

Memo



Date: October 18, 2010
File: 1140-50
To: City Manager
From: Manager, Property Management
Subject: **Bareland Lease Renewal – Callahan Property Group (Ltd.) - (Hardy Road)**

Report Prepared by: T. Abrahamson, Property Officer

Recommendation:

THAT Council approve the City entering into a Lease between the City of Kelowna and Callahan Property Group Ltd., in the form attached to the Report of the Manager, Property Management dated October 18, 2010, for the use of City-owned property being Lot C, Plan 20659, for a term of two (2) years commencing on October 1, 2010 at a rate of \$10,380.00 per year, with no further right of renewal, for the purposes of parking and general storage.

AND THAT the Mayor and City Clerk be authorized to execute the said Lease.

Purpose:

To enter into a bareland lease agreement with Callahan Property Group (Ltd.) for the purpose of general parking and storage.

Background:

Callahan Property Group (Ltd.) currently occupies City-owned land for parking and general storage under an existing lease which expired September 30, 2010. The lease renewal for Callahan reflects current market rates and has not increased since 2008. At that time, the lease was increased 44% and a further increase for the new term was not warranted given the levelling of market rates.

The City's Transportation Dept. has advised that the two-year renewal is compatible with the City's future roadway plans for the site. The City has the right to terminate the lease upon 60-days written notice should immediate use of the lands be required.

The continued use of the lands for the proposed purpose is consistent with the allowable uses on adjacent properties and poses no inconvenience to land users/owners in the area.

Internal Circulation:

Transportation Department

Legal/Statutory Authority:

Section 26(3) of the Community Charter

A handwritten signature in black ink, appearing to be a stylized 'V' or 'W'.

Legal/Statutory Procedural Requirements:

Disposition must be published in a weekly newspaper for two (2) consecutive weeks and posted on the public notice posting place

Considerations not applicable to this report:

Existing Policy:

Financial/Budgetary Considerations:

Personnel Implications:

External Agency/Public Comments:

Community & Media Relations Considerations:


Alternate Recommendation:

In light of the above, the Real Estate & Building Services department request Council's support of this Lease.



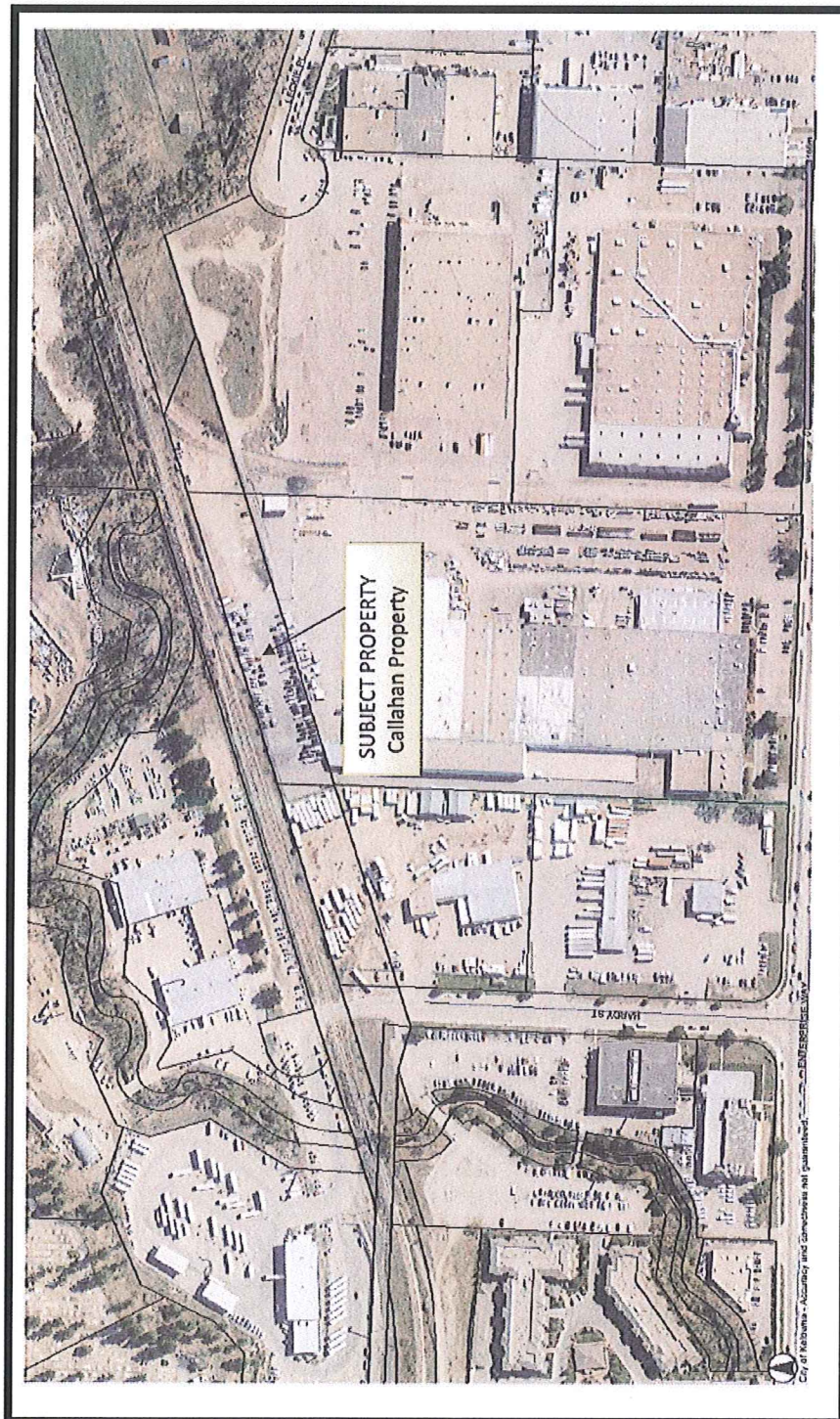
R. Forbes, Manager
Property Management, Real Estate & Building Services

Approved for inclusion:



M. Johansen, Building Services Manager for
D. Gilchrist, Director, Real Estate & Building Services

cc: A. Albiston, Roadway Projects Manager



DOCUMENT APPROVAL			
Cir.	Department	Date	Init.
	RE&BS	2010/10/19	RS
	City Clerk		

CALLAHAN PROPERTY GROUP (LTD.) LEASE

THIS AGREEMENT dated for reference the 1st day of October, 2010.

BETWEEN:

CITY OF KELOWNA, a municipal corporation having its offices at 1435 Water Street, in the City of Kelowna, in the Province of British Columbia, V1Y 1J4

(the "City")

OF THE FIRST PART,

AND:

CALLAHAN PROPERTY GROUP LTD., a company duly incorporated under the laws of the Province of British Columbia, having its registered and records office address at 218 – 1626 Richter Street, in the City of Kelowna, in the Province of British Columbia, V1Y 2M3

(the "Tenant")

OF THE SECOND PART,

WHEREAS:

A. The City is the registered owner in fee simple of that vacant parcel of land on Hardy Street, in Kelowna, British Columbia, which is legally described as:

Parcel Identifier: 007-768-656
 Lot C District Lots 127, 140 and 531 Osoyoos Division Yale District Plan
 20659 Except Plans 22894 and 25187

("Parcel C");

B. The Tenant owns property adjacent to or nearby Parcel C, legally described as Lot 2, Plan 16591, and the Tenant requires additional parking, vehicle storage, and general storage space for that property;

C. The Tenant wishes to lease a portion of Parcel C as parking, vehicle storage and general storage space for its adjoining property and the City agrees to lease a portion of Parcel C, on the terms and conditions of this Lease;

NOW THEREFORE in consideration of the rents, covenants and agreements contained in this Lease and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties covenant and agree as follows:

PART ONE - BASIC TERMS

GRANT OF LEASE

1. The City hereby leases to the Tenant that part of Parcel C shown outlined in bold blue on the sketch plan attached to this Lease as Schedule "A" (the "Leased Area").

TERM OF THE LEASE

2. This Lease shall be for two (2) years commencing on the 1st day of October 2010 (the "Commencement Date") to and including the 30th day of September, 2012 (the "Term").

NO RENEWAL

3. The Tenant is not entitled to any renewal or extension of this Lease.

RENT

4. The Tenant shall pay to the City as rent (the "Rent") the sum of EIGHT HUNDRED SIXTY-FIVE DOLLARS (\$865.00) on the first day of each month during the Term.

HST

5. The Rent does not include Harmonized Sales Tax and the Tenant shall pay to the City the Harmonized Sales Tax (or any replacement tax) in addition to the Rent.

ADDITIONAL RENT

6. All monies other than Rent which are owed to the City by the Tenant shall be considered additional rent ("Additional Rent"), whether or not described as such in this Lease, and shall be paid by the Tenant to the City immediately upon demand and Additional Rent shall be collectible as if the amounts were Rent.

NO SET-OFF

7. Rent and Additional Rent are payable by the Tenant to the City without any set-off or deduction.

NET LEASE

8. It is the intention of the City and the Tenant that this is a "net lease" and that all expenses, costs and payments whatsoever incurred in respect of the Leased Area or anything affecting the Leased Area shall be borne by the Tenant.

USE OF LEASED AREA

9. The Tenant shall not use the Leased Area for any purpose whatsoever other than vehicle parking, vehicle and general storage associated with the adjoining property legally described as Lot 2, Plan 16591.

PART TWO - TENANT'S USE OF LEASED AREA

CONDUCT OF BUSINESS

10. The Tenant shall:
- (a) use only professionally fabricated signs on the Leased Area which not only meet the requirements of the City's sign bylaw and other bylaws, but which have been approved by the City as to quality, content and location;
 - (b) use its best efforts to operate a tidy and organized vehicular parking and storage operation;
 - (c) not establish or erect any structure or improvement on the Leased Area.

TAXES

11. The Tenant shall pay promptly as the same become due all rates, taxes, property taxes and assessments, of whatsoever description, including municipal, regional district, school, hospital district and other property taxes that may at any time during the Term be lawfully imposed, or become due and payable upon, or in respect of the business of the Tenant, the Leased Area or the Tenant's use of it. The Tenant acknowledges that as a non-municipal occupier of municipal land, the Tenant will be liable for the payment of property taxes.

LICENCES AND PERMITS

12. The Tenant shall procure and maintain such licences, permits or approvals from any federal, provincial, municipal or other government authorities and such private permits as may be necessary to enable the Tenant to lawfully use the Leased Area.

UTILITIES

13. The Tenant shall contract directly for any utilities, telecommunications or other services it requires for the Leased Area and the Tenant shall pay promptly as the same become due all associated rates, charges and assessments.

NO OBLIGATIONS BY CITY

14. The City has no obligations under this Lease except to permit the Tenant's occupancy pursuant to the terms of this Lease.

NO WARRANTY OF SERVICES BY CITY

15. The City does not warrant that any service or facility provided by it to the Leased Area in the City's capacity as a local government will be free from interruption. No such interruption shall be deemed to be a disturbance of the Tenant's enjoyment of the Leased Area nor render the City liable for injury to or in damages to the Tenant nor relieve the Tenant from its obligations under this Lease.

RIGHTS OF WAY

16. The Tenant acknowledges and agrees that this Lease and its use of the Leased Area are subject to the rights of way, statutory rights of way, easement and notice of permit (collectively, the "Rights of Way") on the title to Parcel C as of the reference date of this Lease, a copy of which title is attached to this Lease as Schedule "B". The Tenant shall comply strictly with the City's obligations under the Rights of Way.

PUBLIC SAFETY

17. The Tenant shall take reasonable precautions to ensure the safety of persons using the Leased Area.

REPAIR

18. The Tenant shall:
 - (a) repair the Leased Area to the same condition as of the commencement of the Term, save and except only damage by fire, lightning, tempest or other natural cause and reasonable wear and tear;

- (b) permit the City, by its agents or employees, to enter and view the state of repair,

all repairs to be made in a first class workmanlike manner and to the approval of the City.

MAINTENANCE

- 19. The Tenant shall maintain the Leased Area in a good, proper and safe condition.

CLEANLINESS

- 20. The Tenant shall not permit the Leased Area to become untidy, unsightly or hazardous and at the end of each business day the Tenant shall leave the Leased Area in a clean and neat condition, to the satisfaction of the City.

RIGHT TO ENTER FOR PLANNING PURPOSES

- 21. The Tenant agrees that the City shall have the right to enter the Leased Area at all reasonable times to examine it for construction planning purposes, surveying, to make repairs, alterations, improvements or additions as the City may deem necessary or desirable or as the City may be required to make by law. The City shall be allowed to take into the Leased Area all material which may be required for such purpose and the Rent shall in no way abate while such construction planning, surveying, repairs, alterations, improvements or additions are being made by reason of interruption of the business of the Tenant. The City will exercise reasonable diligence as to minimize the disturbance or interruption of the Tenant's operations.

SECURITY

- 22. The Tenant shall be solely responsible for the security of the Leased Area.

BUILDERS LIENS

- 23. The Tenant shall promptly pay for all work and materials supplied to the Leased Area and should the Tenant be responsible for any builder's lien to be filed, the Tenant shall promptly discharge that lien.

NO EXCAVATION

- 24. The Tenant shall not excavate, dig, or extract any sand, gravel, earth, or minerals of any description out of the Leased Area.

NUISANCE

25. The Tenant shall not do, suffer or permit any act:
- (a) which may in any manner, directly or indirectly, cause injury or damage to the Leased Area, Parcel C or surrounding lands or to any fixtures or appurtenances thereof; or
 - (b) which may be or become a nuisance to or interference with any one who occupies or has access to any part of the Leased Area, Parcel C or surrounding lands; or
 - (c) which may, render the Leased Area or Parcel C or any part thereof less desirable or injure the reputation thereof.

ASSIGNMENT

26. Provided the Tenant has duly performed its obligations under this Lease, the Tenant shall have the right with the consent of the City, acting reasonably, to assign this Lease or sublease the entire Leased Area, but only to a person who occupies the adjacent property legally described as Lot 2, Plan 16591 (and such assignment will not relieve the Tenant of liability under this Lease), but in no circumstances may the Tenant license the Leased Area in whole or in part.
27. The acceptance of any rent or the performance of any obligation hereunder by a person other than the Tenant shall not be construed as an admission by the City of any right, title or interest of such person as a sub-tenant, assignee, transferee or otherwise in the place and stead of the Tenant.

COMPLIANCE WITH LAWS

28. The Tenant shall abide by and comply with all applicable statutes, laws, bylaws, rules, and regulations of every authority having jurisdiction which in any manner relates to or affects the business or operations of the Tenant or the Leased Area or the use of the Leased Area, and, without limiting the generality of the foregoing, all relating to environmental protection and safety and any contaminant, pollutant, dangerous substance, liquid waste, industrial waste, hauled liquid waste, or hazardous material or hazardous substance, including all the rules, regulations, policies, guidelines, criteria or the like made under or pursuant to any such laws.
29. The Tenant acknowledges that by entering into this Lease with the City, the Tenant is not relieved from complying with all bylaws and other City requirements with respect to this Leased Area.

CORPORATE EXISTENCE

30. The Tenant shall maintain its corporate existence and not take or allow any proceedings or steps toward dissolution.

PART THREE - ENVIRONMENTAL TERMS

DEFINITIONS

31. In this Part:

"Environmental Laws" means any statutes, laws, regulations, orders, bylaws, standards, guidelines, permits, and other lawful requirements of any governmental authority having jurisdiction over the Premises now or hereafter in force relating in any way to the environment, health, occupational health and safety, or transportation of dangerous goods, including the principles of common law and equity;

"Hazardous Substance" or "Hazardous Substances" means any pollutants, materials, hazardous, corrosive, or toxic substances, special waste or waste of any kind, or any other substance which is now or hereafter prohibited, controlled or regulated under Environmental Laws;

"Release" includes release, spill, leak, pump, pour, emit, discharge, eject, escape, leach, dispose, or dump

32. The Tenant hereby waives any right it may have to receive a site profile of Parcel C or the Leased Area from the City.

POLLUTION

33. The Tenant shall:

- (a) not use or permit to be used all or any part of the Leased Area for the sale, storage, manufacture, disposal, use, or any other dealing with any Hazardous Substances;
- (b) not Release any Hazardous Substance on or from the Leased Area or surrounding areas;
- (c) strictly comply, and cause any person for whom it is in law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Leased Area;
- (d) assume any and all duties, obligations and liabilities under any Environmental Law for Hazardous Substances in, on, under or migrating from the Leased Area brought in or about the Leased Area by the Tenant or by persons whom the Tenant is responsible in law, from and after the commencement of this Lease;
- (e) promptly provide to the City a copy of any environmental site assessment,

audit, or report relating to the Leased Area or Parcel C conducted by or for the Tenant at any time after the commencement of this Lease;

- (f) promptly notify the City in writing of any release after the commencement of this Lease of a Hazardous Substance or Hazardous Substances or any other occurrence or condition at the Leased Area, Parcel C or any adjacent property which could contaminate the Leased Area or Parcel C or subject the City or the Tenant to any fines, penalties, orders, investigations, or proceedings under Environmental Laws;
- (g) provide the City with immediate notice of any fines, penalties, orders, proceedings, investigations, litigation or enforcement proceedings, made or threatened by any third parties or governmental agencies in respect of the Leased Area;
- (h) on the expiry or earlier termination of this Lease, or at any time during the Term if requested by the City or required by any governmental authority pursuant to Environmental Laws, remove from the Leased Area all Hazardous Substances that was directly or indirectly caused by the Tenant or by persons whom the Tenant is responsible in law during the Term of this Lease. The Tenant shall perform these obligations promptly at its own cost and in accordance with Environmental Laws. All such Hazardous Substances shall remain the property of the Tenant, notwithstanding any rule of law or other provision of this Lease to the contrary and notwithstanding the degree of their affixation to the Leased Area.

34. The obligations of the Tenant under this section shall survive the expiry or earlier termination of this Lease.

PART FOUR - RELEASE, INDEMNITY AND INSURANCE

RELEASE

35. The Tenant hereby releases the City and its elected and appointed officials, officers, employees, agents and others of the City from and against all demands and claims which the Tenant may have, now or in the future, in relation to this Lease, the Leased Area, or the Tenant's use or occupancy of the Leased Area or any of the perils against which the Tenant shall have insured or pursuant to the terms of this Lease is obligated to insure.

INDEMNITY

36. The Tenant will and hereby does indemnify and save harmless the City and its elected and appointed officials, officers, employees, agents, successors, assigns and others of the City from any and all liabilities, damages, expenses, costs (including actual costs of professional advisors and including the cost of remediation of the Leased Area and any adjacent property)) claims, losses, demands, suits, actions, fines, penalties, or other harm whatsoever, directly or indirectly, whether relating to death, bodily injury, property loss, property damage

or other consequential loss or damage, in connection with or arising from:

- (a) any breach of any obligation set forth in this Lease to be observed or performed by the Tenant
- (b) any of the perils against which the Tenant shall have insured or pursuant to the terms of this Lease is obligated to insure;
- (c) any act, omission, or negligence of the Tenant, its shareholders, officers, directors, employees, agents, contractors, subcontractors, licensees, invitees, volunteers or others for whom it is responsible;
- (d) any incident or occurrence at the Leased Area, unless resulting from the negligence of the City;
- (e) any release or alleged release at any time during the Term of this Lease of any Hazardous Substance or Hazardous Substances at or from the Leased Area;
- (f) any builders lien filed against Parcel C in relation to this Lease or the use of Parcel C by the Tenant, including associated judgments;
- (g) the granting of this Lease.

SURVIVAL OF INDEMNITY AND RELEASE

37. The indemnities and release contained in this Lease will survive the expiration or earlier termination of the Term.

INSURANCE

38. The Tenant shall, at its sole expense, obtain and maintain during the Term comprehensive general liability insurance providing coverage for death, bodily injury, property loss and damage, and all other losses, arising out of or in connection with the Lease in an amount of not less than \$5,000,000.00 per occurrence.
39. At the time of the Tenant's execution of this Lease and at other times upon demand by the City, the Tenant shall deliver to the City certified copies of the policies or other proof of insurance required to be maintained by the Tenant under this Lease.
40. The City may, from time to time, notify the Tenant to increase the amount of insurance required by this Lease and the Tenant will, within 45 days of receiving such a notice, cause the amounts to be increased and deliver to the City a letter from its insurer certifying the increase in the amount of insurance.
41. The Tenant shall ensure that all policies of insurance pursuant to this Lease are:

- (a) placed with insurers licensed in British Columbia;
 - (b) are written in the name of the Tenant and the City, as an additional insured;
 - (c) contain a cross liability clause and a waiver of subrogation clause in favour of the City;
 - (d) primary and do not require the sharing of any loss by any insurer that insures the City;
 - (e) contain a clause to the effect that any release from liability entered into by the City prior to any loss shall not affect the right of the Tenant or the City to recover; and
 - (f) endorsed to provide the City with 30 day's advance notice in writing of cancellation or material change.
42. All policies may provide that the amount payable in the event of any loss will be reduced by a deductible, in an amount no greater than \$2,000.00 per claim. The Tenant will be solely responsible for any and all insurance deductibles.
43. If the Tenant at any time fails to maintain any insurance it is required to maintain, then the City may (but is not obligated to) obtain and maintain such insurance in such amounts and with such deductible amounts and for such periods of time as the City reasonably deems advisable. The Tenant will pay to the City, on demand, the City's cost of so doing.

PART FIVE - DEFAULT AND TERMINATION

NOTICE OF DEFAULT

44. If the Tenant fails to pay the Rent, or otherwise breaches this Lease, the City may give the Tenant notice in writing of the default. The notice shall state if the default is curable, that the Tenant shall have not less than five (5) business days to cure the default, or no time for cure in the event of an emergency or urgent circumstances, or where the Tenant has failed to keep in force the required insurance.

PROVISO FOR RE-ENTRY

45. Provided always and it is hereby agreed that the City may, without further notice to the Tenant, terminate the Lease and re-enter and take possession of the Leased Area if the Tenant fails to rectify or cure, to the reasonable satisfaction of the City, a default within the time specified in a notice from the City or if the default is one that cannot be rectified or cured.
46. Re-entry by the City may be by force if necessary, without any previous notice of intention to re-enter and the City may remove all persons and property therefrom

and may use such force and assistance in making such removal as the City may deem advisable and such re-entry shall not operate as a waiver or satisfaction in whole or in part of any right, claim, or demand arising out of or connected with any breach or violation by the Tenant of any covenant or Lease on its part to be performed.

TERMINATION FOR CITY USE

47. Without limiting any other section of this Lease, in the event the City may require the use, for whatever purpose, of the Leased Area, the City may terminate this Lease by giving the Tenant a 60-day notice of termination.

DISSOLUTION

48. If any step is taken, an order is made, a resolution passed or a petition filed for the liquidation or winding up or dissolution of the Tenant or if a receiver or receiver-manager is appointed to administer or carry on the Tenant's business, then at the option of the City, the Rent, Additional Rent and all outstanding levies and charges shall become immediately due and payable and this Lease shall immediately become forfeited and void and the City may re-enter and take possession of the Leased Area.

BANKRUPTCY

49. If this Lease is at any time seized or taken in execution or in attachment by any creditor of the Tenant, or if the Tenant should become insolvent or make any assignment for the benefit of creditors, or commit an act which entitles a person to take action under the *Bankruptcy and Insolvency Act* (Canada) or a bankrupt petition is filed or presented against the Tenant or the Tenant consents to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging the Tenant to be bankrupt under any law relating to bankruptcy and insolvency, then at the option of the City, the Rent, Additional Rent and all outstanding levies and charges shall become immediately due and payable and this Lease shall immediately become forfeited and void and the City may re-enter and take possession of the Leased Area.

DISTRAINT

50. If the City levies distress against the goods and chattels of the Tenant, located on the Leased Area, such force as may be deemed necessary for the purpose and for gaining admission to the Leased Area may be used without the City being liable to any action in respect thereof or for any loss or damage occasioned thereby and the Tenant hereby expressly releases the City, its employees and agents from all actions, proceedings, claims or demands whatsoever for or on account or in respect of any such forcible entry or any loss or damage sustained by the Tenant in connection therewith.

NO COMPENSATION

51. The Tenant will make no claim for compensation, in damages or otherwise, upon the lawful termination of the Lease. If the City terminates this Lease lawfully, the City retains the right to proceed at law against the Tenant for all of Rent and other loss or damage and costs, including all prospective losses or prospective damages suffered or to be suffered by the City.

COSTS

52. If the Tenant defaults under this Lease, the Tenant will pay to the City the City's full and actual costs including legal costs arising from the default, whether before action or otherwise, plus a 15% administration fee to reflect City staff time.

LEASED AREA RENDERED UNTENABLE

53. If the Leased Area should, in the opinion of the City, be rendered untenable by fire, earthquake or other casualty, the City may give notice to the Tenant of immediate termination of this Lease.

CONDITION OF LEASED AREA

54. At the expiration or early termination of the Term, the Tenant shall leave the Leased Area in a clean, tidy, safe, proper, and vacant condition, clear of contamination to the extent required by this Lease, and clear of all personal property, and any vehicles or other property left at the Leased Area by the Tenant shall become the absolute property of the City free of all encumbrances without payment of any compensation to the Tenant, unless the City, in its sole discretion, requires the Tenant to remove such property, in which case the Tenant shall do so within 15 days after expiry or early termination of this Lease.

PART SIX - GENERAL CLAUSES

QUIET ENJOYMENT

55. Subject to this Lease, the Tenant may peaceably hold and enjoy the Leased Area during the Term without interruption or disturbance by the City or any person lawfully claiming under the City.

TENANT'S CORPORATE REPRESENTATIONS AND WARRANTIES

56. The Tenant covenants with, and represents and warrants to, the City that:
- (a) the Tenant has the power and capacity to enter into this Lease and to comply with and perform this Lease:
 - (b) all necessary corporate proceedings have been taken to authorize the Tenant to enter into this Lease and to execute and deliver this Lease; and

- (c) this Lease has been properly executed by the Tenant and is a valid and binding obligation of the Tenant that is enforceable against the Tenant in accordance with its terms.

NO REPRESENTATIONS

- 57. The Tenant agrees that it has leased the Leased Area after examining it and that no representations, warranties or conditions have been made by the City Lease and the Tenant accepts the Leased Area "as is" and as fit for the Tenant's purpose.

RIGHT TO INSPECT

- 58. The City may (but is not obligated to) enter the Leased Area at all reasonable times to determine if the Tenant is complying with all its obligations under this Agreement.

ENTIRE AGREEMENT

- 59. The provisions of this Lease constitute the entire agreement between the City and the Tenant and supersede all previous communications, representations, warranties, covenants and agreements whether verbal or written between the parties with respect to this subject matter.

LAW TO THE CONTRARY

- 60. This Lease shall enure to the benefit of and be binding on the parties notwithstanding any rule of law or equity to the contrary.

NO OBLIGATIONS ON CITY

- 61. The rights given to the City by this Lease are permissive only and nothing in this Lease:
 - (a) imposes any duty of care or other legal duty of any kind under the law or tort or otherwise on the City to the Tenant or to anyone else;
 - (b) obliges the City to enforce this Lease, which is a policy matter within the sole discretion of the City.

GOVERNING LAW

- 62. This Lease shall be governed by and construed in accordance with the laws of the Province of British Columbia.

AMENDMENT

63. This Lease may not be modified or amended except by an instrument in writing signed by the City and the Tenant.

REMEDIES NOT EXCLUSIVE

64. No remedy conferred upon or reserved to the City is exclusive of any other remedy under this Lease or provided by law, but all such remedies shall be cumulative and may be exercised in any order or concurrently.

NO JOINT VENTURE

65. Nothing in this Lease shall constitute the Tenant as the agent, joint venturer or partner of the City or give the Tenant any authority or power to bind the City in any way. This Lease creates only the relationship of landlord and tenant.

TENANT

66. Any reference to the "Tenant" includes, where the context allows, shareholders, directors, employees, agents, licensees, volunteers, and invitees of the Tenant and all others over whom the Tenant may reasonably be expected to exercise control and any default in observing or performing the Tenant's obligation by such person will be deemed to be defaults of the Tenant.

OTHER DISPOSITIONS

67. The City reserves the right to grant rights of way, easements, covenants and other dispositions of Parcel C or any part of it in a manner consistent with this Lease and the Tenant shall execute any such document if requested by the City. For greater certainty, but without limiting the generality of the foregoing, a right of way, easement, covenant or other disposition is not inconsistent with this Lease if it does not charge the Leased Area.

POWERS PRESERVED

68. Nothing in this Lease affects the right of the City to exercise its powers within its jurisdiction.

HEADINGS

69. The headings appearing in this Lease have been inserted for reference and as a matter of convenience and do not define, limit or enlarge the scope or meaning of this Lease.

TIME OF ESSENCE

70. Time is of the essence of this Lease.

CONTINUATION OF OBLIGATIONS

71. The unfulfilled obligations of the Tenant under this Lease shall survive the expiry or earlier termination of this Lease.

DECISIONS BY CITY

72. Approvals, consents and other decisions of the City under this Lease may be made on its behalf by its Corporate Officer.

FURTHER ASSURANCES

73. The City and the Tenant shall execute and do all such further deeds, acts, things and assurances as may be reasonably required to carry out the intent of this Lease.

COVENANTS AND CONDITIONS

74. All of the provisions of this Lease shall be deemed and construed to be conditions as well as covenants as though the words specifically expressing or importing covenants and conditions were used in each separate section.

NO WAIVER

75. The failure of the City to insist upon strict performance of any obligation of the Tenant in this Lease or to exercise any right hereunder shall not be construed or operate as a waiver or relinquishment of the right for the future and no waiver shall be inferred from or implied by anything done or omitted by the City save only an express waiver in writing.

OVERHOLDING

76. If the Tenant should continue to occupy the Leased Area after the expiration of the Term and the City should accept rent, the new tenancy thereby created shall be deemed to be a monthly tenancy and shall be subject to the covenants and conditions contained in this Lease insofar as the same are applicable to a tenancy from month to month.

ENUREMENT

77. This Lease shall enure to the benefit of and be binding upon the parties and their heirs, executors, administrators, and successors.

INTERPRETATION

78. Wherever the singular or masculine is used the same shall be construed as meaning the plural or feminine or body corporate or politic as the context may require.

FORM OF LEASE

79. The Tenant acknowledges that this Lease is not in registrable form and the Tenant agrees that the City is not required to provide this Lease in registrable form.

TENANT'S COSTS

80. All obligations, promises, covenants and Leases of the Tenant shall be performed at its own cost and expense.

NOTICES

81. All notices to be given under this Lease shall be in writing and shall be sent by facsimile transmission, or delivered by hand or mailed and addressed to the other party as follows:

If to the City:

City of Kelowna
Community Development & Real Estate
1435 Water Street
Kelowna, BC, V1Y 1J4
Fax No. (250) 862-3312

If to the Tenant:

Callahan Property Group Ltd.
218 – 1626 Richter Street
Kelowna, BC, V1Y 2M3
Fax No. (250) 717-3400

82. Any notice delivered by hand or sent by facsimile transmission shall be deemed to be given and received on the day it is sent. Any notice mailed shall be deemed to be given and received on the third day after it is posted (unless there is a mail strike, slow down or other labour dispute which might affect delivery, in which case the notice shall be effective only if actually delivered).
83. Each party may change its notification information by a notice to the other party in accordance with this section.

INTEREST

84. The Tenant will pay to the City interest at a rate equal to 10% per annum, calculated and compounded monthly, on all unpaid monies under this Lease, from the due date for payment until the date of payment. This stipulation for interest will not prejudice any other right or remedy of the City under this Lease or at law or at equity.

SEVERABILITY

85. If any section, phrase or other part of this Lease should be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and the remainder of the Lease shall be valid and enforced to the fullest extent permitted by law.

SCHEDULES

86. The following schedules are attached to and form part of this Lease

Schedule "A" – Sketch Plan of Leased Area

Schedule "B" – Title Search of Parcel C

IN WITNESS WHEREOF the parties have duly executed this Lease on the dates written below.

DATED the _____ day of _____, 2010

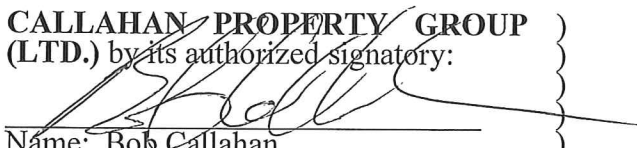
CITY OF KELOWNA by its
authorized signatories:

Mayor

Corporate Officer

DATED the 18 day of August, 2010

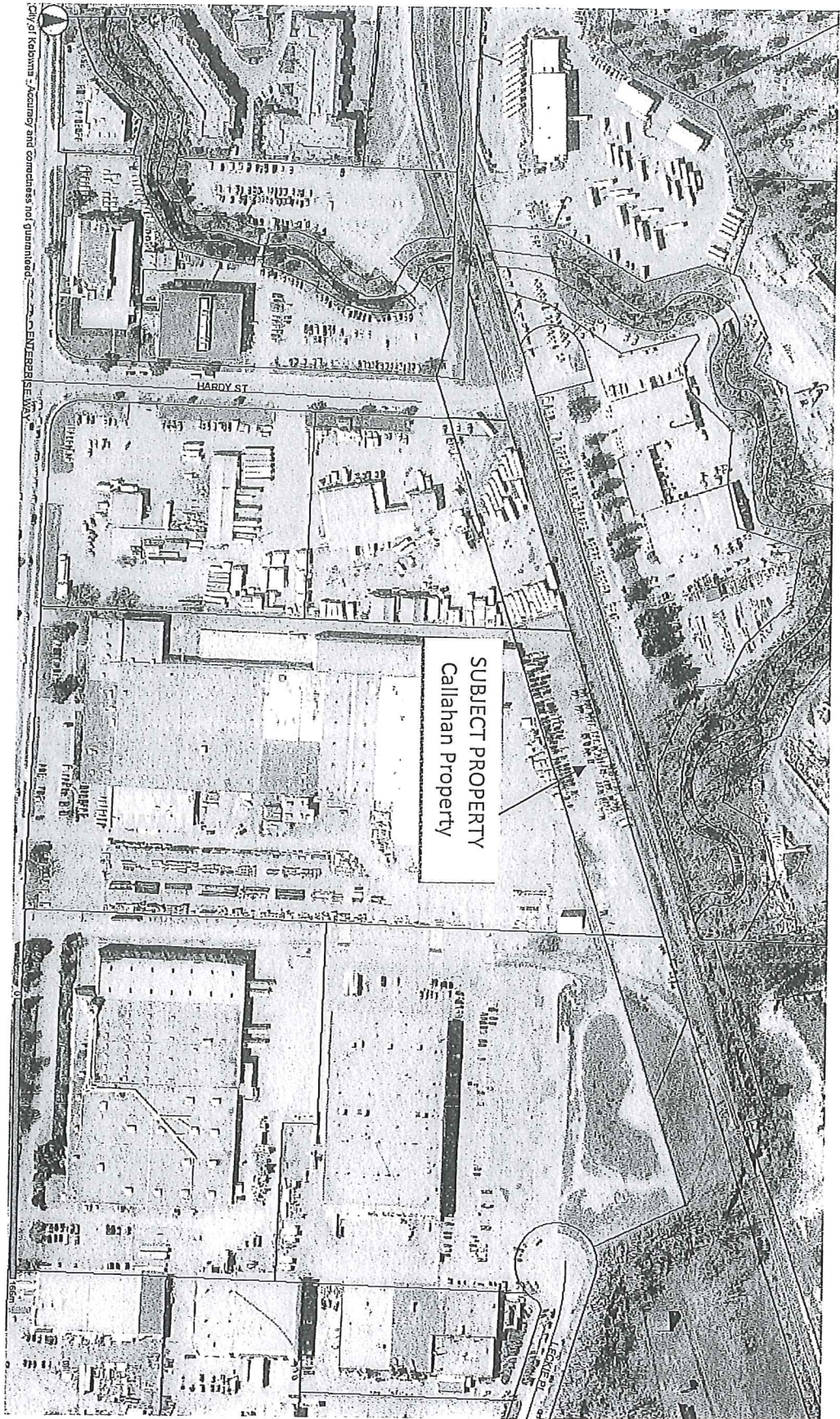
**CALLAHAN PROPERTY GROUP
(LTD.)** by its authorized signatory:



Name: Bob Callahan

SCHEDULE "A"

SKETCH PLAN OF LEASED AREA



Date: 13-Aug-2010
 Requestor: (PK76528)
 Folio:

SCHEDULE "B"
 TITLE SEARCH PRINT
 CITY OF KELOWNA
TITLE SEARCH OF PARCEL C
 TITLE - G33526

Time: 13:45:58
 Page 001 of 002

KAMLOOPS LAND TITLE OFFICE TITLE NO: G33526
 FROM TITLE NO: E26326

APPLICATION FOR REGISTRATION RECEIVED ON: 09 AUGUST, 1972
 ENTERED: 11 JULY, 1987

REGISTERED OWNER IN FEE SIMPLE:

CITY OF KELOWNA
 1435 WATER STREET
 KELOWNA, BC

TAXATION AUTHORITY:
 CITY OF KELOWNA

DESCRIPTION OF LAND:

PARCEL IDENTIFIER: 007-768-656
 LOT C DISTRICT LOTS 127, 140 AND 531 OSOYOOS DIVISION YALE DISTRICT PLAN
 20659 EXCEPT PLANS 22894 AND 25187

LEGAL NOTATIONS:

THIS TITLE MAY BE AFFECTED BY A PERMIT UNDER PART 26 OF THE MUNICIPAL
 ACT, SEE KM91329A

NOTICE OF INTEREST, BUILDERS LIEN ACT (S.3(2)), SEE LA65760
 FILED 2006-05-18

CHARGES, LIENS AND INTERESTS:

NATURE OF CHARGE

CHARGE NUMBER	DATE	TIME
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RIGHT OF WAY

80325E	1959-07-07	13:31
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REGISTERED OWNER OF CHARGE:
 INLAND NATURAL GAS CO. LTD.
 80325E

REMARKS: PART SHOWN ON PLAN A2115 INTER ALIA

MORTGAGE

90363E	1961-06-02	11:38
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REGISTERED OWNER OF CHARGE:

THE ROYAL TRUST COMPANY IN TRUST SEE DD 69780E & 90363E
 90363E

REMARKS: INTER ALIA 80325E (SEE ALSO 90376E, 101710E
 D15112, F39048, H19707 & K31231) INTER ALIA

RIGHT OF WAY

J35851	1974-06-11	14:24
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REGISTERED OWNER OF CHARGE:

CROWN ZELLERBACH CANADA LIMITED
 J35851

REMARKS: PART SHOWN AS PCL. 1 ON PLAN A11250

STATUTORY RIGHT OF WAY

S86745	1981-11-23	12:11
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Date: 13-Aug-2010 TITLE SEARCH PRINT
 Requestor: (PK76528) CITY OF KELOWNA
 Folio: TITLE - G33526

Time: 13:45:58
 Page 002 of 002

REGISTERED OWNER OF CHARGE:
WEST KOOTENAY POWER AND LIGHT COMPANY LIMITED
S86745

REMARKS: PART SHOWN AS PARCEL B ON PLAN A16261

EASEMENT

T20019 1982-04-22 13:40

REMARKS: INTER ALIA PART SHOWN AS PARCEL A ON
PLAN A16785 APPURTENANT TO LOT 1 PLAN 25187

STATUTORY RIGHT OF WAY

KJ75155 1995-09-15 13:42

REGISTERED OWNER OF CHARGE:

CITY OF KELOWNA

KJ75155

STATUTORY RIGHT OF WAY

KJ84462 1995-10-17 11:41

REGISTERED OWNER OF CHARGE:

WEST KOOTENAY POWER LTD.

KJ84462

"CAUTION - CHARGES MAY NOT APPEAR IN ORDER OF PRIORITY. SEE SECTION 28, L.T.A."

DUPLICATE INDEFEASIBLE TITLE: NONE OUTSTANDING

TRANSFERS: NONE

PENDING APPLICATIONS: NONE

*** CURRENT INFORMATION ONLY - NO CANCELLED INFORMATION SHOWN ***