



Aboriginal Affairs and Northern Development Canada  
Application for Registration

Affaires autochtones et Développement  
du Nord Canada  
Demande d'enregistrement

Please send two copies of this document to your regional Aboriginal Affairs and Northern Development Canada office listed in the 'Contact Us' directory.

S'il vous plaît envoyer deux copies de ce document à votre bureau régional des Affaires autochtones et Développement du Nord Canada. Les coordonnées peuvent être trouvées dans l'annuaire 'Contactez-nous'.

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

Le/La soussigné(e) demande par la présente que le document dont les détails sont indiqués ci-dessous, soit inscrit conformément à la loi sur les Indiens dans le Registre des terres indiennes concerné.

Registration # /  
# au registre

6076088

Received Date /  
Date au registre

2013/11/27

Regional File # / # de dossier régional

5843-07397-455

NAME OF PARTIES TO INSTRUMENT / NOM DES PARTIES DU DOCUMENT

Grantor / Cédant

Name / Nom

Crown Canada  
597 - Penticton

Grantee / Cessionnaire

Name / Nom

SKAHA HILLS LIMITED PARTNERSHIP

Instrument Type / Type de document:

Lease 014

Instrument Date / Date du document:

2013/11/01

Purpose / Objet:

RESIDENTIAL

Remarks / Remarques:

DESIGNATION #278559 & AMENDMENT TO DESIGNATION #6074400.  
ACCESS VIA PERMIT #6072109, WHICH EXPIRES APRIL 1, 2014.

LAND DESCRIPTION / DESCRIPTION DE LA TERRE

Province: BRITISH COLUMBIA

Reserve Name / Nom de la réserve: 07397 - PENTICTON 1

Legal Description - Land Affected / Description Légal - Terre: LOT 522 Canada Lands Surveys Record 102342

List of Supporting documentation (must be attached to document or a registration number quoted) /

Liste des documents de support annexés (doivent être attachés ou cités un numéro d'enregistrement):

Applicant Email:

Band Email:

Signature of Applicant  
Signature du requérant

Tel. # of Applicant  
# Tél. du requérant

email  
courriel

Date

Return To:

Theresa Marion  
AANDC-BC Region  
600-1138 Melville Street  
Vancouver, BRITISH COLUMBIA  
V6E 4S3

Registration Number / Numéro d'enregistrement:

Registration Date / Date d'enregistrement:

DEC - 2 2013

and Time: / et heure:

Signature of Registration Office / Signature de l'officier d'enregistrement

Date



**Aboriginal Affairs and Northern Development Canada  
Application for Registration**

**Affaires autochtones et Développement  
du Nord Canada  
Demande d'enregistrement**

Please send two copies of this document to your regional Aboriginal  
Affairs and Northern Development Canada office listed in the 'Contact  
Us' directory.

S'il vous plaît envoyer deux copies de ce document à votre  
bureau régional des Affaires autochtones et Développement  
du Nord Canada. Les coordonnées peuvent être trouvées  
dans l'annuaire 'Contactez-nous'.

Comments / Commentaires:

---

---

---

---

---

---

---

---

---

---

Reason for return / la raison du retour

---

---

---

---

---

---

---

---

---

---

Signature of Registration Office / Signature de l'officier d'enregistrement

Date

---

**LEASE**

**Her Majesty in right of Canada**

**and**

**Skaha Hills Limited Partnership**

---

**Penticton Indian Reserve No.1**

**Lot 522, C.L.S.R. Plan No. 102342**

**Reference Date: November 1, 2013**

## **TABLE OF CONTENTS**

<b>1. GUIDE TO THIS LEASE</b>	<b>1</b>
<b>2. THE LAND AND ITS USE</b>	<b>2</b>
<b>3. RENT</b>	<b>5</b>
<b>4. CONSTRUCTION</b>	<b>6</b>
<b>5. INSURANCE</b>	<b>8</b>
<b>6. LAWS</b>	<b>12</b>
<b>7. ENVIRONMENT</b>	<b>13</b>
<b>8. INSPECTION &amp; ADVERTISING</b>	<b>15</b>
<b>9. ASSIGNMENTS &amp; SUBLEASES</b>	<b>16</b>
<b>10. SECURITY INTERESTS</b>	<b>18</b>
<b>11. INSOLVENCY</b>	<b>21</b>
<b>12. DEFAULTS &amp; THE END OF THIS LEASE</b>	<b>22</b>
<b>13. INDEMNITY</b>	<b>24</b>
<b>14. DISPUTE RESOLUTION</b>	<b>25</b>
<b>15. GENERAL PROVISIONS</b>	<b>26</b>
<b>SCHEDULE A – DEFINITIONS</b>	<b>30</b>
<b>SCHEDULE B – ENVIRONMENTAL PROTECTION MEASURES</b>	<b>34</b>
<b>SCHEDULE C – LENDER AGREEMENT</b>	<b>35</b>
<b>SCHEDULE D – BAND COUNCIL RESOLUTION</b>	<b>38</b>

## LEASE

This lease is made on November 1, 2013 between –

**Her Majesty in right of Canada**, as represented by the Minister of Indian Affairs  
and Northern Development

(referred to as the *landlord*)

and:

**Skaha Hills Limited Partnership**, as represented by its general partner, **Skaha  
Hills GP Inc.**

(referred to as the *tenant*)

### Background:

Title to the *land* is held by the *landlord* for the *First Nation's* use and benefit.

Having possession of the *land*, the *First Nation* designated it for lease on October 28, 1998, which was accepted by the Governor in Council on April 15, 1999, both of which are registered in the *registry* under No.278559 (the "*Original Designation*").

The Original Designation was amended by the *First Nation* on April 3, 2013, which amendment was approved by the Minister of Indian Affairs and Northern Development on July 10, 2013 and registered in the *registry* under No. 6074400.

There were no improvements on the *land* at the *start date*.

This lease is made under subsection 53(1) of the *Indian Act*.

The parties agree as follows:

## 1. GUIDE TO THIS LEASE

### 1.1 Lease Structure

**1.1.1** These are the parts of this lease: article (1.), section (1.1), subsection (1.1.1), paragraph (1.1.1(a)), and subparagraph (1.1.1(a)(i)). Unless stated otherwise, any reference in this lease to an article, section, subsection, paragraph, or subparagraph means the appropriate part of this lease.

- 1.1.2** Wording within square parentheses “[ ]” and headings are for convenience and reference only and are not to be used to interpret any part of this lease.
- 1.1.3** While an attachment to this lease labelled as a “Schedule” forms part of this lease, an attachment labelled as an “Appendix” is included only for the parties’ information and does not form part of this lease.
- 1.2 Interpretation of Words and Phrases**
- 1.2.1** Some words used in this lease are defined in Schedule A and are identified by italic type. A defined term may be read as having an appropriate corresponding meaning when it is used in the plural or verb form.
- 1.2.2** A word in the singular form may be read in the plural form if the context allows it and a word in the plural form may be read in the singular form if the context allows it.
- 1.2.3** The words include, includes, and including are to be read as if they are followed by the phrase “without limitation”
- 1.2.4** The phrases “when this lease ends” and “the ending of this lease” include an ending by cancellation or surrender.
- 1.2.5** Any reference to a statute means that statute, and any regulations made under it, all as changed or replaced over time.
- 1.2.6** When a party is required to consent to, or approve of, something under this lease, that consent or approval must not be unreasonably withheld, unless the provision states otherwise.
- 1.2.7** A party means that party acting by its authorized representative.

## **2. THE LAND AND ITS USE**

### **2.1 Use of the Land**

- 2.1.1** The *landlord* hereby leases the *land* to the *tenant*, and the *tenant* is entitled to quiet enjoyment of the *property*, for the *term*, subject to every other part of this lease.
- 2.1.2** The *tenant* has no right of access to and from the *land* over other lands in the *reserve* by the terms, express or implied, of this lease. The *tenant* must obtain and maintain legal access to and from the *land*.

- 2.1.3** The *property* must not be used for any purposes except for the purposes of a residential development, and purposes ancillary to a residential development.
- 2.1.4** Except where reasonably required by the *permitted uses*, the *tenant* must not cause or allow a nuisance on the *property*.
- 2.1.5** The *tenant* must not cause or allow any waste of the *property*.
- 2.1.6** Subject to subsection 2.5.1, the *tenant* must not vacate or abandon the *property* without first getting the written consent of the *landlord*, which consent may be withheld in its discretion.
- 2.1.7** If any burial site, human remains, or Indian artifact of archaeological or cultural interest is discovered on the *land*, then the *tenant* must promptly notify *Council*. If there are no applicable *First Nation* or federal *laws*, then the *tenant* must comply with the requirements set out in the Heritage Conservation Act, RSBC 1996, c 187, to the extent possible, and the reasonable requirements of the *Council*.
- 2.1.8** The *tenant* must ensure that any disturbed legal control survey monuments are replaced by a duly qualified surveyor to the satisfaction of the Surveyor General of Canada (or any successor).
- 2.1.9** If there are no applicable *laws* about the use of billboards (or other large-scale advertising devices), then the *tenant* must not construct, or allow the construction of, any billboard (or other large-scale advertising device) without first getting the written consent of the *Council*, which consent may be withheld in its discretion.

## **2.2 Representations About the Land and its Use**

- 2.2.1** The *land* is leased "as is" and no representations or warranties are made about the *land* (including the application of *laws*, compliance with *laws*, including uses allowed under any zoning bylaws, and the *land's* condition, title, or encumbrances, or its suitability for the *tenant*).
- 2.2.2** The *tenant* represents the following:
- (a) The *tenant* conducted all inspections of the *land* that it considered necessary.
  - (b) The *land* is suitable for the *tenant's* intended uses.
  - (c) The *tenant's* intended uses are within the scope of the *permitted uses*.

## **2.3 The Landlord May Create Other Interests on the Lands**

**2.3.1** The *landlord* may grant an easement (common law or statutory) or permit in respect of the *land* to an *authority* or utility company, as long as the easement or the permit has no material adverse effect on the *permitted uses*. On being given written notice of the easement or permit by the *landlord*, the *tenant* must promptly sign and deliver to the *landlord* the necessary documentation to subordinate the *tenant's* rights under this lease to the easement or the permit.

## **2.4 Minerals**

**2.4.1** The *landlord* reserves all minerals in the *land*, including –

- (a) ore of metal and every natural substance that can be mined and that –
  - (i) occurs in fragments or particles lying on, above, or adjacent to the bedrock source from which it is derived (commonly described as talus); or
  - (ii) is in the place 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
- (b) coal, petroleum, and all other hydrocarbons (regardless of gravity and how or where recovered), gases (including natural gas, methane, coal bed methane), building and construction stone, limestone, dolomite, marble, shale, clay, sand, and gravel.

**2.4.2** The *landlord* may authorize a *person* to enter the *property* to prospect for, drill for, or remove the substances referred to in subsection 2.4.1, as long as the activity has no material adverse effect on the *permitted uses*.

## **2.5 Surrender**

**2.5.1** Within the first 18 months of the *term*, provided that no sublease of the *land* has been granted, the *tenant* may, at its option, surrender this lease by providing a minimum of 60 days' prior written notice to the *landlord*.



### **3. RENT**

#### **3.1 Payments**

- 3.1.1** The *tenant* must punctually pay the *landlord* all *rent* due at the time and in the manner set out in this lease.
- 3.1.2** All payments by the *tenant* to the *landlord* under this lease must be –
- (a) paid in Canadian dollars;
  - (b) made payable to the Receiver General for Canada (or other *person* designated in writing by the *landlord*);
  - (c) paid without any prior demand, set-off, deduction, or abatement; and
  - (d) include any applicable *GST*.

Payments made may be applied towards outstanding amounts owed by the *tenant* under this lease in the manner the *landlord* may see fit.

#### **3.2 Prepaid Rent**

- 3.2.1** *Prepaid rent* of \$445,000 is due on the *start date*.
- 3.2.2** As the *landlord* will deposit any *prepaid rent* received to an account for the benefit of the *First Nation*, the *tenant* has no right to a refund of any *prepaid rent* from the *landlord* if this lease ends early.

#### **3.3 Additional Rent**

- 3.3.1** The *tenant* must pay any *additional rent* within 30 days after being given written notice of it.
- 3.3.2** This section survives the ending of this lease.

#### **3.4 Interest**

- 3.4.1** If any *rent* is not paid when due, or interest is otherwise payable under this lease, then the *tenant* must pay interest on the amount from the due date until the payment date.

Interest is calculated at the then prevailing "bank rate" set by the Bank of Canada, plus 10%, but is limited to a rate that is 0.01% below the "criminal rate," as determined under the Criminal Code, RSC 1985, c C-46. This section survives the ending of this lease.

### **3.5 Recovery of GST, Additional Rent, and Interest**

- 3.5.1** The *landlord* may recover *GST*, *additional rent*, and interest due the *landlord* as if they were unpaid rent.

## **4. CONSTRUCTION**

### **4.1 Approval Required Before Construction**

- 4.1.1** Before beginning any development on the *lands*, the *tenant* must –

- (a) if applicable, apply to the appropriate *authority* for any approvals necessary to construct any *structures* on the *lands*; and
- (b) deliver a *development plan* to the *landlord* for its approval.

- 4.1.2** As the *tenant* is not relying on the judgment or expertise of the *landlord* when a *development plan* is reviewed under this section, the *tenant* hereby releases the *landlord* from any liability for reviewing and approving a *development plan*. This subsection survives when this lease ends.

- 4.1.3** *Structures* that are the subject of an approved *development plan* must not be substantially altered without the prior approval of the *landlord*.

- 4.1.4** Any *structures* altered, repaired, or replaced during the *term* must be to a standard at least substantially equal in quality of material and workmanship to the original materials and work.

### **4.2 Construction Compliance**

- 4.2.1** Upon receipt of the required approvals referred to in section 4.1, the *tenant* must promptly construct the *structures* in a proper and workmanlike manner in accordance with the applicable approvals.

- 4.2.2** Construction, alteration, repair, and replacement of any *structures* on the *property* must comply with the then existing British Columbia building, fire, electrical, and

other similar codes to the same extent as if the *structures* had been on fee simple lands in the province.

- 4.2.3** Construction, alteration, repair, and replacement of any *structures* on the *property*, and any activities on the *property*, must comply with the environmental protection measures set out in Schedule B.

#### **4.3 Construction Insurance**

- 4.3.1** From the *start date* to *substantial completion*, and any other time a *building* is being constructed, the *tenant* must obtain and maintain (or cause to be obtained and maintained) the following insurance:

- (a) “Wrap-up” commercial general liability insurance against claims for bodily injury (including death), personal injury, or property damage arising in connection with the use and occupation of the *property* for construction. The policy must be written on a comprehensive basis with liability limits of at least \$5,000,000 per occurrence (or any other higher amount that the *landlord* reasonably requires before construction begins).
- (b) Course of construction insurance to cover all risks of physical damage to, or loss of, the *building* (including goods and materials to be incorporated in the *building* while in storage at the site or in transit to it) in an amount at least equal to its full replacement value plus “soft costs”.

#### **4.4 Completion of Construction**

- 4.4.1** A *building* must not be occupied until it is *substantially complete*. *Substantial completion* may be in respect of portions of *buildings*.

- 4.4.2** On request from the *landlord*, the *tenant* must promptly deliver to the *landlord*:

- (a) reproducible as-built plans for any completed *civil works*, certified correct by an *engineer*; and
- (b) a real property report for each completed *building*, certified correct by a *surveyor*, indicating the boundaries of the lot within which the *building* is situated, the location of the *building* within the lot, together with a notation indicating the number of storeys such building has.

#### **4.5 Maintenance**

- 4.5.1** The *tenant* must maintain the *property* in a tenant-like manner as a prudent owner in occupation would maintain it.

#### **4.6 Ownership of Structures During the Term**

- 4.6.1** Despite any rule of law about the immediate vesting of fixtures to the *landlord*, title to any *structures* constructed during the *term* vests with the *tenant*. Despite the *tenant's* title to the *structures* during the *term*, *structures* must not be removed from the *property* without first getting the written consent of the *landlord* which consent may be withheld in its discretion.

#### **4.7 Damage to, or Destruction of, Structures**

- 4.7.1** If any *structures* are damaged or destroyed, then –
- (a) the *tenant* must promptly notify the *landlord* ;
  - (b) this lease will not be deemed to have ended;
  - (c) the *tenant* is not allowed to surrender possession;
  - (d) there will be no reduction or postponement of *rent*; and
  - (e) the *tenant* must repair or replace the *structures* within a reasonable time and, to the extent possible, to a standard at least substantially equal in quality of material and workmanship to the original material and work. To the extent that it is not possible to do so, the repair or replacement of the *structures* must be with *structures* that are reasonably expected to create an overall development of equivalent economic value.

### **5. INSURANCE**

#### **5.1 Commercial General Liability Insurance**

- 5.1.1** At all times during the *term*, the *tenant* must obtain and maintain (or cause to be obtained and maintained) commercial general liability insurance against claims for bodily injury (including death), personal injury, or property damage arising in connection with the use and occupation of the *property*. The policy must be written on a comprehensive basis with liability limits of at least \$5,000,000 per occurrence (or any other higher amount that the *landlord* reasonably requires).

## **5.2 Commercial Building Form Property Insurance**

- 5.2.1** Other than when insurance is required by paragraph 4.3.1(b) [*course of construction insurance*], the *tenant* must obtain and maintain (or cause to be obtained and maintained) commercial building form property insurance to cover all risks of physical damage to, or loss of, all *buildings*, and any other *structures* in which the tenant's interest is insurable, in an amount at least equal to their full replacement value.

## **5.3 Pressure Vessel Insurance**

- 5.3.1** At all times during the *term*, the *tenant* must obtain and maintain (or cause to be obtained and maintained) insurance to cover loss or damage arising in connection with any boilers or other such pressure vessels on the *property*. The insurance must be in an amount at least equal to the full replacement value of the *buildings* housing the boiler or vessel, and any adjacent or ancillary *structures* in which the tenant's interest is insurable.

## **5.4 Other Insurance**

- 5.4.1** The *tenant* must obtain and maintain (or cause to be obtained and maintained) any other insurance that the *landlord* reasonably requires.

## **5.5 Insurance Provisions**

- 5.5.1** The *tenant* must not use, or allow the use of, the *property* in any way that will cause any required insurance to be cancelled or any insurers generally to refuse to provide any required insurance.
- 5.5.2** All insurance required under this lease must include the features customarily included in that type of insurance on similar developments in British Columbia by prudent owners and any features that the *landlord* reasonably requires. The insurance must not include any non-standard, special, or unusual exclusions or restrictive endorsements without first getting the written consent of the *landlord*.
- 5.5.3** The insurance required under this lease must comply with the following:
- (a)** In the case of property insurance, the following provisions apply:
    - (i)** The *landlord* must be listed as additional insured, with loss payable to the *landlord*, and the *lender*, if any, as their respective interests may appear.

- (ii) The insurance may allow a deductible amount with the prior written consent of the *landlord*. The *tenant* will be a co-insurer to the extent of the amount deducted and that amount will, for the purposes of section 5.6, be included as part of the insurance monies payable and paid.
  - (iii) If the insurance includes a co-insurance provision, then the insurance must be in an amount that prevents the parties from being co-insurers and permits full recovery from the insurer.
  - (iv) The insurance must include a waiver of any subrogation rights that the *tenant's* insurer may have against the *landlord* and those for whom the *landlord* is responsible in law, whether or not the damage is caused by the *landlord's* act, omission, or negligence. The *tenant* hereby waives its rights of subrogation against the *landlord*.
- (b) In the case of liability insurance, the following provisions apply:
- (i) The *landlord* must be listed as additional insured.
  - (ii) The insurance must contain cross-liability coverage and a severability of interests endorsement.
- (c) In the case of all insurance policies, the following provisions apply:
- (i) The insurance must be with insurers that are licensed in British Columbia.
  - (ii) The insurance must be primary, non-contributing with, and not in excess of, any other insurance available to the *landlord*.
  - (iii) The insurance must not be invalidated with respect to the interests of the *landlord* by reason of any breach of any warranties, representations, declarations, or conditions contained in the policies.
  - (iv) The insurance must include a provision (or bear an endorsement) that the insurer will give the *landlord* 30 days' written notice of any change or cancellation of the policy.

## **5.6 Proceeds of Property Insurance**

- 5.6.1** The insurance proceeds from the insurance required under paragraph 4.3.1(b) and sections 5.2 and 5.3 must, despite any terms of the policy, be paid to the order of the *lender* first in priority that has entered into a *Lender Agreement*. Subject to section 4.7 [*Damage to, or Destruction of, Structures*], the *lender* must use the insurance proceeds for the repair or replacement of the *structures* damaged or destroyed against certificates of the *architect* or *engineer* in charge of the repair or replacement.
- 5.6.2** If the *structures* are not repaired or replaced within a reasonable time after their damage or destruction, then the *landlord* may have them repaired or replaced and the *lender* must pay the *landlord* the insurance proceeds against certificates of the *architect* or *engineer* in charge of the repair or replacement.
- 5.6.3** If there are no *security interests*, then the *landlord* may appoint a trust company authorized to carry on business in British Columbia to fulfil the *lender's* obligations under this section.

## **5.7 Cancellation of Insurance**

- 5.7.1** The *tenant* must promptly notify the *landlord* if any insurance is cancelled or is threatened to be cancelled. The *tenant* must promptly fix anything that resulted in the cancellation or threat of cancellation and promptly provide reasonably satisfactory evidence to the *landlord* that the insurance will not be cancelled or has been renewed.

## **5.8 Certificates and Policies**

- 5.8.1** After an insurance policy required by this lease is issued, the *tenant* must promptly give the *landlord* a certificate showing evidence of the policy. No later than 15 days before the expiry of that policy, the *tenant* must deliver to the *landlord* a certificate showing that the policy has been renewed or replaced.
- 5.8.2** If requested by the *landlord*, the *tenant* must promptly deliver to the requesting party a certified copy of any insurance policy required by this lease.
- 5.8.3** If requested by the *landlord*, the *tenant* must promptly deliver to the requesting party reasonably satisfactory written evidence from a qualified professional that the insurance then in place meets the requirements of this lease.

## **5.9 Release from, and Indemnity for, Insured Liabilities**

- 5.9.1** The *tenant* hereby releases the *landlord* and its employees, agents, contractors, and subcontractors, from all liability for any injury, death, loss, or expense in any way because of any of the perils or injury against which insurance is to be obtained and maintained under this lease.
- 5.9.2** To the extent that any required insurance is not obtained or maintained, then, without limiting article 13 [*Indemnity*], the *tenant* hereby indemnifies the *landlord* and its employees, agents, contractors, and subcontractors, from all liability for any injury, death, loss, or expense in any way because of any of the perils or injury against which the required insurance was to be obtained and maintained.

## **5.10 Payment of Insurance Premiums**

- 5.10.1** If the *tenant* does not pay (or cause to be paid) any insurance premiums when they become due, then the *landlord* may pay them (or get any insurance that the *landlord* wants, in the *landlord's* discretion) and the *landlord's* expenses for this are *additional rent*.

# **6. LAWS**

## **6.1 Compliance, Notification, and Receipts**

- 6.1.1** The *tenant* must comply with all *laws* that apply to this lease, the *property*, or any activity on the *property*. The *tenant* must require that any other *person* on the *property* because of the *tenant's* rights under this lease does the same.
- 6.1.2** The *tenant* must promptly deliver to the *landlord* copies of any notice from an *authority* requiring something to be done, or stop being done, on the *property*. Once it has been resolved to the *authority's* satisfaction, the *tenant* must promptly deliver to the *landlord* reasonably satisfactory evidence of the resolution.
- 6.1.3** Without limiting subsection 6.1.1, the *tenant* must pay, or cause to be paid, when due (subject to any appeals allowed under applicable *laws*) all taxes that apply to this lease or the *property*. The *tenant* must promptly deliver to the *landlord* copies of official receipts (or other reasonably satisfactory evidence) showing payment of these taxes.
- 6.1.4** The *tenant* must pay, or cause to be paid, when due (subject to any appeals allowed by the utility provider or by law) all providers of utilities (including gas, electricity, water, sanitation, cable, and telephone) to the *property*.



## **6.2 Authorization to Receive Information**

- 6.2.1** On a written request from the *landlord*, the *tenant* must promptly deliver to the *landlord* written authorization to receive information from an *authority* about the *tenant's* compliance with applicable *laws* (including the payment of applicable taxes). The *tenant* must require that, on written request from the *landlord*, any other *person* on the *property* because of the *tenant's* rights under this lease must promptly deliver to the requesting party written authorization to receive information from an *authority* about that *person's* compliance with applicable *laws* (including the payment of applicable taxes).

## **7. ENVIRONMENT**

### **7.1 Use of Contaminants on the Property**

- 7.1.1** If the *property* is exposed to a *contaminant*, then, upon becoming aware of the exposure, the *tenant* must do the following:
- (a)** The *tenant* must promptly report the exposure under the Spill Reporting Regulation, BC Reg 263/90, if a report would be required under that regulation off-reserve, and provide copies of that report to the *landlord*.
  - (b)** If the exposure of the *contaminant* is not covered by the Spill Reporting Regulation, BC Reg 263/90, but is –
    - (i)** a “dangerous good” under the Transportation of Dangerous Goods Act, 1992, SC 1992, c 34;
    - (ii)** a “deleterious substance” under the Fisheries Act, RSC 1985, c F-14, if the affected area is subject to the authority of that Act; or
    - (iii)** a “toxic substance” under the Canadian Environmental Protection Act, 1999, SC 1999, c 33,then the *tenant* must promptly deliver to the *landlord* the same information about the exposure as if it were covered by that Regulation.
  - (c)** If the exposure originated on the *property* during the *term*, then the *tenant* must promptly –
    - (i)** stop, contain, and minimize the effects of the *contaminant*;

- (ii) remove the *contaminant* from the *property* and anywhere else on the *reserve*, but if the removal of all of the *contaminant* is not reasonably possible, reduce the amount of the *contaminant* on the *property* or anywhere else on the *reserve* to a level that is at or below the more stringent of the *environmental benchmarks*; and
- (iii) reduce the amount of the *contaminant* outside the *reserve* to a level that is required by the applicable *laws* of that area.
- (d) The *tenant* must promptly deliver to the *landlord* an independently-prepared report (which must be reasonably satisfactory to the *landlord*) of the activities under paragraph (c) and the condition of the affected areas after those activities compared with, to the extent reasonably possible, the condition of those areas before exposure to the *contaminant*.

**7.1.2** Despite anything else in this lease or any rule of law to the contrary, any *contaminant* coming on the *property* during the *term* does not, no matter its degree of affixation, become the property of the *landlord*. When this lease ends, the *tenant* must promptly remove all *contaminants* from the *property*, but if the removal of all of a *contaminant* is not reasonably possible, then the *tenant* must promptly reduce the amount of the *contaminant* to a level that is at or below the more stringent of the *environmental benchmarks*. This obligation does not apply to the extent that a *contaminant* is proven to have been on the *property* at the *start date* (though it is the *tenant's* obligation to prove its existence to be able to rely on this exemption).

## **7.2 Environmental Site Assessment at the End of the Lease**

**7.2.1** Between 90 days and 180 days before the *term* ends, or no later than 60 days after this lease ends early, the *tenant* must –

- (a) ensure that an environmental site assessment is conducted (to the reasonable satisfaction of the *landlord*) by a *person* approved of in advance by the *landlord* acting reasonably;
- (b) ensure that a report is prepared assessing the environmental condition of the *property* at that time; and
- (c) deliver to the *landlord* a copy of the report (the form and content of which must be reasonably acceptable to the *landlord*).

### **7.3 Environmental Representation**

**7.3.1** The *tenant* represents that the *tenant*, all affiliates (as that term is defined in the Business Corporations Act, SBC 2002, c 57), and their respective directors or senior officers have never been prosecuted for any offences, or received any administrative penalties or orders, under any *laws* that in any way regulate *contaminants* or protect the *environment*.

### **7.4 Environmental Indemnity**

**7.4.1** Without limiting section 13.1 [*Tenant's Indemnity of the Landlord*], the *tenant* hereby indemnifies and must promptly pay the *landlord* (on written notice) from and for any losses or expenses (including legal fees on a solicitor-client basis) of the *landlord* and its employees, agents, contractors, and subcontractors arising in any way because of –

- (a) the exposure of the *property* to *contaminants* during the *term*, except for those *contaminants* on the *property* from the activities or omissions outside the *property* of a *person* other than the *tenant*; or
- (b) the exposure of any other areas to *contaminants* migrating from the *property* in any way because of the activities or omissions during the *term* of the *tenant* or any other *person* on the *property* because of the *tenant's* rights under this lease.

### **7.5 General**

**7.5.1** To the extent that the Environmental Management Act, SBC 2003, c 53, applies to the *property* or this lease, this article is a private agreement about remediation between the parties.

**7.5.2** This article survives the ending of this lease.

## **8. INSPECTION & ADVERTISING**

### **8.1 Access to Inspect**

**8.1.1** The *tenant* must provide the *landlord* with reasonable access to inspect the *property*. This right of access requires reasonable notice to the *tenant*, except in the case of emergency when no notice is required.

**8.1.2** If the inspection is in response to a default of this lease, or, in the process of inspecting the *property*, the *landlord* discovers or confirms that there is a default of

this lease, then the *landlord's* reasonable expenses under this section are *additional rent*.

## **8.2 Access to Advertise**

**8.2.1** During the last 12 months of the *term* and as long as the tenant's use and enjoyment of the *property* is not unreasonably interfered with, the *landlord* may –

- (a) display the usual signs on the *property* advertising it for lease; and
- (b) on reasonable notice being given to the *tenant*, allow prospective lessees and their advisors access to the *property* so that they may inspect it and perform any reasonable assessments of it.

## **9. ASSIGNMENTS & SUBLEASES**

### **9.1 General**

**9.1.1** The *tenant* must not assign, sublease, mortgage, or otherwise dispose of its interest in this lease (or any part of it), except as explicitly permitted in this lease.

**9.1.2** If the *tenant* defaults on any of its obligations in a sublease or *security interest*, then the *landlord* may, without obligation, fix the default (or attempt to fix the default). The *landlord's* expenses for this are *additional rent*.

### **9.2 Assignments**

**9.2.1** The *tenant* must not assign this lease without first getting the written consent for each assignment from the *landlord*. Notwithstanding the foregoing, the *tenant* may, on notice to the *landlord*, assign this lease to a *homeowners' association*.

**9.2.2** An assignment (other than a *security interest* by way of assignment, in which case article 10 applies) is invalid unless the proposed assignee enters into a written agreement with the *landlord* to be responsible for the *tenant's* obligations under this lease and executes a *Declaration of Trust* if the *tenant* has executed such a trust and obtained the benefit of waivers pursuant to section 12.9 (and the trust Termination Date has not arrived).

**9.2.3** The *tenant* is not relieved from any of its obligations under this lease by an assignment unless the assignment is to a *homeowners' association* (in which case the

*tenant* is liable only for liabilities accruing prior to the assignment) or the *landlord* allows (in writing) the *tenant* to be relieved from them.

**9.2.4** The *tenant* must ensure that each assignment is submitted to the *registry* in a form that is acceptable to the *registry*.

**9.2.5** Any reference to an assignment includes, if the *tenant* is a private corporation, the controlling interest of the corporation changing ownership from the *start date* without the prior written consent of the *landlord*.

### **9.3 Subleases**

**9.3.1** The *tenant* may sublet the *property* without the consent of the *landlord*.

**9.3.2** Each sublease (other than a *security interest* by way of sublease, in which case article 10 applies) must contain the following provisions:

- (a) An acknowledgement by the subtenant for the benefit of the *landlord* that the subtenant is not relying on the *landlord's* judgment or expertise in the *landlord's* review of the *development plan* and a release by the subtenant of the *landlord* from any liability for that review, which clause must survive when the sublease ends.
- (b) A requirement to put a similar provision as set out in paragraph (a) in any sublease that the subtenant grants;
- (c) A proviso that notwithstanding anything else in the sublease, if the *tenant* obtains a waiver of forfeiture under section 12.9 of this Lease, then during the lifetime of the Trust, as defined in the *Declaration of Trust*, the *tenant* will have the unrestricted rights of a sub-landlord at law upon termination of the sublease, including the right to the subleased lands free of all charges and mortgages of the sublease and free of any requirements to account to the subtenant for any surplus (receipts over and above total claims of the *tenant* in respect of the sublease) from any subsequent re-letting of the subleased lands, provided that the *tenant* will pay any surplus to mortgagees of the sublease to the extent of any amounts secured under the sublease mortgages. Notwithstanding this proviso, no sublease mortgagee or subtenant will be entitled to an accounting from the *tenant*, or entitled to any right respecting the conduct or process of re-letting the subleased lands.

- 9.3.3** The *tenant* must ensure that each sublease is submitted to the *registry* in a form that is acceptable to the *registry*. The *landlord* is not deemed to have knowledge of any of the terms of any sublease by its submission to the *registry*.

**9.4 Licences**

- 9.4.1** The *tenant* may grant licences of its leasehold interest in the *land* without the consent of the *landlord*.

**10. SECURITY INTERESTS**

**10.1 Consent Requirements**

- 10.1.1** Before any *buildings* are *substantially complete*, the *tenant* may give a *security interest* –

- (a) without the consent of the *landlord* if the *security interest* is solely to finance or refinance the *tenant's* acquisition of its interest in this lease and the construction of *structures*; or
- (b) with the written consent of the *landlord* if the *security interest* is for any other purpose.

- 10.1.2** After the *buildings* are *substantially complete*, the *tenant* may give a *security interest* without the consent of the *landlord*.

- 10.1.3** For greater certainty, a subtenant may mortgage its interest in a sublease without the consent of the *landlord*.

**10.2 Registration**

- 10.2.1** Every *security interest* must be submitted to the *registry* in a form that is acceptable to the *registry*.

**10.3 Rights of a Lender**

- 10.3.1** A *lender* will only obtain rights under this section by entering into a *Lender Agreement*.

- 10.3.2** Except as provided in a *Lender Agreement*, every *security interest* is subject to the rights of the *landlord* under this lease.

**10.3.3** Without first getting the written consent of the *lender*, which consent must not be unreasonably withheld, the *tenant* must not –

- (a) surrender all or any part of this lease; or
- (b) agree to any modification of this lease that materially adversely affects the *lender's security interest*.

If the *lender* does not provide consent, or notify the parties that it will not provide its consent, within 30 days of notification of a proposed surrender or modification, then the *lender* will be conclusively deemed to have given consent.

**10.3.4** If a dispute under this lease is referred to court or arbitration under article 14 [*Dispute Resolution*], then the *tenant* must give the *lender* reasonable notice of the proceedings. If the *lender* reasonably decides that the proceedings may affect its *security interest*, then the *lender* must be given a reasonable opportunity to participate in the proceedings.

**10.3.5** Any proceeds from the property or pressure vessel insurance required under this lease must be used for the repair or replacement of the *property* damaged or destroyed as set out in this lease. Despite any terms of the respective policy, the insurance proceeds must be paid to –

- (a) the *lender* that has entered into a *Lender Agreement* first in priority; or
- (b) at the option of any party, an insurance trustee under an insurance trust agreement to be entered into by the parties and the insurance trustee about the investment and disbursement of the proceeds,

and the disbursement of the proceeds are to be paid out against certificates of the *architect* or *engineer* in charge of the repair or restoration as set out in this lease.

**10.3.6** A *lender* may enforce its *security interest* and acquire the *tenant's* interest in the leasehold estate in any lawful way. If the *lender*, by its representative or by a *receiver*, takes possession of the *property*, then:

- (a) the *lender* will execute a *Declaration of Trust* if the *tenant* has executed such a trust and obtained the benefit of waivers pursuant to section 12.9 (and the trust Termination Date has not arrived), except that any amounts paid to the *lender*, on account of the secured debt, by an assignee of the *lender* in possession, is not Trust Property (as defined in the *Declaration of Trust*) if such assignee executes a *Declaration of Trust* when the assignment is made;

- (b) the *lender* is responsible for the *tenant's* obligations under this lease until the foreclosure of its *security interest* is complete and the *lender* assigns this lease in accordance with section 9.2 [Assignments] and the terms of any trust.

**10.3.7** Any re-entry, cancellation, acceptance of surrender, disclaimer, or forfeiture of this lease by the *landlord* or any *receiver* is not valid against a *lender* unless the *landlord* has first given the *lender* notice of the relevant default. If the *lender* –

- (a) cures the default within 30 days from the date the default notice is delivered;  
or
- (b) promptly begins to cure the default and diligently proceeds to cure it if the default is other than a failure to pay *rent* and cannot reasonably be cured within 30 days,

then the *lender* is entitled to become the tenant of the *property* for the balance of the *term* if the *lender* attorns as tenant to the *landlord* and executes a *Declaration of Trust* if the *tenant* has executed such a trust and obtained the benefit of waivers pursuant to section 12.9 (and the trust Termination Date has not arrived), and complies with all of the *tenant's* obligations under this lease until it assigns its interest in this lease in accordance with section 9.2 [Assignments] and the terms of any trust. If there is more than one *lender*, then the rights under this subsection belong to the *lender* ranking higher in priority who cures the default. If any *lender* has commenced foreclosure proceedings, then this subsection does not apply and subsection 10.3.8 applies instead.

**10.3.8** If a *lender* begins foreclosure proceedings against the *tenant*, then the *landlord* must not re-enter the *property* or cancel or forfeit this lease because of a default if the *lender* –

- (a) first gives notice to the *landlord* of the foreclosure proceedings;
- (b) diligently prosecutes the foreclosure proceedings to conclusion without undue delay;
- (c) cures the default within 30 days from the date the default notice is delivered or, if the default cannot reasonably be cured within 30 days, promptly begins to cure the default and diligently cures it; and
- (d) complies with all of the *tenant's* obligations under this lease and executes a *Declaration of Trust* if the *tenant* has executed such a trust and obtained the benefit of waivers pursuant to section 12.9 (and the trust Termination Date has



not arrived).

- 10.3.9** If a *lender* forecloses the *tenant's* interest in this lease, then the *lender* will execute a *Declaration of Trust* if the *tenant* has executed such a trust and obtained the benefit of waivers pursuant to section 12.9 (and the trust Termination Date has not arrived) and the *lender* will have all the rights and obligations of the *tenant* under this lease until it assigns its interest in this lease, subject to any trust terms.
- 10.3.10** Any re-entry, cancellation, or forfeiture of this lease as against the *tenant* is valid against the *tenant* even though it is made subject to the rights of the *lender* under this section.
- 10.3.11** Each *lender* is granted access to the *property* for the purpose of curing defaults of this lease under this section. The *tenant* is not relieved from any of its obligations under this lease because of entry on the *property* by a *lender* under this section.
- 10.3.12** If there is more than one *lender*, then the *lender's* rights under this section are given to the *lender* ranking higher in priority who wishes to exercise the rights.

## **11. INSOLVENCY**

### **11.1 Events of Insolvency**

#### **11.1.1** The following are considered to be events of insolvency:

- (a)** When the *tenant* makes an assignment for the benefit of creditors or otherwise starts proceedings under any bankruptcy or insolvency laws.
- (b)** When a *receiver* is appointed, other than by a *lender*.
- (c)** When a court with jurisdiction declares the *tenant* bankrupt or insolvent.
- (d)** If the *tenant* is a company and any application, petition, certificate, or order is made or granted to wind-up or dissolve the *tenant*, voluntarily or not.

#### **11.1.2** An event of insolvency is a default of this lease.

## **12. DEFAULTS & THE END OF THIS LEASE**

### **12.1 Defaults Affecting the Landlord**

- 12.1.1** If the *tenant* defaults on any obligation under this lease, then the *landlord* may give the *tenant* a written default notice and the *tenant* must promptly cure the default.

### **12.2 Cancellation**

- 12.2.1** By a written cancellation notice given to the *tenant*, the *landlord* may end this lease early if the *tenant* defaults in any obligation and the default –
- (a) can reasonably be cured within 30 days after the default notice is given but is not cured within that time; or
  - (b) reasonably needs more than 30 days after the default notice is given to be cured but the *tenant* does not begin to cure the default within the 30-day period or the default is not diligently cured.

### **12.3 Curing of Defaults by the Landlord**

- 12.3.1** If a default under section 12.1 is not cured within the time allowed by this article, then the *landlord* may cure the default (with unrestricted access to the *property* to do so) and any of the *landlord's* expenses to do so are *additional rent*. If the *landlord* begins to cure the default, then the *landlord* has no obligation to continue to completion. The *landlord* is not liable for any of the *tenant's* losses or expenses (or those of any subtenant or other *person* having rights on the *land* through the *tenant*) because of the *landlord's* curing of (or attempt to cure) the default.

### **12.4 Issues at the End of this Lease**

- 12.4.1** If this lease ends early, then the *tenant's* interest in the *land* ends and the *landlord* will be considered to have re-entered the *land* without any requirement for the *landlord* to physically re-enter the *property*, start any legal proceeding, or do anything else.
- 12.4.2** Whenever this lease ends, title to the *structures* (except those required to be removed under subsection 12.4.3) vests with the *landlord* for the use and benefit of the *First Nation*, free of all encumbrances, and the *tenant* must promptly surrender the *property* to the *landlord* in the condition it was required to be kept under this lease, except as otherwise expressly provided for in this lease, without any compensation for doing so.

**12.4.3** Upon receipt of notice from the *tenant* that it intends to surrender this lease as permitted under subsection 2.5.1, the *landlord* may, within 120 days thereafter, notify the *tenant* that it must promptly:

- (a) remove all *structures* that the *landlord* notifies the *tenant* to remove;
- (b) fix all damage to the *property* caused by the removal of these structures; and
- (c) leave the rest of the *property* in good condition (as it would be maintained by a prudent owner in occupation) and free from all waste, debris, and things not owned by the *landlord* (including *trade fixtures*, inventory, and other personal property) to the reasonable satisfaction of the *landlord*.

**12.4.4** If any of the *structures*, waste, debris, and things required to be removed under subsection 12.4.3 are not removed, then the *landlord* may remove and dispose of them in its discretion. The *landlord* is not liable to the *tenant* (or any *person* who has an interest in the removed *structures*, waste, debris, or things) for any losses or expenses because of this removal and disposal. The *landlord's* expenses under this subsection are *additional rent*.

**12.4.5** This section survives after this lease ends.

## **12.5 Amounts Owing at the End of this Lease**

**12.5.1** Despite this lease ending early, the *tenant* must pay the following:

- (a) The *tenant* must pay the *landlord* –
  - (i) all outstanding *rent* to the end of the *term*;
  - (ii) all of the *landlord's* prospective losses and expenses, including those arising from the *tenant's* failure to carry on business; and
  - (iii) any other amounts allowed by law.

## **12.6 Survival of Obligations and Access to the Property**

**12.6.1** The *tenant* is entitled to access the *property* after this lease ends only at the reasonable times and on the reasonable conditions set by the *landlord* and only to be able to perform any of the *tenant's* obligations that survive after this lease ends. The *tenant* is not in possession of the *property* because of any activities for this purpose. This section survives after this lease ends.

**12.7 Remedies are Cumulative**

**12.7.1** All remedies under this lease or at law may be exercised at the same time and the exercise of one remedy does not preclude the exercise of any other remedy.

**12.8 Waiver of Forfeiture-Incurable Defaults**

**12.8.1** Notwithstanding any other terms of this Lease, the *landlord* will not be entitled to terminate or forfeit this Lease in respect of any of the following defaults:

- (i) an event of insolvency (as defined in subsection 11.1.1), or
- (ii) failure by the *tenant*, or any subsequent assignees of the Lease that is a company, to maintain their status as a valid and subsisting company in good standing with the provincial corporate registry.

**12.9 Curable Defaults**

**12.9.1** Notwithstanding any other terms of this Lease, the *landlord* will waive forfeiture and the *landlord* will not be entitled to terminate or forfeit this Lease in respect of those defaults under the Lease not otherwise waived under subsection 12.8.1 that exist at the time of waiver, as well as any defaults arising subsequently during the lifetime of the Trust (as defined in the *Declaration of Trust*) until the Trust is terminated, upon the Lessor's receipt of a *Declaration of Trust* executed by the Lessee.

**12.10 Purpose of Waiver of Forfeiture**

**12.10.1** The purpose of this article 12 is to ensure that any subtenant not in default under its sublease remains in peaceable and quiet possession of the subleased premises in accordance with the terms of its sublease.

**13. INDEMNITY**

**13.1 Tenant's Indemnity of the Landlord**

**13.1.1** The *tenant* hereby indemnifies and must promptly pay the *landlord* (on written notice) from and for any losses or expenses (including legal fees on a solicitor-client

basis) of the *landlord* and its employees, agents, contractors, and subcontractors arising in any way because of –

- (a) a breach of any of the *tenant's* obligations under this lease;
- (b) any injury to, or death of, any *person* on the *property* during the *term*;
- (c) any damage to, or loss of, property by any *person* in any way because of the use of the *property* during the *term*;
- (d) the *landlord's* curing of (or attempt to cure) a default of this lease under subsection 12.3.1; or
- (e) the *landlord's* removal and disposal of any *structures*, waste, debris, or things under subsection 12.4.4

but not for those losses or expenses arising in any way because of the gross negligence or wilful misconduct of the *landlord* or its employees, agents, contractors, and subcontractors, unless it involves a peril against which the *tenant* is obligated to obtain and maintain insurance, in which case the release set out in section 5.9 [*Release from, and Indemnity for, Insured Liabilities*] absolves the *landlord* of all liability for that negligence or misconduct.

## **13.2 Survival**

**13.2.1** This article survives after this lease ends.

# **14. DISPUTE RESOLUTION**

## **14.1 Disputes**

**14.1.1** Any dispute under this lease which is not resolved by negotiation must be resolved by referral, in the first instance, to the Federal Court of Canada (or any replacement or successor court having jurisdiction). Any decision of the court is final and binding on the parties. If the court refuses jurisdiction or does not determine the dispute, then a party may refer the dispute to any other court that has jurisdiction and the parties may exercise any other right or remedy they have under this lease or otherwise.

## **15. GENERAL PROVISIONS**

### **15.1 Delivery**

- 15.1.1** Any notice or other thing to be given from one party to another must be delivered in writing in accordance with this section to the following addresses:

**To the *landlord*:**

Director, Lands and Economic  
Development  
Aboriginal Affairs and Northern  
Development Canada  
600 – 1138 Melville Street  
Vancouver, BC V6E 4S3  
Fax: (604) 775-7149  
E-mail: \_\_\_\_\_

**To the *tenant*:**

Skaha Hills Limited Partnership  
402 Warren Avenue East  
Penticton, BC V2A 3M2

Attention: President  
Fax: (250) 493- 7255

- 15.1.2** If there is a postal interruption, or threat of interruption, then deliveries must be given by means other than mail.

- 15.1.3** Any change in contact information will take effect on delivery of the notice. If the delivery date is disputed, then it is considered to be given as follows:

- (a)** If sent by fax, e-mail, or other electronic means before 3:00 p.m. Pacific time on a business day, it is considered to be delivered on the day of transmission.
- (b)** If sent by fax, e-mail, or other electronic means after 3:00 p.m. Pacific time on a business day, or on a day that is not a business day, it is considered to be delivered on the next business day.
- (c)** If sent by regular mail, it is considered to be delivered on the third business

day after it is postmarked.

**15.2 This Lease is the Entire Agreement Between the Parties**

- 15.2.1** This lease is the entire agreement between the parties about the subject matter of this lease. It supersedes and revokes all previous negotiations, arrangements, letters of intent, and offers to lease.
- 15.2.2** Any modifications of this lease must be in writing and executed by at least the parties who will be bound by the modification.

**15.3 Net Lease**

- 15.3.1** This is a triple-net lease.

**15.4 Tenant's Obligations and Representations**

- 15.4.1** All of the *tenant's* obligations are conditions as well as covenants.
- 15.4.2** All of the *tenant's* representations survive after this lease ends.

**15.5 Governing Law**

- 15.5.1** This lease is governed by, and is to be interpreted in accordance with, the applicable laws of Canada and British Columbia.

**15.6 Time is of the Essence**

- 15.6.1** Time is of the essence.

**15.7 Ambiguity & Invalidity**

- 15.7.1** This is not a standard form document. If any part of this lease is ambiguous, then it is not to be presumed to be interpreted in favour of any party.
- 15.7.2** If any part of this lease is invalid, then the rest of this lease will continue in effect and be interpreted as if this lease had been made without the invalid part.

**15.8 This Lease Benefits and Binds Successors**

- 15.8.1** This lease benefits and binds each party's heirs, executors, administrators, successors, permitted assigns, and other legal representatives.



**15.9 Waivers**

**15.9.1** Any waiver of an obligation must be in writing. No waiver is to be inferred from anything done or omitted to be done.

**15.10 Not a Joint Venture**

**15.10.1** The *landlord* has an arms-length relationship with the other parties and does not have any relationship of agency, partnership, joint venture, or other similar association.

**15.11 First Nation Authority**

**15.11.1** The *Council*, on behalf of the *First Nation*, at a duly convened meeting and by a duly executed resolution (a copy of which is in Schedule D) consented to the lease terms.

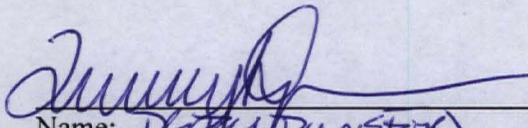
**15.12 Tenant Authority**

**15.12.1** The *tenant* represents the following:

- (a) The *tenant* is incorporated under the laws of British Columbia.
- (b) The *tenant* is in good standing with the British Columbia corporate registry.
- (c) The *tenant* has the corporate authority under its documents of incorporation to enter into this lease and perform all of its obligations under this lease.
- (d) The *person* signing this lease on the *tenant's* behalf has the authority to bind the *tenant* to this lease.

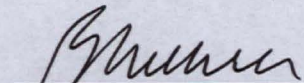
The parties are signing this lease as of the reference date at the top of page one.

**HER MAJESTY IN RIGHT OF CANADA**, as  
represented by the Minister of Indian Affairs and  
Northern Development

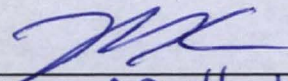
  
Name: Terry Dunstons  
Manager, Lands and Economic Development  
BC Region

**NOV 29 2013**



  
\_\_\_\_\_  
Witness as to the *tenant's* authorized  
signatory

) **SKAHA HILLS LIMITED PARTNERSHIP,**  
) as represented by its general partner, **SKAHA**  
) **HILLS GP INC.**  
)

)   
) \_\_\_\_\_  
) Name: Matt Kenyon  
) Director  
)

I have the authority to bind the corporation.

[Signature page to a lease dated November 1, 2013]

## SCHEDULE A – DEFINITIONS

**"additional rent"** means any of the *landlord's* expenses (and those of the *landlord's* agents, contractors, and subcontractors), together with an administration fee of 10% of the expenses, referred to in this lease.

**"architect"** means an individual who is registered or licensed as an architect in British Columbia.

**"authority"** means any government (including any governmental or quasi-governmental authority, commission, or board) having jurisdiction, including, for greater certainty, the *Council*, on behalf of the *First Nation*.

**"buildings"** has the same meaning as in the British Columbia Building Code as it exists from time to time.

**"civil works"** means the improvements for storm, water, sewer or road purposes, as provided for in a *development plan*, required to service the *buildings*.

**"contaminant"** includes –

- (a) a substance regulated under any federal, provincial, or *First Nation laws* that, in whole or in part, regulate waste, pollution, or contaminants, protect the *environment*, or relate to the health or safety of humans; and
- (b) any biological organism (including fungi, mould, and spores) or other irritant in sufficient concentration to negatively affect human health.

**"Council"** means the *First Nation's* "council of the band", as that term is defined in the *Indian Act*, or any successor.

**"Curable Defaults"** means all those defaults under the Lease not otherwise identified under subsection 12.8.1 [*Incurable Defaults*].

**"Declaration of Trust"** means a declaration of trust substantially in the form attached as Schedule E.

**"development plan"** includes the complete and detailed conceptual plans, development plans, design briefs, construction specifications, and cost estimates of any *structures*, all as prepared by an *architect* or *engineer*, and any other documents that the *landlord* reasonably requires.

**"engineer"** means an individual who is registered or licensed as an engineer in British Columbia.

**"environment"** has the meaning given to it in the Canadian Environmental Protection Act, 1999, SC 1999, c 33.

**"environmental benchmarks"** means –

- (a) the level set out in the Canadian Environmental Quality Guidelines (or any replacement guidelines) established by the Canadian Council of Ministers of the Environment, or any successor or replacement body or federal standard, for the more stringent of residential or agricultural uses;
- (b) the level set out in the Contaminated Sites Regulation, BC Reg 375/96 for the more stringent of residential or agricultural uses;
- (c) the level set out in any *laws* of the *First Nation* for the more stringent of residential or agricultural uses; or
- (d) if no level is set out in any of them, a level that is consistent with the ambient level of the *contaminant* in the nearby area.

**"First Nation"** means the Penticton Indian Band or its successor or replacement.

**"GST"** means any tax that applies to the grant of this lease and the payment of *rent*.

**"Indian Act"** means the Indian Act, RSC 1985, c I-5.

**"homeowners' association"** means a corporation or a society in which the shareholders or members, as the case may be, are comprised of sublessees of the *land* and/or the *tenant*.

**"land"** means the lands described as:

In the Province of British Columbia  
In Similkameen Division of Yale District  
In Penticton Indian Reserve No. 1

All of Lot 522 as shown on Plan 102342 recorded in the Canada Lands Surveys Records in Ottawa. The said lot contains about 4.01 hectares,

subject to all pre-existing encumbrances.

**“laws”** includes the legislation, rules, codes, guidelines, and standards of an *authority*.

**“lender”** means a lender or mortgagee under a *security interest*.

**“Lender Agreement”** means an agreement substantially in the form attached as Schedule C.

**“permitted uses”** means the uses set out in subsection 2.1.3.

**“person”** includes an individual, corporation, partnership, *authority*, and any heirs, executors, administrators, successors, or other legal representatives of any of them.

**“prepaid rent”** means the amount set out in section 3.2 [*Prepaid Rent*].

**“property”** means any or all of the *land* and *structures*, excluding *trade fixtures*.

**“receiver”** means any receiver, interim receiver, receiver-manager, trustee, liquidator, or other custodian of any of the *tenant’s* interest in the *property*.

**“registry”** means the registry with registration jurisdiction over the *land*.

**“rent”** means *additional rent* and *prepaid rent*.

**“reserve”** means Penticton Indian Reserve No.1.

**“security interest”** means a mortgage (including a debenture, deed of trust, bond, assignment of rents, or any other instrument) of, and charging the *tenant’s* leasehold interest in, the *property* as security for a debt.

**“start date”** means the first day of the *term*.

**“structures”** means all *buildings*, including hard landscaping and all necessary services and ancillary facilities, constructed on, affixed to, or appurtenant to, any part of the *lands*.

**“substantial completion”** means the date on which the *landlord* is provided with a written certificate by an *architect* or *engineer* certifying under seal that –

- (a) the *structures* are substantially complete in all material respects in a proper and workmanlike manner and in accordance with the plans, specifications, and supporting documents provided to and accepted by the *authority* under paragraph 4.1.1(a), the *development plan* approved under paragraph 4.1.1(b), and in accordance with the requirements in this lease, except for deficiencies the correction of which, in the opinion of the *architect* or *engineer*, is adequately ensured;
- (b) all permits for occupancy required by an *authority* have been obtained; and
- (c) the *buildings* are ready for occupancy.

**"surveyor"** means a person registered or licenced as a land surveyor by both the Association of Canada Lands Surveyors and the Association of British Columbia Land Surveyors or their respective successors or replacement.

**"term"** means the period from November 15, 2013 to and including November 14, 2112.

**"trade fixtures"** means fixtures or improvements on the *property* that are in the nature of usual tenant's fixtures and that are normally removable by tenants.

## **SCHEDULE B – ENVIRONMENTAL PROTECTION MEASURES**

*(Include any terms to be required as a result of any environmental review conducted under the Canadian Environmental Assessment Act, 2012. If none, state "None.")*



# 1 MITIGATION TABLES FOR SKAHA HILLS

1.1 TABLE 2.0 SUMMARY OF KEY EFFECTS, MITIGATION, AND COMMITMENTS FROM THE ENVIRONMENTAL ASSESSMENT FOR SKAHA HILLS PHASE 1

General Issue Category	Description of Potential Effect	Construction & Reclamation Mitigation	Operations & Occupancy Mitigation	Commitments Environmental Monitoring Program /Future Build up
Surface Water	Exposed soils during construction could be subject to erosion	<ul style="list-style-type: none"> <li>• Install run off containment/dispersion systems using suitable tools and techniques. Subject to site needs, this can include bar ditches, containment drywells, silt fences or other suitable erosion and water control features.</li> </ul>	<ul style="list-style-type: none"> <li>• Not applicable</li> </ul>	<ul style="list-style-type: none"> <li>• Not applicable</li> </ul>
	Post construction control to avoid erosion and off site water damage	<ul style="list-style-type: none"> <li>• Install drywells and storm water containment systems.</li> <li>• Landscape and re-vegetate disturbed areas after construction</li> </ul>	<ul style="list-style-type: none"> <li>• Conduct follow up inspection to ensure adequacy of landscaping, revegetation and storm water systems.</li> <li>• Dry Wells and containment ditches on lots and around parking areas are inspected annually for evidence of contamination: install absorbent socks/pads if evidence of contamination and dispose at licensed landfill.</li> </ul>	<ul style="list-style-type: none"> <li>• EMP <ul style="list-style-type: none"> <li>◦ Conduct inspections for 1 season after initial construction of roads and infrastructure to ensure soils are protected from erosion.</li> <li>◦ Monitor as needed.</li> </ul> </li> </ul>
Wildlife	Dispersion and mobility of wildlife limited by project infrastructure	<ul style="list-style-type: none"> <li>• Establish habitat corridors as per the EA using natural areas and natural drainage systems.</li> <li>• Build in crossing feature on the main access road at the habitat connectivity feature: Cattle guard for a wildlife underpass for small mammals and snakes.</li> <li>• Install cover features such as stones in the crossing</li> <li>• Install temporary drift fence to assist in funneling wildlife to the crossing feature.</li> <li>• If fencing is required to exclude horses, use 3 or 4 strand wildlife compatible fences.</li> </ul>	<ul style="list-style-type: none"> <li>• Conduct follow up inspection to ensure proper installation.</li> </ul>	<ul style="list-style-type: none"> <li>• Future Build-up <ul style="list-style-type: none"> <li>◦ Ensure that activities do not compromise integrity of hibernacula or habitat retention areas</li> <li>◦ Conduct migratory assessment in year 2 &amp; 5 after installation to determine use and eventual Phase 3 design.</li> </ul> </li> </ul>
Wildfire Prevention	Inadvertent wildfire caused by construction equipment or workers	<ul style="list-style-type: none"> <li>• Burning of residue from grubbing only during the late fall to early spring when the fire hazard is low.</li> <li>• Implement smoking restrictions during the fire season with designated smoking areas and breaks will be established, with suitable ashtrays made available.</li> <li>• Smoking will not be permitted outside of designated areas and times.</li> <li>• Vehicles to have well maintained exhaust systems.</li> <li>• Contractor to have fire-fighting equipment on site during fire season: <ul style="list-style-type: none"> <li>◦ One Wajax/Backpack water sprayer will be available to each crew;</li> <li>◦ Shovels and grub-hoe/axes must be readily accessible and available for each crew member; and</li> <li>◦ A filled and mobile 500-gallon water tank or truck must be on standby at the site.</li> </ul> </li> <li>• Must have tool for each employee and a Wajax type water container for each crew.</li> <li>• Have an emergency plan and means to report fire.</li> </ul>	<ul style="list-style-type: none"> <li>• Not required. Regional fire hazard awareness programs considered adequate.</li> </ul>	<ul style="list-style-type: none"> <li>• EMP: <ul style="list-style-type: none"> <li>◦ Monitoring during construction and site preparation</li> </ul> </li> <li>• Future build-up: <ul style="list-style-type: none"> <li>◦ Not applicable</li> </ul> </li> </ul>



General Issue Category	Description of Potential Effect	Construction & Reclamation Mitigation	Operations & Occupancy Mitigation	Commitments Environmental Monitoring Program (EMP) and/or Future Build up
Migratory Bird Nesting and Foraging	<p>Disruption &amp; mortality during nesting</p> <p>Loss of some foraging and nesting habitat from project development</p>	<ul style="list-style-type: none"> <li>Conduct pre-clearing nesting survey(s) if clearing is between April 1 and August 31</li> <li>Implement use of timing constraints and buffer zones during construction with a biologist's input if nesting found on or in close proximity to the site.</li> <li>Establish habitat corridors as per the EA using natural areas and natural drainage systems and retaining potential nesting habitats.</li> </ul>	<ul style="list-style-type: none"> <li>Not applicable</li> </ul>	<ul style="list-style-type: none"> <li>EMP: <ul style="list-style-type: none"> <li>If migratory bird or raptor nesting occurs, on or in close proximity to site, monitoring of buffer zone and effects may be implemented subject to the recommendations of the biologist.</li> </ul> </li> </ul>
Snake foraging and migration	<p>Mortality from site preparation equipment</p> <p>Operations activities may cause mortality due to interaction with people &amp; equipment</p>	<ul style="list-style-type: none"> <li>Provide habitat corridors to facilitate snake migration.</li> <li>Include snake awareness and protection in pre-job orientations.</li> <li>Daily inspection, and if necessary removal of snakes, from excavations, stored materials and under equipment when works occur between April 1 and October 15.</li> <li>Routine inspection of all parked equipment and vehicles as well as stockpiles of construction and building materials prior to movement.</li> <li>Preconstruction assessment (with relocation if necessary under a SARA permit) to avoid harming sheltering snakes when works are to be initiated between April 15 and October 15.</li> <li>Install a temporary snake fence during construction around the site works for the reservoirs where longer term activity is anticipated.</li> <li>Incorporate snake habitat crossing features.</li> <li>Plan and implement corrective action as needed.</li> </ul>	<ul style="list-style-type: none"> <li>Design habitat connectivity for and operations (as well as construction)</li> <li>Conduct an interview with a sample of tenants and vineyard workers after 2 to 3 years to determine if snakes are an issue and require corrective measures.</li> <li>If snakes are using the area after construction, create and distribute awareness information for workers and implement reduced speed limits.</li> </ul>	<ul style="list-style-type: none"> <li>Future build-up <ul style="list-style-type: none"> <li>Protect existing hibernacula by establishing buffer zones</li> <li>Prepare a supplemental EA or EA amendment to address effects of golf course and Phase 3 on snakes and key habitat.</li> </ul> </li> </ul>
Residential/ Neighbours	Noise, dust and other factors may be concern and cause a nuisance	<ul style="list-style-type: none"> <li>The use of heavy equipment during construction is restricted to periods between 7 am and 10 pm;</li> <li>Access road paving or stabilized surfaces are required for dust control during operations;</li> <li>Shrouded, energy efficient low lumen lights will be installed as street lights;</li> <li>If the contractor's construction activities or vineyard preparations occur during the dry season (generally April 1 to October 31) generating significant amounts of dust, measures will be implemented to suppress and control the generation of dust using water or a non-toxic dust suppressant and reduced speed.</li> </ul>	<ul style="list-style-type: none"> <li>Not required</li> </ul>	<ul style="list-style-type: none"> <li>EMP: <ul style="list-style-type: none"> <li>Monitoring during construction and site preparation</li> </ul> </li> <li>Future build-up: <ul style="list-style-type: none"> <li>Not applicable</li> </ul> </li> </ul>



General Issue Category	Description of Potential Effect	Construction & Reclamation Mitigation	Operations & Occupancy Mitigation	Commitments Environmental Monitoring Program (EMP) and/or Future Build up
Vegetation resources	<p>Loss of shrub steppe grassland</p> <p>Ensure residual habitat corridors of natural vegetation are not affected by the development</p> <p>Invasive species (weeds) can cause adverse effects on site and to adjacent natural areas.</p>	<ul style="list-style-type: none"> <li>Locate project site primarily on vegetation ecosystem units which are previously disturbed and are determined to have low quality rankings for wildlife habitat</li> <li>Set aside habitat corridors using natural areas along drainage and watercourses generally with a west to east flow identified as providing connectivity and cover for wildlife, including migrating snakes</li> <li>Restore disturbed areas with xeriscaping, low maintenance desert type shrub species, and features in green area, trails and along roadways;</li> <li>During the lot sales process, residents will be encouraged to use xeriscaping landscaping on their sites;</li> <li>Allow residual habitat corridors to re-establish with the native vegetation present;</li> <li>Implement weed prevention and control programs which will include: <ul style="list-style-type: none"> <li>Inspection and cleaning of equipment and vehicles prior to entry to site to prevent additional introduction of noxious weeds</li> <li>Include prevention and management of weeds as part of the terms of reference of the construction contractors and the vineyard operations</li> <li>Include expectations of weed management in pre-job orientations;</li> <li>Install a weed barrier under the xeriscaping features to minimize weed growth</li> <li>Initiate regular weed inspections and weed control to prevent infestations into adjacent vegetation</li> <li>Monitoring and control of weeds on open exposed soils</li> <li>Ensure no new weed species are introduced</li> </ul> </li> <li>If required to minimize damage from horses, fence areas of the development which may result in an enhancement of habitat and the return of residual undisturbed habitat, in the area fenced, to a higher quality natural state.</li> </ul>	<ul style="list-style-type: none"> <li>Conduct follow-up inspections in first 2 to 3 years to ensure weed control and prevention programs are in place (see EMP).</li> </ul>	<ul style="list-style-type: none"> <li>EMP <ul style="list-style-type: none"> <li>Monitoring 2 to 3 times during the growing season and coordinate weed control for 2 to 3 years after site preparation for lots and vineyards.</li> <li>Implement weed control as required</li> </ul> </li> <li>Future Build-up <ul style="list-style-type: none"> <li>Prepare a supplemental EA or EA amendment to address effects</li> </ul> </li> </ul>
Soils	Exposed soils subject to weed invasion and erosion	<ul style="list-style-type: none"> <li>Implement weed prevention and management programs as described in Vegetation Resources section (above)</li> <li>Install temporary dispersion and containment systems using a combination of silt fences and diversion berms both of which slow water speed and direct it offsite to adjacent vegetated areas.</li> <li>Stabilize soil storage piles and erect silt fences or diversion berms around piles that will be present for extended periods.</li> </ul>	<ul style="list-style-type: none"> <li>Soil erosion will be prevented during operation with the use of storm water catchment systems</li> <li>Use xeriscaping and re-vegetation of disturbed areas as soon as possible after construction.</li> <li>Temporary diversion berms and silt fences will be installed until the restoration is stable.</li> <li>Implement annual weed control</li> </ul>	<ul style="list-style-type: none"> <li>EMP <ul style="list-style-type: none"> <li>Monitoring 2 to 3 times during the growing season and coordinate weed control for 2 to 3 years after site preparation for lots and vineyards</li> </ul> </li> <li>Future Build-up <ul style="list-style-type: none"> <li>Prepare a supplemental EA or EA amendment to address effects</li> </ul> </li> </ul>



General Issue Category	Description of Potential Effect	Construction & Reclamation Mitigation	Operations & Occupancy Mitigation	Commitments Environmental Monitoring Program (EMP) and/or Future Build up
Ground water	Consumption exceeds planned amounts	<ul style="list-style-type: none"> <li>• Install water conservation systems for vineyards and residences.</li> </ul>	<ul style="list-style-type: none"> <li>• Not required.</li> </ul>	<ul style="list-style-type: none"> <li>• Future Build-up: <ul style="list-style-type: none"> <li>• Prepare an engineering assessment and supplemental EA or EA amendment to address effects and sources</li> </ul> </li> </ul>
	Aquifer could become contaminated from a spill or improper material handling	<ul style="list-style-type: none"> <li>• Clearly marking the wells and ensuring there are physical barriers on the surface to prevent inadvertent spills from flowing to the well casing</li> </ul>	<ul style="list-style-type: none"> <li>• See spill prevention and waste management</li> </ul>	<ul style="list-style-type: none"> <li>• EMP: <ul style="list-style-type: none"> <li>○ Monitoring during construction and site preparation</li> </ul> </li> <li>• Future build-up: <ul style="list-style-type: none"> <li>○ Not applicable Not applicable</li> </ul> </li> </ul>
Waste Management	Improper waste handling can cause environmental contamination	<ul style="list-style-type: none"> <li>• Should any hazardous wastes be generated, they must be collected, handled, stored, transported, and disposed of according to both federal and provincial regulations</li> <li>• Solid wastes will be temporarily stored in a secure area and must be disposed of on a routine basis throughout the construction process.</li> <li>• All waste materials will be removed from the site during construction on a weekly basis.</li> <li>• If waste materials are temporarily stored onsite, they must be safely contained, labeled, and located within the project boundaries</li> <li>• Portable toilets and washrooms will be provided by the owner or the contractor during construction. <ul style="list-style-type: none"> <li>• They will be situated well away from environmentally sensitive areas and will be secured to prevent them from overturning.</li> <li>• Maintain and service at appropriate intervals depending on the workforce size.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Effluent and waste water from the residences and the vineyard operations will be collected in utility pipelines and carried to a connection nearby to the City of Penticton system for treatment and eventual discharge.</li> <li>• Solid wastes will include household refuse and recyclables. These will be stored at the residences and at the vineyard on site with weekly collection and disposal by a third party waste management firm.</li> <li>• Hazardous chemicals (potentially from Vineyard operations) and waste will need to be stored and handled using industry best practices with systems separated from the effluent and irrigation systems.</li> <li>• All chemicals must be stored in accordance with all applicable provincial and federal regulations.</li> </ul>	<ul style="list-style-type: none"> <li>• EMP: <ul style="list-style-type: none"> <li>○ Monitoring during construction and site preparation</li> </ul> </li> <li>• Future build-up: <ul style="list-style-type: none"> <li>○ Not applicable</li> </ul> </li> </ul>
All Environmental Factors	Site preparation contractor and vineyard operator may knowledge to make effective corrective action decisions on environmental issues during the course of work	<ul style="list-style-type: none"> <li>• Conduct contractor environmental orientation for all employees and subcontractors within 2 days of initiating work.</li> <li>• Occasional visitors (i.e. delivery trucks) will be under guidance of worker who has completed the orientation</li> <li>• Provide regular environmental monitoring and</li> </ul>	<ul style="list-style-type: none"> <li>• Establish a key resource for advice and consultation.</li> </ul>	<ul style="list-style-type: none"> <li>• EMP: <ul style="list-style-type: none"> <li>○ Monitoring during construction and site preparation</li> </ul> </li> <li>• Future build-up: <ul style="list-style-type: none"> <li>○ Not applicable</li> </ul> </li> </ul>
Timber	Damage and disturbance from site preparation or tenant activities	<ul style="list-style-type: none"> <li>• Timber removal required for Phase 1 under permit issued in 2012 for initial site works.</li> <li>• Larger timber to be used by community as needed.</li> </ul>	<ul style="list-style-type: none"> <li>• Not applicable</li> </ul>	<ul style="list-style-type: none"> <li>• Not applicable</li> </ul>



General Issue Category	Description of Potential Effect	Construction & Reclamation Mitigation	Operations & Occupancy Mitigation	Commitments Environmental Monitoring Program (EMP) and/or Future Build up
Spill Prevention	Spills can have adverse effects to the environment	<ul style="list-style-type: none"> <li>• All bulk oil and fuel storage over 100 litres in a single container, if installed on site on the ground, should have secondary containment;</li> <li>• All chemicals must be transported and stored in accordance with the Transportation of Dangerous Goods Regulations and the Workplace Hazardous Materials Information System;</li> <li>• The vineyard and winery will provide adequate spill prevention and cleanup equipment and supplies sufficient to handle any possible on-site incident; and</li> <li>• Any quantity of a spill of fuel or chemicals will be considered a reportable incident and must be cleaned up immediately and reported to the project partnership and if applicable, regulatory agencies.</li> <li>• All equipment and materials must be stored within the perimeter of the project works; and</li> <li>• Equipment must not be temporarily stored on top of any sensitive vegetation or other sensitive environmental features.</li> </ul>	<ul style="list-style-type: none"> <li>• All bulk oil and fuel storage over 100 litres in a single container, if installed on site on the ground, should have secondary containment;</li> <li>• All chemicals must be transported and stored in accordance with the Transportation of Dangerous Goods Regulations and the Workplace Hazardous Materials Information System;</li> <li>• The vineyard and winery will provide adequate spill prevention and cleanup equipment and supplies sufficient to handle any possible on-site incident; and</li> <li>• Any quantity of a spill of fuel or chemicals will be considered a reportable incident and must be cleaned up immediately and reported to the project partnership and if applicable, regulatory agencies.</li> <li>• All equipment and materials must be stored within the perimeter of the project works; and</li> <li>• Equipment and materials must not be temporarily stored on top of any sensitive vegetation or other sensitive environmental features.</li> </ul>	<ul style="list-style-type: none"> <li>• EMP: <ul style="list-style-type: none"> <li>◦ Monitoring during construction and site preparation</li> </ul> </li> <li>• Future build-up: <ul style="list-style-type: none"> <li>◦ Not applicable</li> </ul> </li> </ul>
Cumulative Effects	Longer term build-up including golf course may have adverse effects on the environment including snakes and one or two snake hibernacula.	<ul style="list-style-type: none"> <li>• Not applicable</li> </ul>	<ul style="list-style-type: none"> <li>• Not applicable</li> </ul>	<ul style="list-style-type: none"> <li>• Future Build-up <ul style="list-style-type: none"> <li>◦ Prepare a supplemental EA or EA amendment to address effects</li> <li>◦ Phase 3 will required additional precautions and design elements in the vicinity of the central hibernacula.</li> <li>◦ Should the golf course development proceed, there are fairways and trail systems requiring a thoughtful and careful approach near snake habitat that will need to include cover features for secure crossing locations and offsets from the hibernacula and orientation, and awareness programs for workers and users</li> <li>◦ Golf course design to include consideration for residual habitat for wildlife, particularly snakes.</li> </ul> </li> </ul>
Archaeological & Cultural Heritage	Disturbance or damage to a cultural resource	<ul style="list-style-type: none"> <li>• Conduct an AIA approximately 1 month prior to construction of Phase 1.</li> <li>• Conduct contractor orientation</li> <li>• If resource discovered stop work or activity, mark resource, and have assessed by an archaeologist and a community representative</li> </ul>	<ul style="list-style-type: none"> <li>• Prepare tenants information package celebrating the Okanagan peoples cultural heritage of the area as well as a brief protocol on what to do 'if cultural resources are found'</li> </ul>	<ul style="list-style-type: none"> <li>• EMP: Monitoring during construction and site preparation</li> <li>• Future Build-up <ul style="list-style-type: none"> <li>◦ Conduct an AIA prior to construction.</li> <li>◦ Conduct contractor orientation.</li> <li>◦ If resource discovered stop work or activity, mark resource, and have assessed by an archaeologist and a community representative.</li> </ul> </li> </ul>

## SCHEDULE C – LENDER AGREEMENT

This agreement is made on <Month Day, Year> between –

**Her Majesty in right of Canada**, as represented by the Minister of Indian Affairs  
and Northern Development

(referred to as the *landlord*)

and:

<Tenant>

(referred to as the *tenant*)

and:

<Lender>, a bank under the *Bank Act*, SC 1991, c 46

(referred to as the *lender*).

The *tenant* is in possession of the *land* by a lease dated <Month Day, Year> and registered in the *registry* under No. <#> (the “*lease*”).

The *tenant* gave the *lender* a *security interest* in the *lease*, by an instrument dated <Month Day, Year>, to secure loans or credit facilities up to the aggregate principal amount of \$<#> (the “*security interest*”).

In consideration of \$1 paid by each party to the others, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Any italicized term used in this agreement but not defined in it is to have the meaning given it in the *lease* as of the date of this agreement.

**IF THE LEASE REQUIRES THE CONSENT OF THE LANDLORD, THEN INCLUDE THE FOLLOWING PARAGRAPH:**

2. The *landlord* hereby consents to the *security interest*.
3. The *landlord* and *tenant* represent that the *lease* has not been modified from the form that was originally executed and registered, other than by any modification agreement registered in the *registry*.



4. The *landlord* represents that, as of the date of this agreement and to the best of its knowledge (but without any investigation), the *tenant* is not in default under the *lease*.
5. The *lender* has all of the rights and obligations of a "lender" under the *lease* as though section 10.3 [*Rights of a Lender*] of the *lease* formed part of this agreement. Without limitation, if the *lender* (or any *receiver* appointed by it) takes possession of the *property* under its *security interest*, then the *lender* hereby agrees to attorn as tenant under the *lease* and on the *lease* terms for as long as it remains tenant and has not assigned the balance of the *term* and the *lender* will execute a *Declaration of Trust* if the *tenant* has executed such a trust and obtained the benefit of waivers pursuant to section 12.9 (and the trust Termination Date has not arrived).
6. Unless the *lender* has foreclosed the *tenant's* interest in the *lease* and elected to continue this agreement and be bound as tenant under the *lease* and the *Declaration of Trust*, if applicable, this agreement ends when the debt secured by the *security interest* has been paid in full or ceased to be covered by the *security interest* and the *lender* has filed a discharge of its *security interest* in the *registry*.
7. The *lender* must promptly file a discharge in the *registry* when the *lease* is no longer subject to the *security interest*.
8. The *lender* acknowledges that the *landlord* does not have any relationship of agency, partnership, joint venture, or other such association with the *tenant*.
9. Deliveries to the *lender* must be to the following address or fax:  
  
    <LENDER'S NAME>  
    <LENDER'S ADDRESS>  
  
    Fax: (###) ###-####
10. Any change in address or fax will take effect 10 days after the *lender* gives the *landlord* written notice of it.
11. This agreement benefits and binds each party's heirs, executors, administrators, successors, permitted assigns, and other legal representatives.

The parties are signing this agreement as of the reference date on the top of page one.

**<NAME>  
Manager, Lands and Economic Development  
BC Region**

) **<TENANT>**  
 )  
 )  
 )  
 ) **By: \_\_\_\_\_**  
 )  
 ) **Name:**  
 )  
 ) **Title:**  
 )  
 ) **I have the authority to bind the corporation.**

) **<LENDER>**  
)  
)  
)  
) \_\_\_\_\_  
)  
) **Name:**  
)  
) **Title:**  
)  
) **I have the authority to bind the corporation**

Price Item Volume 2013 (ml) US

## SCHEDULE D – BAND COUNCIL RESOLUTION

### (Suggested Wording)

Skaha Hills Limited Partnership, as represented by its general partner, Skaha Hills GP Inc. (the “*tenant*”) wants to lease certain lands in Penticton Indian Reserve No.1.

We have been provided with an unexecuted form of lease (the “*lease*”) to be entered into between *Canada* and the *tenant*.

BE IT RESOLVED that the Chief and Council, on behalf of the First Nation –

- A. read and understood the *lease* terms;
- B. were advised by Indian and Northern Affairs Canada to get independent legal advice before signing this resolution, so do not rely on *Canada* for advice about the *lease* or this resolution;
- C. consent to the execution of the *lease*.

DATED \_\_\_\_\_, 20\_\_.

Quorum for the Band Council is \_\_\_\_\_ members.

\_\_\_\_\_  
Chief

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor



SCHEDULE D  
BAND COUNCIL RESOLUTION  
PENTICTON INDIAN BAND

BCR No. \_\_\_\_\_

A quorum for this Band consists of five Council Members

NOTE: The words, "From our Band Funds" "Capital" or "Revenue" whichever is the case, must appear in all resolutions requesting expenditures from Band Funds

THE COUNCIL OF THE	PENTICTON INDIAN BAND	PIB Capital Fund Balance	\$ _____
DISTRICT	BRITISH COLUMBIA REGION	PIB Revenue Fund Balance	\$ _____
PLACE	ADMINISTRATION BUILDING		
DATE	NOVEMBER 5, 2013		
PROGRAM	LANDS		

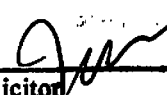
WHEREAS: At a duly convened Band Council meeting the Penticton Band Chief and Council do recognize and accept their duties and responsibilities in relation to effective governance of all affairs for the Penticton Band; and,

WHEREAS:

1. The Band designated for lease on October 28, 1998, certain lands in the Penticton Indian Reserve #1 and this land designation was accepted by the Governor in Council on April 15, 1999, both of which are registered in the registry under No. 278559 (the "Original Designation");
2. The Original Designation was amended by the First Nation on April 3, 2013, which amendment was approved by the Minister of Indian Affairs and Northern Development on July 10, 2013 and registered in the registry under No. 6074400;
3. Skaha Hills Limited Partnership (the "tenant") wishes to lease a portion of the lands set out in the Original Designation described as all of Lot 522 as shown on Plan 102342 recorded in the Canada Lands Surveys Records in Ottawa (the "Lands");
4. We have been provided with an unexecuted form of lease (the "lease") to be entered into between Canada and the tenant for the lease of the Lands from November 15, 2013 to and including November 14, 2112;
5. We have read and understood the lease terms; and,
6. We have received independent legal advice about the lease and this resolution before signing this resolution.

THEREFORE BE IT RESOLVED that the Chief and Council, accept the terms of the lease and, on behalf of the Band, consent to the execution of the lease.

Certified a true copy this 26<sup>th</sup>  
day of November, 2013.

  
Solicitor

JEAN YUEN  
Barrister & Solicitor  
700 - 595 BURNARD STREET  
P.O. BOX 49290  
VANCOUVER, B.C. V7X 1S8  
(604) 687-6789

  
(Chief Jonathan Kruger)

  
(Councillor Inez Pierre)

  
(Councillor Clinton George)

  
(Councillor Clint Gabriel)

  
(Councillor Dolly Kruger)

  
(Councillor Travis Kruger)

  
(Councillor Joseph Pierre)

  
(Councillor Timmothy Lezard)

  
(Councillor Kevin Gabriel)



## **SCHEDULE E- DECLARATION OF TRUST**

**THIS DECLARATION OF TRUST is made and effective as of the ☐☐ day of ☐☐, 2013, by ☐☐ [Lessee or Assignee] (the "Trustee").**

### **W H E R E A S:**

A. On \_\_\_\_\_, the [Lessee] entered into a lease (the "Head Lease") with Her Majesty the Queen in Right of Canada with respect to property described as:

[insert property legal description]

(the "Leased Lands")

B. The Head Lease is in default, and the [Lessee or Assignee] wishes to have the advantage of a waiver of forfeiture provided in the Head Lease on condition the [Lessee or Assignee] executes this Declaration of Trust.

**NOW THIS TRUST DECLARATION WITNESSES as follows:**

### **1. INTERPRETATION**

**1.1 Definitions:** In this Trust Declaration unless the context requires otherwise:

- (a) "Beneficiary" means Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian Affairs and Northern Development;
- (b) "Consent to Act as Trustee" mean the form of consent attached as Appendix "B" to this Trust Declaration;
- (c) "Curable Defaults" has the meaning given to them in the Head Lease;
- (d) "Declaration of Trust" or "Trust Declaration" means this Declaration of Trust;
- (e) "Head Lease" means the lease entered between Her Majesty the Queen in Right of Canada and the [lessee], on [date].
- (f) "Leased Lands" means the property leased to [lessee] pursuant to the Head Lease;
- (g) "Termination Date" means the date upon which the earliest of the following occurs:

- (i) The date upon which all Curable Defaults under the Head Lease are cured to the satisfaction of the Beneficiary acting reasonably; or
    - (ii) The end of the applicable statutory perpetuity period, if any;
  - (h) "Trust" means the trust created by this Trust Declaration;
  - (i) "Trust Property" means the entire interest of the [Lessee or Assignee] in the Leased Lands, including the reversion following subletting, and all property substituted therefor, including all income, rent, fees, charges, assessments, and proceeds of any kind from the subletting of the Leased Lands;
  - (j) "Trustee" means the [Lessee or Assignee].
- 1.2 **Governing Law:** The Trust will be governed by and construed in accordance with the laws of British Columbia and the laws of Canada applicable therein.
- 1.3 **Standard Interpretation:** In this Trust Declaration:
- (a) unless it is otherwise clear from the context, "including" means "including, but not limited to", and "includes" means "includes, but not limited to";
  - (b) unless it is otherwise clear from the context, the use of the singular includes the plural and the use of the plural includes the singular;
  - (c) either gender will mean and include both genders.
2. **CREATION OF THE TRUST**
- 2.1 **Acceptance by Trustee:** The Trustee, by signing this Trust Declaration, signifies its acceptance of the Trust and the duties contained in it.
- 2.2 **Term of Trust:** The Trust will remain in force and effect from the date of execution until the Termination Date, at which time the Trust Property will beneficially vest in the Trustee. [ie.Lessee; Assignee].
- 2.3 **Purpose of the Trust:** The purpose of the Trust is to ensure the Trust Property is managed for the use and benefit of the Beneficiary during the term of the Trust, and that all reasonable steps be taken to remedy Curable Defaults under the Head Lease.
- 2.4 **Beneficiary of Trust:** The Trustee hereby declares and agrees to hold the Trust Property in trust for the use and benefit of the Beneficiary subject to the terms and conditions and with the powers set out and contained herein.

2.5 **Nature of Relationship:** The Trust is an unincorporated trust established to benefit the Beneficiary and nothing contained in this Trust Declaration is intended to constitute nor will it be deemed to constitute a general partnership, limited partnership, syndicate, contract, lease, association, joint venture, company or corporation.

2.6 **Fiscal Year:** The fiscal year of the Trust shall end on the 31<sup>st</sup> day of December of each year

### 3. **PAYMENT OF EXPENSES**

3.1 **Payment of Expenses:** The Trustee will pay out of the Trust Property all expenses related to the creation and administration of the Trust when authorized pursuant to the criteria in section 3.2.

3.2 **Payment Procedure:** The payment of the expenses of the Trust will be made when the expense is detailed by an invoice in writing and submitted to the Trustee; and

- (a) the Trustee has determined that the expense is reasonable; or
- (b) the expense has been included in a budget prepared and approved by the Trustee; or
- (c) the expense is an obligation under an agreement that the Trustee has entered into.

### 4. **DUTIES OF TRUSTEE**

4.1 **General Duties:** Subject to the express provisions hereof, the Trustee shall observe and adhere to the duties and standards of care imposed upon trustees by the general law. Without limitation, except if expressly provided otherwise, such duties and standards of care shall include the following:

- (a) **Honesty, Good Faith and Standard of Care:** The Trustee shall exercise its powers and discharge its duties honestly, in good faith and in the best interests of the Beneficiary. The Trustee will exercise that degree of care, diligence and skill that a reasonably prudent person would exercise in similar circumstances.
- (b) **Carry Out the Terms of the Trust:** The Trustee will carry out the Trust terms, exercising to the extent necessary the Trustee's power to retain advisors, and to use fees, assessments, levies paid by Sublessees of the Leased Land for the management and maintenance of common property, all in accordance with the terms of the subleases.

4.2 **Specific Duties:** The Trustee shall:

- (a) open an account for the Trust in a Canadian chartered bank or Financial Institution for the deposit of all funds to be received by the Trustee;
- (b) take all reasonable steps to collect and receive all income, rent, proceeds, fees, levies, charges, assessments and other payments when due in respect of any assets of the Trust Property, pursuant to subleases of the Leased Lands or otherwise, and promptly credit to the Trust Property all such receipts received by them;
- (c) promptly issue written notices of default for any subleases of the Leased Lands in default and, unless otherwise directed by the Beneficiary, terminate any such subleases if default has not been remedied in accordance with the terms of such subleases, and after such termination, promptly re-let the land so reverting for sublease at fair market rent (as established by appraisal) on sublease terms in compliance with the Head Lease and substantially in the form attached as Appendix "A";
- (d) do all within the Trustee's legal authority to satisfy the terms of the Head Lease;
- (e) establish total assessments and special assessments pursuant to any subleases of the Leased Lands in such amounts as necessary (and to the extent permitted under such subleases) to cure all defaults under the Head Lease;
- (f) promptly apply the proceeds from the subletting of the Leased Lands to the curing of defaults under the Head Lease and take all reasonable steps to sub-let the Leased Lands;
- (g) decline to assign the Head Lease until the proposed assignee has executed and delivered to Canada a Consent to act as Trustee in the form attached as Appendix "B" to this Trust Declaration.
- (h) retain custody of all or any accounts pertaining to all or any part of the Trust Property, maintain books of account, and receive and disburse monies and perform any clerical duties in connection with all or any part thereof;
- (i) keep accurate and detailed accounts of all assets, investments, receipts, disbursements and other transactions hereunder, and all accounts, books and records relating thereto shall be open to inspection and audit at all reasonable times by the Beneficiary;
- (j) within one hundred and twenty (120) days following the close of each Fiscal Year of the Trust, deliver to the Beneficiary audited financial statements prepared by an independent firm of chartered accountants or certified general accountants, at the expense of the Trust, setting forth all investments, receipts, disbursements and other transactions effected by them during such fiscal year;

- (k) provide the Beneficiary with financial statements and records affecting the Trust Property as and when requested by the Beneficiary from time to time;
- (l) attend a meeting with the Beneficiary when requested by the Beneficiary and report on the use of the Trust Property for the purposes of the Trust. The Trustee shall be given fourteen (14) days notice of any such meeting;
- (m) calculate applicable taxes as may apply to the Trust Property, file any required tax returns or other filings and withhold from any payments from the Trust Property and remit there from all taxes and other assessments required by any applicable law to be so withheld and remitted;
- (n) establish an office of the Trust at a location determined by the Trustee. All accounts and records required to be maintained by the Trustee shall be kept at the office.

## 5. POWERS OF TRUSTEE

5.1 **General and Specific Powers:** In addition to all other powers given to it by this Trust Declaration and the general rules of law, the Trustee shall have the following power and authority:

- (a) subject to its duties as Trustee, the Trustee will have the same powers in administering the Trust Property as it would have if it were the owner of the Trust Property. Without limiting the generality of the foregoing and in addition to all other powers given to it by this Trust Declaration and general rules of law, the Trustee will have the specific powers and authorities set out in this section;
- (b) the Trustee may exercise all the right and authority granted to it as sublandlord under any subleases of the Leased Lands, and as tenant under the Head Lease;
- (c) the Trustee may make, execute, acknowledge and deliver any and all deeds, leases, subleases, mortgages, assignments, conveyances, contracts, waivers, releases or other documents of transfer and any and all other instruments in writing that may be necessary or proper for the accomplishment of any of the powers herein granted, acting always consistently with the terms and conditions of the Head Lease;
- (d) the Trustee may establish accounts with any chartered bank, credit union, loan or trust company or other financial institution and deposit any cash comprised in the Trust Property to such account upon such terms and conditions as the Trustee will see fit;
- (e) the Trustee may do all such things and acts incidental to discharging its obligations as a sublandlord under any subleases of the Leased Land, and as tenant under the Head Lease;

- (f) the Trustee may incur and pay out of the Trust Property any charges, expenses or disbursements which are, in the opinion of the Trustee, necessary or incidental to or desirable for the carrying out of any of the purposes of the Trust or conducting the business of the Trust, including the discharge of its obligations as sub-landlord and as tenant under the Head Lease;
- (g) in making investments, the Trustee shall not be limited to investments permitted by law for trustees, but may invest in such manner and in such investments as it shall deem advisable, provided that, in exercising its investment powers, the Trustee shall have regard to the terms and the purpose of the Trust;
- (h) the Trustee may delegate investment decisions to any managers or advisors as the Trustee in its discretion considers advisable;
- (i) the Trustee may commence, defend, adjust or settle suits or legal proceedings in connection with the Trust Property and retain legal counsel to represent the Trust or the Trustee in such suits or legal proceedings;
- (j) the Trustee may retain such legal counsel, chartered accountants, investment consultants, real estate appraisers, administrative assistants, agents or other advisors qualified in the field for which their advice and opinions are sought, as the Trustee may deem necessary from time to time for the purpose of discharging its duties hereunder, and may pay out of the Trust Property as expenses compensation to agents, consultants and professional advisors employed or retained by the Trustee;
- (k) the Trustee may make any election, determination or designation pursuant to the provisions of any taxing statute, as the Trustee in its discretion on the advice of a chartered accountant or legal counsel specializing in taxation, decide;
- (l) the Trustee may do all such other acts and things as may be necessary or useful to promote or carry out any of the purposes of the Trust, and to promote or carry out the provisions of this Trust Declaration.

## 6. SUCCESSOR TRUSTEE

- 6.1 **Resignation:** The Trustee, or any Trustee hereafter appointed, may resign by appointing a successor trustee provided that such resignation shall not take effect until the date a successor trustee has executed and delivered to the Beneficiary a Consent to Act as Trustee, and the Head Lease is assigned to the successor trustee, together with control and title to the balance of the Trust Property, if any.

## 7. AUDIT AND TRUST RECORDS

- 7.1 **Records to be Kept:** The Trustee will keep or cause to be kept accurate and detailed accounts of all investments, receipts, disbursements and other transactions of the Trust

which records will be open to inspection and audit at all reasonable times by the Beneficiary.

- 7.2 **Annual Audited Financial Statements:** The Trustee will have the accounts of the Trust for each year prepared and audited by an independent qualified chartered accountant or certified general accountant appointed by the Trustee. The chartered accountant or certified general accountant will prepare and submit the following statements to the Beneficiary:

- (a) a balance sheet;
- (b) an income statement;
- (c) a statement of retained earnings; and
- (d) a statement of changes in financial position.

8. **VARIATION**

- 8.1 **Variation With Beneficiary's Consent:** This Trust Declaration may not be amended or modified except by an agreement in writing executed by the Trustee and approved by the Beneficiary.

9. **GENERAL**

- 9.1 **Severability:** If any provision or part of this Trust Declaration is invalid or unenforceable for any reason, this will not affect the validity or enforceability of any other provision or part. Each and every provision and part of this Trust Declaration is severable from each and every other provision or part and will be valid and enforceable and will be given effect to the extent permitted by law.

- 9.2 **Notices:** Unless otherwise provided, a communication required or permitted to be given or made under this Trust Declaration may be given or made in one or more of the following ways:

- (a) delivered personally or by courier;
- (b) transmitted by facsimile transmission;
- (c) mailed; or
- (d) sent by e-mail.

- 9.3 **Delivery and Receipt:** A communication will be considered to have been delivered and received:

- (a) if delivered personally or by courier, on the commencement of business on the business day next following the business day on which it was received by the addressee or a responsible representative of the addressee;
- (b) if sent by facsimile transmission or e-mail and if the sender receives confirmation of the transmission, then at the start of business on the business day next following the business day on which it was transmitted; or
- (c) if mailed by prepaid registered post in Canada, when the postal receipt is acknowledged by the addressee.

**9.4 Addresses for Notice:** A communication must be delivered, transmitted to the facsimile number or mailed to the address of the intended recipient set out below:

For: Her Majesty in Right of Canada, as represented by the Minister of Indian Affairs and Northern Development Canada

Address        600-1138 Melville Street Vancouver BC V6E 4S3  
Attention:     Director, Lands and Economic Development  
                  Aboriginal Affairs and Northern Development Canada  
Fax Number:   (604) 666-3097

For: Trustee

Address  
Attention:  
Fax Number:

**9.5 Change of Address:** The Beneficiary or Trustee may change the postal address, facsimile number, or e-mail address, by giving a notice to the other, in the manner set out above.

IN WITNESS WHEREOF the Trustee has executed this Trust Declaration as of the day and year first above written.



SIGNED by the **TRUSTEE** by its duly  
authorized signatories:

\_\_\_\_\_  
As to the Authorized Signatory of the [Lessee  
or Assignee]

Proof of execution by Corporation to be  
completed and attached to Trust Declaration

**NOTE: APPENDIX "A" IS A FORM OF SUBLEASE**

**APPENDIX "B" CONSENT TO ACT AS TRUSTEE**

\_\_\_\_\_ hereby accepts its appointment as Trustee under the Trust Declaration.

\_\_\_\_\_ has received a copy of the Trust Declaration dated as of \_\_\_\_\_ (the "Trust Declaration").

It is acknowledged that, as a Trustee, \_\_\_\_\_ is vested with all of the trusts, powers, authorities, duties and obligations contained in the Trust Declaration as applicable to the Trustee. \_\_\_\_\_ accepts and agrees to observe and carry out the duties and obligations of the Trustee as contained in the Trust Declaration, and as imposed by law and equity.

Address:

Attention:  
Work Phone:  
Work Fax:  
E-Mail:

SIGNED by the TRUSTEE[Lessee or )  
Assignee] )  
by its duly authorized signatories: )  
)  
)  
)  
)  
)  
\_\_\_\_\_)  
As to the Authorized Signatory )  
)  
)  
)  
)  
)  
)  
)  
)

RECEIVED  
JAN 10 1964  
U.S. DEPT. OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D.C. 20535

REGISTERED IN INDIAN LAND REGISTRY, OTTAWA  
AS NUMBER \_\_\_\_\_ ON THE  
\_\_\_\_\_ DAY OF \_\_\_\_\_  
PLEASE QUOTE ABOVE NUMBER IN  
ANY FURTHER TRANSACATIONS



# 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:

Date:

*[Signature]*  
*April 29, 2014*

## GENERAL INSTRUMENT - PART 1

(This area for Westbank Lands Office use)

Page 1 of 28 Pages

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

**PUSHOR MITCHELL LLP**, Lawyers, 301 - 1665

Ellis Street, Kelowna, British Columbia V1Y 2B3

Phone (250) 762-2108 File No. 38038.19

*[Signature]* *Laurel Reading*  
Signature of Applicant, Applicant's Solicitor or Agent

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

PIN

LEGAL DESCRIPTION

SEE SCHEDULE

SEE SCHEDULE

3. NATURE OF INTEREST:

DOCUMENT REFERENCE

PERSON ENTITLED TO INTEREST

DESCRIPTION

(page and paragraph)

Modification of Lease 206130 Modified  
by 207868, 208500, Assigned by  
SG00411, Modified by SG00412

ENTIRE INSTRUMENT

TRANSFeree

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

<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

Lease

Sublease

Assignment of Lease

Assignment of Sublease

<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

Agreement for Sale

Assignment of Mortgage

Discharge of Mortgage

Permit

<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input checked="" type="checkbox"/>

Licence

Easement

Release

Other - Modification of Lease

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): WESTBANK FIRST NATION, Suite 301 - 515 Highway 97 S., Kelowna, British Columbia, V1Z 3J2

6. TRANSFeree(S): including occupation(s), postal address(es) and postal code(s)

BAYVIEW HOMEOWNERS MANAGEMENT CORP. (Incorporation No. 419609) having an office at 215 - 1511  
Sutherland Avenue, Kelowna, British Columbia, V1Y 5Y7

7. ADDITIONAL OR MODIFIED TERMS: None

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.

### EXECUTION DATE

Y	M	D
14	APR 28	2014

Officer Signature(s)

*[Signature]*  
**KEVIN KINGSTON**  
LEGAL COUNSEL

301 - 515 Highway 97 South  
Kelowna, BC V1Z 3J2

Party(ies) Signature(s)

WESTBANK FIRST NATION

Print Name:

Print Name:

OFFICER CERTIFICATE

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.



# WESTBANK FIRST NATION

Westbank Lands Register  
Form No. WFN-05

## EXECUTIONS CONTINUED

Page 2 of 28 Pages

Officer Signature(s)

As to both signature(s)

ANDREA EAST  
BARRISTER & SOLICITOR  
3<sup>RD</sup> FLOOR - 1665 ELLIS STREET  
KELOWNA, BC V1Y 2B3  
PHONE: (250) 762-2108

### EXECUTION DATE

Y	M	D
14	04	24

Party(ies) Signature(s)

BAYVIEW HOMEOWNERS  
MANAGEMENT CORP.

Print Name: TERRY TURCAN

Print Name: CHRIS FABIG

### 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.

SIGNED BY THE WESTBANK FIRST NATION DIRECTOR OF LANDS PURSUANT TO THE WESTBANK FIRST NATION LAND RULES	
	Signature
	Date



## WESTBANK FIRST NATION

Westbank Lands Register

Form No. WFN-06

### **SCHEDULE**

Page 3 of 28 Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORMS WFN-01, WFN-02, WFN-03, WFN-04.]

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

(PIN)	(LEGAL DESCRIPTION)
902516700	Lot 4-2-370 Tsinstikeptum Indian Reserve No. 9 CLSR Plan 83480
902516701	Lot 4-2-371 Tsinstikeptum Indian Reserve No. 9 CLSR Plan 83480
902516702	Lot 4-2-372 (road) Tsinstikeptum Indian Reserve No. 9 CLSR Plan 83480



## **WESTBANK FIRST NATION**

**Westbank Lands Register**  
**Form No. WFN-06**

### **SCHEDULE**

Page 4 of 28 Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORMS WFN-01, WFN-02, WFN-03, WFN-04.]

## **TERMS OF INSTRUMENT – PART 2**

### **MODIFICATION OF LEASE (Amended and Restated)**

**BETWEEN:**

**WESTBANK FIRST NATION,**  
As represented by its duly elected Council  
#301-515 Highway 97 South  
Kelowna, BC V1Z 3J2

(the "Lessor")  
**OF THE FIRST PART**

**AND:**

**BAYVIEW HOMEOWNERS MANAGEMENT CORP.**  
Incorporation No. 419609  
a British Columbia company, having its registered and records  
office at 215 – 1511 Sutherland Avenue, in the City of Kelowna,  
in the Province of British Columbia, V1Y 5Y7

(the "Lessee")  
**OF THE SECOND PART**

**BACKGROUND:**

- A. Her Majesty the Queen in Right of Canada as represented by the Minister of Indian Affairs and Northern Development ("Her Majesty") granted a Lease made the 6<sup>th</sup> day of May 1991 but effective as of the 1<sup>st</sup> day of January, 1991 to Artisan Management Inc., a company duly incorporated under the laws of the Province of British Columbia (Incorporated No. 401786), then having a registered and records office at 3610 Devonshire Drive, Surrey, British Columbia, V4S 3E3 ("Artisan") for a term of 99 years commencing January 1, 1991 respecting lands situate on the Tsinstikeptum Indian Reserve No. 9 (the "Reserve"), in the Province of British Columbia, more particularly described as:

Lot 4-2-3 in the Tsinstikeptum Indian Reserve No. 9, Province of British Columbia as shown on RSBC Plan of Survey No. 1046 (now shown on Plan 74340 deposited in the Canada Lands Surveys Records at Ottawa, Ontario)

("Lot 4-2-3")





## WESTBANK FIRST NATION

Westbank Lands Register  
Form No. WFN-06

### SCHEDULE

Page 5 of 28 Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORMS WFN-01, WFN-02, WFN-03, WFN-04.]

which Lease was registered at the Indian Land Registry at Ottawa on the 19<sup>th</sup> day of August, 1991 under No. 206130 (the "Head Lease");

B. Lot 4-2-3 was subsequently subdivided and is now legally described as:

Lots 4-2-370, 4-2-371 and 4-2-372 (road)  
Tsinstikeptum Indian Reserve No. 9  
CLSR, Plan No. 83480

(the "Lands")

- C. The Head Lease was amended by a Modification of Lease dated for reference the 1<sup>st</sup> day of February, 1992 which was registered at the Indian Land Registry on the 21<sup>st</sup> day of April 1992 under No. 207868, which Modification of Lease was effective the 31<sup>st</sup> day of March, 1992;
- D. The Head Lease was further amended by a Modification of Lease dated for reference the 29<sup>th</sup> day of May, 1992 which was registered in the Indian Land Registry on the 16<sup>th</sup> day of July, 1992 under No. 208500, which Modification of Lease was effective the 1<sup>st</sup> day of May, 1992;
- E. As a result of the provisions of the Westbank First Nation Self-Government Agreement entered into by Westbank and Her Majesty on the 3<sup>rd</sup> day of October, 2003, the *Westbank First Nation Self-Government Act*, S.C. 2004, c.17, which came into force on the 1<sup>st</sup> day of April 2005, Westbank has assumed all land management powers of Her Majesty respecting the Reserve, including acting in the stead of Her Majesty and the Minister in relation to all matters concerning the Lands and the Head Lease.
- F. The Head Lease, as modified and amended by the 1992 Modifications, was assigned to the Lessee pursuant to an Assignment of Lease dated the 22<sup>nd</sup> day of August, 2005, and registered in the Westbank Land Register of the First Nations Self-Government Lands Registry in the National Capital Region as Number SG00411;
- G. The Head Lease was further amended pursuant to a Modification of Head Lease Agreement dated August 26, 2005 and registered in the Westbank Land Register of the First Nations Self-Government Lands Registry in the National Capital Region as Number SG00412.
- H. The Lessor and the Lessee wish to amend and restate the Head Lease as set out below:

NOW THEREFORE THIS INDENTURE OF LEASE WITNESSES that in consideration of the sum of TEN DOLLARS (\$10.00) now paid by the Lessee to the Lessor (the receipt whereof is hereby acknowledged) and in further consideration of the rents, covenants and agreements reserved and contained in this Lease, the Parties covenant and agree as follows:



## WESTBANK FIRST NATION

### Westbank Lands Register

Form No. WFN-06

#### SCHEDULE

Page 6 of 28 Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORMS WFN-01, WFN-02, WFN-03, WFN-04.]

#### 1.00 Definitions

##### "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 shall include that section as amended or replaced from time to time,

##### "First Nation"

means the Westbank First Nation, or any successor to the First Nation pursuant to a federal statute,

##### "First Nation Council"

means the governing body of the First Nation, elected under the Constitution or otherwise in accordance with applicable laws,

##### "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,

##### "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 shall include that section as amended or replaced from time to time,

##### "Lease"

means this Indenture of Lease,

##### "Lease Date"

means the date on which the Term commences,

##### "Minerals"

means ore of metal and every natural substance that can be mined and that:

- a) 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
- b) 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 hydro carbons, regardless of gravity and howsoever and wheresoever recovered, natural gas, building and construction stone, limestone, dolomite, marble, shale, clay, sand and gravel,



## **WESTBANK FIRST NATION**

### **Westbank Lands Register**

**Form No. WFN-06**

#### **SCHEDULE**

Page 7 of 28 Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORMS WFN-01, WFN-02, WFN-03, WFN-04.]

**"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, and includes Canada Mortgage and Housing Corporation and its successors.

**"Party"**

means a party to this Lease and "Parties" means both of them,

**"Person"**

includes any natural person, partnership, association or corporation,

**"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,

**"Registry"**

means the Register of Westbank Lands established by Canada and held in Ottawa, Ontario, or the successor registry for the Westbank Lands established in accordance with Applicable Laws.

**"Rent"**

means the rent described in Article 4.00 hereof and other amounts which by the terms of this Lease shall be payable as rent by the Lessee to the Lessor,

**"Reserve"**

means the Tsinstikeptum Indian Reserve No. 9 of Westbank First Nation,

**"Sublessee"**

means any Sublessee of a portion of the Lands whose sublease has been registered in the Registry.

**"Term"**

means the period of time commencing on the effective date of the assignment of this Lease to the Lessee herein and expiring on the 31<sup>st</sup> day of December, 2089.

#### **2.00 The Demise**

- 2.01 The Lessor leases to the Lessee the Premises, 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 in the events herein set forth.



## **WESTBANK FIRST NATION**

**Westbank Lands Register**  
**Form No. WFN-06**

### **SCHEDULE**

Page 8 of 28 Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORMS WFN-01, WFN-02, WFN-03, WFN-04.]

#### **3.00 Minerals**

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

#### **4.00 Rent**

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

4.02 The Lessee shall pay the sum of ONE DOLLAR (\$1.00) for the term of the Lease in advance on or before the execution hereof by the Lessor.

#### **5.00 Payment of Rent**

5.01 The Lessor acknowledges receipt of payment of the Rent in accordance with Section 4.02, and confirms that 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 the 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 remedies available to the Lessor in the event of the Lessee's default herein.

#### **6.00 Scope of Lessee's Covenants**

6.01 All agreements, terms, conditions, provisos, duties and obligations to be performed or observed by the Lessee under this Lease shall 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.

#### **7.00 Assignment**

7.01 Except as provided in Article 9.00, the Lessee shall not assign the whole or any part of this Lease without the prior written consent of the Lessor, which consent may not be unreasonably withheld.

7.02 Consent to any assignment shall not be construed as consent to any other assignment.

7.03 Without limiting Section 7.01, 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 Lessor, whereby the Assignee covenants and agrees with the Lessor that upon the Lessor's consent to the 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 Lessor prior to obtaining the Lessor's consent to the assignment.

#### **8.00 Subletting**

8.01 Except as provided in Article 9.00 and provided the Lessee is not in default under this Lease, the Lessee shall not sublet or part with possession of the whole or any part of the Premises without the prior written consent of the Lessor, which consent may not be unreasonably withheld.



## WESTBANK FIRST NATION

Westbank Lands Register  
Form No. WFN-06

### SCHEDULE

Page 9 of 28 Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORMS WFN-01, WFN-02, WFN-03, WFN-04.]

8.02 Notwithstanding the consent of the Lessor to any sublease or parting with possession, the sublease and parting with possession shall always be subject to this Lease.

#### 9.00 Mortgage

9.01 Notwithstanding anything or any other provision in this Lease, the Lessee shall not mortgage the whole or any part of the interest of the Lessee in this Lease by any means without the prior written consent of the Lessor, which consent shall not be unreasonably withheld.

9.02 Notwithstanding anything else in this Lease, any mortgage and any consent of the Lessor to a mortgage shall 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 shall covenant and agree under seal with the Lessor 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 Lessor's consent and the assignee covenants and agrees as provided in paragraph 9.02(c);
- (b) the Mortgagee of the Lease will cause any assignee of the leasehold interest under an assignment to agree in writing to assume, perform and observe all of the Lessee's covenants and agreements and upon registration of the assumption agreement in the Registry and delivery of the assumption agreement to the Lessor, the Mortgagee of the Lease will be deemed to be released from any and all obligations hereunder; and
- (c) the Mortgagee of the Lessee's interest (excluding a Mortgagee of a Sublessee's interest) shall covenant not to disturb the Sublessee's rights once the Sublease is registered in the Registry;

9.03 If any of the conditions in Section 9.02 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 34.00 will be deemed to have occurred.

9.04 Subject to Sections 9.02 and 9.03, consent by the Lessor to any mortgage shall 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.

#### 10.00 Consent and Registration

10.01 The Lessee will provide the Lessor with four copies of every document with respect to a disposition of the leasehold which is referred to in Articles 7.00, 8.00 or 9.00 as requiring the Lessor's consent. These copies shall be originally executed copies or copies of the duly executed documents certified as true copies by a solicitor for one of the parties to the document and shall be in a form acceptable for registration in the Registry.



## WESTBANK FIRST NATION

Westbank Lands Register  
Form No. WFN-06

### **SCHEDULE**

Page 10 of 28 Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORMS WFN-01, WFN-02, WFN-03, WFN-04.]

- 10.02 The Lessor's consent to any disposition of the leasehold shall not constitute any assurance to anyone that the disposition will be registered in the Registry or relieve the Lessee from the obligation to provide the form of document required for registration.
- 10.03 Neither the granting of this Lease nor anything contained in it shall be construed as an agreement or assurance by the Lessor that this Lease or any assignment, sublease, mortgage or other disposition of the leasehold can or may be registered in the Provincial Land Title Office.
- 10.04 Sublessees may without the consent of the Lessor assign or sublet all or portions of their respective subleases and mortgage their respective subleases.

#### 11.00 Utilities

- 11.01 The Lessee is responsible for providing at its expense all services and facilities required by it for use of the Premises.
- 11.02 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.
- 11.03 No interruption of any service or facility provided to the Premises which is not caused by the Lessor, or its employees or agents will be deemed to be a disturbance of the Lessee's enjoyment of the Premises or render the Lessor liable for injury to or in damages to the Lessee or relieve the Parties from their obligations under this Lease.

#### 12.00 Taxes

- 12.01 Without limiting the generality of Article 13.00, the Lessee will pay on or before the due date in each and every year during the Term all taxes, trade licenses, 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.
- 12.02 Without relieving or modifying the obligation of the Lessee to comply with Section 12.01, the Lessee may at its expense, contest or appeal the validity or amount of any tax, trade license, 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.
- 12.03 The Lessee will upon request by the Lessor and within thirty (30) days after the date taxes, trade licences, rates, levies, duties or assessments are due provide the Lessor with official receipts of the competent authority or other proof satisfactory to the Lessor evidencing payment.



## WESTBANK FIRST NATION

Westbank Lands Register

Form No. WFN-06

### **SCHEDULE**

Page 11 of 28 Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORMS WFN-01, WFN-02, WFN-03, WFN-04.]

#### **13.00 Compliance with Laws**

- 13.01 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 First Nation Council or any public utility company lawfully acting under statutory power.
- 13.02 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 to or a copy of it to the Lessor 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 Lessor, the Lessor 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 Lessor of compliance with the terms of the statutory notice, including any certificates of inspection issued in respect of the works.

#### **14.00 Non-Disturbance**

- 14.01 The Sublessees may peaceably and quietly possess, hold and enjoy their 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.
- 14.02 Notwithstanding anything to the contrary herein, the Lessor hereby covenants to and in favour of and for the benefit of every Sublessee that should for any reason the Lessee has ceased to exist, at the time this Lease is declared cancelled, any Sublessee may require a new lease directly from the Lessor upon the cancellation of this Lease for any reason prior to the expiry of the Term and the Lessor will grant to such Sublessee a new lease on the same terms as contained in any sublease held by such Sublessee in the Lands, provided:
- (a) that such new lease shall be for nominal consideration only not exceeding the sum of \$10.00;
  - (b) that the default in respect of which the Lease is cancelled has been cured in relation to that part of the Lands comprised by the sublease held by such Sublessee;
  - (c) that the covenants and obligations contained in the new lease to be issued shall not be inconsistent with the covenants and obligations of the Lessee herein to the Lessor as they relate to the subleased premises;



## WESTBANK FIRST NATION

### Westbank Lands Register Form No. WFN-06

#### **SCHEDULE**

Page 12 of 28 Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORMS WFN-01, WFN-02, WFN-03, WFN-04.]

- (d) that the terms of the said new leases shall contain such arrangements as are reasonably required to ensure that the new leases make appropriate arrangements for the use, maintenance and payment for all common parts and facilities or infrastructure required for the use and occupation of the Lands demised by the said new leases;
- (e) any new Lease granted shall be granted subject to the interests of any Mortgagee of such sublease to reflect the interests, and rights of the Mortgagee of such sublease prior to the termination of the Lease or the request for the grant of the new lease as appropriate;
- (f) the reasonable legal and consulting costs of the Lessor required to issue such lease shall be payable by the party to whom the new lease is to be granted.

14.03 The Lessor hereby covenants and agrees with the intention that such covenant and agreement shall be enforceable by any Sublessee (the "Interested Party") that the provision of the Lease expressed to be for the benefit of any Interested Party shall be and enure for the benefit of any Interested Party and shall be fully enforceable by any Interested Party notwithstanding that such Interested Party is not a party to the terms of the Lease and the Lessor shall not do anything or make any argument to prevent or obstruct whether directly or indirectly any Interested Party in taking the benefit of and enforcing the provisions of the Lease expressed to be for the benefit of any Interested Party based upon the fact that such Interested Party is not a party to the terms of the Lease.

#### 15.00 Nuisance

- 15.01 The Lessee will not cause, permit or suffer any nuisance at the Premises.
- 15.02 Without limiting Section 15.01, the lessee will, upon written notice from the Lessor, 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 Lessor for the purposes of Article 33.00.
- 15.03 The normal carrying on at any time by the Lessee of the uses permitted by Section 14.01 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.

#### 16.00 Waste

- 16.01 Except as permitted by Section 16.02, the Lessee will not cause, permit or suffer the commission of any waste of the Premises.
- 16.02 Except as required by construction and installations expressly permitted by this Lease, and except as permitted in writing by the Lessor, the Lessee will not cause, permit or suffer the removal of any sand, gravel, marl, topsoil, or other material constituting part of the Premises.





## WESTBANK FIRST NATION

### Westbank Lands Register Form No. WFN-06

#### **SCHEDULE**

Page 13 of 28 Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORMS WFN-01, WFN-02, WFN-03, WFN-04.]

#### 17.00 Rubbish

- 17.01 Without limiting Article 15.00, 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 Section 14.01 or as permitted in writing by the Lessor.

#### 18.00 Alterations and Additions

- 18.01 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 19.00 and Section 19.01, except as provided under this Section and in Articles 20.00 and 28.00, the Lessee will not construct any new buildings, structures or other improvements on, under or above the lands.

#### 19.00 New Improvements

- 19.01 Except as provided under this Article and Articles 18.00, 20.00 and 28.00, the Lessee will not construct any new buildings, structures or other improvements on, under or above the Land.
- 19.02 The Lessee will submit complete and detailed plans and specifications for the construction of all permitted improvements referred to in Article 14.00, including the following plans and specifications and all other documents as may be required by the Lessor to enable him to determine conveniently whether the works will comply with the provision of Article 21.00, all of which plans, specifications and other documents shall be hereinafter collectively called the Development Plan;

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

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

#### **ROADS**

- (a) Location, dimension and size;
- (b) Construction specifications.



## **WESTBANK FIRST NATION**

**Westbank Lands Register**  
**Form No. WFN-06**

### **SCHEDULE**

Page 14 of 28 Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORMS WFN-01, WFN-02, WFN-03, WFN-04.]

#### **BUILDINGS**

- (a) Location, dimension and size (number of units, number of storeys, floor area, number of rooms) of all proposed buildings and accessory facilities;
- (b) Dimensions of frontyard, sideyards, rear yard;
- (c) Construction specifications.

#### **SANITARY DISPOSAL**

- (a) Location and size of on-site sanitary sewer connections;
- (b) Construction specifications.

#### **WATER SUPPLY**

- (a) Location and size of existing and/or proposed water mains;
- (b) constructions specifications

- 19.03 Unless and to the extent the Lessor otherwise agrees in writing, the Development Plan shall be prepared by a professional architect or engineer licensed to practice as an architect or engineer in British Columbia.
- 19.04 The Lessor 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 21.00. 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 Lessor for approval.
- 19.05 No approval or failure to approve by the Lessor of the Development Plan will be construed as an assumption of responsibility in any way by the Lessor for the Development Plan or any work completed in accordance with the Development Plan.
- 19.06 Upon receipt of the Lessor's approval of the Development Plan the Lessee will promptly carry out only such work as provided in the Development Plan and of which the Lessor approved. Once the Lessee has commenced the work it will proceed with all due diligence to completion.
- 19.07 Without limiting the foregoing, the Lessee shall and hereby agrees to develop the Premises in accordance with the Development Plan as approved by the Lessor and the provisions of Article 21.00.
- 19.08 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 Lessor with a certificate prepared by an engineer licensed to practice as an engineer in British Columbia, certifying that



## WESTBANK FIRST NATION

Westbank Lands Register

Form No. WFN-06

### SCHEDULE

Page 15 of 28 Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORMS WFN-01, WFN-02, WFN-03, WFN-04.]

the work has been completed in accordance with the standards set forth in Article 21.00 herein.

- 19.09 If the Lessee fails to complete development of the Premises in accordance with the Development Plan, the Lessor 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 shall absolutely cease, determine and be void with re-entry or any other act or any suit or legal proceedings to be brought or taken, PROVIDED the Lessor shall nevertheless be entitled to recover from the Lessee the rent then accrued or accruing, and moreover that any right of action by the Lessor against the Lessee in respect of any antecedent breach of any of the covenants, provisos, stipulations or conditions contained in this Lease shall not be thereby prejudiced.

#### 20.00 Repair of Premises

- 20.01.1 Subject to Section 20.02 the Lessee will at all times during the Term at its expense well and substantially repair, renew and maintain all Improvements in a good and tenable condition in every respect as would a careful owner in occupation excepting reasonable wear and tear only as is not inconsistent with the foregoing.
- 20.01.2 Without limiting Section 20.01.1, the maintenance of the electrical, heating, ventilating, air conditioner, water and sewer systems will include all inspections, cleaning, oiling and adjustments and all replacements of bulbs, ballasts and filters.
- 20.01.3 Without limiting Section 20.01.1, 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.
- 20.02 Whenever repair or renewal pursuant to this Section requires 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 Lessor, which consent shall not be unreasonably withheld.
- 20.03 The Lessee will complete all repair and renewal under this Section in accordance with the provisions of Article 21.00.

#### 21.00 Construction Requirements

- 21.01 Without limiting Article 13.00, 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 "A" 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 "A" 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.



## WESTBANK FIRST NATION

### Westbank Lands Register Form No. WFN-06

#### **SCHEDULE**

Page 16 of 28 Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORMS WFN-01, WFN-02, WFN-03, WFN-04.]

- 21.02.1 Whenever construction or other work under this Lease requires the Lessor's consent, the Lessor may as a prerequisite to deciding whether or not to consent require that the lessee provide him with complete and detailed plans and specifications of the work, including all documents as will enable the Lessor to determine conveniently whether the work will comply with the provisions of this Section.
- 21.02.2 Unless and to the extent the Lessor otherwise agrees in writing all such plans and specifications shall be prepared by a professional architect or engineer licensed to practice as an architect or engineer in British Columbia.
- 21.02.3 If the Lessor requires plans and specifications pursuant to Section 20.02.1 then the Lessee will carry out only such work as provided in the plans and specifications and to which the Lessor has consented. Once the Lessee has commenced the work it will proceed with all due diligence to completion.
- 21.02.4 No consent or failure to consent by the Lessor to plans and specifications referred to in Section 21.02.1 or to the work will be construed as an assumption of responsibility in any way by the Lessor for those plans or specifications or any work completed in accordance with them.

#### **22.00 Signs**

- 22.01 The Lessee shall not require during the Term the consent of the Lessor to place any sign or other advertising device on the lands provided they are related to the uses described in Article 14.00.
- 22.02 The Lessee shall be responsible for the repair, maintenance, strengthening or removal of any sign or advertising device.
- 22.03 The Lessor will not be deemed to have acknowledged or admitted any liability or responsibility with respect to the placement, repair, maintenance, strengthening or removing signs on the Lands during the term.

#### **23.00 Liability Insurance**

- 23.01 The Lessee will forthwith effect and maintain at its expense comprehensive general liability insurance (the "Liability Insurance") with the Lessor as an additional insured against claims for personal injury, death or property damage or loss occurring at or about the Premises.
- 23.02 The Liability Insurance will provide protection to the limit of not less than One Million Dollars (\$1,000,000.00) in respect of any one occurrence.
- 23.03 The Liability Insurance will contain a provision for cross liability.

#### **24.00 Property Insurance**

- 24.01 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.



## WESTBANK FIRST NATION

Westbank Lands Register  
Form No. WFN-06

### **SCHEDULE**

Page 17 of 28 Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORMS WFN-01, WFN-02, WFN-03, WFN-04.]

#### **25.00 Insurance Provisions**

- 25.01 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 fifteen (15) days prior written notice.
- 25.02 Notwithstanding the foregoing all insurance obligations of the Lessee shall be waived during such time as title to the Lands is held by Canada Mortgage and Housing Corporation in the event that it has granted or insured a mortgage and subsequently acquired title to the Lands by reason of the default of the Lessee.

#### **26.00 Insurance Validation**

- 26.01 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 Lessor 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.
- 26.02 The Lessee releases the Lessor, their respective officers, employees, agents or contractors from all liability for loss or damage caused by or resulting from any of the perils or injury against which it has covenanted in this Lease to insure, except if the loss, damage or injury may arise out of the negligence or omission of the Lessor, its officers, employees, agents or contractors, and even though the Lessee has failed to so insure.
- 26.03 The Lessee will, upon request, deliver certificates of insurance evidencing every policy of insurance that is required 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.
- 26.04 The Lessee will, upon written request, deliver a certified copy of every insurance policy taken out by the Lessee with respect to the Premises.

#### **27.00 Indemnity**

- 27.01 The Lessee will indemnify and save harmless the Lessor 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.
- 27.02 Notwithstanding Section 27.01, 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 willful act or omission of the Lessor, Her officials, employees or agents.



## **WESTBANK FIRST NATION**

### **Westbank Lands Register Form No. WFN-06**

#### **SCHEDULE**

Page 18 of 28 Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORMS WFN-01, WFN-02, WFN-03, WFN-04.]

#### **28.00 Replacement on Destruction**

- 28.01 If during the Term any Improvements (in this Section called the "Damaged Improvements") are damaged or destroyed by fire or any other cause so as to render the Premises or any part thereof unfit for the purposes of the Lessee as provided in Article 14.00 the provisions of this Section will have effect.
- 28.02 The Rent will not abate whether the Damaged Improvements are rendered partially or wholly unfit for the purposes of the Lessee.
- 28.03 The Lessee may in its discretion determine whether or not to restore and repair the Damaged Improvements PROVIDED that it notifies the Lessor of its decision in that regard within sixty (60) days of the damage or destruction occurring and PROVIDED further that notice to the Lessor 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 Mortgagees to whose mortgages the Lessor has consented.
- 28.04.1 If the Lessee determines to restore or repair the Damaged Improvements or if it fails to give the Lessor notice as provided in Section 28.03 then it will provide the Lessor with complete and detailed plans and specifications of the 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 as 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.
- 28.04.2 The plans and specifications and the cost estimate referred to in Section 28.04.1 will be prepared and signed by an architect or engineer licensed to practise in British Columbia.
- 28.04.3 Without limiting the foregoing, the Lessee will at its expense complete all restoration and repair in accordance with the provisions of Article 21.00.

#### **29.00 Insurance Proceeds**

- 29.01 If the Lessee has determined to restore or repair or has failed to give notice as provided in Section 28.03 and if the Lessor has consented in writing to the payment of insurance proceeds to the Lessee then the proceeds shall be paid to the Lessee in trust to apply to the costs of restoration or repair of the Premises. The cost of the repairs or restoration shall be borne by the Lessee whether or not it exceeds the insurance proceeds.
- 29.01.1 If the Lessee has determined to restore or repair or has failed to give notice as provided in Section 28.03 and if the Lessor has required in writing that insurance proceeds be paid to either the Receiver General for Canada ("Receiver General") or a trustee then the proceeds shall be paid to the Receiver General or a trustee, appointed by the Lessor, to hold on behalf of the Lessor, the Lessee and any leasehold Mortgagees to whose mortgages the Lessor has consented and to be applied in accordance with the provisions of this Section. The Lessee will do all things necessary or convenient to facilitate this payment.



## WESTBANK FIRST NATION

### Westbank Lands Register Form No. WFN-06

#### **SCHEDULE**

Page 19 of 28 Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORMS WFN-01, WFN-02, WFN-03, WFN-04.]

- 29.01.2 Work in progress shall be paid for in installments as progress payments out of the insurance proceeds, PROVIDED that the Receiver General or the trustee at all times shall 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. The lessee shall 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.
- 29.01.3 Any progress payments to be made under this Section by the Receiver General or the trustee to the Lessee shall not be made without the submission 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.
- 29.02 Before any contract is entered into by the Lessee for the carrying out of any restoration or repair work pursuant to Article 28.00, copies of the estimates for the work and the contracts for the completion of the work shall be submitted by the Lessee to the Lessor, the leasehold Mortgagees to whose mortgages the Lessor has consented and any trustee appointed pursuant to Section 29.01.1.
- 29.03 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 shall be paid to the Lessor for the Lessor's use and benefit.

#### 30.00 Removal of Buildings, Fixtures and Chattels

- 30.01 At any time during the Term or within one hundred twenty days (120) after the expiration or sooner termination of this Lease, the Lessee may, if not in default hereunder, at the Lessee's own expense remove from the Premises all the Lessee's moveable goods, chattels and trade fixtures and all buildings and improvements placed on the Premises by the Lessee PROVIDING the following conditions are met:
- (a) The Lessee has not earlier than ninety days (90) and not later than sixty days (60) before the expiration or earlier termination of this Lease, given to the Lessor written notice of its intention to remove the buildings, fixtures and improvements; and
  - (b) The Lessee has given to the Lessor a performance bond in such amount as the Lessor may require to cover the costs of improvements and to enable the Lessor to complete their removal and to restore the premises to a neat, clean and tidy state; and
  - (c) The Lessee completes the work of removal not later than one hundred twenty days (120) after expiry or the termination date of the term.
- 30.02 Subject to Section 30.03, the Lessee shall upon the expiration or earlier termination of this Lease, or upon removal of buildings, fixtures and improvements pursuant to Section 30.01, whichever is later, leave the Premises in good and substantial repair and condition and free of all debris to the reasonable satisfaction of the Lessor.



## **WESTBANK FIRST NATION**

**Westbank Lands Register**  
**Form No. WFN-06**

### **SCHEDULE**

Page 20 of 28 Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORMS WFN-01, WFN-02, WFN-03, WFN-04.]

30.03 Upon written demand by the Lessor given on or before the ninetieth day after the expiration or earlier termination of this Lease, the Lessee will at the Lessee's own expense immediately upon the expiration or earlier termination of this Lease or upon demand being given, whichever is later, remove from the Premises all buildings and other improvements constituting part of the Premises including without limiting the generality of the foregoing, all the Lessee's moveable goods, chattels and trade fixtures, or such of them as the Lessor may require to be removed from the Premises and leave the remainder of the Premises in good substantial repair and condition and free from all debris to the reasonable satisfaction of the Lessor.

#### **31.00 Quiet Enjoyment**

31.00 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 the Lessor.

#### **32.00 Forfeiture**

32.01.1 If the Lessee:

- (a) fails to pay any Rent when due under this Lease, or
- (b) is in actual material default of a material obligation hereunder

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

32.01.2 If the Lessor gives the Lessee notice of default under Section 32.01.1 and either:

- (a) the default is a default mentioned in paragraph 32.01.1(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 sixty (60) days; or
- (b) the default is not a default mentioned in paragraph 32.01.1(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 promptly upon receipt of the notice and to proceed to cure it with all due diligence to completion;

then the Lessor may by notice to the Lessee subject to the provisions of this Article 32 and the rights of the parties under Article 14 and Article 52 declare the Term ended.

32.02.1 If the Lessor declares the Term ended as provided in Section 32.01.2, then except as otherwise expressly provided in this Lease, this Lease and everything contained in it and the Term will thereupon absolutely cease, determine and be void without re-entry or any other act or legal proceedings, and the Lessor may re-enter the Premises and possess and enjoy it as if the Lease had not been made.

32.02.2 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





## WESTBANK FIRST NATION

Westbank Lands Register  
Form No. WFN-06

### SCHEDULE

Page 21 of 28 Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORMS WFN-01, WFN-02, WFN-03, WFN-04.]

antecedent breach of any of the Lessee's covenants including a right of action under Article 27.00, subject always to the rights of the parties in Article 14.

- 32.03 No notice to the Lessee will be valid for any purpose unless and until a copy of such notice is also given each Mortgagee and Sublessee. The copy of such notice may be given to a Mortgagee and Sublessee at the address specified by the Mortgagee and Sublessee and otherwise on the same terms and conditions as applicable to notices referred to in Article 53.00.
- 32.04 Any curing of a default by a Mortgagee or a Sublessee will be construed as curing default by the Lessee. The Lessor hereby grants the Mortgagee and Sublessee access to the Premises for the purposes of curing any defaults under the Lease.
- 32.05 If any disagreement arises as to the occurrence or subsistence of a material default hereunder or whether the curing of any default is promptly commenced, has been substantially completed or is proceeding with reasonable diligence, and without limiting any other remedies or relative that might be available to the Lessee, a Mortgagee or Sublessee in accordance with this Agreement or at law, the question may be dealt with in accordance with Article 52.00 of this Lease.
- 32.06 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.
- 32.07 If the Lessor gives the Lessee notice of a breach of any of the Lessee's obligations and such breach is not rectified within the period set out in Article 32.01.2, then the Lessor, without relieving the Lessee of its obligations under this Lease and without limiting any other right of the Lessor, may 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. All of the Lessor's costs and expenses of such performance will be expeditiously payable by the Lessee upon the Lessor delivering notice of the Lessor's costs.
- 32.08 All rights and remedies of the Lessor 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. All rights and remedies of the Lessor may be exercised concurrently.

### 33.00 Insolvency

- 33.01 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, shall immediately become due and payable.



## WESTBANK FIRST NATION

### Westbank Lands Register Form No. WFN-06

#### **SCHEDULE**

Page 22 of 28 Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORMS WFN-01, WFN-02, WFN-03, WFN-04.]

#### 34.00 Performance of Covenants

- 34.01 If the Lessee fails to perform any Lessee's covenant, then without limiting any other remedy of the Lessor under this Lease the Lessor 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 Lessor may but will not be obligated to do whatever is reasonably necessary to perform it. Any reasonable cost or expense incurred by the Lessor in performing the covenant will be paid by the Lessee to the Lessor forthwith upon demand by the Lessor.
- 34.02 The Lessee will provide the Lessor, his officials, employees and agents convenient access to the Premises at all reasonable times from time to time for the purposes of viewing the Premises and otherwise determining that the Lessee's covenants are being duly observed and performed.
- 34.03 The Lessee will also provide the Lessor, 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 34.01.

#### 35.00 Distress

- 35.01 The Lessor will be entitled to levy distress against the chattels and trade fixtures of the Lessee and the Lessor on behalf of the Lessor may use such force as he deems necessary for that purpose and for gaining admittance to the Premises without being liable for any action or for any loss or damage occasioned by the distress or the use of force.

#### 36.00 Right of the Lessor to Relet

- 36.01 If the Premises shall be deserted or vacated, the Lessor shall 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 occasioned 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.
- 36.02 Rent for any reletting under Section 36.01 may be applied by the Lessor to any expenses incurred by him in the re-entry of the Premises and in the reletting and to any other monies owing to the Lessor under this Lease in such proportions and in such order of priority as the Lessor may decide.
- 36.03 The Lessor will not be construed as re-entering the Premises as agent of the Lessee if prior to the re-entry the Lessor has declared the Term ended.
- 36.04 Notwithstanding a re-entry by the Lessor, 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 covenants of this Lease, including a right of action under Article 27.00.



## WESTBANK FIRST NATION

Westbank Lands Register  
Form No. WFN-06

### SCHEDULE

Page 23 of 28 Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORMS WFN-01, WFN-02, WFN-03, WFN-04.]

#### 37.00 Intentionally Deleted

#### 38.00 Environment

- 38.01 Notwithstanding Section 14.01 or any other provision of this Lease, whenever construction or other work under Articles 19.00 or 20.00 requires the Lessor's consent, the Lessor may, as a prerequisite to deciding whether or not to consent, require the Lessee to prepare and submit an environmental impact assessment report on terms of reference and in a form satisfactory to the Lessor.
- 38.02 Notwithstanding Section 14.01 or any other provision of this Lease, if in the reasonable opinion of the Lessor, the proposed construction or other work under Article 19.00 or 20.00 would have a negative and unmitigatable impact on the environment (to the extent that mitigation would not reduce the impact to an acceptable level), then the Lessor may, upon thirty (30) days written notice to the Lessee, terminate the Lease, and the provisions of Sections 32.02.1, 32.02.2 and 32.03 will apply.

#### 39.00 Intentionally Deleted

#### 40.00 Intentionally Deleted

#### 41.00 Payments by the Lessor Regarded as Rent

- 41.01 If at any time before or after the expiration of earlier termination of the Term 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 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 the Lessor on a solicitor-client basis), together with interest as provided in Article 42.00, will be paid by the Lessee to the Lessor forthwith on demand by the Lessor.
- 41.02 The amount of any damage, loss, expense or payment referred to in Section 41.01 will be added to the Rent due under the Lease, be due and payable as Rent and be recoverable in the manner provided by law for the recovery of Rent in arrears.

#### 42.00 Arrears to Bear Interest

- 42.01 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 shall 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.



## WESTBANK FIRST NATION

Westbank Lands Register  
Form No. WFN-06

### **SCHEDULE**

Page 24 of 28 Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORMS WFN-01, WFN-02, WFN-03, WFN-04.]

#### **43.00 Remedies Cumulative**

- 43.01 All rights and remedies of the Lessor 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.
- 43.02 All rights and remedies of the Lessor may be exercised concurrently.

#### **44.00 Surrender of Possession**

- 44.01 Subject to Article 30.00, when the Term expires or otherwise ends, the Lessee will peaceably surrender the Premises to the Lessor maintained, repaired and renewed as provided in Article 20.00.

#### **45.00 Holding Over**

- 45.01 If the Lessee continues in possession of the Premises after the Term expires by effluxion of time, its status notwithstanding any payment of Rent will be that of 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 30.00.
- 45.02 The Lessee will during the continuance of the month to month tenancy referred to in Section 45.01, pay in advance on the first day of each month a Rent in such amount as is agreed between the Lessor and the Lessee. If the Lessee disagrees with the rent set by the Lessor, it shall be resolved pursuant to Article 52.00.
- 45.03 The month to month tenancy referred to in Section 45.01 will be subject to all the terms and conditions of this Lease except as modified by Sections 45.01 and 45.02 and except as they are inapplicable to the tenancy from month to month.

#### **46.00 Net Lease**

- 46.01 This Lease is to be a completely carefree net Lease for the Lessor and notwithstanding anything to 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.

#### **47.00 No Warranties**

- 47.01 No representations, warranties or conditions have been made to the Lessee in respect of the Premises by the Lessor or its employees and agents.
- 47.02 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 the Lessor or its employees or agents.



## WESTBANK FIRST NATION

Westbank Lands Register  
Form No. WFN-06

### **SCHEDULE**

Page 25 of 28 Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORMS WFN-01, WFN-02, WFN-03, WFN-04.]

#### 48.00 Corporate Authority

48.01 If the Lessee is one or more corporations, the Lessee warrants and represents to the Lessor that:

- (a) the Lessee has the corporate authority pursuant to its Memorandum and Sections to enter into this Lease and to perform all 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 the annual reports at the office of the Registrar of Companies of British Columbia.

#### 49.00 Headings

- 49.01 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.
- 49.02 Any reference in this Lease to an article, section, paragraph or clause shall mean an article, section, paragraph or clause of this Lease unless otherwise expressly provided.
- 49.03 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.

#### 50.00 Amendments

- 50.01 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.
- 50.02 No condoning, excusing or overlooking by the Lessor 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 the Lessor in respect of any continuing or subsequent default and no waiver of these rights will be inferred from anything done or omitted by the Lessor except by an express waiver in writing.

#### 51.00 Governing Law

- 51.01 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.

#### 52.00 Dispute Resolution

- 52.01 Should there be a disagreement or dispute between the parties with respect to any matter under this Agreement or the interpretation thereof, the same may be referred jointly by the Parties to a single arbitrator pursuant to the



## WESTBANK FIRST NATION

Westbank Lands Register

Form No. WFN-06

### **SCHEDULE**

Page 26 of 28 Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORMS WFN-01, WFN-02, WFN-03, WFN-04.]

Commercial Arbitration Act of British Columbia and any amendments thereto and the determination of such arbitrator will be final and binding upon the Parties.

52.02 Any Mortgagee, including those of subleases, must be given the opportunity to participate in any arbitration, the subject-matter of which could, in the opinion of such Mortgagee, impact on its security.

#### 53.00 Notice

53.01 All notices, demands, requests, elections, consents or other communications that may be or are required to be given pursuant to this Lease will be in writing and will be validly given:

- (a) if delivered by hand to the representative indicated in this Article of the Party to whom notice is being given;
- (b) if enclosed in an envelope and mailed by prepaid double registered mail in Canada to such representative at the address given in this Article.

53.02 The address of each Party for the purposes of this Article is as follows:

To the Lessor:

Westbank First Nation  
301 -515 S.Highway 97  
Kelowna, B.C.  
V1Z 3J2

To the Lessee:

Bayview Homeowners Management Corp.  
c/o 215 – 1511 Sutherland Avenue  
Kelowna, BC V1Y 5Y7  
and  
Pushor Mitchell LLP  
3<sup>rd</sup> Floor 1665 Ellis Street  
Kelowna, BC V1Y 2B3  
Attention: Susan G. Connaghan

53.03 Either party may change its address for the purposes of this Section by giving notice of the change to the other Party in the manner provided in this Section.

53.04 For the purposes of this Section, the representative of the Lessor any person authorized by the First Nation Council, and the representative of the Lessee will be the president, secretary or a director of the Lessee if the



## WESTBANK FIRST NATION

Westbank Lands Register  
Form No. WFN-06

### SCHEDULE

Page 27 of 28 Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORMS WFN-01, WFN-02, WFN-03, WFN-04.]

Lessee is a corporation or will be the Lessee if the Lessee is a natural person or persons or will be a partner of the Lessee if the Lessee is a partnership.

53.05 Notices, demands, requests, elections, consents or other communications given pursuant to this Section will be deemed to be given and received:

(a) if delivered by hand, on the day of delivery, and

(b) if mailed by prepaid double registered mail:

i. ninety-six (96) hours from the time of mailing if mailed within British Columbia and if during that ninety-six (96) hour period there is no strike of the mails or other postal disruption, or

ii. at the time of actual receipt if mailed outside of British Columbia or if during the ninety-six (96) hour period after mailing there is a strike of the mails or other postal disruption.

#### 54.00 Time of the Essence

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

#### 55.00 Severability

55.01 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.

#### 56.00 Plurality and Gender

56.01 This Lease shall enure to 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 shall include the heirs, executors, administrators, successors, assigns and other legal representatives of the Party.

56.02 Reference to a Party shall be read as if all required changes in the singular and plural and all grammatical changes rendered necessary by gender had been made.

56.03 If a Party is comprised of more than one Person then all covenants and agreements of that Party shall be deemed joint and several.



## WESTBANK FIRST NATION

Westbank Lands Register  
Form No. WFN-06

### **SCHEDULE**

Page 28 of 28 Pages

[ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON FORMS WFN-01, WFN-02, WFN-03, WFN-04.]

#### 57.00 Intentionally Deleted

#### 58.00 Not a Joint Venture

58.01 Nothing in this Lease will be construed as making the Lessor an agent, partner or joint venturer with the Lessee nor as creating any relationship between the Parties other than the relationship of Lessor and Lessee.

#### 59.00 Land Rules Apply

59.01 This Lease is subject to and governed by Part XI of the Westbank First Nation Constitution proclaimed effective April 1, 2005 as amended 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.

#### 60.00 Execution of Part 1 Binding

60.01 By signing Part 1 of this Lease, the Parties agree to be bound by its terms.

END OF DOCUMENT