilling
    - broadcasting studios
    - business industrial
    - business park
    - business support services
    - call centres
    - cannabis cultivation, processing, and dispensary facilities
    - care centres, major
    - care centres, minor
    - carnival
    - clubs, private
    - commercial schools, educational or training facilities
    - commercial storage
    - community recreation centres
    - concrete plants
    - contractor services
    - convenience vehicle rentals
    - cultural exhibits, private
    - custom indoor manufacturing
    - drive-through services
    - drive-through vehicle services
    - electric vehicle charging station
    - emergency protective services

- equipment rental, sales and repair shops
- extended medical treatment services
- financial services
- flea markets
- fleet services
- food primary establishments/restaurants
- funeral services and crematorium
- gaming facilities
- gas bar
- general industrial
- government agencies
- government services
- group homes, minor
- health services
- high technology research and product design
- hostels
- hotels and motels
- household repair services
- industrial processing
- kennels
- landscaping and aggregate supply
- light industrial
- liquor primary establishment, major
- liquor primary establishment, minor
- lumber yards and facilities
- manufacturing and repair shops
- non-accessory parking
- nurseries and greenhouses
- offices
- offices, construction and development
- participant recreation services, indoor
- pawn shops
- personal services
- private clubs
- real estate sales office
- recycling depots, plants and materials drop-off centres
- residential security/operator unit
- retail store, licensee
- retail stores, convenience
- retail stores, general

- retail stores, service commercial
- second-hand dealerships
- seniors assisted housing
- seniors residential care
- seniors supportive housing
- service stations, minor
- shopping centres
- special needs housing
- spectator entertainment establishments
- storage, outdoor
- storage, outdoor
- temporary shelter services
- truck and mobile home sales/rentals
- used goods store
- utility services, minor impact
- vehicle and equipment sales/rentals, industrial and agricultural
- warehouse facilities and sales; and
- warehouse sales
- wrecking yards

For greater certainty, the Designated Lands shall not be used for:

- (i) a slaughter house;
  - (ii) storage of toxic chemicals;
  - (iii) a chemical treatment plant;
  - (iv) a waste disposal facility; or
  - (v) a bulk fuel refinery;
- (c) The following residential uses: single family homes, modular or manufactured homes, town houses, condominiums, apartment housing, and multi-family dwellings;
- (collectively the "**Approved Developments**"); or
- (d) Commercial, industrial, institutional, or residential developments that are not Approved Developments ("**Future Development Proposals**"),

and on terms consistent with this Designation. Any such lease may allow assignments, subleases, and mortgages and may be used as security to obtain financing and to secure other obligations related to the Designated Lands or otherwise.

7. Canada may grant or issue easements, permits, rights-of-way, licences of occupation, or other interests that may be necessary for, or in aid of, the primary purposes of any lease

or of any uses of the Reserve adjacent to the Designated Lands.

8. Canada may enter into any commercially reasonable agreements in aid of the primary purposes of any lease.
9. The terms and conditions of any lease, interest, or agreement granted, issued, entered into, or amended by Canada under this Designation require the consent of Council by way of resolution.
10. Any resolution given to Canada from Council under this Designation constitutes conclusive evidence to Canada that the resolution is valid and the information contained in it is true.

### ***Rent***

11. An appraisal of the Designated Lands was prepared by Kent Macpherson Appraisals & Consulting, and dated July 27, 2022 (the "**Appraisal**"). It appraised the market value of the Designated Lands as \$44,000,000.
12. Appraisals of the portions of the Designated Lands to be used for Future Development Proposals have not yet been conducted. Those portions will be valued when more specific projects are identified and information about value will be provided to Okanagan's electors at that time.
13. All leases of the Designated Lands must be at fair market rent, except that any lease to a corporation, limited partnership, or other entity 100% beneficially owned by Okanagan (a "Band Entity") may be for less than fair market rent. For any lease, rent can either be fully prepaid, paid annually, or paid by some other method acceptable to Canada and Council.
14. Under a lease to a Band Entity for less than fair market rent, the Band Entity and not Canada must ensure that any subleases are for fair market rent.

### ***Acknowledgments of the First Nation***

15. Okanagan acknowledges and agrees that, under a lease to a Band Entity, the following are some of the risks involved:
  - (a) Sublease revenues will be paid directly to the Band Entity and Canada will not monitor subleases, ensure that sublease rents to a Band Entity are at fair market value, or receive sublease rent revenues on Okanagan's behalf.
  - (b) For leases at less than fair market rent, the amount of money that is the difference between what could have been received under the lease (that is, the fair market rent) and what will be received under the lease (which is usually a "nominal rent", which is essentially zero) will not be paid to Canada and administered under the

*Indian Act* but will instead be managed by the Band Entity.

- (c) Although the Band Entity is to be beneficially owned by Okanagan, a Band Entity is a separate entity from the Okanagan and has different legal rights and obligations, such as (but not limited to) the following:
- (i) For activities on the Designated Lands, a Band Entity may be a taxable entity, while Okanagan is not.
  - (ii) A Band Entity may have overhead expenses, such as salaries to its employees, directors, and officers, which would not otherwise be incurred and which may reduce the amount of money available for distribution as profits or for use on other projects controlled by that Band Entity.
  - (iii) If a Band Entity gives security (such as a mortgage) and does not make the required payments, then a lender could possibly appoint an entity or a person who is not a member of Okanagan to manage the Band Entity for debts owed and could possibly seize and sell the Band Entity's assets (including its interest in any leases and subleases).
  - (iv) Okanagan's members have a right under the *Indian Act* to elect Council but may not have a similar right to elect directors of a Band Entity.
  - (v) Canada does not ensure the proper operation of a Band Entity and, as in any business, the Band Entity's operations carry risk. There is a risk that part or all of the benefit of a less than fair market rent lease may be lost through the business activities of the Band Entity and any anticipated profits may not flow through to Okanagan.
  - (vi) Canada will not monitor, and is not responsible for the administration of, the Band Entity, including but not limited to any collection, distribution, or use of monies earned, held, or used by a Band Entity or any trust associated with a Band Entity.
  - (vii) Canada has not reviewed or approved any trust agreements or business structure of or related to any Band Entity.
- (d) Okanagan has relied on its own independent legal and financial advisors. It has not relied upon Canada in the formation of the Band Entity and any trust, and will continue to rely on its own legal and financial advisors and not Canada in the administration of any Band Entity and any trust.

### ***Deposit of Rent and Fees***

16. All payments made to Canada under any lease or other interest granted or issued under this Designation will be credited to Okanagan as Indian moneys, except for any payments that are reimbursements of moneys spent by Canada, Canada's administrative fees

identified in the lease or interest, or other similar payments.

***Further Ratification Required for Leases for Future Development Proposals***

17. The following terms apply to leases that include Future Development Proposals:
- (a) If Canada is requested to execute a lease for a specific project or a specific and limited use (in the reasonable opinion of Canada), then, before Canada executes the lease, Council must deliver a resolution to Canada declaring that Okanagan's electors have approved, by a vote conducted in accordance with subparagraph (f), the rent payable, the term of the proposed lease, the portion of the Designated Lands to be leased, and the project or purpose for which such lands will be leased.
  - (b) If Canada is requested to execute a lease where the Future Development Proposals are not considered to be specific projects or specific and limited uses (in the reasonable opinion of Canada), then the lease must contain the following requirements:
    - (i) Before any works can be constructed under the lease on any of the Designated Lands relating to the Future Development Proposals, Council must deliver a resolution to Canada declaring that Okanagan's electors have approved, under a vote conducted in accordance with subparagraph (f), a specific project or specific and limited use (in the reasonable opinion of Canada) to be developed, the portion of the Designated Lands to be constructed upon, and the rent attributable to that portion of the Designated Lands.
    - (ii) Before a sublease of the Designated Lands relating to the Future Development Proposals can be granted under the lease, Council must deliver a resolution to Canada declaring that Okanagan's electors have approved, under a vote conducted under subparagraph (f), a proposal for a specific project or a specific and limited use (in the reasonable opinion of Canada) to be developed, the portion of the Designated Lands to be subleased, the rent payable (except with respect to a sublease that is derived from a lease where fair market rent is payable), and the term.
  - (c) If Canada is requested to amend a lease granted under this Designation that reduces the rent payable, increases the term, increases the area of Designated Lands to be leased, or changes the project or the purposes for which such lands are to be leased, then, before Canada amends the lease, Council must deliver a resolution to Canada declaring that Okanagan's electors have approved the amendment under a vote conducted in accordance with subparagraph (f).
  - (d) If a sublease is granted under the process set out in subparagraph (b) and an amendment proposes to increase the term of the sublease, increase the area of the Designated Lands to be leased under the sublease, or change the project or the

purposes for which such lands are subleased, then, for that amendment to be valid, Council must first deliver a resolution to Canada declaring that Okanagan's electors have approved the amendment under a vote conducted in accordance with subparagraph (f).

- (e) For the purposes of voting on rent under subparagraphs (a) to (c) (except with respect to a sublease that is derived from a lease where fair market rent is payable), Council must provide Okanagan's electors with reasonable evidence of the fair market value of the particular portion of the Designated Lands and, in the case of rent payable that is less than fair market value, the information set out in paragraph 15 and Council's reasons for wanting less than fair market rent.
- (f) To obtain the informed consent of Okanagan, any vote of Okanagan's electors required under this Designation is to be called and conducted by Council, which will establish and enforce the rules and procedures for the vote and any appeals arising from the vote, subject to the following requirements:
  - (i) The vote must include both on and off-reserve electors, who must be provided with an information package about the proposed specific project or specific and limited use, as the case may be, and, in the case of off-reserve electors, a mail-in ballot (and a postage-paid return envelope for the ballot) capable of being returned without identifying the elector and within time for the vote, or such other method of voting consistent with methods allowed by the *Indian Referendum Regulations*.
  - (ii) The vote is conclusively deemed to be successful if 50% plus 1 of the eligible votes cast are in favour of the proposal or question to be voted upon.

### ***Revocation of Designation***

18. Council may, by way of resolution, request that Canada's Minister responsible for accepting designations under the *Indian Act* revoke this Designation over the whole or any part of the Designated Lands, as long as there are no existing rights or interests issued under this Designation on the affected Designated Lands.

### ***Amendment of Designation***

19. Council may, by way of resolution, request that Canada's Minister responsible for accepting designations under the *Indian Act* amend this Designation to correct a typographical or manifest error, but, if there are any rights or interests existing under this Designation, then, either the rights or interests must not be affected by the amendment, or the holders of the rights or interests must have agreed to the amendment.

### ***Recommendation of Designation***

20. Under section 39.1 of the *Indian Act*, Council hereby recommends to the Minister of Indigenous Services the acceptance of this Designation.

This Designation is executed on \_\_\_\_\_, 20\_\_.

SIGNED AND DELIVERED BY the )  
Chief and Council of the Okanagan )  
Indian Band at a duly convened )  
meeting in the presence of: )

\_\_\_\_\_  
Byron Louis  
Chief

\_\_\_\_\_  
(Signature of Witness as to all )  
signatures) )

\_\_\_\_\_  
Viola Brown  
Councillor

\_\_\_\_\_  
(Name of Witness) )

\_\_\_\_\_  
Timothy Isaac  
Councillor

\_\_\_\_\_  
(Position / title) )

\_\_\_\_\_  
Joseph Jack  
Councillor

\_\_\_\_\_  
Allan Louis  
Councillor

\_\_\_\_\_  
Sheldon Louis  
Councillor

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David Marchand  
Councillor

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Rachel Marchand  
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Ryan Oliverius  
Councillor
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Rochelle Saddleman  
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Dan Wilson  
Councillor
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