

RETURN TO:

Westbank Indian Band
Lands Department
2 - 515 Highway 97 South
Kelowna, B.C. V1Z 3J1
Fax: (604) 769-4036

APPLICATION FOR REGISTRATION
INDIAN LANDS

The undersigned hereby requests that the instrument, the particular of which are set out below, be entered, pursuant to the Indian Act, in the appropriate Register of the Indian Land Registry.

Log No.: Log Date: Regional File No.:

NAMES OF PARTIES TO INSTRUMENT

Grantor

Surname	Given Names	No.
<u>Her Majesty The Queen in Right of Canada</u>		
_____	_____	_____
_____	_____	_____

Grantee

Surname	Given Names	No.
<u>K-West Equities Corporation</u>		
_____	_____	_____
_____	_____	_____

Instrument Type lease (or Code) _____
Instrument Date July 1st, 1993
Purpose _____ (or Code) _____
W.I.B. Control No. _____

LAND DESCRIPTION

Province: BRITISH COLUMBIA Band Name: WESTBANK INDIAN BAND
Reserve Name: TSINSTIKEPTUM INDIAN RESERVE NO. 9 10

Parcel	Parcel Identification Number (PIN)	List of Supporting Documentation
<u>LOT 208 OCSR Plan 75234</u>		
_____	_____	_____
_____	_____	_____

[Signature] Telephone No. of Applicant Date Oct 20/93
Signature of Applicant Sept 29/93

ACCEPTANCE

This Application for Registration has been accepted and the instrument has been entered in the appropriate Register. This instrument has been registered under number: 216812 Date: 27 October/93 Hour: 9:51 a.m.
p.m.

[Signature]
Registrar

C A N A D A

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

Commercial Lease

THIS LEASE EFFECTIVE THE 1st DAY OF July,
1993 IS MADE:

BETWEEN: HER MAJESTY THE QUEEN IN RIGHT OF CANADA
as represented by the Minister of Indian
Affairs and Northern Development,

("Her Majesty")

OF THE FIRST PART

AND: K-WEST EQUITIES CORP., a body corporate (Incorporation
No. 421674) duly incorporated pursuant to the laws of
the Province of British Columbia, and having its
registered office at #101-1461 St. Paul Street,
Kelowna, British Columbia, V1Y 2E4.

(the "Lessee")

OF THE SECOND PART.

RECITALS

- A. The Lands leased under this Lease are part of Tsinstikeptum Indian Reserve No. 9, which is set apart by Her Majesty for the use and benefit of the Westbank Band of Indians.
- B. The Lands are in the lawful possession of Michael Shane Abel (No. 162), a member of the Westbank Band, who has applied to the Minister for the Lands to be leased and consented to the Lease in Schedule "A" attached hereto.
- C. The Band Council has by resolution concurred with the leasing of the Lands by resolution dated the 22nd day of September, 1993.
- D. The Minister is authorized to grant this Lease pursuant to Section 58(3) of the Indian Act.
- E. The Lessee has applied to lease the 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. "Approved Mortgagees" means all mortgagees to whose mortgages the Minister has consented.
 - b. "Band" means the Westbank Band of Indians, or any successor to the Band pursuant to a federal statute.
 - c. "Band Council" means the Council of the Band within the meaning of the Indian Act, or any successor to the Band Council pursuant to a federal statute.
 - d. "Bank of Canada Review" means that publication that is published by the Bank of Canada on a monthly basis and named the "Bank of Canada Review" 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 chartered banks' rate or rates on prime business loans (i.e., the per annum interest rate that is charged by Canadian chartered banks to their most creditworthy commercial borrowers) from time to time in effect on the last Wednesday of the month or upon another day or days in substitution for the last Wednesday of the month are published.
 - e. "Fair Market Rent" means, for any particular Period, the amount of annual rent for which a willing and knowledgeable lessor would rent the Lands in the free and open commercial market to a willing and knowledgeable lessee, without restriction to comparison with other Reserve lands, available for leasing at the commencement of the Period assuming that at such time:
 - i) the Lands are owned by the lessor in fee simple and have no charges or encumbrances existing against title;
 - ii) the Lands include the Improvements to the Lands existing as of the Lease Date but do not include Improvements which the lessee subsequently makes to the Lands and which the lessee may be permitted but is not obliged to make;
 - iii) all necessary services to the Lands are available from the utility sources which are nearest to the Lands and which have adequate capacity to provide such services;
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- iv) motor vehicle access from a public highway to the Lands is available without cost to the lessee;
 - v) the Lands are leased for the uses permitted in this lease;
 - vi) a reasonable time is permitted to find a willing and knowledgeable lessee; and
 - vii) the lessor and lessee are acting at arm's length and neither is acting under compulsion.
- f. "Federal Court Act" means the Federal Court Act, R.S.C. 1985 c.F-7, and regulations made thereunder, all as amended or replaced from time to time, and any reference to a section of this Act will include that section as amended or replaced from time to time.
- g. "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 forming part of or attached to the Improvements and all alterations, removals, additions to, replacements and substitutions of the Improvements.
- h. "Indian Act" means the Indian Act, R.S.C. 1985, c.I-5 as amended, and regulations made thereunder all as amended or replaced from time to time, and any reference to a section of this Act will include that section as amended or replaced from time to time.
- i. "Lands" means those lands situate, lying and being in Tsinstikeptum Indian Reserve No. 9 in the Province of British Columbia and more particularly known and described as:
- Lot 208 in Tsinstikeptum Indian Reserve No. 9, Province of British Columbia, as shown on Plan of Survey No. 75234 deposited in the Canada Lands Surveys Records at Ottawa, Ontario.
- j. "Lease" means this Indenture of Lease.
- k. "Lease Date" means the date on which the Term commences.
- l. "Lease Year" means a twelve month period commencing on the ____ day of _____, _____ in one
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calendar year and ending on the ____ day of _____, _____ in the immediately succeeding calendar year.

- m. **"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 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.
 - n. **"Minister"** means the Minister of Indian Affairs and Northern Development and his authorized representatives.
 - o. **"Party"** means a party to this Lease and **"Parties"** means all of them.
 - p. **"Person"** includes any natural person, partnership, association or corporation.
 - q. **"Premises"** means the Lands and the Improvements and every reference in this Lease to the **"Premises"** includes a reference to every part of the Premises.
 - r. **"Prime Rate"** means, for any particular calendar month, the chartered Banks' rate on prime business loans (ie., 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.
 - s. **"Rent"** means the rent described in Article 5 hereof and other amounts which by the terms of this Lease will be
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payable as rent by the Lessee to Her Majesty.

- t. "Reserve" means the Tsinstikeptum Indian Reserve No.9 of the Band.
- u. "Residential Unit" means a fully self contained dwelling unit comprised either within its own building or as a separate unit in a duplex or multi unit complex building.
- v. "Term" means the period of time commencing on the 1st day of July, 1993 and expiring on the 30th day of June, 2092.

2. THE DEMISE

The Minister, on behalf of Her Majesty, pursuant to section 58(3) of the Indian Act, hereby leases to the Lessee the Premises, excepting and reserving unto Her Majesty all Minerals upon or under the Lands, TO HAVE AND TO HOLD the Premises unto the Lessee for the Term, yielding and paying Rent as hereinafter provided, and subject to the terms, conditions, provisos, exceptions and reservations contained in this Lease and the prior termination as herein set forth.

3. MINERALS

- 3.1 Her Majesty, Her officials, employees, agents, lessees and licensees retains the right to enter on the Premises to prospect and drill for and to work Minerals subject to notice being provided to the Lessee.
- 3.2 The Minister will determine and give notice to the Lessee of any compensation to be paid for interference with this Lease pursuant to section 3.1.
- 3.3 If the Lessee disagrees with the compensation as determined by the Minister pursuant to section 3.2, then it may at its expense within sixty (60) days from delivery of notice of compensation to the Lessee refer the matter to the Federal Court for a new determination of compensation pursuant to Section 17 of the Federal Court Act. If the Lessee fails to refer the matter to the Federal Court within the specified time then the compensation will be deemed to be that set out in the Minister's notice.

4. USE OF PREMISES

- 4.1 During the term the Lessee may enter upon and have free and

uninterrupted access to the Lands subject to:

- (a) there shall be no improvements whatsoever constructed upon the Lands without the consent of the Minister first obtained in writing.

4.2 The Lessee may construct, develop, maintain, or lease residential, single family unit or multi-family units ("Residential Unit"), landscaping, roadways, outbuildings and such related or ancillary uses as the Lessee may require.

5. RENT

5.1 The Lessee will pay as rent the following amount in the manner hereinafter provided.

5.2 Rent payable by the Lessee for the term shall be the total sum of SEVEN HUNDRED THOUSAND DOLLARS (\$700,000.00) payable as follows:

- (a) Upon completion of registration of this Lease at the Indian Land Registry in Ottawa, Canada, rent in the sum of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) shall become due and be paid. The initial payment of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) represents a prepayment of the sum of EIGHT THOUSAND THREE HUNDRED THIRTY-THREE and 33/100 DOLLARS (\$8,333.33) per residential Residential Unit for the first THIRTY (30) units to be constructed by the Lessee upon the Lands;
 - (b) One year following the due date of the initial payment referred to in clause 5.2(a) or sooner rent in the further sum of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) shall become due and be paid. The second payment of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) represents a prepayment of the sum of EIGHT THOUSAND THREE HUNDRED THIRTY-THREE and 33/100 DOLLARS (\$8,333.33) per residential Residential Unit for the second thirty (30) units to be constructed by the Lessee upon the Lands. Such sum shall become due and be paid prior to commencement of construction of the thirty-first (31) residential Residential Unit or one year following the due date of the said initial payment whichever event shall first occur.
 - (c) One year following the due date of the second payment referred to in clause 5.2(b) or sooner rent in the further sum of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) shall become due and be paid. The third payment of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00)
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represents a prepayment of the sum of EIGHT THOUSAND THREE HUNDRED THIRTY-THREE and 33/100 DOLLARS (\$8,333.33) per residential Residential Unit for the next twenty-four (24) units to be constructed by the Lessee upon the Lands. Such sum shall become due and be paid prior to commencement of construction of the sixty-first (61) residential Residential Unit or one year following the due date of the said second payment whichever event shall first occur.

6. PAYMENT OF RENT

- 6.1 The Lessee will pay all Rents payable hereunder without deduction, abatement or set-off whatsoever and without any demand for Rent being made.
- 6.2 All Rents payable under this Lease will be paid by certified cheque or bank draft in favour of the Receiver General for Canada ("Receiver General") at the office of the Minister designated in Article 51, or if permitted or required in writing by the Minister, by certified cheque or bank draft in favour of such other Person or at such place as may from time to time be designated by the minister.
- 6.3 With respect to any Rent payable pursuant to this Lease, the Lessee and its principles acknowledge and understand that Her Majesty will pay to the lawful possessor of the Lands, the Rent in full, and such funds will not be available to the Crown to be refunded in part or at all, and that the Crown will not accept any liability or risk for refunding any Rent, in the event of termination of this Lease, and the Lessee and its principles accept this risk in the event of termination.

7. ASSIGNMENT

- 7.1 Except as provided in Article 9 the Lessee will not assign the whole or any part of this Lease without the prior written consent of the Minister, which consent may not be unreasonably withheld.
 - 7.2 Consent to any assignment will not be construed as consent to any other assignment.
 - 7.3 Without limiting section 7.1, the Lessee will obtain from any proposed assignee of the whole or any part of this Lease a written agreement, under seal and in a form approved by the Minister, whereby the assignee covenants and agrees with Her Majesty that upon the Minister's consent to the
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assignment it will observe and perform all of the covenants and agreements to be observed or performed by the Lessee under this Lease, and the Lessee will deliver the agreement to the Minister prior to obtaining the Minister's consent to the assignment.

- 7.4 Upon any assignment, any agreement in writing pursuant to subsection 24.3.a. will terminate.

8. SUBLETTING

- 8.1 Subject to Article 9 and provided the Lessee is not in default under this Lease, the Lessee will not sublet or part with possession of the whole or any part of the Premises without the prior written consent of the Minister, which consent may not be unreasonably withheld.

- 8.2 Each sublease consented to pursuant to section 8.1 must include the following provisions:

- a. no sublease will be for a period which will extend beyond one day before the expiration of the term of this Lease;
- b. no sublease will release or impair the continuing obligations of the Lessee hereunder, or discharge the Lessee of or from any liability, whether past, present or future under this Lease, and the Lessee will continue fully liable hereunder;
- c. each sublease will be expressly subject and subordinate to this Lease and to the rights of Her Majesty hereunder and will terminate upon the termination of this Lease;
- d. each sublessee has agreed in writing to comply with and be bound by all applicable terms, covenants, conditions, provisos and agreements of this Lease and that in the event of conflict between the provisions of this Lease and the sublease the provisions of this Lease will govern;

- 8.3 All subleases issued under this Lease must be submitted for registration in accordance with Article 10 in the Indian Lands Registry.

9. MORTGAGE

- 9.1 The Lessee will not mortgage the whole or any part of its interest in this Lease by any means without the prior written consent of the Minister, which consent will not be unreasonably withheld.
- 9.2 Notwithstanding anything else in this Lease, any mortgage and any consent of the Minister to a 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 covenant and agree in writing with Her Majesty to perform and observe all the Lessee's covenants and agreements under the Lease until the Lease is duly assigned to an assignee with the Minister's consent and the assignee covenants and agrees as provided in subsection 9.2.c;
 - b. the mortgagee will not cause or permit any assignment of the leasehold interest pursuant to the exercise of the mortgagee's remedies under its mortgage or at law without the prior written consent of the Minister which consent will not be unreasonably withheld;
 - c. the mortgagee will cause any assignee of the leasehold interest under an assignment referred to in subsection 9.2.b to covenant and agree in writing with Her Majesty to perform and observe all the Lessee's covenants and agreements under the Lease;
 - d. the mortgage will provide that if the mortgagee has exercised his rights under subsection 9.2(a) then the proceeds of all insurance policies with respect to the Premises will be used solely for rebuilding or repairing the loss or damage to the Premises.
- 9.3 If any of the conditions in section 9.2 are not observed or performed then consent to the mortgage will be deemed not to have been given and a failure to observe or perform a covenant of this Lease as referred to in Article 37 will be deemed to have occurred.
- 9.4 Subject to sections 9.2 and 9.3, the Minister's consent to any mortgage will be deemed to include consent to the right of the mortgagee to exercise any power of sale or any other remedy with respect to the leasehold interest under the mortgage not inconsistent with the provisions of this Lease.
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10. CONSENT AND REGISTRATION

- 10.1 The Lessee will provide the Minister with four copies of every document with respect to a disposition of the leasehold referred to in Articles 7, 8 or 9 as requiring the Minister's consent. These copies will be originally executed copies and must be in a form acceptable for registration by the Registrar of Indian Lands or anyone in any successor office or anyone duly authorized to act for the Registrar.
- 10.2 The Minister's consent to any disposition of the leasehold will not constitute any assurance to anyone that the disposition will be registered by the Registrar for Indian Lands or relieve the Lessee from the obligation to provide the form of document required for registration.
- 10.3 Neither the granting of this Lease nor anything contained in it will be construed as an agreement or assurance by the Minister that this Lease or any assignment, sublease, mortgage or other disposition of the leasehold can or may be registered in the 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 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 except those caused by Her Majesty, Her officials, employees or agents will be deemed to be a disturbance of the Lessee's enjoyment of the Premises or render Her Majesty liable for injury to or in damages to the Lessee or relieve the Parties from their obligations under this Lease.

12. TAXES

- 12.1 Without limiting the generality of Article 13, the Lessee will pay on or before the due date in each and every year during the Term all 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.
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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 all due diligence.

12.3 The Lessee will upon request by the Minister and within thirty (30) days after the date taxes, trade licences, rates, levies, duties or assessments are due provide the Minister with official receipts of the competent authority or other proof satisfactory to the Minister evidencing payment.

13. COMPLIANCE WITH LAWS

13.1 The Lessee will at its expense observe and perform all of its obligations and all matters and things necessary or expedient to be observed or performed by it by virtue of any applicable law, statute, by-law, ordinance, regulation or lawful requirement of the federal, provincial or municipal government or authority, the Band Council or any public utility company lawfully acting under statutory power.

13.2 If any statutory notice is given lawfully requiring the execution of works by the Lessee at the Premises during the Term, and

- a. if notice is served upon the Lessee, the Lessee will forthwith forward it or a copy of it to the Minister and will (unless a certificate of exemption is obtained from the respective statutory authority) forthwith, at its expense, execute such works as are necessary to comply with the notice, or
- b. if the notice is served upon the Minister, the Minister will forthwith forward it or a copy of it to the Lessee and thereupon the Lessee will, forthwith, at its expense, execute such works as are necessary to comply with the notice, and
- c. the Lessee will forthwith upon completion of the works required by statutory notice, provide evidence satisfactory to the Minister of compliance with the terms of the statutory notice, including any certificates of inspection issued in respect of the works.

13.3 If the Lessee contests the validity of any requirements set

out in section 13.1, proceedings relating thereto must be commenced before the expiration of sixty (60) days after the Lessee has first been notified of any breach of such requirements.

- 13.4 The Lessee will indemnify and hold harmless Her Majesty from all loss, damage, costs and expense suffered by Her Majesty by reason of the Lessee undertaking such proceedings and that the Lessee will conduct such proceedings with all due 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 Minister, abate any nuisance arising directly or indirectly out of the use or occupation of the Premises by the Lessee or someone else. Written notice under this section will be deemed to be an order of the Minister for the purposes of section 37.2.
- 14.3 The normal carrying on at any time by the Lessee of the uses permitted by Article 4 to the standards required of it under the provisions of this Lease will not be considered to be a nuisance for the purpose of this section.

15. WASTE

- 15.1 Except as permitted by section 15.2, the Lessee will not cause, permit or suffer the commission of any waste of the Premises.
- 15.2 Except as required by construction and installations expressly permitted by this Lease, and except as permitted in writing by the Minister, the Lessee will not cause, permit or suffer the removal of any sand, gravel, marl, topsoil, or other material constituting part of the Premises.

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 or as permitted in writing by the Minister.
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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 Lands 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 Band Council or other lawful authority.
- 17.2 Without limiting the generality of Article 13 and notwithstanding section 17.1 the Lessee will ensure that all new sublessees conduct environmental assessments compatible with the Environmental Assessment and Review Process Guidelines Order (SOR/84-467), 1984, or its successor legislation and any regulation made thereunder, and compatible with all applicable federal policies and procedures, as amended or replaced including all such amendments made subsequent to the effective date of this Lease.
- 17.3 The Lessee will design, construct, operate, maintain and decommission the Works in accordance with all specifications, mitigative measures, and environmental protection measures described in the Environmental Impact Statement which specifications, mitigative measures and environmental protection measures become conditions which form part of this Lease.

18. NO CONTAMINANTS

- 18.1 Without limiting the generality of Article 13 no contaminants or toxic substances as defined under the Canadian Environmental Protection Act as amended or replaced from time to time or as defined under the equivalent provincial legislation, as amended or replaced, will be used, emitted, discharged or stored on the Lands or any adjacent land by the Lessee, its officers, directors, invitees, agents, employees or sublessees except in strict compliance with all applicable laws, statutes, by-laws, ordinances, regulations, notices, orders, or lawful requirements of the federal, provincial, municipal government or authority, the Band Council or other lawful authority.

19. NO RESIDUAL/ADVERSE IMPACT

- 19.1 At all times there will be no residual adverse environmental
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impacts as a result of the use of the Lands or the activities of the Lessee, its officers, directors, invitees, agents, employees and sublessees.

20. MITIGATION OF ENVIRONMENTAL IMPACTS

- 20.1 The Lessee will notify the Minister pursuant to Article 51 of any detrimental environmental impacts immediately upon discovery by the Lessee. Should the operations and activities of the Lessee, its officers, directors, invitees, agents, employees and sublessees contribute to any detrimental environmental impacts for which the Minister considers remedial action is necessary, in accordance with regulations and standards established by applicable Federal and Provincial Legislation, the Lessee hereby agrees to undertake immediately and pay the costs of such remedial action.
- 20.2 The Lessee will implement the appropriate technology, design or repair to mitigate anticipated or actual adverse environmental impacts attributable to the Lessee's use of the Lands immediately following discovery or notice thereof by the Lessee. Further, the Lessee will permit the Minister's representatives to enter onto the Lands at all times to inspect and monitor the Lessee's activities and to ensure that the Lessee has mitigated any anticipated or actual adverse impacts on the environment to the satisfaction of the Minister.

21. ALTERATIONS AND ADDITIONS

- 21.1 Except as provided in Articles 22, 23 and 30 the Lessee will not alter, remove, add to, replace, or make substitutions for the Premises, without first having received the written consent of the Minister which consent may be arbitrarily withheld.
- 21.2 The Lessee will at its expense complete or cause to be completed all alterations, removals, additions, replacements and substitutions in accordance with the provisions of Article 24.

22. NEW IMPROVEMENTS

- 22.1 Except as provided under this Article and in Articles 4, 21, 23, and 30, the Lessee will not construct any new buildings, structures or other Improvements on, under or above the
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Lands.

- 22.2 The Lessee will submit to the Minister and the Band Council complete and detailed plans and specifications for the construction of all Permitted Improvements referred to in Article 4, including the following plans and specifications and all other documents (collectively the "Development Plan") as may be required by the Band Council and the Minister to enable them to determine conveniently whether the work will comply with the provisions of Article 24:

SITE

All site plans drawn to scale, including any as constructed plans where available, showing the following required features with appropriate dimensions:

- * Boundary lines with dimensions and acreage;
- * Natural and artificial features of subject property and adjacent property, including improvements (buildings, easements, railway lines, pipelines, watercourses, culverts, ditches, etc.);
- * "North" arrow;
- * Title block including drawing scale, date, developer's name and address, reference numbers;

ROADS

- * Location, dimension and size;
- * Construction specifications.

BUILDINGS

- * Location, dimension and size (number of units, number of storeys, floor area, number of rooms) of all proposed buildings and accessory facilities;
- * Dimensions of front yard, side yards, rear yard;
- * Construction specifications.

SANITARY DISPOSAL

- * Location and size of on-site sanitary sewer connections;

- * Construction specifications.

WATER SUPPLY

- * Location and size of existing and/or proposed water mains;
- * Construction specifications.

- 22.3 Unless and to the extent the Band Council and the Minister otherwise agree in writing, the Development Plan will be prepared by a professional architect or engineer licensed to practice as an architect or engineer in British Columbia.
- 22.4 The Band Council and the Minister may approve the Development Plan as submitted, or may require amendments or revisions to the Development Plan to ensure compliance with the provisions of Article 24. Such amendment or revision must be completed within thirty (30) days of the date of notice in writing of such requirement being received by the Lessee and the Development Plan as amended or revised must be re-submitted to the Band Council for approval.
- 22.5 No approval or failure to approve by the Minister of the Development Plan will be construed as an assumption of responsibility in any way by the Minister for the Development Plan or any work completed in accordance with the Development Plan.
- 22.6 Upon receiving approval of the Band Council and the Minister of the Development Plan, the Lessee will promptly carry out only such work as provided in the Development Plan and of which the Minister approved. Once the Lessee has commenced the work it will proceed with all due diligence to completion..
- 22.7 Without limiting the foregoing, the Lessee will develop the Premises in accordance with the Development Plan as approved and in accordance with the provisions of Article 24.
- 22.8 Upon completion of each stage of construction, commencing with the construction of foundations and including the lockup stage, the rough completion stage and the final completion stage, the Lessee will provide the Minister with a Certificate prepared by an engineer licensed to practice as an engineer in British Columbia, certifying that the work has been completed in accordance with the standards set forth in Article 24 herein.

- 22.9 If the Lessee fails to complete development of the Premises in accordance with the Development Plan, the Minister may on thirty (30) days written notice to the Lessee terminate the Lease with respect to that portion of the Premises whereon the Development Plan has not been carried through to completion without any apportionment or rebate of the rents paid, and everything herein contained and the estate or term with respect to that portion of the Premises will absolutely cease, determine and be void without re-entry or any other act or any suit or legal proceedings to be brought or taken, PROVIDED the Minister will nevertheless be entitled to recover from the Lessee the rent then accrued or accruing, and moreover that any right of action by Her Majesty against the Lessee in respect of any antecedent breach of any of the covenants, provisos, stipulations or conditions contained in this Lease will not be thereby prejudiced.

23. REPAIR OF PREMISES

- 23.1 a. Subject to section 23.2 the Lessee will at its expense at all times during the Term repair, renew and maintain all Improvements in a good and tenantable condition in every respect as would a careful owner in occupation excepting reasonable wear and tear only as is not inconsistent with the foregoing.
- b. Without limiting subsection 23.1.a, the maintenance of the electrical, heating, ventilating, air conditioning, water and sewer systems will include all inspections, cleaning, oiling and adjustments and all replacements of bulbs, ballasts and filters.
- c. Without limiting subsection 23.1.a, the maintenance of any and all lawns and gardens constituting part of the Premises will include all cutting, pruning, cultivating, weeding, fertilizing and watering in order to keep the lawns and gardens in a neat, tidy and healthy condition.
- 23.2 Whenever repair or renewal pursuant to this Article requires substantially altering, removing, adding to, replacing or making substitutions for the Premises, the Lessee will not undertake the work without first having received the written consent of the Minister, which consent will not be unreasonably withheld.
- 23.3 The Lessee will complete all repair and renewal under this Article in accordance with the provisions of Article 24.

24. CONSTRUCTION REQUIREMENTS

- 24.1 Without limiting Article 13, all construction and other work on the Premises will be carried out and completed to a standard and quality at least as high as those of any improvements which are being repaired, restored, renewed, replaced or substituted and in accordance with the standards set out in Schedule "B" to this Lease, as those standards may be amended or replaced from time to time. If there is a conflict among any of the standards in Schedule "B" or if they cover the same subject matter then the highest standard will apply and if any standard is inapplicable for any reason the remaining standards will continue to apply in full force and effect.
- 24.2 a. Whenever construction or other work under this Lease requires the Minister's consent, the Minister may as a prerequisite to deciding whether or not to consent require that the Lessee provide the Band Council and the Minister with complete and detailed plans and specifications of the work, including all documents as will enable the Minister to determine conveniently whether the work will comply with the provisions of this Article.
- b. Unless and to the extent the Band Council and the Minister otherwise agree in writing all such plans and specifications will be prepared by a professional architect or engineer licensed to practice as an architect or engineer in British Columbia.
- c. If plans and specifications are required pursuant to subsection 24.2.a then the Lessee will carry out only such work as provided in the plans and specifications and to which the Minister has consented. Once the Lessee has commenced the work it will proceed with all due diligence to completion.
- d. No consent or failure to consent by the Minister to plans and specifications referred to in subsection 24.2.a or to the work will be construed as an assumption of responsibility in any way by the Minister for those plans or specifications or any work completed in accordance with them.
- 24.3 a. Without in any way relieving the Lessee from any other obligation under this Lease, if any work which the Lessee is required to perform under this Lease (not including the construction of Residential Units) involves a cost in excess of FIFTY THOUSAND DOLLARS (\$50,000.00) as estimated in accordance with provisions of this Lease then before the Lessee commences the work
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it will, unless otherwise agreed to in writing between Her Majesty and the Lessee, provide the Minister with a performance bond in an amount at least equal to the estimated cost of the work without equivocation and a labour and material bond for the payment of all labour and material in connection with the work.

- b. The performance bond and the labour and material bond referred to in subsection 24.3.a will be in forms satisfactory to the Minister with sureties approved by the Minister.

25. SIGNS

- 25.1 The Lessee will not at any time during the Term affix or exhibit upon the Premises any sign or other advertising device except with the prior written consent of the Minister, such consent not to be unreasonably withheld, and except where necessary for carrying out the purpose permitted by Article 4.
- 25.2 The Minister from time to time at all times during the Term may have any sign at the Premises examined, and the Lessee will repair, strengthen or remove the sign upon notice from the Minister, and if the Lessee fails to comply with the notice to repair or strengthen the sign, the Minister may, but will not be obligated to repair or strengthen the sign or remove the sign and the costs, charges and expenses or doing so will be forthwith paid by the Lessee as additional Rent.
- 25.3 The giving of notice or the undertaking of repairs, strengthening or removal of any sign by the Minister under this Article will not be deemed an acknowledgement or admission of any liability or responsibility on the part of Her Majesty.
- 25.4 No consent by the Minister to any sign will be construed as an assumption of responsibility in any way by the Minister for that sign.

26. LIABILITY INSURANCE

- 26.1 The Lessee will forthwith effect and maintain at its expense with one or more companies satisfactory to the Minister, comprehensive general liability insurance (the "Liability Insurance") in the joint names of the Lessee and Her Majesty against claims for personal injury, death or property damage or loss occurring at or about the Premises.
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26.2 The Liability Insurance will provide protection in an amount of not less than TWO MILLION DOLLARS (\$2,000,000.00) for any one occurrence or to such other reasonable amount as the Minister may notify the Lessee in writing from time to time. If the Lessee disagrees with the Minister's determination of a reasonable amount it may at its own expense within sixty (60) days after the notice refer the matter to the Federal Court under section 17 of the Federal Court Act for a new determination of a reasonable amount. Until the Federal Court makes a new determination the Lessee will insure in an amount not less than as provided in the Minister's notice.

27. PROPERTY INSURANCE

27.1 The Lessee will forthwith effect and maintain at its expense with one or more companies satisfactory to the minister, property insurance (the "Property Insurance") in the joint names of the Lessee and Her Majesty, insuring the Improvements against loss or damage by fire and other perils under customary supplementary coverage.

27.2 The Property Insurance will insure at all times all Improvements for one hundred per cent (100%) of their full replacement cost.

27.3 Notwithstanding the foregoing, if an insurance policy required under this Lease contains a co-insurance provision then the Lessee will at all times maintain sufficient insurance to prevent Her Majesty and the Lessee from being co-insurers.

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.

28.2 The Liability Insurance will contain a provision for cross liability between Her Majesty and the Lessee and the Property Insurance will contain a waiver of subrogation so that the insurance will protect Her Majesty and the Lessee as if they were fully insured under separate policies.

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 notice in writing from the Minister 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 Her Majesty from all liability for loss and damage caused by any of the perils against which it has covenanted to insure, even though the loss or damage may arise out of the negligence of Her Majesty, Her official, employee or agent.
- 29.3 The Lessee will deliver Certificates of the insurers evidencing every policy of insurance that is required by this Lease to the Minister immediately after the insurance is effected and will deliver a Certificate of Renewal or other evidence satisfactory to the Minister that the insurance has been renewed or replaced to the Minister at least ten (10) days before the expiry of any policy of insurance in force.
- 29.4 The Lessee will, upon written request from the Minister, deliver a certified copy of every insurance policy requested by the Minister.

30. REPLACEMENT ON DESTRUCTION

- 30.1 If during the Term any Improvements are damaged or destroyed by fire or any other cause (in this Article the "Damaged Improvements") so as to render the Premises or any part thereof unfit for the purpose as provided in Article 4 the provisions of this Article will have effect.
 - 30.2 The Rent will not abate whether the Damaged Improvements are rendered partially or wholly unfit for the purpose of the Lease.
 - 30.3 The Lessee may in its discretion determine whether or not to restore and repair the Damaged Improvements PROVIDED THAT it notifies the Minister of its decision in that regard within sixty (60) days of the damage or destruction occurring and PROVIDED further that notice to the Minister of the Lessee's decision not to restore or repair will not be considered valid or effective unless it includes the written consent of all Approved Mortgagees.
 - 30.4 a. If the Lessee determines to restore or repair the Damaged Improvements or if it fails to give the Minister notice as provided in section 30.3 then it will provide the Band Council and the Minister with complete and detailed plans and specifications of the
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proposed restoration or repair together with an estimate of the full cost of the restoration or repair and will restore or repair the Damaged Improvements to the same or better condition than that which existed immediately prior to the damage or destruction without allowance for deterioration and will carry out the work with diligence and dispatch.

- b. Without limiting the foregoing, the Lessee will at its expense complete all restoration and repair in accordance with the provisions of Article 24.
- c. The plans and specifications and the cost estimate referred to in this section will be prepared and signed by an architect or engineer licensed to practice in the Province of British Columbia.

30.5 If the Lessee notifies the Minister pursuant to section 30.3 that it has determined not to restore or repair the Damaged Improvements, then:

- a. except as otherwise expressly provided in this Lease, this Lease will cease, determine and be void from the date the Minister is notified pursuant to section 30.3 of the Lessee's determination not to restore and repair the Damaged Improvements, and the Minister may re-enter the Premises and possess and enjoy them as if this Lease had not been made,
- b. the Lessee will immediately surrender the Premises and all of its interest therein and all insurance proceeds in respect of the damage or destruction to Her Majesty;
- c. notwithstanding anything to the contrary contained in section 30.2, the rent will be apportioned and will be paid by the Lessee only to the date the minister is notified pursuant to section 30.3 of the Lessee's determination not to restore and repair the Damaged Improvements,

PROVIDED that Her Majesty will be entitled to recover from the Lessee the rent then accrued or accruing up to the date the Minister is notified pursuant to section 30.3 of the Lessee's determination not to restore and repair the Damaged Improvements, 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 33.

31. INSURANCE PROCEEDS

31.1 If the Lessee has determined to restore or repair or has failed to give notice as provided in section 30.3 the following will occur:

- a. if the Minister has consented in writing to the payment of insurance proceeds to the Lessee then the proceeds will be paid to the Lessee in trust to apply to the costs of restoration or repair of the Premises and the Lessee will be responsible for the cost of the repairs or restoration whether or not it exceeds the insurance proceeds; or
 - b. if the Minister has required in writing that insurance proceeds be paid to either the Receiver General or a trustee then the proceeds will be paid to the Receiver General or a trustee, appointed by the Minister, to hold on behalf of Her Majesty, the Lessee and any Approved Mortgagees in accordance with the following:
 - i) the Lessee will do all things necessary or convenient to facilitate the payment to the Receiver General or trustee;
 - ii) work in progress will be paid for in instalments as progress payments out of the insurance proceeds, PROVIDED that the Receiver General or the trustee at all times will retain sufficient of the insurance proceeds to pay for the estimated cost of the restoration or repair remaining to be completed and any trustee fees and costs remaining to be paid at the date the payment is made;
 - iii) any progress payments to be made by the Receiver General or the trustee to the Lessee will not be made without the submission by the Lessee of a statement, certified by an architect or engineer for the Lessee stating the estimated amount required to complete the restoration or repair at the date of the Certificate, the amount claimed by individual contractors at that date, the amount owing on work already done, and the amount of any payments made at the date of the Certificate for work already done, and verifying the standard and quality of the work already done; and
 - iv) the Lessee will pay and be responsible for the cost of the restoration or repair and the fees and costs of any trustee in excess of the insurance proceeds.
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- 31.2 Before any contract is entered into by the Lessee for the carrying out of any restoration or repair work pursuant to Article 30, copies of the estimates for the work and the contracts for the completion of the work will be submitted by the Lessee to the Minister, the Approved Mortgagees and any trustee appointed pursuant to subsection 31.1.b.
- 31.3 If this Lease expires or is otherwise terminated for whatever cause, insurance proceeds remaining with the Receiver General or the trustee after payment of any trustee fees and costs will be paid to Her Majesty for Her Majesty's use and benefit.

32. REMOVAL OF BUILDINGS, FIXTURES AND CHATELS

- 32.1 At any time during the Term or within ninety (90) days after the expiration or earlier termination of this Lease if the Lessee is not in default under the Lease it may at its expense remove all of its moveable goods, chattels and tenant's fixtures and may permit sublessees of this Lease to remove all of their moveable goods, chattels and tenant's fixtures from the Premises.
- 32.2 The Lessee will at the Lessee's own expense, upon written demand by the Minister given on or before the 90th day after the expiration or earlier termination of this Lease, forthwith remove from the Premises any or all of the Lessee's movable goods, chattels, tenant's fixtures and Improvements and the sublessee's moveable goods, chattels and tenant's fixtures and Improvements as the Minister requires and leave the remainder of the Premises in good and substantial repair and condition and free from all debris to the reasonable satisfaction of the Minister.
- 32.3 If the Lessee or the sublessee do not remove the moveable goods, chattels and tenant's fixtures and Improvements from the Premises as provided in section 32.2 then the Minister may remove them and dispose of them as he sees fit. The Lessee will pay to the Minister all costs and expenses incurred in the removal and disposal of the moveable goods, chattels and tenant's fixtures and Improvements and in making good all damage caused to the Premises by the removal forthwith upon demand. The Minister 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 moveable goods, chattels or tenant's fixtures and Improvements.
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33. INDEMNITY

- 33.1 The Lessee will indemnify and save harmless Her Majesty against and from all loss, costs and expense arising out of or related to any breach of a Lessee's covenant and all claims, demands, actions, suits and other proceedings for personal injury, death or property damage or loss arising out of or related to any act or omission of the Lessee, its officials, employees or agents or any act or omission of a sublessee under this Lease, its officials, employees or agents.
- 33.2 Notwithstanding section 33.1, the Lessee's covenant to indemnify and save harmless will not apply to any claim, demand, loss, cost, damage, action, suit or other proceeding to the extent that same is occasioned or contributed to by the negligence or wilful act or omission of Her Majesty, Her officials, employees or agents.

34. QUIET ENJOYMENT

- 34.1 The Lessee by paying the Rent and observing and performing the covenants in this Lease may peaceably and quietly possess, hold and enjoy the Premises during the Term without any interruption or disturbance by Her Majesty.

35. FORFEITURE

35.1 If the Lessee:

- a. fails to pay any Rent or any other sum required to be paid by the Lessee when due under this Lease; or
- b. fails to perform or observe any other covenant of this Lease;

then the Minister may give the Lessee notice of the default.

35.2 If the Minister gives the Lessee notice of default under section 35.1 and either:

- a. the default is a default mentioned in subsection 35.1.a or is reasonably capable of being cured within thirty (30) days after the notice is given and the Lessee fails to cure the default within the thirty (30) days; or
 - b. the default is not a default mentioned in subsection 35.1.a and is not reasonably capable of being cured
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within thirty (30) days after the notice is given and the Lessee fails to commence to cure the default promptly upon receipt of the notice and to proceed to cure it with all due diligence to completion; then the Minister may by notice to the Lessee subject to section 35.6 declare the Term ended.

- 35.3 If the Minister declares the Term ended as provided in section 35.2, then except as otherwise expressly provided in this Lease, this Lease and everything contained in it and the estate and Term will thereupon terminate without re-entry or any other act or legal proceedings, and the Minister may re-enter the Premises and possess and enjoy it as if the Lease had not been made.
- 35.4 Notwithstanding a declaration by the Minister that the Term has ended, Her Majesty 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 33.
- 35.5 No notice to the Lessee under subsections 35.1.a, 35.1.b or Article 39 will be valid for any purpose unless and until a copy of such notice is also given to any Approved Mortgagee who has provided the Minister in writing with an address in British Columbia to which the Minister may mail and deliver copies of notices. 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 51.
- 35.6 Any curing of a default by an Approved Mortgagee will be construed as curing of that default by the Lessee.
- 35.7 If any disagreement arises as to whether the curing of any default is promptly commenced or is proceeded upon with due diligence, the question may be referred to the Federal Court in accordance with Article 50 of this Lease.

36. INSOLVENCY

- 36.1 If the Lessee becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or if it is a corporation and proceedings are begun to wind it up then accelerated Rent for the period of three (3) months next following the date of bankruptcy or other event, calculated at the same rate as would have been payable by the Lessee if no bankruptcy or other event had taken place, will immediately become due and payable.
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37. PERFORMANCE OF COVENANTS

- 37.1 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 Her Majesty for the Lessee and for its successors and assigns.
- 37.2 If the Lessee fails to perform any Lessee's covenant, then without limiting any other remedy of the Minister under this Lease the Minister may order the Lessee in writing to perform the covenant, and if the Lessee does not perform it within thirty (30) days of such order the Minister may but will not be obligated to do whatever is reasonably necessary to perform it. The Lessee will pay to Her Majesty as additional Rent any reasonable cost or expense incurred by the Minister in performing the covenant forthwith upon demand by the Minister.
- 37.3 The Lessee will provide the Minister, his officials, employees, agents, contractors and subcontractors with and without vehicles and equipment convenient access to the Premises at all reasonable times for the purposes of viewing the Premises and otherwise determining that the Lessee's covenants are being duly observed and performed.
- 37.4 The Lessee will also provide the Minister, his officials, employees, agents, contractors and subcontractors with and without vehicles and equipment all necessary access to the Premises for the purpose of performing the Lessee's covenants pursuant to section 37.2.

38. RIGHT OF THE MINISTER TO RELET

- 38.1 If the Premises are deserted or vacated, the Minister will have the right, at his option, to enter the Premises as the agent of the Lessee either by force or otherwise without being liable for any action or for any loss or damage caused by the entry or the use of force and to relet the Premises as the agent and at the risk of the Lessee, and to receive the rent for any reletting.
- 38.2 Rent for any reletting under section 38.1 may be applied by the Minister to any expenses incurred by him in the re-entry of the Premises and in the reletting and to any other monies owing to Her Majesty under this Lease in such proportions and in such order of priority as the Minister
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may decide.

38.3 The Minister will not be construed as re-entering the Premises as agent of the Lessee if prior to the re-entry the Minister has declared the Term ended.

38.4 Notwithstanding a re-entry by the Minister, Her Majesty 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 covenants of this Lease, including a right of action under Article 33.

39. CHANGE IN CONTROL OF LESSEE

39.1 If the Lessee is one or more corporations, and if by the sale or other disposition of the securities of the corporation, or of any one of the corporations, the control or the beneficial ownership of fifty percent (50%) or more of the voting shares of any class of shares of such corporation is changed after the execution of this Lease without the Minister's prior written consent, the Minister may, within sixty (60) days of becoming aware of the change in control or ownership, terminate this Lease by giving the Lessee sixty (60) days notice.

39.2 If the Minister declares the Term ended as provided in section 39.1 then the provisions of sections 35.5 and 35.6 will apply.

40. PAYMENTS BY HER MAJESTY REGARDED AS RENT

40.1 If at any time before or after the expiration or earlier termination of the Lease Her Majesty 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 Her Majesty is compelled or 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) then in every such case the amount of damage, loss, expense or payment (including legal fees of Her Majesty on a solicitor-client basis), together with interest as provided in section 41.1, will be paid by the Lessee to Her Majesty forthwith on demand by the Minister.

40.2 The amount of any damage, loss, expense or payment referred

to in section 40.1 will be added to or deemed to be Rent due under the Lease, and be recoverable in the manner provided by law for the recovery of Rent in arrears.

41. ARREARS TO BEAR INTEREST

- 41.1 If the Rent or any other sum owing by the Lessee to Her Majesty 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 Her Majesty 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.

42. REMEDIES CUMULATIVE

- 42.1 All rights and remedies of Her Majesty 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.
- 42.2 All rights and remedies of Her Majesty may be exercised concurrently.

43. SURRENDER OF POSSESSION

- 43.1 Subject to Article 32, when the Term expires or otherwise ends, the Lessee will peaceably surrender the Premises to Her Majesty maintained, repaired and renewed as provided in Article 23.

44. HOLDING OVER

- 44.1 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. The Lessee will not be construed as being in possession of the Premises solely by its exercise of rights under Article 32.
- 44.2 The Lessee will, during the continuance of the month to month tenancy referred to in section 44.1, pay as Rent in advance on the first day of each month the following:
- a. if the Minister has consented in writing to the month
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to month tenancy, an amount equal to one-twelfth (1/12) of the annual Rent payable for the last year of the expired Term; or

- b. if the Minister has not consented in writing to the month to month tenancy, an amount equal to one-sixth (1/6) of the annual Rent payable for the last year of the expired Term.

44.3 The month to month tenancy referred to in section 44.1 will be subject to all the terms and conditions of this Lease except as modified by sections 44.1 and 44.2 and except as they are inapplicable to the tenancy from month to month.

45. NET LEASE

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

46. NO WARRANTIES

46.1 No representations, warranties or conditions have been made to the Lessee in respect of the Premises by Her Majesty, Her officials, servants and agents.

46.2 The Lessee is fully familiar with the Premises and every part and aspect of the Premises and without limiting the generality of the foregoing the Lessee acknowledges that it has carried out a full inspection of the Premises and takes the Premises as is in reliance of its own inspection and not relying on any representations or warranties of Her Majesty, Her officials, servants or agents.

47. HEADINGS

47.1 All headings in this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit, enlarge, modify or explain the scope or meaning of the Lease or any of its provisions.

47.2 Any reference in this Lease to an Article, section, subsection or clause will mean an Article, section, subsection or clause of this Lease unless otherwise expressly provided.

47.3 Any reference in this Lease to Lessee's covenants will be

deemed to include all terms and conditions to be performed or observed by the Lessee under this Lease.

48. AMENDMENTS

- 48.1 This Lease constitutes the entire agreement between the Parties with respect to the subject matter of this Lease and no modification, or waiver of any provision of the Lease will be inferred from anything done or omitted by either of the Parties except by an express waiver in writing duly executed by the respective Party.
- 48.2 No condoning, excusing or overlooking by Her Majesty of any default by the Lessee at any time or times in performing or observing any of the Lessee's covenants will operate as a waiver of or otherwise affect the rights of Her Majesty in respect of any continuing or subsequent default and no waiver of these rights will be inferred from anything done or omitted by Her Majesty except by an express waiver in writing.

49. GOVERNING LAW

- 49.1 This Lease will be governed by and construed in accordance with the laws of Canada and otherwise in accordance with the laws of the Province of British Columbia, which laws as the case may be will be deemed to be the proper law of this Lease.

50. DISPUTE RESOLUTION

- 50.1 Where this Lease provides that a question may or will be referred to the Federal Court for determination then the decision of the Federal Court subject to appeal will be considered final and binding upon the Parties.
- 50.2 If upon a reference to it, the Federal Court refuses jurisdiction or otherwise fails to determine the question or if neither of the Parties refers the matter to the Federal Court within thirty (30) days of either Party delivering a notice to the other requesting it to do so then the question may be referred by either Party to any other court of competent jurisdiction and the Parties may exercise any other right or remedy they may have under this Lease or otherwise.
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51. NOTICE

- 51.1 The Lessee acknowledges that, subject to and pursuant to Order in Council P.C. 1989-998 dated May 25th, 1989, which Order in Council was made pursuant to Section 60 of the Indian Act, at the time of execution hereof and until such time that the Lessee is given notice otherwise by the Minister in accordance with this Section, the Westbank Indian Band is the duly authorized representative of the Minister for the purposes of the management of the Lands.
- 51.2 All notices under this Lease must be given in writing and delivered in accordance with this Article.
- 51.3 All notices will be delivered to the other party and no notice shall be effective until such delivery has been made.

The addresses for delivery are:

To the Minister:

Westbank Indian Band
301 - 515 Highway 97 South
Kelowna, British Columbia
V1Z 3J4

Fax: (604) 769-4377

To the Lessee at:

K-West Equities Corp.
#101-1461 St. Paul Street
Kelowna, British Columbia
V1Y 2E4

Fax: (604) 762-9960

51.4 Notice will be deemed to have been delivered:

- a. if delivered by hand, upon receipt;
 - b. if sent by electronic transmission, 48 hours after the time of transmission, excluding from the calculation weekends and public holidays;
 - c. if sent by registered mail, four (4) days after the mailing thereof, provided that if there is a postal strike or other disruption such notice will be delivered by hand or electronic transmission.
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- 51.5 The parties may change their respective addresses for delivery by delivering notice of change as provided in this Article.

52. TIME OF THE ESSENCE

- 52.1 Time is of the essence in this Lease and each of its terms and conditions.

53. SEVERABILITY

- 53.1 If any part of this Lease is declared or held invalid for any reason, the invalidity of that part will not affect the validity of the remainder which will continue in full force and effect and be construed as if this Lease had been executed without the invalid portion. The intention of the Parties is that this Lease would have been executed without reference to any portion which may, for any reason, be declared or held invalid.

54. PLURALITY AND GENDER

- 54.1 This Lease will be for the benefit of and be binding upon the heirs, executors, administrators, successors, assigns and other legal representatives, as the case may be, of each of the Parties. Every reference in this Lease to any Party includes the heirs, executors, administrators,, successors, assigns and other legal representatives of the Party.
- 54.2 Reference to a Party will be read as if all required changes in the singular and plural and all grammatical changes rendered necessary by gender had been made.
- 54.3 If a Party is comprised of more than one Person then all covenants and agreements of that Party will be deemed joint and several.

55. NO SHARE TO MEMBERS OF PARLIAMENT

- 55.1 No member of the House of Commons or the Senate will be admitted to any share or part of this Lease or to any benefit to arise from this Lease.
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56. NOT A JOINT VENTURE

56.1 Nothing in this Lease will be construed as making the Band or the Band Council an agent, partner or joint venturer with Her Majesty or the Lessee nor as creating any relationship between the Parties other than the relationship of lessor and lessee.

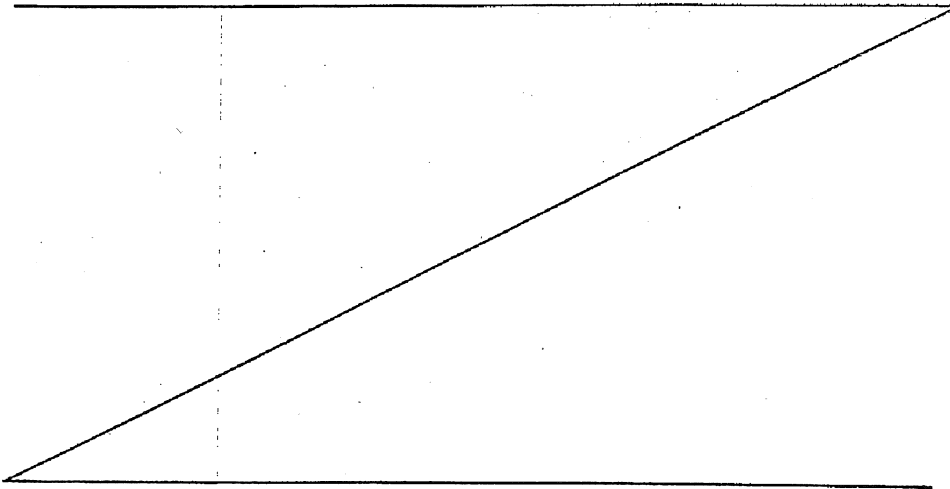
57. INDIAN ACT APPLIES

57.1 This Lease is subject to the Indian Act.

58. CORPORATE AUTHORITY

58.1 The Lessee warrants and represents to Her Majesty that:

- a. The Lessee has the corporate authority pursuant to its documents of incorporation to enter into this Lease and to perform all of the covenants and agreements contained herein; and
- b. The Lessee is a company duly incorporated under the laws of the Province of British Columbia, is not a reporting company and is a valid and subsisting company in good standing with respect to the filing of annual reports with the provincial corporate registry.



59. ACCELERATION

59.1 In the event that the Lessee shall sell or assign its full interest or substantially all of its interest in this Lease (not including a sale by way of sublease of Residential Units) the rent reserved in Subsection 5.2 shall forthwith at the option of Her Majesty become due and payable.

IN WITNESS WHEREOF the Parties have signed hereunder.

SIGNED, SEALED AND DELIVERED)
on behalf of Her Majesty the)
Queen by the Lands Manager)
appointed by the Council of)
the Westbank Indian Band)
pursuant to Order in Council)
P.C. 1989-998 dated May)
25, 1989 in the presence)
of:)

[Signature]
Witness

HER MAJESTY THE QUEEN in
Right of Canada as
represented by the Minister
of Indian Affairs and
Northern Development

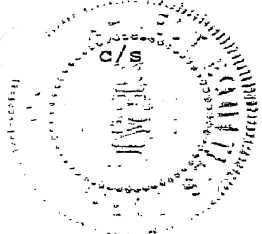
[Signature]

LYLE BREWER
LANDS MANAGER

K-WEST EQUITIES CORP. by its
authorized signatory:

[Signature]

Kevin Bird
President
Date: September 17, 1993



AFFIDAVIT OF WITNESS

I, Bernice Derdson, of the City of Kelowna in the Province of British Columbia, make oath and say:

1. I was present and saw the instrument duly signed by Lyle Brewer.
2. I know the said Lyle Brewer and I believe that he/she/they is/are of the full age of majority for the Province of British Columbia.
3. I am the subscribing witness to the instrument and I am of the full age of majority for the Province of British Columbia.
4. I verily believe that each person whose signature I witnessed is the party of the same name referred to in the instrument.

SWORN before me in the
City of
Kelowna
in the Province of British
Columbia this 29 day
of September,
1993.

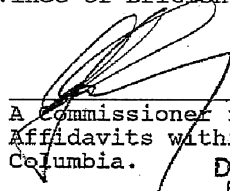
Notary Public
A Notary Public in and for
the Province of British
Columbia
A Commissioner for taking
oaths within the Province
of British Columbia.

Witness

PROOF OF EXECUTION BY CORPORATION

I certify that on the 17th day of September, 1993 at Kelowna, in the Province of British Columbia, Kevin Bird, who is personally known to me, appeared before me and acknowledged to me that he is the authorized signatory of K-West Equities Corp. and that he is the person who subscribed his name as signing officer of the said company to the annexed instrument, and that he was duly authorized to subscribe his name as aforesaid (and that the corporation existed at the date the instrument was executed by the corporation)**.

IN TESTIMONY of which I set my hand and seal of office at the City of Kelowna, in the Province of British Columbia, this 17th day of September, 1993.


A Commissioner for taking
Affidavits within British
Columbia.

D. JAMES RAMSAY
BARRISTER & SOLICITOR
#101-1461 ST. PAUL STREET
KELOWNA, B.C. V1Y 2E5
PHONE: 763-7646

- * If signing officer is personally known to the officer taking the acknowledgement strike out the words in brackets.
- ** If the words in brackets do not apply, strike them out (relevant in BC only) to be used if the applicant wishes the registrar to exercise his discretion under section 162(5) of the Land Title Act not to call for further evidence of the existence of the Corporation.

SCHEDULE "A"

I, MICHAEL SHANE ABEL, Locatee, hereby acknowledge and declare that I am in lawful possession of the Lands, have read and understood all the terms and conditions of this Lease, have been advised by the Minister of Indian Affairs and Northern Development to obtain the advice of a lawyer before signing this acknowledgement, declaration and consent and do not rely on the legal advice of anyone except my own lawyer, and hereby consent to the terms and conditions of this Lease. Further I make application to the Minister of Indian Affairs and Northern Development pursuant to Section 58(3) of the Indian Act on the terms and conditions as contained herein.

SIGNED, SEALED AND DELIVERED
by the Locatee in the
presence of:

Name: _____

Address: _____

GEORGE R. HOLLAND

Occupation: 1737 Pandosy St.
Kelowna, B.C. V1Y 1R2
Barrister & Solicitor

Mike Abel

MICHAEL SHANE ABEL

SCHEDULE "B"

CODES, STANDARDS AND GUIDELINES

BUILDING AND FIRE SAFETY

National Building Code of Canada (NBC) and supplements (Associate Committee on the NB, National Research Council) or provincial equivalent.

National Fire Code of Canada (NFC) and supplements (Associate Committee on the NFC, National Research Council) or provincial equivalent.

Canadian Electrical Code Part 1, 2 and 3 (Canadian Standards Association C22.1, C22.2 and C22.3) and Electrical Safety Branch Regulations and Bulletins, B.C. Ministry of Municipal Affairs.

Canada Labour Code (Labour Canada) or provincial equivalent.

ENVIRONMENTAL

Environmental Assessment and Review Process (EARP) Guidelines Order, 1984 (Environment Canada) Registration SOR/84-467.

Canadian Environmental Protection Act and Regulations.

Design Guidelines for Wastewater Systems in B.C. Region, Latest Edition, (DIAND).

B.C. Sewage Disposal Regulations (Province of B.C.)

B.C. Septic Tank Standards (Canada Mortgage and Housing Corporation).

Guidelines for Effluent Quality and Wastewater Treatment at Federal Establishments, 1987 (Environment Canada).

Code of Good Practice on Dump Closing or Conversion to Sanitary Landfills at Federal Establishments, Report EPA-1-EC-77-4, September 1977.

Code of Good Practice for Handling Solid Wastes at Federal Establishments (Environment Canada).

Code of Good Practice for Management of Hazardous and Toxic Wastes at Federal Establishments (Environment Canada).

SCHEDULE "B" CONT'D.

CODES, STANDARDS AND GUIDELINES

WATERWORKS

Design Guidelines for Water Works in B.C. Region, Latest Edition (DIAND).

Guidelines for Canadian Drinking Water Quality, Fourth Edition, 1989 (Health and Welfare Canada).

Water Supply for Public Fire Protection, 1981 - Fire Underwriters Survey.

ROADS AND DRAINAGE

Design Guidelines for Road Works in B.C. Region, Latest Edition, (DIAND).

Design of Highway Bridges (Canadian Standards Association Z184-M1983), (Where gas distribution system is owned and operated by the Band).

Gas Pipeline System (Canadian Standards Association Z184-M1983) (Where gas distribution system is owned and operated by the Band).

PLANNING

Site Planning standards are to be consistent with local municipal and/or Regional District Guidelines.

_____, 1993

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

AND

K-WEST EQUITIES CORP.

COMMERCIAL LEASE

PORTER RAMSAY

Barristers and Solicitors
101 - 1461 St. Paul Street
Kelowna, British Columbia
V1Y 2E4

Att: D. JAMES RAMSAY

File: 19701-1

/ws

DATED this 1st day of July, 1993.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

AND

K-WEST EQUITIES CORP.

=====

COMMERCIAL LEASE

=====

TABLE OF CONTENTS

	<u>Page</u>
1. <u>DEFINITIONS</u>	2
2. <u>THE DEMISE</u>	5
3. <u>MINERALS</u>	5
4. <u>USE OF PREMISES</u>	5
5. <u>RENT</u>	6
6. <u>PAYMENT OF RENT</u>	7
7. <u>ASSIGNMENT</u>	7
8. <u>SUBLETTING</u>	8
9. <u>MORTGAGE</u>	9
10. <u>CONSENT AND REGISTRATION</u>	10
11. <u>UTILITIES</u>	10
12. <u>TAXES</u>	10
13. <u>COMPLIANCE WITH LAWS</u>	11
14. <u>NUISANCE</u>	12
15. <u>WASTE</u>	12
16. <u>RUBBISH</u>	12
17. <u>ENVIRONMENTAL STANDARDS</u>	13
18. <u>NO CONTAMINANTS</u>	13
19. <u>NO RESIDUAL/ADVERSE IMPACT</u>	13
20. <u>MITIGATION OF ENVIRONMENTAL IMPACTS</u>	14
21. <u>ALTERATIONS AND ADDITIONS</u>	14
22. <u>NEW IMPROVEMENTS</u>	14
23. <u>REPAIR OF PREMISES</u>	17
24. <u>CONSTRUCTION REQUIREMENTS</u>	18
25. <u>SIGNS</u>	19
26. <u>LIABILITY INSURANCE</u>	19

27.	<u>PROPERTY INSURANCE</u>	20
28.	<u>INSURANCE PROVISIONS</u>	20
29.	<u>INSURANCE VALIDATION</u>	20
30.	<u>REPLACEMENT ON DESTRUCTION</u>	21
31.	<u>INSURANCE PROCEEDS</u>	23
32.	<u>REMOVAL OF BUILDINGS, FIXTURES AND CHATTELS</u>	24
33.	<u>INDEMNITY</u>	25
34.	<u>QUIET ENJOYMENT</u>	25
35.	<u>FORFEITURE</u>	25
36.	<u>INSOLVENCY</u>	26
37.	<u>PERFORMANCE OF COVENANTS</u>	27
38.	<u>RIGHT OF THE MINISTER TO RELET</u>	27
39.	<u>CHANGE IN CONTROL OF LESSEE</u>	28
40.	<u>PAYMENTS BY HER MAJESTY REGARDED AS RENT</u>	28
41.	<u>ARREARS TO BEAR INTEREST</u>	29
42.	<u>REMEDIES CUMULATIVE</u>	29
43.	<u>SURRENDER OF POSSESSION</u>	29
44.	<u>HOLDING OVER</u>	29
45.	<u>NET LEASE</u>	30
46.	<u>NO WARRANTIES</u>	30
47.	<u>HEADINGS</u>	30
48.	<u>AMENDMENTS</u>	31
49.	<u>GOVERNING LAW</u>	31
50.	<u>DISPUTE RESOLUTION</u>	31
51.	<u>NOTICE</u>	31
52.	<u>TIME OF THE ESSENCE</u>	33
53.	<u>SEVERABILITY</u>	33

54.	<u>PLURALITY AND GENDER</u>	33
55.	<u>NO SHARE TO MEMBERS OF PARLIAMENT</u>	33
56.	<u>NOT A JOINT VENTURE</u>	33
57.	<u>INDIAN ACT APPLIES</u>	34
58.	<u>CORPORATE AUTHORITY</u>	34
59.	<u>ACCELERATION</u>	35



WESTBANK INDIAN COUNCIL

SUITE 301 - 515 HIGHWAY 97 SOUTH, KELOWNA, B.C. V1Z 3J2 - TELEPHONE 769-5666 - FAX 769-4377

BAND COUNCIL RESOLUTION

CHRONOLOGICAL NUMBER: 1993/94-175

The undersigned Chief and Councillors of the Westbank Band do hereby certify that the following is a resolution that was duly moved, seconded and approved by a majority of the Council at a duly convened meeting held at the Administration Offices of the Band at 515 Highway 97 South, Tsinstikeptum Indian Reserve No. 10, on the 29th day of September, 1993.

WHEREAS:

- A. Michael Shane Abel Band No. 162 member of the Westbank Indian Band is in lawful possession of lands within Tsinstikeptum Indian Reserve No. 9, as follows:

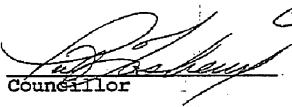
The whole of Lot 208, in Tsinstikeptum Indian Reserve No. 9, Province of British Columbia, as shown on Plan of Survey No. 75234 deposited in the Canada Lands Surveys Records at Ottawa, Ontario.
(hereinafter called the "Lands")

- B. Michael Shane Abel has applied to Her Majesty the Queen in Right of Canada, as represented by the Council of the Westbank Band (hereinafter called "Her Majesty"), for the Lands to be leased for his benefit pursuant to Section 58(3) of the Indian Act to K-West Equities Corp., for a term of nine-nine (99) years from July 1st, 1993 and expiring June 30th, 2092 pursuant to the terms and conditions contained in the form of Lease attached hereto (hereinafter called the "Lease").

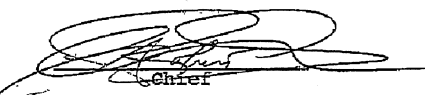
- C. The said Michael Shane Abel has requested the Council of the Westbank Band to approve the issuing of the Lease by resolution.

NOW THEREFORE BE IT RESOLVED THAT consent to the leasing of the Lands to K-West Equities Corp., be and is hereby given, and;

THAT, pursuant to Order in Council P.C. 1989-998 dated May 25th, 1989, which Order in Council was made pursuant to Section 60 of the Indian Act, we do hereby agree, on behalf of Her Majesty to lease the Lands for the benefit of Michael Shane Abel on the terms and conditions set out in the Lease.


Councillor

Councillor


Chief


Councillor



Indian and Northern
Affairs Canada

Affaires Indiennes
et du Nord Canada

September 14, 1993

Your file Votre référence

WESTBANK INDIAN BAND

Our file Notre référence

SEP 21 1993

RECEIVED

Lynn P. Vanderburg
Lands Officer
Westbank Indian Band
Suite 301-515 Highway 97 South
KELOWNA, British Columbia
V1Z 3J2

Pre-audit of Proposed 99 Year Lease to
K-West Equities Corporation of Lot 208, Plan 75234 CLSR
Tsinstikeptum I.R. No. 10, British Columbia

Thank you for the material provided to us in your letter of September 8, 1993 related to the above noted proposed lease. This is to advise you that our pre-audit review has been completed and the lease in its present form is satisfactory.

The lease may now be executed and submitted for registration. The original of this letter should be submitted along with the Band Council Resolution at the time of registration.

Should you have any questions, please contact Bruce Cooper at 994-6724.

for Graham Swan
Director
Lands Directorate
Lands and Trust Services

Canada

Printed on recycled paper - Imprimé sur papier recyclé

Environmental Assessment and Review Process (EARP)
PROJECT REGISTER AND SCREENING DECISION SUMMARY

REGION	SCREENING REPORT NO:	DURATION DATE:
LOCATION <u>LOT 208 case plan 75234</u>		
FILE #: <u>Tsunkikeptun 18 NO.9</u>		PROJECT CONTROL NO:
BAND NAME: <u>Westbank Indian Band</u>		
PROJECT DESCRIPTION: <u>K-West Equities Corporation</u>		

SCREENING PROCEDURES

Check where appropriate:	Summary of Impact			Planned Future Studies	
	NONE	MITIGABLE	UNKNOWN	YES	NO
Plants/Animals		✓			
Marine/Aquatic	✓				
Soils		✓			
Groundwater	✓				
Surface Water		✓			
Air Quality	✓				
Noise	✓				
Social:					
Community Service	✓				
Land Use	✓				
Recreational Interests	✓				
Employment/Income Levels	✓				
Individual Well-Being	✓				

NOTE: If any component has unknown impact, an IEE is required. Overall screening decision (below) will be one of the coding 0 or 4 through 9.

INFORMATION SOURCES

Check where appropriate
and specify sources

Physical:

- ☐ RESERVE MASTER PLAN
☐ AREA MASTER PLAN
☐ LITERATURE CONSULTED
☐ UNPUBLISHED INFORMATION
☐ CONSULTATIONS
☐ ENVIRONMENTAL STUDIES
☐ SITE RECONNAISSANCE
☐ OTHER

SPECIFY:

Environmental
assessment, prepared
by Stanley Associates
Engineering Ltd.

Attach list of titles/
names as appropriate for
above categories. Attach
maps, photos, plans if
available.

SUMMARY OF OVERALL PROJECT SCREENING DECISION

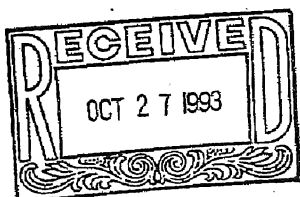
An initial assessment of the impact of the project on the components checked above leads us to the following conclusion (check one):

- ___ 0 - Initial assessment under way - no decision yet
 ___ 1 - Automatic exclusion; project proceeds
 ___ 2 - No significant adverse effects; project proceeds
 ___ 3 - Potentially adverse effects may be mitigated with known technology; project proceeds
 ___ 4 - Assess the proposal in greater detail (IEE required); adverse impact unknown
 ___ 5 - Further study (IEE) required; ability to mitigate adverse effects is unknown
 ___ 6 - Refer proposal for public review by a panel - adverse impact significant
 ___ 7 - Refer proposal for public review - significant public concern
 ___ 8 - Automatic referral for public review by a panel - potentially significant adverse impacts
 ___ 9 - Impacts unacceptable - either modify, rescreen, or abandon project

Pr 4 By: Westbank Indian Band District Office Signature Sept 29/83 Date

Recommended By: Regional Environmental Officer Signature Date

Receipt Stamp



4571

Registration Stamp

 216812 1993-10-27 9:51AM
 Registration No. Date Time
Indian Land Registry
REGISTRATION CONTROL SHEETSec. 53 and/or 60 Bands Sec 53/60Region B-C Instrument type 14

COMPUTER REGISTRATION INFORMATION (For computerized reserves only.)

LOG # P4807 LOG DATE 27 Oct/93 R.I.P. No _____INSTRUMENT NAME Lease CODE 14RESERVE NAME Jointly held I.R. #9 CODE 7420PURPOSE NAME Residential CODE _____TERM 99 yrs. FROM 01 July/93 TO 30 June, 2092

RETIRE PIN: YES _____ NO _____

CP REQUIRED YES _____ NO _____

PIN(s)

902002197

LEGAL DESCRIPTION/LAND AFFECTED

Lot 208, C.L.S.R. 75234

REMARKS/REGISTRATION NOS. AFFECTED _____

NEW PIN(S) CREATED

LEGAL DESCRIPTION

REGISTRATION NOS. (CARRIED OVER) _____

EXAMINED by M. Chetlerburg Date 27 October/93

Initial verification by _____ Date _____

Final verification by M. Chetlerburg Date 27 October/93