

**Indian and Northern Affairs Canada  
Application for Registration**

**Affaires indiennes et du Nord Canada  
Demande d'enregistrement**

**Send Two Copies to:**

Indian and Northern Affairs  
Indian Lands Registry  
Terrasses de la Chaudière  
Ottawa, Ontario K1A 0H4  
Attention: Registrar of Indian Lands

**Envoyer deux copies à:**

Affaires indiennes et du Nord Canada  
Registre des terres indiennes  
Terrasses de la Chaudière  
Ottawa, Ontario K1A 0H4  
Attention: Le registraire des terres indiennes

The undersigned hereby requests that the instrument, the particulars of which are set out below, be entered, pursuant to the Westbank First Nation Self-Government Act, in the appropriate register of the First Nations Self-Government Land Register.  
Le/La soussigné(e) demande par la présente que le document dont les détails montrés ci-dessous, soit inscrit conformément à la Loi sur l'autonomie gouvernementale de la Première Nation de Westbank, dans le Registre.

<u>Log # / # au registre</u>	<u>Log Date / Date au registre</u>	<u>Regional File # / # de dossier régional</u>
P74822	16/Jan/2006 5:59 pm	2006-23
	dd/mmm/yyyy hh:mm am/pm	
	jj/mmm/aaaa hh:mm am/pm	

NAME OF PARTIES TO INSTRUMENT / NOM DES PARTIES DU DOCUMENT

**Grantor / Cédant**

Name / Nom

RONALD MICHAEL DERRICKSON

**Grantee / Cessionnaire**

Name / Nom

ARIA APARTMENTS LIMITED PARTNERSHIP

Instrument Type / Type de document: LEASE (or / ou Code) 14

Instrument Date / Date du document: 2006/Jan/12

Purpose / Objet: (or / ou Code)

LAND DESCRIPTION / DESCRIPTION DE LA TERRE

Province: BRITISH COLUMBIA

FN Land Code / Code foncier de la PN: 106.1

Reserve Name / Nom de la réserve: TSINSTIKEPTUM NO. 9

Crown Land Name / Nom de la terre de la couronne:

Legal Description - Land Affected /  
Description Légal - Terre:

902508562 LOT 344 CLSR 85020

Remarks / Remarques: SUBJECT TO PERMIT #307110



**WESTBANK FIRST NATION**

**Angie Derrickson**

Lands Officer

Signature of Applicant  
Signature du requérant

LANDS OFFICE  
201 - 515 Hwy 97 South  
Kelowna, B C V1Z 3J2

Phone (250) 769-2442  
Fax (250) 769-2443  
Email: aderrickson@wfn.ca

email  
courriel

Date

Jan. 16/06

**Return To:**

Address:

**Indian and Northern Affairs Canada  
Application for Registration**

**Affaires indiennes et du Nord Canada  
Demande d'enregistrement**

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Terrasses de la Chaudiere  
Ottawa, Ontario K1A 0H4  
Attention: Le registraire des terres indiennes

Registration Number / Numéro d'enregistrement: SG 00715

Registration Date / Date d'enregistrement: JAN 20 2006 and Time / et heure: 10:08  A.M. /  P.M.

Loretta Roy JAN 20 2006  
Signature of Registration Officer / Signature de l'officier d'enregistrement Date

Comments / Commentaires:

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Clarification/clarification

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Signature of Registration Officer / Signature de l'officier d'enregistrement Date



**WESTBANK FIRST NATION**

Westbank Lands Register  
Form No. WFN-02

APPROVED AS TO THE FORM BY THE  
DIRECTOR OF LANDS PURSUANT TO THE  
WESTBANK FIRST NATION LAND RULES  
Signature: *[Signature]*  
Date: *Jan 13/02*

**GENERAL INSTRUMENT - PART 1**

(This area for Westbank Lands Office use)

Page 1 of \_\_\_ Pages

**1. APPLICATION:** (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

BASSETT & COMPANY  
Barristers, Solicitors and Notaries  
260 - 2300 Carrington Road  
Westbank, B.C.  
V4T 2N6 Phone 768-5152 File No. 24299/BMP/dts

*[Signature]*

**2. (a) PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:**

(PIN)

(LEGAL DESCRIPTION)

902508562

Lot 344, Tsinstikeptum Indian Reserve No. 9, Province of British Columbia as shown on CLSR Plan of Survey No. 85020 deposited in the Canada Lands Surveys records at Ottawa, Ontario.

**3. NATURE OF INTEREST:**

DESCRIPTION

DOCUMENT REFERENCE

PERSON ENTITLED TO INTEREST

Lease

(PAGE AND PARAGRAPH)  
Entire Instrument

Transferee.

**4. TERMS:** Part 2 of this instrument consists of (select one only)

- Lease
- Sublease
- Assignment of Lease
- Assignment of Sublease
- Agreement for Sale
- Assignment of Mortgage
- Discharge of Mortgage
- Permit
- Licence
- Easement
- Release

Part 2 includes any additional or modified terms referred to in item 7 or in a schedule attached to this instrument. If discharge of mortgage or release is selected, the interest described in item 3 is released or discharged from the land described in item 2.

**5. TRANSFEROR(S):**

RONALD MICHAEL DERRICKSON, Businessman, of 2280 C Louie Drive, Westbank, British Columbia V4T 6J1

**6. TRANSFEREE(S):** (INCLUDING OCCUPATIONS(S), POSTAL ADDRESS(ES) AND POSTAL CODES(S))

ARIA APARTMENTS LIMITED PARTNERSHIP, of #202-45793 Luckakuck Way, Chilliwack, British Columbia V2R 5S3

**7. ADDITIONAL OR MODIFIED TERMS:**

NIL

**8. EXECUTION(S):** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the instrument described in item 4.

*[Signature]*

**ROGER M. MACE**  
BARRISTER & SOLICITOR  
2nd Floor - 1674 Bertram Street  
Kelowna, BC V1Y 9G4  
FAS (250) THE SIGNATURES 763-9524

Execution Date		
Y	M	D
06	01	12

Party(ies) Signature(s)  
RONALD MICHAEL DERRICKSON  
by his authorized signatory:

*[Signature]*

Name: *MURRAY D. GLAZIER*

**MURRAY D. GLAZIER**

Officer Certification: Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies that there has been compliance with the Westbank First Nation Land Rules.

FORM D

EXECUTIONS CONTINUED

Officer's Signature(s)

BARRY M. PORRELLI  
Barrister & Solicitor  
#260, 2300 Carrington Road  
Westbank, BC V4T 2N6  
(250) 768-5152

Execution Date

Y	M	D
06	07	05

Transferor(s) Signature(s)

ARIA APARTMENTS LIMITED  
PARTNERSHIP by its authorized signatory:

  
Name: Eric Jan Maveen

Officer Certification:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1979, c 116, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument. *that there has been compliance with the Westbank First Nation*

*of Land Rules.*

**LAND LEASE**

THIS LEASE dated for reference the     day of December, 2005 is made

BETWEEN

**RONALD MICHAEL DERRICKSON**, member of  
the Westbank First Nation, of  
2280 C Louie Drive  
Westbank , British Columbia, V4T 6J1

(hereinafter called the "Lessor")

AND

**ARIA APARTMENTS LIMITED PARTNERSHIP**, of  
#202-45793 Luckakuck Way  
Chilliwack, British Columbia, V2R 5S3

(hereinafter called the "Lessee")

**RECITALS**

- A. The Lands leased under this Lease are part of Tsinstikeptum Indian Reserve No. 9.
- B. The Lessor is in lawful possession of the Lands hereinafter described under a Certificate of Possession.
- C. The Lessor is authorized to grant this Lease pursuant to Part XI (the "Land Rules") of the Westbank First Nation Constitution proclaimed effective April 1, 2005 (the "Constitution") which sets out the principles, rules and administrative structures pursuant to which the First Nation will exercise authority and jurisdiction over the Westbank Lands.

In consideration of the rents, covenants and agreements reserved and contained in this Lease, the Parties covenant and agree as follows:

**1. DEFINITIONS**

- (a) "**Applicable Laws**" means, in respect of the Lands, the Land Rules and any other applicable law, statute, by-law, ordinance, regulation or lawful requirement of the federal, provincial or municipal government or authority, the First Nation or First Nation Council or any public utility lawfully acting under statutory power.
- (b) "**Approved Mortgagees**" means all mortgagees of the leasehold interest herein granted or granted by a sublessee of the Lessee and whose mortgages have been registered in the Registry.
- (c) "**Bank of Canada Review**" means the publication so titled that is published by the Bank of Canada on a monthly basis or any similar publication that is published by the Bank of Canada on at least a monthly basis as a replacement for the Bank of Canada Review and in which the per annum interest rate that

is charged by Canadian, chartered banks to their most creditworthy commercial borrowers from time to time are published.

- (d) **"Completion Date"** means the date this Lease is registered at the Registry.
- (e) **"Development Plan"** means the land use plan that is submitted to the First Nation Council as part of the land development process of the First Nation, including complete and detailed plans, design briefs, construction specifications, cost estimates and all other documents as may reasonably be required.
- (f) **"Environment"** means the air, land, water and all other external conditions or influences under which humans, animals and plants live or are developed.
- (g) **"First Nation"** means the Westbank First Nation or any successor to the First Nation pursuant to a federal statute.
- (h) **"First Nation Council"** means the governing body of the First Nation, elected under the Constitution or otherwise in accordance with Applicable Laws.
- (i) **"Hazardous Substances"** means:
  - (i) explosives;
  - (ii) inflammable oils and materials; and
  - (iii) any substance which when discharged into the Environment is or is likely to injure, damage, or endanger land, water, property, animal or plant life or human health or safety.
- (j) **"Improvements"** means all buildings, structures, works, facilities, services, landscaping and other improvements by whomsoever made and which are at any time and from time to time situate on, under or above the Lands, including all equipment, machinery, apparatus and fixtures (other than trade fixtures) forming part of or attached to the improvements and all alterations, removal, additions to, replacements and substitutions of the "Improvements".
- (k) **"Lands"** means Lot 344, TIR No. 9, Province of British Columbia as shown on CLSR Plan of Survey No. 85020, subject to an Access Permit Registration No. 307110.
- (l) **"Lease"** means this Indenture of Lease.
- (m) **"Lessor"** means Ronald Michael Derrickson.
- (n) **"Minerals"** means ore of metal and every natural substance that can be mined and that:
  - (i) occurs in fragments or particles lying on or above or adjacent to the bedrock source from which it is derived, and commonly described as talus; or

- (ii) is in the place or position in which it was originally formed or deposited, as distinguished from loose, fragmentary or broken rock or float which by decomposition or erosion of rock, is found in wash, loose earth, gravel or sand, and includes coal, petroleum and all other hydrocarbons; regardless of gravity and howsoever and wheresoever recovered, natural gas, building and construction stone, limestone, dolomite, marble, shale, clay, sand and gravel.
- (o) "**Nutrient**" means any substance or combination of substances defined as a nutrient under the Canadian Environmental Protection Act as amended or replaced from time to time.
- (p) "**Party**" means a party to this Lease and "**Parties**" means all of them.
- (q) "**Person**" includes any individual, partnership, association or corporation.
- (r) "**Premises**" means and includes the Lands and the Improvements and every reference in this Lease to the "Premises" includes a reference to every part of the Lands or the Premises, as the context may require.
- (s) "**Prime Rate**" means, for any particular calendar month the per annum interest rate that is charged by Canadian chartered banks to their most creditworthy commercial borrowers in effect upon the last Wednesday of the month as the rate is ascertained and published for the month in the Bank of Canada Review, or if more than one such rate is published for the last Wednesday of the month, the average of all such rates or if another day or other days are substituted for the last Wednesday of the month in the Bank of Canada Review, the rate or the average of all rates published for the day or days substituted for the last Wednesday of the month.
- (t) "**Registry**" means the Register of Westbank Lands established by Canada and held in Ottawa, Ontario or successor registry for the Westbank Lands established in accordance with Applicable Laws.
- (u) "**Remedial Plan**" means a plan prepared by the Lessee at the sole expense of the Lessee and designed to remove, eliminate, limit, correct, counteract, or mitigate the negative effects of a Hazardous Substance which has been discharged upon the Premises or any part thereof in such fashion that the land, water, property, animal or plant life, or human health and safety are or are likely to be injured, damaged or endangered.
- (v) "**Rent**" means the rent described in Article 5 hereof.
- (w) "**Reserve**" means the Tsinstikeptum Indian Reserve No. 9 of the First Nation.
- (x) "**Subleased Lands**" means that portion of the Lands included in a sublease granted pursuant to this Lease.
- (y) "**Term**" means the 99 year period commencing on the date this Lease is filed at the Registry.

- (z) "Toxic Substance" means any substance defined as a toxic substance under the Canadian Environmental Protection Act as amended or replaced from time to time.
- (aa) "Westbank Lands" has the meaning ascribed to it in the Westbank First Nation Constitution.

**2. THE DEMISE**

- 2.1 The Lessor hereby leases to the Lessee the Lands, excepting and reserving unto the Lessor all Minerals upon or under the Lands, and except as otherwise provided herein, free and clear of all liens, charges and encumbrances, TO HAVE AND TO HOLD the Lands unto the Lessee for the Term, yielding and paying the Rent as hereinafter provided, and subject to the terms, conditions, provisos, exceptions and reservations contained in this Lease.
- 2.2 The Lessee acknowledges that this Lease is subject to Applicable Laws.

**3. MINERALS**

- 3.1 The granting of this Lease does not grant any interest in the Minerals or natural resources under the Lands.

**4. USE OF LANDS**

- 4.1 The Lands may be used for any lawful purpose in accordance with Applicable Laws, as they are amended from time to time, including medium or high density multi-family apartments in one or more buildings comprising up to 160 single family living units.

**5. RENT**

- 5.1 The Lessee will pay as Rent the sum of \$2,000,000.00 (this is equivalent to \$20,202.02 per year broken out for each year of the Term), as Rent prepaid for or in respect of the Lands for the entire Term payable on the Completion Date as follows:
  - (a) \$100,000.00 as a non-refundable and irrevocable deposit paid to the Lessor's solicitors in trust and released to the Lessor (payment is acknowledged by the Lessor);
  - (b) \$100,000.00 as a further deposit paid to the Lessor's solicitors and to be held in an interest bearing trust account and paid by the Lessor's solicitors to the Lessor as Rent on the registration of this Lease (payment is acknowledged by the Lessor);
  - (c) \$1,800,000.00 payable to the Lessor on the Completion Date.
- 5.2 The Lessor acknowledges that upon payment of the Rent in accordance with Section 5.1, no other rent of any kind will be payable by the Lessee for the Lands during the Term.



The Lessee acknowledges that other monies which may become payable by Lessee to the Lessor hereunder, if any, while not constituting rent, will be collectable by the Lessor with all remedies available for the collection of rent, including all remedies available to the Lessor in the event of Lessee's default hereunder.

**6. ASSIGNMENT**

- 6.1 Subject to the Lessee being current with respect to its obligations pursuant to this Lease, the Lessee may assign this Lease or any portion thereof without the consent of the Lessor.
- 6.2 The Lessee will obtain from any proposed assignee a written agreement whereby the assignee covenants and agrees that it will observe and perform all of the covenants and agreements to be observed or performed by the Lessee under this Lease.
- 6.3 The assignment of this Lease by the Lessee will not relieve and discharge the Lessee from his obligations or liabilities under this Lease except to the extent such obligations are assumed in writing by the assignee.
- 6.4 The Lessee may subdivide the Lands or assign leasehold interests in portions of the Lands without the consent of the Lessor. The Lessor will, without payment of further rent or other consideration, promptly and without delay, sign such modifications of lease and replacement leases as are required to facilitate the Lessee effecting any subdivision or making an assignment. The Lessee will reimburse the Lessor for any reasonable expenses required by the Lessor to comply with his obligation pursuant to this Section 6.4.
- 6.5 No assignment will be valid unless it includes the following provisions:
- (a) the assignee is bound by all terms of this Lease;
  - (b) in the event of conflict between the terms of this Lease and the assignment, the terms of this Lease will govern; and
  - (c) the assignment must be registered in the Registry.
- 6.6 If the Lessee is one or more corporations, the shares of which are not publicly traded on any exchange, the Lessee will provide the Lessor with written notice of any change of control of such corporation.

**7. SUBLETTING**

- 7.1 The Lessee may sublet any part of the Premises without the consent of the Lessor.
- 7.2 Any sublease of the Premises will include the following provisions:
- (a) a sublease may be for any period up to one day before the expiration of the Term of this Lease, and not beyond;
  - (b) a sublease will be expressly subject and subordinate to this Lease and to the rights of the Lessor hereunder; and

- (c) a sublease will oblige the subtenant not to do anything in contravention of this Lease.

7.3 Subtenants may assign and sublet all or portions of the Premises and mortgage their respective subleases without the consent of the Lessor.

7.4 In the event the Lessor is in a position to declare the Term herein ended and cancel this Lease pursuant to the provisions of Article 34 the Lessee shall execute an assignment of the Lease for the unexpired Term to a company incorporated pursuant to the Laws of the Province of British Columbia for this express purpose (herein called "Lessee Corp."), and the Lessor shall execute any documentation necessary to give effect to such Assignment of Lease and further shall attend to the immediate registration of the Assignment of the Lease despite any act, omission or default of the Lessee under this Lease, subject to the following conditions:

- (a) The Lessor is in a position to cancel this Lease pursuant to the provisions of Article 34.
- (b) Lessee Corp. is in good standing with respect to filing of annual reports with the Registrar of Companies in British Columbia.
- (c) The shares of Lessee Corp. have been issued only to sublessees;
- (d) If applicable the Approved Mortgagee is owner of a mortgage registered against inter alia the Lands in which case the assignment shall be subject to such mortgage;
- (e) Rent for Lands has been paid in full pursuant to section 5.1.
- (f) All other monies due and payable pursuant to this Lease are paid in full to the date of the Assignment of this Lease to Lessee Corp.

7.5 Subject to Section 7.4, it is hereby provided the sublessees may peaceably and quietly possess, hold and enjoy the Subleased Lands during the term of the Lease and their sublease without interruption or disturbance by the Lessor, or anyone claiming under it, despite any default by the Lessee of its obligations hereunder.

7.6 In the event the Lessee refuses or neglects to execute an Assignment of Lease to Lessee Corp. or an Approved Mortgagee as required herein, the Director of Lands is irrevocably authorized for and on behalf of the Lessee to execute the Assignment of Lease and such other documents as are required (if any) to be signed by the Lessee to give effect to the provisions of section 7.6 or 9.3 as the case may be.

## **8. NON DISTURBANCE**

8.1 The Lessor hereby covenants, to and in favour of the Lessee and to and in favour of and for the benefit of every sublessee, mortgagee, licensee, permittee, or holder of any other interest in the Lessee's leasehold estate hereunder or in any interest derived therefrom (each of which parties is herein called an "Interested Party"), that if this Lease is cancelled for any reason whatsoever prior to the expiration of the Term or if any rights of the Lessee hereunder are cancelled, suspended or interfered with for any reason whatsoever, the Lessor will not disturb or interfere with the possession, interest or rights

of any such Interested Party in respect of the Lands during the Term provided that such Interested Party observes and performs for and in favour of the Lessor, its covenants and obligations contained in its sublease, mortgage, licence, permit, concession or other instrument under which such Interested Party's interest in respect of the Lands arises subject to the proviso that the covenants and obligations cannot be inconsistent with the covenants and obligations of the Lessee herein to the Lessor or which create a liability or payment obligation (i.e. property taxes, utilities, insurance) on the Lessor. The Lessor will sign such non-disturbance agreements as may be reasonably requested, but subject always to payment of the Lessor's reasonable legal and consulting costs without delay, to confirm the Lessor's agreements relating hereto.

9. **MORTGAGE**

9.1 The Lessee may mortgage the whole or any part of its interest in this Lease by any means without the consent of the Lessor. The Lessor confirms that any mortgagee of any interest in the leasehold estate may enforce its security to the fullest extent and acquire the leasehold estate in any lawful way and, by its representative or a receiver, as the case may be, and subject to Section 9.2, take possession of and manage the Lands and sell or assign or sublet the Premises without notice to the Lessor and without the necessity of obtaining any consent from the Lessor.

9.2 Notwithstanding anything else in this Lease, any mortgage will be subject to the following conditions:

- (a) if the mortgagee takes possession of the Premises or acquires the Lessee's equity of redemption then the mortgagee will perform and observe all the Lessee's covenants and agreements under the Lease while in possession of the Premises and until the Lease is duly assigned to an assignee as provided in Section 9.2(b) below; and
- (b) the mortgagee will cause any assignee of the leasehold interest under an assignment to agree in writing to assume, perform and observe all the Lessee's covenants and agreements under the Lease, and upon delivery to the Lessor of such assumption agreement, the mortgagee will be deemed to be released from any and all obligations hereunder.

9.3 In the event the Lessor is in a position to declare the Term herein ended and cancel this Lease pursuant to the provisions of Article 34 the Lessee shall execute an assignment of the Lease for the unexpired Term of the Lease to an Approved Mortgagee or its Assignee, and the Lessor shall execute any documentation to give effect to such Assignment of Lease and further shall attend to the immediate registration of the Assignment of the Lease despite any act, omission or default of the Lessee under this Lease, subject to the following conditions:

- (a) The Lessor is in a position to cancel this Lease pursuant to the provisions of Article 34.
- (b) A Lessee Corp. shall not have elected to take an assignment of the Lease subject to the mortgage of the Approved Mortgagee.

- (c) The Approved Mortgagee is owner of a mortgage registered against inter alia the Lands.
- (d) Rent for the Lands has been paid in full pursuant to section 5.1.
- (e) All the monies due and payable pursuant to this Lease are paid in full to the date of the assignment of this Lease to an Approved Mortgagee.

**10. REGISTRATION**

- 10.1 The Lessee will provide the Registry with the appropriate number of copies of every document to be registered with respect to a disposition of the leasehold estate referred to in Articles 6 or 9. These copies will be originally executed copies and must be in a form acceptable for registration in the Registry.
- 10.2 Neither the granting of this Lease nor anything contained in it will be construed as an agreement or assurance that this Lease or any assignment, sublease mortgage or other disposition of the leasehold estate can or may be registered in a provincial land title or registry office.

**11. UTILITIES**

- 11.1 The Lessee is responsible for providing at its expense all services and facilities required by it for use of the Premises.
- 11.2 Without limiting the generality of the foregoing the Lessee and/or the sublessees will pay for all water, gas, telephone, light, power, heat, air-conditioning, sewer and garbage disposal services and facilities for use of the Premises.
- 11.3 No interruption of any service or facility provided to the Premises will be deemed to be a disturbance of the Lessee's enjoyment of the Premises or render the Lessor or the First Nation liable for injury to or in damages to the Lessee or relieve the Parties from their obligations under this Lease.

**12. TAXES**

- 12.1 The Lessee will pay on or before the due date in each and every year during the Term all applicable taxes, trade licences, rates, levies, duties and assessments of any kind lawfully imposed by any competent authority, whether in respect of the Premises, fixtures, machinery, equipment or business relating to the Premises or in respect of occupation of the Premises by anyone.
- 12.2 Without in any way relieving or modifying the obligation of the Lessee to comply with Section 12.1, the Lessee may at its expense, contest or appeal the validity or amount of any tax, trade licence, rate, levy, duty or assessment PROVIDED that the Lessee commences any proceedings to contest or appeal the validity or amount forthwith and continues with the proceedings with reasonable diligence.
- 12.3 The Lessee will, upon written request by the Lessor, provide the Lessor with copies of official receipts of the competent authority or other proof satisfactory to the Lessor, acting reasonably, evidencing payment of taxes, trade licences, rates, levies, duties or assessments payable with respect to the Premises.

**13. COMPLIANCE WITH LAWS**

- 13.1 The Lessee, acting reasonably and at its expense, will observe and perform all of its obligations and all matters and things necessary or expedient to be observed or performed by it in connection with the Premises in accordance with Applicable Laws.
- 13.2 Without in any way relieving or modifying the obligation of the Lessee to comply with Section 13.1, the Lessee may at its expense, contest or appeal the enforceability or validity of any of the Applicable Laws, PROVIDED that the Lessee commences any proceedings to contest or appeal the enforceability or validity thereof or any cost associated therewith forthwith and continues with the proceedings with reasonable diligence.

**14. NUISANCE**

- 14.1 The Lessee will not cause, permit or suffer any nuisance at the Premises.
- 14.2 Without limiting Section 14.1, the Lessee will, upon written notice from the Lessor or the First Nation Council, use reasonable commercial efforts to abate any nuisance within its control and arising directly or indirectly out of the use or occupation of the Premises by the Lessee or someone else for whom the Lessee is responsible in law.
- 14.3 The normal carrying on at any time by the Lessee of a lawful use as contemplated in Section 4.1 to the standards required of it under any provision of this Lease will not be considered a nuisance for the purposes of this Article 14.

**15. WASTE**

- 15.1 The Lessee will not cause, permit or suffer the commission of any waste on the Lands.
- 15.2 The Lessee will not cause, permit or suffer the removal of any sand, gravel, topsoil, or other material constituting part of the Lands except as required by construction and installations permitted by this Lease and otherwise except in compliance with Applicable Laws, in which case, removal will not constitute waste.

**16. RUBBISH**

- 16.1 Without limiting Article 14, the Lessee will not cause, permit or suffer any rubbish or debris to be placed or left at the Premises except as is reasonably necessary in accordance with the uses permitted by Article 4, by construction or installations permitted by this Lease or as permitted in writing by the Lessor, acting reasonably.

**17. ENVIRONMENTAL STANDARDS**

- 17.1 Without limiting the generality of Article 13, the Lessee will at all times conduct all business or activities on the Premises in compliance with all applicable environmental laws, statutes, by-laws, ordinances, regulations, notices, orders or lawful requirements of the federal, provincial, municipal government or authority, the First Nation Council or other lawful authority.

**18. NO CONTAMINANTS**

18.1 Without limiting the generality of Article 13, no Toxic Substances or Nutrients will be used, emitted, discharged or stored on the Premises or any adjacent land by the Lessee, its officers, directors, invitees, agents, employees or sublessee except in strict compliance with all applicable environmental laws, statutes, by-laws, ordinances, regulations, notices, orders or lawful requirements of the federal, provincial, municipal government or authority, the First Nation Council or other lawful authority; and the Lessee will immediately give written notice to the Lessor and First Nation Council of the occurrence of any event in or on the Premises constituting an offence thereunder or being in breach thereof and, if the Lessee will, alone or with others, cause or permit the happening of such event, the Lessee will, at its own expense:

- (a) promptly remove the Toxic Substances or Nutrients from the Premises in a manner which conforms with all such applicable environmental laws, permits, by-laws, ordinances, regulations, notices and orders governing the removal, movement and disposal of, Toxic Substances or Nutrients; and
- (b) provide all bonds or securities reasonably required by the Lessor or government authority having jurisdiction; and
- (c) if requested, obtain at the Lessee's expense, from an independent consultant designated or approved by the Lessor, acting reasonably, verification of the complete and proper removal of the Toxic Substances or Nutrients from the Premises or, if such is not the case, reporting as to the extent of any failure of this Article 18; and
- (d) assume full responsibility for all damages to adjacent land and water caused by any such discharge of Toxic Substances or Nutrients which originated on and whose source is the Premises.

**19. COSTS ASSOCIATED WITH MITIGATION OF ENVIRONMENTAL IMPACTS**

19.1 The Lessee will, at its own expense, remedy any damage to the Lands caused by the performance of the Lessee's obligations under Article 18.

19.2 The Lessee will implement the appropriate technology, design or repair to mitigate anticipated or remediate actual adverse environmental impacts attributable to the Lessee's use of the Premises immediately following discovery or notice thereof by the Lessee. Further, the Lessee will permit the Lessor's representatives and the representatives of the First Nation Council to enter onto the Premises at all reasonable times and on reasonable prior written notice, to inspect and monitor the Lessee's activities in the course of mitigation and to ensure that the Lessee has taken reasonable steps to mitigate any reasonably anticipated or actual adverse impacts attributable to the Lessee on the Environment to the satisfaction of the Lessor. The Lessee may require that a representative of the Lessee be present.

**20. POSSESSION OF HAZARDOUS SUBSTANCES, TOXIC SUBSTANCES AND NUTRIENTS**

20.1 If the Lessee brings or creates upon the Premises or permits the bringing or creating thereon any Hazardous Substance, Toxic Substance or Nutrient or if the conduct of the Lessee's business will cause there to be any Hazardous Substances, Toxic Substances or Nutrients upon the Lands or the Premises notwithstanding any rule of law to the contrary, such Hazardous Substance, Toxic Substance or Nutrient will be and remain the sole and exclusive property of the Lessee and will not become the property of the Lessor or the First Nation notwithstanding the degree of fixation of the Hazardous Substance, Toxic Substance or Nutrient or the goods containing the Hazardous Substance, Toxic Substance or Nutrient to the Premises and notwithstanding the expiry or earlier termination of this Lease.

**21. SURVIVAL OF OBLIGATIONS**

21.1 The obligations of the Lessee pursuant to Articles 17, 18 and 19 will survive the expiry or earlier termination of this Lease, save only that, to the extent that the performance of these obligations requires access to or entry upon the Premises or any part thereof after the expiration or earlier termination of this Lease, the Lessee will be afforded reasonable entry and access for purposes at such times and upon such terms and conditions as the First Nation Council may from time to time reasonably specify in writing. If the Lessee, despite being afforded reasonable opportunities to perform such obligations, fails to do so, the Lessor may, at the Lessee's expense, by the Lessor's officers, employees, agents or contractors and subcontractors, undertake the performance of any necessary work in order to complete such obligations of the Lessee, but having commenced such work, the Lessor will have no obligation to the Lessee to complete such work.

**22. ALTERATIONS AND ADDITIONS**

22.1 The Lessee will not erect Improvements, alter, remove, add to, replace, or make substitutions for the Improvements except in compliance with Applicable Laws.

**23. NEW IMPROVEMENTS**

23.1 The Lessee will not construct any new buildings, structures or other Improvements on, under or above the Lands except in compliance with Applicable Laws.

**24. REPAIR OF PREMISES**

24.1 The Lessee will be solely responsible, in compliance with Applicable Laws, for the erection of any Improvements on the Lands and for the condition, operation, repair, replacement, maintenance and management of the Premises.

**25. SIGNS**

25.1 The Lessee will have the right, without the consent of the Lessor, to erect or exhibit signage, in accordance with Applicable Laws, in and about any portion of the Premises in conjunction with any lawful purpose described or contemplated in Article 4.

**26. LIABILITY INSURANCE**

- 26.1 The Lessee will forthwith effect and maintain at its expense with one or more companies satisfactory to the Lessor, comprehensive general liability insurance (the "Liability Insurance") with the Lessor and the Westbank First Nation as additional insureds, against claims for personal injury, death or property damage or loss occurring at or about the Premises.
- 26.2 The Liability Insurance will provide protection in an amount of not less than **TWO MILLION (\$2,000,000) DOLLARS** for any one occurrence or to such other reasonable amount as the Lessor may notify the Lessee in writing from time to time.
- 26.3 The Liability Insurance will contain a provision for cross liability.

**27. PROPERTY INSURANCE**

- 27.1 If applicable the Lessee, acting reasonably, will effect and maintain at its expense property insurance insuring the Improvements against loss or damage by fire and other perils under customary supplementary coverage.

**28. INSURANCE PROVISIONS**

- 28.1 Every insurance policy required under this Lease will to the extent that it is obtainable contain an agreement by the insurer that it will not cancel or substantially alter the policy without first giving each of the insureds at least thirty (30) days prior written notice.

**29. INSURANCE VALIDATION**

- 29.1 The Lessee will not do, permit or suffer anything to be done at the Premises which might cause any policy of insurance required by this Lease to be invalidated or cancelled, and the Lessee will comply forthwith with every lawful notice in writing from the Lessor or First Nation Council or any insurer requiring the execution of works or discontinuance of any use of the Premises in order to avoid invalidation or cancellation of any insurance.
- 29.2 The Lessee releases the Lessor and the First Nation, their respective officers, employees, agents or contractors, from all liability from loss or damage caused by or resulting from any of the perils or an injury against which the Lessee has covenanted in this Lease to insure except if the loss, damage or injury arises out of the negligence or omission of the Lessor, First Nation, or their respective officers, agents, employees or contractors, even though the Lessee has failed to so insure.
- 29.3 The Lessee will, upon request, deliver certificates of the insurance evidencing every policy of insurance that is required by this Lease immediately after the insurance is effected and will, upon request, deliver a certificate of renewal that the insurance has been renewed or replaced at least ten (10) days before the expiry of any policy of insurance in force.
- 29.4 The Lessee will, upon written request, deliver a certified copy of every insurance policy taken out by the Lessee with respect to the Premises.



**30. REINSTATEMENT OF DAMAGED PREMISES**

- 30.1 Where the Lessee determines to restore or repair damage to the Premises, such restoration or repair will be carried out in good and workmanlike manner and with reasonable diligence and in compliance with Applicable Laws.
- 30.2 The Lessee, prior to commencing any work of restoring, rebuilding or replacing the Improvements, in whole or in part, will remove or screen unsightly rubble and debris resulting from damage or destruction and will keep the Lands in safe and secure condition. If the Lessee fails to perform such obligations in any material respect, the Lessor may, at the Lessee's expense, by the Lessor's officers, employees, agents or contractors and subcontractors, undertake the performance of any necessary work in order to complete such obligations of the Lessee, but having commenced such work, the Lessor will have no obligation to the Lessee to complete such work.

**31. BUILDINGS, FIXTURES AND CHATTELS**

- 31.1 Ownership of any Improvements made upon or to the Lands by or for the Lessee will vest in the Lessee or any sub-tenant, licensee, permittee or franchisee of the Lessee, as the case may be, for and during the Term, notwithstanding any rule or law to the contrary. Notwithstanding the foregoing, the Lessor will be entitled, on written notice to the Lessee delivered prior to the commencement of the last year of the Term, to require the Lessee to remove some or all its Improvements from the Lands upon expiry of the Term and leave the Lands in a clean and safe condition.
- 31.2 The Lessee will pay all costs and expenses incurred in the removal and disposal of the Improvements and in making good all damage caused to the Lands by the removal thereof forthwith upon demand. The Lessor and the First Nation will not be responsible to the Lessee or sublessee for any loss suffered by the Lessee or sublessee as a result of the removal or the disposal of any Improvements, moveable goods, chattels or tenant's fixtures and Improvements which the Lessee fails to remove in accordance herewith.

**32. INDEMNITY**

- 32.1 The Lessee will indemnify and save harmless the Lessor, the First Nation, the First Nation's officers, employees, agents or contractors, against and from all liability, loss, costs, claims, demands, expenses, actions, damages, suits and other proceedings, whatsoever, including consequential, howsoever arising out of or related to any breach of a Lessee's covenant or for personal injury, death or property damage or loss arising out of or related to any act or omission of the Lessee, its officers, employees or agents or any person for whom the Lessee is responsible.

**33. QUIET ENJOYMENT**

- 33.1 The Lessee, by paying the Rent and observing and performing its covenants in this Lease, may peaceably and quietly possess, hold and enjoy the Lands during the Term without any interruption or disturbance by the Lessor or anyone claiming by or through either of them.

**34. FORFEITURE**

- 34.1 If the Lessee:

- (a) fails to pay the Rent when due under this Lease; or
- (b) is alleged to be in material default of a material obligation hereunder;

then the Lessor may give the Lessee notice of such default.

34.2 If the Lessor gives the Lessee notice of default under Section 34.1 and either:

- (a) the default is a default mentioned in Section 34.1(a) or is reasonably capable of being cured within sixty (60) days after the notice is given and the Lessee fails to cure the default within the sixty (60) days; or
- (b) the default is not a default mentioned in Section 34.1(a) and is not reasonably capable of being cured within sixty (60) days after the notice is given and the Lessee fails to commence to cure the default with reasonable diligence upon receipt of the notice and to proceed to cure it with reasonable diligence to completion;

then, subject to the provisions of this Article 34 and to the rights of the parties under Article 47, the Lessor may by notice to the Lessee declare the Term ended.

34.3 If the Lessor declares the Term ended as provided in Section 34.2, then except as otherwise expressly provided in this Lease, and subject to the rights of the parties under Article 47, or otherwise at law, this Lease and everything contained in it and the leasehold estate and Term will thereupon terminate without re-entry or any other act or legal proceedings, and the Lessor may re-enter the Lands and possess and enjoy them as if the Lease had not been made.

34.4 Notwithstanding a declaration by the Lessor that the Term has ended, the Lessor will be entitled to recover from the Lessee the Rent then accrued or accruing, and enforce any right of action against the Lessee in respect of any antecedent breach of any of the Lessee's covenants including a right of action under Article 32.

34.5 No notice to the Lessee hereunder will be valid for any purpose unless and until a copy of such notice is also given to each Approved Mortgagee and the Lessee Corp.. The copy of such notice may be given to the Approved Mortgagee at the address specified by the Approved Mortgagee and otherwise on the same terms and conditions as applicable to notices referred to in Article 48.

34.6 Any curing of a default by an Approved Mortgagee or any subtenant will be construed as curing of that default by the Lessee.

34.7 If any disagreement arises as to the occurrence or subsistence of a material default hereunder or whether the curing of any such default is promptly commenced, has been substantially completed or is proceeding with reasonable diligence, and without limiting any other remedies or relief that might be available to the Lessee, an Approved Mortgagee or a subtenant in accordance herewith or at law, the question may be dealt with in accordance with Article 47 of this Lease.

34.8 The Lessor acknowledges that in consideration of the Rent, the Lessor will, to the fullest extent reasonably possible, seek recourse in respect of alleged material default by the Lessee hereunder by way of a claim in law against the Lessee for debt or damages, as the

case may be, recoverable against the Lands or the rents derived therefrom by the Lessee, or seek an order of a court of competent jurisdiction restraining continuing breach, and will not resort to exercising a right to cancel this Lease and forfeit the leasehold estate except in respect of a serious or continuing breach of a material covenant hereunder for which a reasonable and adequate alternate remedy has not been or cannot reasonably be obtained.

**35. PERFORMANCE OF COVENANTS**

- 35.1 All agreements, terms, conditions, provisos, duties and obligations to be performed or observed by the Lessee under this Lease will be deemed to be Lessee's covenants and all the Lessee's covenants in this Lease are made with the Lessor for the Lessee and for its successors and assigns. Without limiting any other remedy of the Lessor under this Lease, the Lessor may request the Lessee in writing to perform the covenant, and if the Lessee does not perform it within thirty (30) days of such order the Lessor may but will not be obligated to do whatever is reasonably necessary to perform it. The Lessee will pay to the Lessor any cost or expense reasonably incurred by the Lessor in performing the covenant forthwith upon demand by the Lessor.
- 35.2 The Lessee will provide the Lessor, the First Nation Council, their officers, employees, agents, contractors and subcontractors, with and without vehicles and equipment, convenient access to the Premises at all reasonable times on reasonable prior written notice, except in the case of an emergency, for the purposes of viewing the Premises and otherwise determining that the Lessee's covenants are being duly observed and performed. The Lessee may require that a representative of the Lessee be present.
- 35.3 The Lessee will also provide the Lessor and the First Nation Council, their officers, employees, agents, contractors and subcontractors with and without vehicles and equipment all reasonable and necessary access to the Premises for the purpose of performing the Lessee's covenants pursuant to Section 35.1.

**36. PAYMENTS PAID BY LESSOR COLLECTABLE AS RENT**

- 36.1 If at any time before or after the expiration or earlier termination of the Lease the Lessor suffers or incurs any damage, loss or expense by reason of any failure of the Lessee to perform or observe any of the Lessee's covenants or makes any payment for which the Lessee is liable under this Lease, or if the Lessor is compelled or, acting reasonably, elects to incur any expense including legal fees in instituting, prosecuting or defending any action or proceeding instituted by reason of any default of the Lessee under this Lease (including any action or proceeding against the Lessee) and succeeds in establishing such default, then in every such case the amount of damage, loss, expense or payment (including legal fees on a solicitor-client basis), together with interest as provided in Section 37.1, will be paid by the Lessee to the Lessor forthwith on demand.
- 36.2 The amount of any damage, loss, expense or payment referred to in Section 36.1 will be recoverable in the manner provided by law for the recovery of rent in arrears.

**37. ARREARS TO BEAR INTEREST**

- 37.1 If the Rent or any other sum owing by the Lessee to the Lessor under this Lease is not paid within thirty (30) days from the date on which it is due then it will bear interest at

the Prime Rate in effect from time to time plus four percent (4%) per annum from the date the Rent or the sum is due until the date of the payment by the Lessee, but this stipulation for interest will not prejudice or affect any other remedies of the Lessor under this Lease or otherwise, or be construed to relieve the Lessee from any default in making the Rent payment at the time and in the manner specified in this Lease.

**38. REMEDIES CUMULATIVE**

38.1 All rights and remedies of the Lessor and First Nation are cumulative and are in addition to and do not exclude any other right or remedy provided in this Lease or otherwise allowed by law.

38.2 All rights and remedies of the Lessor may be exercised concurrently.

**39. SURRENDER OF POSSESSION**

39.1 Subject to Article 31, when the Term expires or otherwise ends, the Lessee will peaceably surrender the Lands and the Improvements, as applicable, as provided in this Lease.

**40. HOLDING OVER**

40.1 If the Lessee continues in possession of the Premises after the expiry of the full Term, notwithstanding any payment of Rent, the Lessee will be considered a tenant from month to month.

40.2 The month to month tenancy referred to in Section 39.1 will be subject to all the terms and conditions of this Lease except as they are inapplicable to the tenancy from month to month.

**41. NET LEASE**

41.1 This Lease is to be a completely carefree net lease and notwithstanding anything in this Lease to the contrary the Lessor is not to be responsible during the Term for any costs, charges, expenses or outlays of any nature in respect of the Premises.

41.2 The Lessee will be responsible for prompt payment of the Lessor's reasonable direct out of pocket expenses incurred in connection with execution and delivery of further and other documents when required hereunder or in connection herewith, including documents referred to in Sections 6.4, 7.4, 43.1 and 44.1.

**42. WARRANTIES**

42.1 Except as otherwise set out herein, no representations, warranties or conditions have been made to the Lessee in respect of the Lands by the Lessor, the First Nation, its officials, servants and agents.

42.2 The Lessor warrants that there is satisfactory access to the Premises by public or private road or right of way and the Lessee's obligations hereunder are subject to such access remaining available during the Term.

- 42.3 The Lessor acknowledges that the Lessor is leasing the Lands to the Lessee on the basis that they are capable for development pursuant to the Lessee's intended use and to the best of the Lessor's knowledge there are no environmental, heritage or cultural prohibitions to such development.
- 42.4 The Lessor shall not consent to an assignment of lease(s) granted to Vintage Hills Golf Corporation ("Vintage Hills") for the property surrounding the Lands or in the event the Vintage Hills lease is cancelled, a new lease, unless the assignee or lessee covenants to continue operating the golf course thereon for a minimum period of 10 years from the commencement of the Term of this Lease.
- 42.5 The Lessor acknowledges that it may be/ desirable to redesign and realign access to the Lands from Carrington Road to improve the development potential of the Lands. This may include the Permittee under access permit 307110 constructing alternate access to the golf course which is generally acknowledged as preferable for both the Permittee and the Lessee. The Lessor agrees to use his best efforts acting reasonably to accommodate the Lessee in this regard with the Lessee acknowledging that the consent of Kelly Derrickson and Margaret Derickson would also be required.
- 42.6 Carrington Road Holdings Ltd., lessee of a development adjacent to the Lands known as "Sonoma Pines" may request a higher density in phase 7 of its development to provide for apartment condominium style construction, which would involve a modification of the Carrington Road Holdings Ltd. lease and consent of the Lessor. The Lessor covenants and agrees with the Lessee herein not to consent to such modification until the earlier of January 1, 2008 or the Lessee's development of the Lands has achieved 90% sales.

43. **CERTIFICATE OF STATUS**

- 43.1 The Lessor will from time to time, upon not less than 15 days prior request by the Lessee, execute and deliver to the Lessee or to any other addressee as requested by the Lessee, a statement in writing prepared by the Lessee and certifying:
- (a) that this Lease is unmodified and in full force and effect or if modified, identifying such modifications and confirming that the Lease is in full force and effect as modified;
  - (b) that the Lessee is not in default of any provision of this Lease, or if in default, the particulars thereof; and

any other matters related to this Lease as may be reasonably requested.

- 43.2 The Lessee will reimburse the Lessor for any reasonable legal or consulting costs required for the Lessor to issue the Certificate of Status required pursuant to Section 43.1.

44. **OTHER ENCUMBRANCES**

- 44.1 The Lessor will authorize the granting of or will execute and deliver any easement, right of way or similar charge over the Lands as may be reasonably required by the First Nation or any public utility or approving authority to enable the Lessee to develop or redevelop the Lands for any lawful purpose, provided the Lessor will not be obliged to incur any costs in connection therewith.

