



Application for Registration

Privacy Act Statement

"This statement explains the purposes and use of your personal information. Only information needed to respond to program requirements will be requested. Collection and use of personal information is in accordance with the *Privacy Act*. In some cases, information may be disclosed without your consent pursuant to subsection 8(2) of the *Privacy Act*."

The collection and use of your personal information for this Statutory Declaration is authorized by sections 21 - 55 of the *Indian Act* <http://laws-lois.justice.gc.ca/eng/acts/i-5/> and is required for your participation.

We will use your personal information, your contact information, for the processing of the form. We share the personal information you give us with Bands (First Nation Governments) for whom AANDC tracks this. The information collected is described in Personal Information Bank "Monitoring and Compliance of Reserve Land Instruments", AANDC PPU 096, detailed at <http://www.aandc-aandc.gc.ca/eng/1100100011039/1100100011040>, will be retained for a period of 30 years after the last administrative action and then transferred to Library and Archives Canada (LAC) as archival records.

As stated in the *Privacy Act*, you have the right to access your personal information and request changes to incorrect information. Contact our office (toll-free) at 1-800-567-9604 to notify us about incorrect information. For more information on privacy issues and the *Privacy Act* in general, you can consult the Privacy Commissioner at 1 (800) 282-1378.

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

<u>Registration Number</u> 6092369	<u>Received Date</u> 2016/05/16	<u>Regional File Number</u> 5643-07397-11
---------------------------------------	------------------------------------	--

NAME OF PARTIES TO INSTRUMENT	
<u>Name</u> Crown Canada	Grantor
<u>Name</u> WARREN AVENUE DEVELOPMENT CORPORATION	Grantee

Instrument Type Lease 014
Instrument Date 2016/05/01
Purpose COMMERCIAL
Remarks

LAND DESCRIPTION	
Province :	BRITISH COLUMBIA
Reserve Name	07397 - PENTICTON 1
Legal Description - Land Affected	LOT 111 Canada Lands Surveys Record 60092

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

Applicant Email :

Band Email :

()			
Signature of Applicant	Tel. number of Applicant	email	Date

Return To :	
Mahalia Nahanee 600 - 1138 Melville Street Vancouver, BRITISH COLUMBIA V6E4S3	

Registration Number _____

Registration Date: MAY 18 2016 and Time: _____

Signature of Registration Officer	Date
-----------------------------------	------

Comments

Reason for return

Signature of Registration Officer	Date
-----------------------------------	------

LEASE

Her Majesty in right of Canada

and

Warren Avenue Development Corp.

and

Warren Avenue Owners Corp.

and

Angeline Mary Anne Allison, also known as Angeline Mary Anne Kruger

Penticton Indian Reserve No. 1

Lot 111, C.L.S.R. Plan No. 60092

Date: May 1, 2016

TABLE OF CONTENTS

1.	GUIDE TO THIS LEASE	2
2.	THE LAND AND ITS USE	3
3.	RENT	6
4.	OWNERS' CORPORATION	8
5.	CONSTRUCTION	8
6.	INSURANCE	11
7.	LAWS	14
8.	ENVIRONMENT	15
9.	INSPECTION & ADVERTISING	18
10.	ASSIGNMENTS & SUBLEASES	18
11.	SECURITY INTERESTS	21
12.	INSOLVENCY	24
13.	DEFAULTS & THE END OF THIS LEASE	25
14.	INDEMNITY	28
15.	DISPUTE RESOLUTION	29
16.	GENERAL PROVISIONS	29
	SCHEDULE A – DEFINITIONS	34
	SCHEDULE B – ENVIRONMENTAL PROTECTION MEASURES	
	SCHEDULE C - ASSIGNMENT AGREEMENT	
	SCHEDULE C-1– OWNERS' CORPORATION ASSIGNMENT AGREEMENT	
	SCHEDULE D – LENDER AGREEMENT	
	SCHEDULE E – COUNCIL RESOLUTION	
	APPENDIX A – LANDHOLDER CONSENT	

LEASE

This lease dated as of May 1, 2016 between –

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

(referred to as the *landlord*)

and:

Warren Avenue Development Corp.

(referred to as the *tenant*)

and:

Warren Avenue Owners Corp.

(referred to as the *owners' corporation*)

and:

Angeline Mary Anne Allison, also known as Angeline Mary Anne Kruger

(referred to as the *landholder*)

Background:

The *tenant* wishes to lease the *land*.

The *land* is in the lawful possession of the *landholder*, who has applied to the *landlord* for the *land* to be leased, as evidenced by the landholder consent attached as Appendix "A" to this lease.

The *Council*, on behalf of the *First Nation*, declared it is not opposed to the granting of this lease, as evidenced by the *Council* resolution attached as Schedule E to this lease.

There were no improvements on the *land* at the *start date*, other than two existing *buildings* on the *land*.

This lease is made under subsection 58(3) 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.
- 1.1.4** The following are the Schedules and Appendices to this lease:

(a) Schedules:

Schedule A – Definitions
Schedule B – Environmental Protection Measures
Schedule C – Assignment Agreement
Schedule C-1 – Owners’ Corporation Assignment Agreement
Schedule D – Lender Agreement
Schedule E – Council Resolution
Schedule F – Declaration of Trust

(b) Appendices:

Appendix “A” – Landholder Consent

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 termination 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 the terms and conditions of this lease.
- 2.1.2** The *tenant* acknowledges that, without limiting the generality of subsection 2.2.1, the *tenant* is solely responsible for obtaining and maintaining legal and physical access to and from the *land*, whether by public or private road or otherwise.
- 2.1.3** Nothing contained in section 2.1.2 in any way modifies or derogates from any covenant, duty or obligation of the *landholder* to the *tenant* pursuant to any agreement in writing between the *landholder* and the *tenant*, whether made before or after the execution and delivery of this lease.
- 2.1.4** The *tenant* will fulfill or cause to be fulfilled all obligations to the Province of British Columbia under any right of way or other agreement pursuant to which the *tenant* and *subtenants* and their invitees are provided with access to and egress from the *land* by way of provincial road and bridge facilities, including any obligations to carry insurance in connection therewith.
- 2.1.5** The *property* must not be used for any purposes except for any of the following:
- (a)** a residential uses;
 - (b)** commercial uses;
 - (c)** recreational vehicle and mobile home uses;

(d) light industrial uses;

(e) such other uses as may be consented to in writing by the *landlord*; and

together with such accessory structures and uses as are customarily ancillary to any of the foregoing uses.

2.1.6 Except where reasonably required by the *permitted uses*, the *tenant* must not cause or allow a nuisance on the *property*.

2.1.7 Except where reasonably required in connection with the construction of the *structures* in accordance with this lease, the *tenant* must not cause or allow the commission of any equitable waste in respect of the *property*.

2.1.8 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*.

2.1.9 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).

2.1.10 If there are no applicable *laws* about the use of signage or 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, unless the billboard (or other large-scale advertising device) is included in a *development plan* that has been approved in accordance with this lease.

2.1.11 The *landholder* is to deliver vacant possession of the land as of the start date, but the *landholder* may remove either or both of the existing buildings on the land, at the expense of the *landholder*, provided that such work must be completed no later than the date that is 60 days after the execution and delivery of this lease by all parties and that the *landholder* will be carrying out any such work at her own risk and will leave the land in a reasonably neat and tidy condition following completion of such work. Any improvements not removed by the *landholder* by such date may be removed or disposed of by the *tenant* at any time during the *term*.

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*.

2.2.3 Nothing contained in subsection 2.2.1 or 2.2.2 in any way modifies or derogates from any covenant, duty or obligation of the *landholder* to the *tenant* pursuant to any agreement in writing between the *landholder* and the *tenant*, whether made before or after the execution and delivery of this lease.

2.3 Other Interests and Rights in Respect of the Lands

2.3.1 The *landlord* may, with the prior written consent of the *tenant*, acting reasonably, grant an easement (common law or statutory) or permit in respect of the *land* to an *authority* or utility company. 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.

2.3.2 The *tenant* may during the *term* grant easements or licences in respect of the *tenant's* leasehold interest in the *property* which may be required or desired in connection with the installation, provision or maintenance of any service, utility or facility servicing the *property* or which otherwise may be required by the *tenant*, without the consent of the *landlord*. Such easements or licences may be granted to any city, local government, public utility or other entity providing the service, utility or facility, on terms and conditions determined by the *tenant*, provided that the term of any such easement or licence shall not extend beyond one day before the expiration of the *term* and shall not conflict with any provision of this lease. Such easements and licences shall be solely in respect of the *tenant's* leasehold interest in the *land*.

2.3.3 The *landlord* will act reasonably in considering any request by the *tenant* to grant any easement or permit in respect of the *land* in connection with the development of the *land*, provided that any such easement or permit does not materially adversely affect the value of the *land*, and the *landholder* hereby consents to the granting of any such easement or permit.

2.3.4 The *tenant*, in its sole discretion, may designate one or more of the *common facilities* as being used for a single or mixed residential, recreational or commercial purpose either for the benefit of the *subtenants* or *occupants* or the public. The *tenant* may derive all or a portion of any ongoing net revenue from the operation of any *common facilities*. The *common facilities* may be subleased or licensed to the *owners' corporation*, subject to the provisions this lease.

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, with the prior written consent of the *landholder*, 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*.

2.4.3 The *landlord* will determine and give a notice of compensation to the *tenant* if any compensation is to be paid to the *tenant* in connection with the exercise of any rights under subsection 2.4.2.

2.4.4 If the *tenant* disagrees with the *landlord's* determination as to whether to grant compensation, or the amount of compensation given pursuant to subsection 2.4.3, then the *tenant* may, at its expense and within 60 days after delivery of a notice referred to in subsection 2.4.3, refer the matter to Federal Court pursuant to section 17 of the *Federal Courts Act*, RSC, 1985, c. F-7 for a review of the *landlord's* determination. If the *tenant* fails to refer the matter to Federal Court within the required time, the determination or the compensation will be deemed to be that set out in the *landlord's* notice.

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 \$10.00 nominal rent is due on the *start date*. Such amount, including such other good and valuable consideration, constitutes the entire *prepaid rent* for the *term* and will be paid directly from the *tenant* to the *landlord*.

3.2.2 The *tenant* acknowledges and agrees that:

- (a) any *rent* paid to the *landlord* will be paid by the *landlord* over to the *landholder*, for the *landholder's* use and benefit and will not be available to be refunded to the *tenant* by the *landlord*;
- (b) the *tenant* will have no right to a refund of, and the *landlord* will not be liable to the *tenant* for refunding, any *rent* in the event of termination of this lease; and
- (c) the *tenant* accepts this risk and liability.

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 5%, 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. OWNERS' CORPORATION

4.1 Owners' Corporation

4.1.1 The *tenant* and the *owners' corporation* will ensure that the articles of the *owners' corporation* include the following provisions:

- (a) the requirement for the creation of an operating budget for the on-going maintenance and operation of the *property*, including the *common facilities* and common costs, to which the *subtenants* shall pay their respective proportionate shares;
- (b) the creation of a contingency reserve fund; and
- (c) the obligation by the *subtenants* to pay special assessments if and when approved by the requisite vote of the members of the *owners' corporation* or in accordance with the provisions of the Declaration of Trust.

5. CONSTRUCTION

5.1 Approval Required Before Construction

5.1.1 Before beginning any development on the *land*, the *tenant* must –

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

5.1.2 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.

5.1.3 *Structures* that are the subject of an approved *development plan* must not be substantially altered without the prior approval of the *landlord*, acting reasonably.

5.1.4 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, unless otherwise approved by the *landlord*, acting reasonably.

5.2 Construction Compliance

5.2.1 Following receipt of the required approvals referred to in section 5.1, the *tenant* may construct the *structures*, and any such construction will be carried out, in a proper and workmanlike manner in accordance with the applicable approvals. If construction is carried out in *phases*, as set out in an approved *development plan*, the *tenant* will build the *common facilities* necessary to support, and directly associated with, each *phase*.

5.2.2 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.

5.2.3 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 or referred to in Schedule B.

5.3 Construction Insurance

5.3.1 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".

5.4 Completion of Construction

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

5.4.2 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.

5.5 Maintenance

- 5.5.1** The *tenant* must maintain the *property* in a tenant-like manner as a prudent owner in occupation would maintain it, subject to normal wear and tear.

5.6 Ownership of Structures During the Term

- 5.6.1** 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*, except for any *structures* owned by the holder of an easement, license, permit or other encumbrance in respect of the *land* that has been granted in accordance with this lease.

5.7 Damage to, or Destruction of, Structures

- 5.7.1** 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) subject to subsection 5.7.2, 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.

- 5.7.2** If any *structures* that are damaged or destroyed are demised under a *sublease* (the "*damaged subleased structures*"), and:

- (a) the whole or any part of the interest in the *damaged subleased structures* is mortgaged by the holder of the *sublease* to a lender, insured against borrower default, under the *National Housing Act*, RSC, 1985, c. N-11
- (b) the damage or destruction make up more than fifty percent (50%) of the *structures* demised under the *sublease*; and

- (c) *Canada Mortgage and Housing Corporation* elects not to apply the proceeds of property insurance payable in respect of the *damaged subleased structures* to the repair and replacement of the *damaged subleased structures*;

then, notwithstanding any other provisions of this lease, the *tenant* will not be required to repair or replace the *damaged subleased structures* but shall be required to clear and restore that portion of the *land* demised under the *sublease* to a safe condition and as nearly as possible to its condition prior to the commencement of construction to the reasonable satisfaction of the *landlord*.

5.8 Superseding Development Approval Jurisdiction

- 5.8.1** The parties agree that if at any time during the *term* the *First Nation* enacts laws or bylaws that are applicable to the development of or construction on the *land* which would have the effect of superseding any of the requirements under this lease with respect to development or construction, then the *landlord* and the *landholder* and the *owners' corporation* each will act reasonably in considering any request of the *tenant* to modify this lease accordingly.

- 5.8.2** If at any time the *landholder* or any heir, successor or assign of the *landholder* becomes the *landlord* under this lease, by reason of the enactment of a *Land Code* in respect of the *land* or otherwise, all references in this article 5 to the *landlord* will be deemed to be references to the relevant *authority* having jurisdiction with respect to such matters, to the extent applicable.

6. INSURANCE

6.1 Commercial General Liability Insurance

- 6.1.1** 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).

6.2 Commercial Building Form Property Insurance

- 6.2.1** Other than when insurance is required by paragraph 5.3.1(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 equal to their full replacement value.

6.3 Pressure Vessel Insurance

- 6.3.1** 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 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.

6.4 Other Insurance

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

6.5 Insurance Provisions

- 6.5.1** 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.
- 6.5.2** 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.
- 6.5.3** 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 reasonable deductible amount. The *tenant* will be a co-insurer to the extent of the amount deducted and that amount will, for the purposes of section 6.6, 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 *tenant* will use commercially reasonable efforts to cause the insurance to 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, and the *landlord* acknowledges and agrees that the insurer may agree only to use best efforts or commercially reasonable efforts to give such notice.

6.6 Proceeds of Property Insurance

- 6.6.1** The insurance proceeds from the insurance required under paragraph 5.3.1(b) and sections 6.2 and 6.3 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 5.7.2, 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.
- 6.6.2** 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.
- 6.6.3** 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.

6.7 Cancellation of Insurance

- 6.7.1** 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 or replaced.

6.8 Certificates and Policies

- 6.8.1** 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 10 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.

- 6.8.2** If requested by the *landlord*, acting reasonably, the *tenant* must promptly deliver to the *landlord* a certified copy of any insurance policy required by this lease.

- 6.8.3** If requested by the *landlord*, acting reasonably, the *tenant* must promptly deliver to the *landlord* reasonably satisfactory written evidence from a qualified professional that the insurance then in place meets the requirements of this lease.

6.9 Release from, and Indemnity for, Insured Liabilities

- 6.9.1** The *tenant* hereby releases the *landlord* and the *landholder* and their 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.

- 6.9.2** To the extent that any required insurance is not obtained or maintained, then, without limiting article 14, the *tenant* hereby indemnifies the *landlord* and the *landholder* and their 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.

6.10 Payment of Insurance Premiums

- 6.10.1** If the *tenant* does not pay (or cause of 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* reasonable expenses for this are *additional rent*.

7. LAWS

7.1 Compliance, Notification, and Receipts

- 7.1.1** 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.
- 7.1.2** 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.
- 7.1.3** Without limiting subsection 7.1.1, the *tenant* must pay, or cause to be paid, when due (subject to any appeals allowed under applicable *laws*) all property 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 property taxes, upon the written request of the *landlord*, acting reasonably.
- 7.1.4** 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*.
- 7.2** **Authorization to Receive Information**
- 7.2.1** On a written request from the *landlord*, acting reasonably, the *tenant* must promptly deliver to the *landlord* written authorization to receive relevant information from an *authority* about the *tenant's* compliance with applicable *laws* (including the payment of applicable property taxes). The *tenant* must require that, on written request from the *landlord*, acting reasonably, any other *subtenant* must promptly deliver to the *landlord* written authorization to receive relevant information from an *authority* about that *subtenant's* compliance with applicable *laws* (including the payment of applicable property taxes).
- 7.3** **Fire Services**
- 7.3.1** The *tenant* will ensure that the *property* is inspected every five years by a *person* who has authority under the *Fire Services Act*, R.S.B.C. 1996, c. 144 to conduct inspections under that Act, even if that Act does not allow inspections on the *property*. That *person* must prepare an inspection report which would include any recommended actions resulting from the inspection. The *tenant* will promptly deliver the inspection report to the *landlord* and promptly comply with the recommended actions in the inspection report and notify the *landlord* of that compliance when completed.

8. ENVIRONMENT

8.1 Use of Contaminants on the Property

8.1.1 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*.

8.1.2 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).

8.2 Environmental Site Assessment at the End of the Lease

8.2.1 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*).

8.3 Environmental Representation

8.3.1 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*.

8.4 Environmental Indemnity

8.4.1 Without limiting section 14.1, 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) 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.

8.5 General

8.5.1 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.

8.5.2 This article survives the ending of this lease.

9. INSPECTION & ADVERTISING

9.1 Access to Inspect

9.1.1 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.

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

9.2 Access to Advertise

9.2.1 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* and the *landholder* 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.

10. ASSIGNMENTS & SUBLEASES

10.1 General

10.1.1 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.

10.2 Assignments

10.2.1 The *tenant* may assign this lease without the consent of the *landlord*. Without limiting the foregoing, the *tenant* may, without the consent of the *landlord*, assign this lease to the *owners' corporation*.

- 10.2.2** Prior to an assignment (other than a *security interest* by way of assignment, in which case article 11 applies) the *tenant* and the proposed assignee must enter into a written agreement with the *landlord* to be responsible for the *tenant's* obligations under this lease, substantially in the form of Schedule C (with such changes thereto as are agreed to by the *landlord* and the *tenant*, each acting reasonably) or Schedule C-1 if the proposed assignee is the *owners' corporation* (with such changes thereto as are agreed to by the *landlord* and the *tenant*, each acting reasonably) and, if the lease is in default, the proposed assignee must execute a *Declaration of Trust* if the *tenant* has executed a *Declaration of Trust* and obtained the benefit of waivers pursuant to section 13.8 (and the *Trust Termination Date* has not arrived).
- 10.2.3** The *tenant* is not released from any of its covenants, duties, obligations or liabilities under this lease by an assignment unless the assignment is to an *owners' corporation* or the *landlord*, acting reasonably, agrees in writing for the *tenant* to be released. Upon an assignment of this lease to the *owners' corporation*, the *tenant* will be released from all covenants, duties, obligations and liabilities under this lease that arise after the time of such assignment and the *tenant* will remain liable only for any duties, obligations and liabilities arising or accruing prior to the time of the assignment.
- 10.2.4** The *tenant* must ensure that each assignment (other than an assignment referred to in subsection 10.2.5) is submitted to the *registry* in a form that is acceptable to the *registry*.
- 10.2.5** Any reference to an assignment includes, if the *tenant* is a private corporation, the controlling interest of the corporation changing ownership after the *start date*, other than any change of the controlling interest of the *owners' corporation*.
- 10.2.6** The *tenant* may subdivide the *land* or assign leasehold interests in portions of the *land* without the consent of the *landlord*. The *landlord* will, without payment of further rent or other consideration, sign such modifications of lease or replacement leases as are required to facilitate the *tenant* effecting any such subdivision or making any such assignment, provided that the other parties to this lease have signed the modification of lease or replacement lease prior to it being presented to the *landlord*. The *tenant* will reimburse the *landlord* for any reasonable expenses required by the *landlord* to comply with its obligations pursuant to this subsection 10.2.6.
- 10.3 Subleases**
- 10.3.1** The *tenant* may sublet the *property* without the consent of the *landlord*.
- 10.3.2** Each *sublease* (other than a *security interest* by way of sublease, in which case article 11 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 any *development plan* in respect of the *land* 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) provisos that the holders of each *sublease* will be the holder of one share in the capital of the *owners' corporation* – that when a *sublease* is issued to a *subtenant*, one share in the capital of the *owners' corporation* will be issued or transferred to the *subtenant* and that when a *subtenant* assigns a *sublease*, the *subtenant* must concurrently transfer the share in the capital of the *owners' corporation* issued or transferred in respect of the *sublease* to the assignee of the *sublease*;
- (d) a proviso that the *subtenant* will be bound by the articles of the *owners' corporation* and that any assignee of a *sublease* must agree to be bound by the articles of the *owners' corporation* as a condition to the assignment of the *sublease*;
- (e) a proviso that if the *Canada Mortgage and Housing Corporation* becomes the *subtenant* under the *sublease*, any insurance required under article 6 of this lease, which the *tenant* causes to be obtained and/or maintained by the *subtenant* under the *sublease*, will not be required to be obtained or maintained by the *Canada Mortgage and Housing Corporation*, and will be obtained and maintained by the *tenant*; and
- (f) a proviso that notwithstanding anything else in the *sublease*, if the *tenant* executes a *Declaration of Trust* and obtains a waiver of forfeiture under section 13.8 of this lease, then during the lifetime of the Trust, as defined in the *Declaration of Trust* and in accordance with sections 4.2(c) and (f) of the *Declaration of Trust*, the *tenant* will have the unrestricted rights of a sub-landlord at law upon termination of a *sublease* in default, including the right to the *subleased property*, free of all charges and mortgages of the *sublease* and free of any requirements to account to the subtenant for any amounts received in respect of any subsequent re-letting of the *subleased property*, provided that the *tenant* pays any receipts from any such re-letting in the following order of priority:
 - (i) first to the *tenant*, to the extent of any amount owing from the *subtenant* to the *tenant* pursuant to the *sublease*;
 - (ii) second, to the *tenant*, to the extent of any costs incurred by the *tenant* in connection with the re-letting;

- (iii) third, to the *owners' corporation*, to the extent that any amounts are owing by the *subtenant* to the *owners' corporation*, but only to the extent that such amounts, if they had been levied by a strata corporation under the *Strata Property Act*, SBC 1998, c. 43 for lands that are not *reserve lands* would take priority over a mortgage of the *sublease*;
- (iv) fourth, to any mortgagees of the *sublease*, to the extent of any amounts owing under any mortgages *registered* in the *registry* in respect of the *sublease*;
- (v) fifth, to the *tenant*, to the extent of any other amounts owing from the *subtenant* to the *tenant*;
- (vi) sixth, to the *owners' corporation*, to the extent of any other amounts owing from the *subtenant* to the *owners' corporation*;
- (vii) seventh, to the *tenant*, the amount of any basic rent (not including property taxes, utility charges or operating costs) that has not yet been paid and is later payable under the *sublease*; and
- (viii) thereafter, to the *subtenant* any surplus;

and notwithstanding this proviso, no *subtenant* or mortgagee of a *sublease* will be entitled to an accounting from the Minister of Indian Affairs and Northern Development (or any party acting as agent on behalf of, or otherwise responsible, including for the sake of clarity, as trustee, to the Minister), or entitled to any right respecting the conduct or process of re-letting the *subleased property*, and, for clarity, all amounts received from such subletting will be received by the *tenant* as trustee for the *landlord*.

- 10.3.3** 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*.

11. SECURITY INTERESTS

11.1 No Consent Requirement

11.1.1 The *tenant* may give a *security interest* without the consent of the *landlord*.

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

11.2 Registration

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

11.3 Rights of a Lender

11.3.1 The *landlord* will act reasonably in considering any request from the *tenant* to enter into a *Lender Agreement* in the form of Schedule D (with such changes thereto as are agreed to by the *landlord* and the *lender*, each acting reasonably) with any *lender*.

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

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

11.3.4 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*.

11.3.5 If a dispute under this lease is referred to court under article 15, 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.

11.3.6 Subject to subsection 5.7.2 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.

- 11.3.7** 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 a *Declaration of Trust* and obtained the benefit of waivers pursuant to section 13.8 (and the *Trust Termination Date* has not arrived), provided that any amounts paid to the *lender*, on account of the secured debt, by an assignee of this lease from the *lender*, is not Trust Property (as defined in the *Declaration of Trust*) if such assignee executes a *Declaration of Trust* when the assignment is made, and the *Declaration of Trust* may be revised to reflect the foregoing prior to the execution thereof by the *lender*;
 - (b) the *lender* is responsible for the *tenant's* obligations under this lease from the time of the possession of the *property* by the *lender* or its *receiver* until the *lender's* foreclosure proceedings in respect of its *security interest* are complete and the *lender* assigns or causes the assignment of this lease in accordance with section 10.2 and the terms of any *Declaration of Trust*.

11.3.8 Prior to a *lender* commencing any foreclosure proceedings under its *security interest*, any re-entry or termination or acceptance of surrender 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 60 days from the date the default notice is delivered; or
- (b) if the default is other than a failure to pay *rent* and cannot reasonably be cured within 60 days, promptly begins to cure the default and diligently pursues the curing of the default,

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 a *Declaration of Trust* and obtained the benefit of waivers pursuant to section 13.8 (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 10.2 and the terms of any *Declaration of Trust* (if the *Trust Termination Date* has not arrived). If there is more than one *lender*, then the rights under this subsection belong to the *lender* ranking highest in priority who cures the default. If any *lender* has commenced foreclosure proceedings, then this subsection does not apply and subsection 11.3.9 applies instead.

11.3.9 If a *lender* commences foreclosure proceedings under its *security interest* against the *tenant*, then the *landlord* must not re-enter the *property* or terminate 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 60 days from the date the default notice is delivered or, if the default is other than a failure to pay *rent* and cannot reasonably be cured within 60 days, promptly begins to cure the default and diligently pursues the curing of the default; and
- (d) complies with all of the *tenant's* obligations under this lease and executes a *Declaration of Trust* if the *tenant* has executed a *Declaration of Trust* and obtained the benefit of waivers pursuant to section 13.8 (and the *Trust Termination Date* has not arrived).

- 11.3.10** If a *lender* forecloses the *tenant's* interest in this lease and obtains a final order vesting title to this *lease* in the *lender*, 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 13.8 (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.
- 11.3.11** Any re-entry or termination of this lease as against the *tenant* in accordance with the terms of this lease is valid against the *tenant* even though it is made subject to the rights of the *lender* under this section.
- 11.3.12** Each *lender* is hereby granted the right of 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.
- 11.3.13** If there is more than one *lender*, then the *lender's* rights under this section are given to the *lender* ranking highest in priority who wishes to exercise the rights.

12. INSOLVENCY

12.1 Events of Insolvency

12.1.1 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.

12.1.2 An event of insolvency is a default under this lease.

13. DEFAULTS & THE END OF THIS LEASE

13.1 Defaults Affecting the Landlord

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

13.1.2 No written default notice delivered to the *tenant* under subsection 13.1.1 will be valid unless and until a copy of such notice is also delivered to each *lender*, to the *owners' corporation*, and to each mortgagee under a mortgage of *sublease* (if the mortgage of the *sublease* is registered in the *registry*) and article 16 will apply accordingly.

13.2 Termination

13.2.1 By a written termination notice given to the *tenant*, the *landlord* may end this lease early if the *tenant* defaults in any material obligation and the default –

- (a) is a failure to pay *rent* or can reasonably be cured within 60 days after the default notice is given but the default is not cured within that time; or
- (b) cannot reasonably be cured within 60 days after the default notice is given but either the *tenant* does not begin to cure the default within the 60-day period or, having begun to cure the default within the 60-day period the *tenant* does not thereafter continue to diligently pursue the curing of the default.

13.3 Curing of Defaults by the Landlord

13.3.1 If a default under section 13.1 is not cured within the time allowed by this article, then the *landlord* may cure the default (and the *landlord* will have unrestricted access to the *property* to do so) and any of the *landlord's* reasonable 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.

13.4 Issues at the End of this Lease

- 13.4.1** 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.
- 13.4.2** Whenever this lease ends, the *tenant* will be entitled to elect whether to remove all structures from the *property* or to leave all *structures* on the *property*, and subject to subsection 13.4.3, title to any *structures* constructed by or on behalf of the *tenant* and remaining on the *property* vests with the *landlord* for the use and benefit of the *landholder*, 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.
- 13.4.3** The *tenant* may remove any *structures* within the *property* at any time and from time to time in the ordinary course of business during the *term*. In removing any *structures* from the *property* during or at the end of the *term*, the *tenant* will do so in a good and workmanlike manner and in accordance with the terms of this lease and prior to the end of the *term* the *tenant* will repair all damage to the *property* caused by the removal of any *structures* and leave the rest of the *property* in a good, neat and tidy 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 all *trade fixtures*, inventory and other personal property) or the grantee of an easement or permit referred to in section 13.4.4, all to the reasonable satisfaction of the *landlord*.
- 13.4.4** Subsection 13.4.2 does not modify, limit or restrict any rights of ownership of any *structures* held by the grantee of an easement or permit granted pursuant to subsection 2.3.3 or otherwise.
- 13.4.5** This section survives after this lease ends.

13.5 Amounts Owing at the End of this Lease

- 13.5.1** 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*; and
 - (ii) any other amounts allowed by law.

13.6 Survival of Obligations and Access to the Property

13.6.1 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.

13.7 Remedies are Cumulative

13.7.1 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.

13.8 Waiver of Forfeiture – Protection of Subtenants – Incurable and Curable Defaults

13.8.1 If the *landlord* is entitled to terminate this lease and one or more *subleases* have been filed for registration in the *registry*, then this section 13.8 applies.

13.8.2 Notwithstanding any other terms of this lease, the *landlord* will not be entitled to terminate this lease in respect of any of the following defaults:

- (a) an event of insolvency (as defined in subsection 12.1.1), or
- (b) any failure by the *tenant*, or any general partner of the *tenant*, or any subsequent assignees of the lease or general partner thereof that is a company, to maintain their status as a valid and subsisting company in good standing with the provincial corporate registry.

13.8.3 Notwithstanding any other terms of this lease, the *landlord* will waive forfeiture and the *landlord* will not be entitled to terminate this lease in respect of those defaults under the lease not otherwise waived under subsection 13.8.2 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 *landlord's* receipt of a *Declaration of Trust* executed by the *tenant*, assignee (including the *owners' corporation* receiving an assignment in accordance with section 13.9 or otherwise) or a *lender* in accordance with the terms of this lease.

13.8.4 The purpose of sections 13.8.2 and 13.8.3 is to ensure that any *subtenant* not in default under its *sublease* remains in peaceable and quiet possession of the *subtenant's subleased property* in accordance with the terms of its *sublease*.

13.9 Owners' Corporation's Right to Assignment After Default Notice

13.9.1 If the *owners' corporation* receives a copy of a default notice from the *landlord* under this article 13, then at the option of the *owners' corporation*, which may be exercised

by delivery of written notice to the *tenant*, the *owners' corporation* may require the *tenant* to forthwith assign all of its rights and interests in this lease to the *owners' corporation*. Should the *owners' corporation* exercise this option, the *tenant* will execute and deliver to the *owners' corporation* an assignment of this lease in the form required by the *owners' corporation* and such other instruments as may be required or deemed desirable by the *owners' corporation* to evidence such assignment.

13.9.2 The *tenant* hereby irrevocably constitutes and appoints the *owners' corporation* with full power of substitution, as its true and lawful attorney and agent, with full power and authority in its name, place and stead to execute, file and record in the appropriate public offices, including the *registry*, an assignment of this lease for the purposes of subsection 13.9.1 and any and all documents and instruments as may be required or deemed desirable by the *owners' corporation* to evidence the assignment of this lease.

13.9.3 The *owners' corporation* will comply with section 10.2 in the case of any assignment in accordance with this section 13.9.

14. INDEMNITY

14.1 Tenant's Indemnity of the Landlord

14.1.1 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 the *landholder* and their 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*; or
- (d) the *landlord's* curing of (or attempt to cure) a default of this lease under subsection 13.3.1

but not for those losses or expenses arising in any way because of the gross negligence or wilful misconduct of the *landlord* or the *landholder* or their 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 6.9 [*Release from, and Indemnity for, Insured Liabilities*] absolves the *landlord* and *landholder* of all liability for that negligence or misconduct.

14.2 Survival

14.2.1 This article survives after this lease ends.

15. DISPUTE RESOLUTION

15.1 Disputes

15.1.1 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.

16. GENERAL PROVISIONS

16.1 Notices

16.1.1 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
Indigenous and Northern Affairs Canada
600 – 1138 Melville Street
Vancouver, British Columbia V6E 4S3

Fax: (604) 775-7149

To the tenant:

Warren Avenue Development Corp.
101 – 1531 Fairview Road
Penticton, British Columbia V2A 6P6

Attention: Doug Kenyon
Email: doug@kenyonco.com

To the *landholder*:

Anne A. Allison
c/o Bernadine Allison
615C - 6th Avenue
P.O. Box 262
Keremeos, B.C. V0X 1N0
Email: mballison32@gmail.com

To the *owners' corporation*:

101 – 1531 Fairview Road
Penticton, British Columbia V2A 6P6

Attention: Doug Kenyon
Email: doug@kenyonco.com

Any change of address for notices will take effect on delivery of notice of such change in accordance with this section 16.1.1.

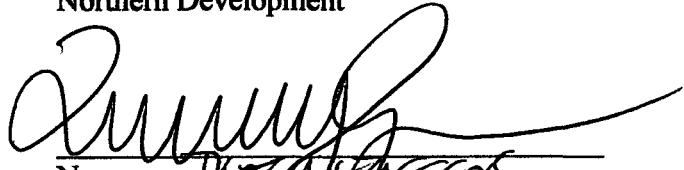
- 16.1.2** If there is a postal interruption, or threat of interruption, then deliveries must be given by means other than mail.
- 16.1.3** If the delivery date of any notice is disputed, then it is considered to be given as follows:
- (a) If sent by fax, e-mail, or other electronic means before 3:00 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 sixth business day after it is postmarked.
- 16.2 This Lease is the Entire Agreement Between the Parties**
- 16.2.1** This lease, including the schedules and appendices hereto, form the entire agreement between the parties about the subject matter of this lease. This lease supersedes and revokes all previous negotiations, arrangements, letters of intent, and offers to lease.
- 16.2.2** Any modifications of this lease must be in writing and executed by at least the parties who will be bound by the modification.


- 16.3 Net Lease**
- 16.3.1** This is a triple-net lease.
- 16.4 Tenant's Obligations and Representations**
- 16.4.1** All of the *tenant's* obligations are conditions as well as covenants.
- 16.4.2** All of the *tenant's* representations survive after this lease ends.
- 16.5 Governing Law**
- 16.5.1** This lease is governed by, and is to be interpreted in accordance with, the applicable laws of Canada and British Columbia.
- 16.6 Time is of the Essence**
- 16.6.1** Time is of the essence.
- 16.7 Ambiguity & Invalidity**
- 16.7.1** 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.
- 16.7.2** 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.
- 16.8 This Lease Benefits and Binds Successors**
- 16.8.1** This lease benefits and binds each party's heirs, executors, administrators, successors, permitted assigns, and other legal representatives.
- 16.9 Waivers**
- 16.9.1** Any waiver of an obligation must be in writing. No waiver is to be inferred from anything done or omitted to be done.
- 16.10 Not a Joint Venture**
- 16.10.1** 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.
- 16.11 Tenant Authority**
- 16.11.1** The *tenant* represents the following:
- (a) the *tenant* is a limited partnership formed under the laws of British Columbia;

- (b) the general partner of the *tenant* is a company duly incorporated under the laws of British Columbia;
- (c) the general partner of the *tenant* is in good standing with respect to the filing of annual reports with the British Columbia corporate registry;
- (d) the tenant has the capacity and authority pursuant to its documents of formation to enter into this lease and to perform all of its covenants, agreements, duties and obligations under this lease; and
- (e) The *person* signing this lease on the *tenant's* behalf has the authority to bind the *tenant* to this lease.

IN WITNESS WHEREOF the Parties have executed this Lease as of the date of execution by the Lessor.

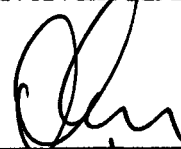
HER MAJESTY IN RIGHT OF CANADA, as represented by the Minister of Indian Affairs and Northern Development


 Name: Theresa Klassen
 Manager, Lands and Economic Development
 BC Region
 Date of Execution by Lessor: 05/01/2016




 Witness as to the *tenant's* authorized signatory

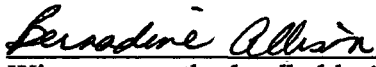
) **WARREN AVENUE DEVELOPMENT**
) **CORP.**

) Per: 
) Name: Douglas Kenyon
) Director
)

I have the authority to bind the corporation.




Witness as to the owners'
corporation's authorized signatory




Witness as to the landholder's
signature

) **WARREN AVENUE OWNERS CORP.**
)
)
)

) Per: 
) Name: Douglas Keryon
) Director
)

) I have the authority to bind the corporation.
)

) **LANDHOLDER:**
)
)

) 
) ANGELINE MARY ANNE ALLISON
) (also known as Angeline Mary Anne Kruger)
)
)

[Signature page to a lease dated as of May 1, 2016]

SCHEDULE A – DEFINITIONS

“additional rent” means any of the *landlord’s* expenses (including those paid to 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.

“Canada Mortgage and Housing Corporation” means the Canada Mortgage and Housing Corporation established under the *Canada Mortgage and Housing Corporation Act*, RSC, 1985, c. C-7.

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

“common facilities” means any roads, services, utilities, energy systems, heating systems, wastewater systems, parking areas, parks, recreational facilities, recreational buildings, amenities and other facilities and areas within the *land* that are designated or intended for the common use and benefit of all *occupants* of the *property* or for certain groups of *occupants* of the *property*.

“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 defaults under this lease not identified in subsection 13.8.2.

“damaged subleased structures” has the meaning provided in subsection 5.7.2.

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

"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.

"land" means the land described as:

In the Province of British Columbia
In Osoyoos Division of Yale District
All of Lot 111 shown on Plan 60092 CLSR recorded in the Canada Land Surveys
Records in Ottawa.

Containing about 4.043 hectares (9.99 acres)

“Land Code” means a land code pursuant to the *First Nations Land Management Act*, S.C. 1999, c. 24 that is in effect and applicable in respect of the *land*.

“landholder” means the person or persons in lawful possession of the *land* as evidenced by a certificate of possession issued pursuant to subsection 20(2) of the *Indian Act*, who, at the time of the execution and delivery of this lease, is Angeline Mary Anne Allison (also known as and identified in the parcel abstract in respect of the *land* as Angeline Mary Anne Kruger), who is a member of the Penticton Indian Band.

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

“lender” means a lender or mortgagee under a *security interest* in respect of this lease.

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

“occupant” means a person legally entitled or permitted to enter upon the *property*, including *common facilities*, or any *subleased property* pursuant to any *sublease*, whether such person is a *subtenant* a family member of a *subtenant* or an invitee of a *subtenant*.

“owners’ corporation” means Warren Avenue Owners Corp., a company incorporated under the laws of British Columbia under number BC1031712.

“permitted uses” means the uses set out in subsection 2.1.5.

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

“phase” means any particular phase of the development of the *land*, as described in an approved development plan or otherwise established by the *tenant* as a separate phase of development.

“prepaid rent” means the amount set out in section 3.2.

“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*.

“registered” means registered in the *registry* or filed for registration in the *registry* and not rejected by the *registry*.

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

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

“reserve” means Penticton Indian Reserve No. 1.

“reserve lands” means lands within a reserve, as defined in the *Indian Act*.

“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 *land*, excluding *trade fixtures*.

“substantially complete” or **“substantial completion”** in respect of:

- (a) a *unit*, means that the *unit*, or a substantial part of it, is ready for use or is being used for the purposes intended in accordance with any applicable *laws*;
- (b) a *structure* means that the *structure* or a substantial part of it is ready for use or is being used for the purposes intended in accordance with any applicable *laws*;
- (c) a *phase* means that all *units* and *structures* for *common facilities* shown in the *development plan* for that *phase*, or a substantial part of it, are ready for use or are being used or the purposes intended in accordance with any applicable *laws*;
- (d) the entire development of the *property* means that the development of the entire property, in accordance with the *development plan* for the *property*, are *substantially complete* in accordance with this definition; and
- (e) any work left to be done is capable of being done at a cost of not more than 3% of the first \$500,000, 2% of the next \$500,000 and 1% of the balance of the value of the *unit*, *structure*, *phase* or development, as applicable, at the relevant time,

and *substantial completion* may occur notwithstanding the need to complete minor adjustments, repair minor deficiencies, to complete work which by its nature is seasonal and to complete landscaping.

“sublease” means a sublease of all or part of the *property* granted in accordance with this lease.

“subleased property” means the property subleased pursuant to a *sublease*.

“subtenant” means the holder or holders of a *sublease*.

“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 150 year period from May 1, 2016 to and including April 30, 2166.

“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.

“Trust Termination Date” means the “Trust Termination Date”, as defined in the *Declaration of Trust*.

“unit” means a detached or semi-detached home or unit, the whole of which is intended for occupation by one or more individuals as a place of residence or lodging.

Schedule B: Environmental Protection Measures

Ref.	Objective/Commitment and Assurances	Project Phase/Timing	Complete
1.0	General Practices		
1.1	No machinery or equipment will be operated within the HPEA except where slope re-grading is required.	Construction	<input type="checkbox"/>
1.2	General Best Management Practices (BMPs) will be followed at all times. They are outlined in <i>Develop with Care: Environmental Guidelines for Urban and Rural Development</i> – Section 5: Regional Information Packages, Thompson Region (MWLAP 2006).	Pre-construction/ Construction	<input type="checkbox"/>
1.3	Construction-generated waste will be removed from the construction site on a regular basis and placed in an approved landfill so that it does not accumulate on-site.	Construction	<input type="checkbox"/>
1.4	Noise issues will be minimized by limiting construction times to regular work hours (7:00 AM to 5:30 PM, Monday through Friday).	Construction	<input type="checkbox"/>
1.5	All equipment on-site will be in sound mechanical condition: no equipment with fuel leaks or deteriorated hydraulic hoses shall be used. Equipment will be inspected daily and kept clean and free of oil, grease, coolant, or other contaminants. All machinery will comply with applicable B.C. and federal regulations for operations and exhaust emissions. Exhaust systems must work well enough to control noise to normal operating levels.	Construction	<input type="checkbox"/>
1.6	Any vehicles that produce visible emissions for more than 10 seconds will be sent for repairs before use.	Construction	<input type="checkbox"/>
1.7	Secondary containment will be used for vehicle fueling, washing, and maintenance areas. All re-fueling, oil changes, and lubrication will occur further than 30 m from the oxbow, and appropriate oil pans and catchment systems will be in place for all re-fueling activities. No overflow or spillage will be permitted.	Construction	<input type="checkbox"/>
1.8	Spill kits will be maintained and used on-site in the event of accidents or leaks. All petroleum storage facilities must conform to the latest provincial codes of practices for aboveground storage tank systems containing petroleum products (including fuels, oils, and lubricants). Fuel tanks must have connections that shut off automatically when the container is full. Small chemical storages on-site (e.g., 45 gallon drums) must be stored on a stable rack with a cover. Each rack must have its own spill response kit.	Construction	<input type="checkbox"/>
1.9	A spill prevention and control plan will be implemented as needed (including the steps detailed in section 4 of the CEMP). All construction personnel must be trained to use spill prevention and control equipment before active construction begins. The spill reporting procedures must also be explained to all personnel and they must all be provided with the spill response and reporting guidelines in an easy to follow, written format.	Pre-Construction	<input type="checkbox"/>
1.10	Condensation siphoned from fuel tanks must be collected in a separate tank for disposal in a licensed facility.	Construction	<input type="checkbox"/>

SCHEDULE B - ENVIRONMENTAL PROTECTION MEASURES

1.11	All vehicles accessing the site must be clean and free of weeds and any associated seeds before entering or leaving the worksite.	Pre-Construction/ Construction	<input type="checkbox"/>
1.12	A weed management plan that is designed to restore the disturbed area to a functioning ecological condition will be implemented. This plan will include a weed infestation monitoring regime that will quantify the effectiveness of the weed management plan.	Pre-Construction	<input type="checkbox"/>
1.13	Until re-vegetation and restoration activities are complete, exposed and denuded soils will be watered down to reduce the potential for fugitive dust generated from site preparation and construction. Where dust is observed to be a nuisance and cannot be controlled by water spraying or implementation of other mitigation measures, works shall cease and work practice reviewed to reduce air quality impacts. All dust, soil, or mud deposited on public roads will be removed.	Construction/ Post- construction	<input type="checkbox"/>
1.14	Excessive Coarse Woody Debris (CWD) throughout the oxbow channel will be removed, particularly at the outfall to the Okanagan River canal.	Construction	<input type="checkbox"/>
1.15	Any works below the high water mark of the oxbow must not be conducted, as defined by the change in vegetation where the banks become barren of vegetation, except where removal of the dirt dam and CWD or upgrades to the access bridge requires it. All activities below the high water mark must conform to the application under the Water Act.	Construction	<input type="checkbox"/>
1.16	A section 9 Water Act Approval is not required for the proposed work as long as the work is done in accordance with BC Regulations 204/88 – Part 7 and with the Terms and Conditions specified by the habitat officer (see documents review).	Construction	<input type="checkbox"/>
1.17	Soil stockpiles will be located away from natural flow paths, not under the canopy of any trees; they will be contained within the road right-of-way corridor. Temporary erosion and sediment control structures will be placed around stockpiles.	Construction	<input type="checkbox"/>
1.18	Filter or silt fences will be installed along the construction site boundaries to contain sediment on-site and prevent sediment from being carried in run-off toward the oxbow during site preparation and construction. Where possible, the lower edge of the fence fabric shall be buried on the upslope side of the fence. Silt fencing will be inspected daily to ensure that no areas have been compromised. Where erosion control structures need maintenance or repair, these works must be undertaken as soon as practicable. Silt fencing, if installed correctly, will also double as turtle-exclusion fencing.	Pre-construction/ Construction	<input type="checkbox"/>
1.19	A barrier (i.e., silt fencing, snow fencing and/or high visibility ribbon) will be installed along the perimeter of the HPEA to prevent accidental encroachment or disturbance by on-site machinery.	Pre-construction/ Construction	<input type="checkbox"/>
1.20	Directional drill boreholes for site utilities will be located 30 m from the oxbow and drilling will be aligned so as to not damage riparian trees or their root systems. Boreholes will be lined with fabric that will prevent the leeching of drilling waste into the groundwater.	Pre-construction/ Construction	<input type="checkbox"/>

1.21	All in-stream work (i.e. bridge repairs or replacement, removal of dirt) will be completed during the reduced risk timing window for Okanagan River (Ellis Creek to Skaha Lake), which is November 15 to April 1 and July 22 to August 31.	Construction	<input type="checkbox"/>
1.22	The Qualified Environmental Professional (QEP) will be present on-site daily when the site preparation and preliminary groundwork is proceeding within 30 m of the oxbow.	Pre-construction/ Construction	<input type="checkbox"/>
1.23	The QEP will prepare daily diaries containing photographs and chronologically sorted notes of each day of environmental monitoring. The QEP will submit monthly updates to the INAC Senior Environmental Specialist.	Construction	<input type="checkbox"/>
1.24	The QEP will have the authority to halt or modify construction activities if some aspect of the work is creating or will result in environmental damage. The QEP will document all such instances and measures taken to address the environmental emergency.	Pre-construction/ Construction	<input type="checkbox"/>
1.25	Once the northern portion of the HPEA is completed, the area will be protected from site construction using exclusion fencing. The fence is intended to prevent reptiles, amphibians, and turtles from entering the development area, as well as to prevent human and their pets from accessing the HPEA. The permanent fence will include one-way tunnels to allow small animals to leave the development area and access the oxbow.	Construction/ Post- construction	<input type="checkbox"/>
1.26	Interpretive signage along the gravel pedestrian trail will be installed to increase residents' awareness of the uniqueness of the area.	Post-construction	<input type="checkbox"/>
1.27	Permeable construction material (e.g., gravel) will be used to construct a walkway outside of the perimeter of the HPEA.	Construction	<input type="checkbox"/>
1.28	Upon project completion, the site will be cleaned up of all construction waste and debris. All areas disturbed during construction will be cleared of construction waste, re-contoured, and re-vegetated as per the planting plan. The Proponent will submit a final completion report detailing the final site condition to the INAC Senior Environmental Specialist for review.	Post-Construction	<input type="checkbox"/>
2.0 - Vegetation			
2.1	The QEP will flag mature or decaying trees and shrubs in the HPEA and establish buffers using silt fence or other highly visible material to prevent damage to their root systems. This is necessary because these plants provide habitat for western screech owls and Lewis's woodpecker.	Pre-Construction/ Construction	<input type="checkbox"/>
2.2	Any areas of disturbed soils will be promptly re-seeded to prevent erosion, restore wildlife habitat (by emphasizing native seed mixtures), and to control invasive weeds.	Construction/ Post- construction	<input type="checkbox"/>
2.2	No upland vegetation (i.e., shrubs, trees, or forbs in the Development area) will be cleared within the migratory breeding bird window. All vegetation clearing must be completed between August 15 and March 30 to avoid the most sensitive seasons for migratory and breeding birds. If this is not possible, a QEP must conduct detailed nest surveys within the Project area immediately prior to clearing.	Pre-construction/ Construction	<input type="checkbox"/>
2.3	HPEA planting will conform to the plan detailed in Section 3.4 of the CEMP (Associated,	Construction/ Post-	<input type="checkbox"/>

	February 2016).	construction	
2.4	Roses (<i>Rosa nootkana</i> or <i>R. acicularis</i>) that are under the project footprint will be transplanted into the yellow-breasted chat HPEA. These shrubs are currently conditioned to the site conditions and are candidates for successful transplanting. It may be necessary to procure rose bushes in addition to the ones that will be transplanted.	Pre-construction	<input type="checkbox"/>
2.5	The oxbow slopes will be re-graded to a slope of at least 1:2 and thick top-soil will be applied to provide a suitable medium for increased slope stability and planting. The slopes will be re-graded using an excavator and the work will be conducted above the high water mark. The slopes will be grass-seeded immediately to prevent any short term erosion associated with high precipitation. Damaging native vegetation and wildlife features must be avoided wherever possible; all mature riparian vegetation will be flagged prior to restoration. It is especially important to avoid the area where the Great Basin gopher snakes have been reported using a hole in the ground near the southeastern portion of the property.	Pre-construction/ Construction	<input type="checkbox"/>
2.6	Where possible, landscaping and upland re-vegetation should include: <ol style="list-style-type: none"> 1. Bluebunch wheatgrass (<i>Pseudoroegneria spicata</i>) plugs instead of agronomic grasses and lawns; 2. Ponderosa pine (<i>Pinus ponderosa</i>) saplings; 3. Saskatoon (<i>Amelanchier alnifolia</i>) shrubs; 4. Big sagebrush (<i>Artemisia tridentata</i>) shrubs. 	Post-construction/ Construction	<input type="checkbox"/>
2.8	Topsoil will be placed in discrete pockets around the base of each planting to increase soil fertility for each planting. Install silt fencing downslope of areas where topsoil has been placed to prevent sediment transport to the oxbow.	Pre-construction/ Construction	<input type="checkbox"/>
2.9	The QEP will monitor restoration and document the numbers of individual plants planted.	Post-construction	<input type="checkbox"/>
2.10	The QEP will mark on-site the newly planted vegetation in order to properly monitor growth and survival in subsequent years.	Post-construction	<input type="checkbox"/>
2.11	Using photographs, the QEP will document the growth and survivorship of the plantings within each area and the immigration of wildlife into the restored area.	Post-construction	<input type="checkbox"/>
2.12	An assessment of surviving plants will be conducted after the first growing season to determine the survival ratio of dead plants being replaced the following spring. Any plantings that do not survive the first three years will be replaced to achieve a survival rate of 80%.	Post-construction	<input type="checkbox"/>
2.13	Residents will be educated on the importance of riparian vegetation and the HPEA along the oxbow and will be prohibited from planting non-native vegetation in the area.	Post-construction	<input type="checkbox"/>
2.14	Residents will not use fertilizers, pesticides, or herbicides on lawns or gardens located near the oxbow.	Post-construction	<input type="checkbox"/>
3.0	Wildlife		

3.1	Sensitive timing for migratory birds will be avoided by completing land-clearing activities outside of the active migratory season (March 15 to August 15) and the breeding season (April 1 to July 31)	Construction	<input type="checkbox"/>
3.2	If construction is likely to occur during critical wildlife activity windows such as the migratory bird window or turtle nesting window, a QEP will conduct a pre-construction survey no more than 5 days immediately prior to commencement of construction.	Pre-construction/ Construction	<input type="checkbox"/>
3.3	A surrogate raptor nest has been constructed on the platform at the south end of the property near the access bridge. If the surrogate nest or any other nest is occupied by a raptor at the time of construction, a QEP will assess the degree of effect on raptors during construction. Active raptor nests will receive a no-disturbance buffer for the life of the Project.	Pre-construction/ Construction	<input type="checkbox"/>
3.4	Potential impacts to painted turtles will be minimized by following the Best Management Practices (BMPs) outlined in Best Management Practices for Amphibians and Reptiles in Urban and Rural Developments.	Pre-construction/ Construction	<input type="checkbox"/>
3.5	A QEP will identify constructed turtle nesting habitat and the location where gopher snakes were identified and either flag or isolate with snow fencing prior to construction. Turtles may occupy nests year round, so a QEP assessment of habitat potential and habitat use will be essential to prevent effects on western painted turtles. If clearing of these potential habitat features must occur, then work must be scheduled between September 1 and March 30 to avoid peak nesting period for the turtles.	Pre-construction/ Construction	<input type="checkbox"/>
3.6	The Painted Turtle Monitoring Plan will be implemented to determine how and when painted turtles use the site. Temporary fencing will be installed at the top of the bank of the oxbow to discourage turtles from entering the area: this will discourage future nesting. The construction area will be inspected thoroughly for turtles prior to starting work each morning. The QEP will be contacted if turtles or nests are encountered.	Pre-construction/ Construction	<input type="checkbox"/>
3.7	Prior to site preparation, about 1,000 m ² of the north section of the HPEA will be dedicated to western painted turtle habitat enhancement. Sand will be imported to the site and several benches will be created about 1 m set-back from the top of the bank so that loose material will not migrate into the oxbow channel. The benches will be constructed around existing riparian vegetation, will be a minimum of 0.5 m high, and will have a southern aspect. The configuration of the sand benches will be determined in the field and supervised by a QEP.	Pre-construction	<input type="checkbox"/>
3.8	The natural hydrology of the oxbow will be re-established so that this habitat continues to provide suitable conditions for turtles. The current dirt dam within the oxbow channel will be removed to allow for flow and improved water quality conditions. The work area will be	Pre-construction	<input type="checkbox"/>

	Isolated from the rest of the channel and will be completed during the reduced risk timing window for Okanagan River (Ellis Creek to Skaha Lake) which is November 15 to April 1 and July 22 to August 31.		
3.9	To protect fish and fish habitat: work will be completed during periods of low water or in isolation of flow, and during time of least risk to fish species in the creek; the work area will be isolated, and work will be conducted in the dry; the site will be properly isolated using isolation dams, fish screen, and/or silt fence; and water will be routed around the construction site to maintain downstream flows.	Construction	<input type="checkbox"/>
3.10	Corridors of no-disturbance will be maintained between the oxbow habitat and the upland nesting and foraging habitat through exclusion fencing, public awareness signs, and rehabilitated riparian areas.	Pre-construction/ Construction/ Post- construction	<input type="checkbox"/>
3.11	Nest boxes will be placed within in the HPEA to enhance habitat for wood ducks, western screech owls, and Lewis's woodpecker.	Pre-construction/ Construction	<input type="checkbox"/>
3.12	An "all paws/feet on trails" policy will be implemented, particularly during the sensitive migratory window.	Construction/ Post- Construction	<input type="checkbox"/>
4.0 - Archaeology			
4.1	No archaeological sites were identified within the Project area. In addition, the PIB has not indicated that there are sensitive sites within the Project area, likely due to the past disturbances. However, a qualified archaeologist must be on-site during the initial trenching for infrastructure or proposed geological test pits excavated on the property. If any artifacts are discovered during excavation, the PIB must be notified immediately (Archaeological Impact Assessment, 2012).	Pre-construction/ Construction	<input type="checkbox"/>
4.2	The Heritage Contingency Plan will be adhered to during all earthworks.	Construction	<input type="checkbox"/>
4.3	The QEP will have authority to stop all activities if any artifacts are found.	Construction	<input type="checkbox"/>

SCHEDULE C – ASSIGNMENT AGREEMENT

THIS AGREEMENT is effective as of <MONTH, DAY, YEAR>,

AMONG:

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

(the “*landlord*”)

AND:

WARREN AVENUE DEVELOPMENT CORP., a corporation incorporated under the Business Corporations Act (Incorporation Number BC1057713) having an office at 1300 – 777 Dunsmuir Street, P.O. Box 10424, Pacific Centre, Vancouver, BC V7Y 1K2

(the “*tenant*”)

AND:

<ASSIGNEE>

(the “*assignee*”)

BACKGROUND:

- A. The *landlord* leased certain lands in the Penticton Indian Reserve No. 1 to the *tenant* pursuant to a lease dated as of May 1, 2016 (the “Lease”) and registered in the *registry* under No. _____; and
- B. The *tenant* wishes to assign its rights and interest in the Lease to the *assignee* by entering into the assignment agreement, which is attached as Appendix “A” to this agreement.

NOW THEREFORE, in consideration of the obligations, covenants, and agreements in this agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. THE ASSIGNMENT

1.1 Landlord’s Acknowledgement

- 1.1.1 The *landlord* acknowledges, on the terms of this agreement, the assignment of the Lease from the *tenant* to the *assignee*. This acknowledgement will not be deemed to:

- (a) waive compliance by the *tenant* or the *assignee* of any terms in the Lease;
- (b) waive or restrict any of the rights and remedies of the *landlord* under the Lease;

- (c) approve of the form or any of the terms of the assignment agreement; or
- (d) ensure that the assignment agreement can be registered in the *registry* or the provincial land title office.

1.2 Landlord's Representations

- 1.2.1 The *landlord* represents and warrants that, to the best of the *landlord's* knowledge but with no investigation on the part of the *landlord*, the Lease is in good standing as of the date of this agreement or, if the Lease is not in good standing, the *tenant* has executed a *Declaration of Trust* and obtained the benefit of the waivers pursuant to subsection 13.8.3 of the Lease (and the *Trust Termination Date* has not arrived).
- 1.2.2 Despite anything else contained in this agreement, the *landlord* makes no representations or warranties with respect to the state of title to the *property* or matters contained within the *registry*.

1.3 Assignee to Observe Terms of Lease

- 1.3.1 The *assignee* covenants with the *landlord* to be bound by all of the *tenant's* covenants in the Lease and the *assignee* hereby attorns to the *landlord* as tenant under the Lease.

1.4 "As is – Where is" Property

- 1.4.1 The *assignee* confirms to the *landlord* that the *assignee* has inspected the *property* and accepts the *property* from the *landlord* on an "as-is where-is" basis. Such confirmation does not modify, limit or restrict any covenant, representation or warranty made by the *tenant* in favour of the *assignee* in connection with the *property* or the assignment of the Lease to the *assignee*.
- 1.4.2 The *assignee* acknowledges and agrees that none of the *landlord*, the *landlord's* officials, employees, servants, agents, contractors, or subcontractors, the *landholder*, the *First Nation*, the *Council*, or any member of the *First Nation* has made any representations or warranties with respect to:
 - (a) the terms of the Lease;
 - (b) the suitability of the *property* for any particular use;
 - (c) the condition of the *property*;
 - (d) compliance of the *property* with any *laws*; or
 - (e) the presence or absence of *contaminants* within the *property*,and the *assignee* confirms that the *assignee* has not relied on any such *person* in this regard.

1.5 Assignee's Representations

1.5.1 The *assignee* represents and warrants to the *landlord* that the person or persons signing this agreement on the *assignee's* behalf have the authority to bind the *assignee* to this agreement.

1.5.2 The *assignee* makes the same representations and warranties (with any necessary changes in points of detail) to the *landlord* that the *tenant* made in the Lease.

2. GENERAL

2.1 No Merger

2.1.1 The Lease will survive the execution of this agreement and not merge in this agreement.

2.2 Definitions

2.2.1 Any italicized terms not defined in this agreement but defined in the Lease have the same meanings that are given to them in the Lease.

2.3 Headings

2.3.1 All headings are for convenience and reference only. They are not to be used to define, limit, enlarge, modify, or explain the scope or meaning of any provision.

2.4 Binding on Successors

2.4.1 This agreement will enure to the benefit of and be binding upon the parties and their respective heirs, administrators, successors, representatives, and assigns.

IN WITNESS WHEREOF the parties have executed this agreement as of the date first written on page 1.

) **HER MAJESTY IN RIGHT OF CANADA**, as
) represented by the Minister of Indian Affairs and
) Northern Development
)
)
)
)
)
)
)
) _____
) <TITLE>
) <DIRECTORATE>
) BC Region

[illegible]

Per: _____
Authorized Signatory

I have the authority to bind the corporation.

)
)
)
)
)
)
)
)
)
)
)

(signature)

(name of person signing)

(title)

I have the authority to bind the corporation.

SCHEDULE C-1 – OWNERS' CORPORATION ASSIGNMENT AGREEMENT

THIS AGREEMENT is effective as of <MONTH, DAY, YEAR>,

AMONG:

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

(the "*landlord*")

AND:

WARREN AVENUE DEVELOPMENT CORP., a corporation incorporated under the Business Corporations Act (Incorporation Number BC1057713) having an office at 1300 – 777 Dunsmuir Street, P.O. Box 10424, Pacific Centre, Vancouver, BC V7Y 1K2

(the "*tenant*")

AND:

WARREN AVENUE OWNERS CORP.

(the "*assignee*")

BACKGROUND:

- C. The *landlord* leased certain lands in the Penticton Indian Reserve No. 1 to the *tenant* pursuant to a lease dated as of May 1, 2016 (the "*Lease*") and registered in the *registry* under No. _____; and
- D. The *tenant* wishes to assign its rights and interest in the Lease to the *assignee* by entering into the assignment agreement, which is attached as Appendix "A" to this agreement.

NOW THEREFORE, in consideration of the obligations, covenants, and agreements in this agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

3. THE ASSIGNMENT

3.1 Landlord's Acknowledgement

- 3.1.1 The *landlord* acknowledges, on the terms of this agreement, the assignment of the Lease from the *tenant* to the *assignee*. This acknowledgement will not be deemed to:
 - (a) waive compliance by the *tenant* or the *assignee* of any terms in the Lease;
 - (b) waive or restrict any of the rights and remedies of the *landlord* under the Lease;

- (c) approve of the form or any of the terms of the assignment agreement; or
- (d) ensure that the assignment agreement can be registered in the *registry* or the provincial land title office.

3.2 Landlord's Representations

- 3.2.1 Despite anything else contained in this agreement, the *landlord* makes no representations or warranties with respect to the state of title to the *property* or matters contained within the *registry*.

3.3 Assignee to Observe Terms of Lease

- 3.3.1 The *assignee* covenants with the *landlord* to be bound by all of the *tenant's* covenants in the Lease and the *assignee* hereby attorns to the *landlord* as tenant under the Lease.

3.4 "As is – Where is" Property

- 3.4.1 The *assignee* confirms to the *landlord* that the *assignee* has inspected the *property* and accepts the *property* from the *landlord* on an "as-is where-is" basis. Such confirmation does not modify, limit or restrict any covenant, representation or warranty made by the *tenant* in favour of the *assignee* in connection with the *property* or the assignment of the Lease to the *assignee*.

- 3.4.2 The *assignee* acknowledges and agrees that none of the *landlord*, the *landlord's* officials, employees, servants, agents, contractors, or subcontractors, *the landholder* the *First Nation*, the *Council*, or any member of the *First Nation* has made any representations or warranties with respect to:

- (a) the terms of the Lease;
- (b) the suitability of the *property* for any particular use;
- (c) the condition of the *property*;
- (d) compliance of the *property* with any *laws*; or
- (e) the presence or absence of *contaminants* within the *property*,

and the *assignee* confirms that the *assignee* has not relied on any such *person* in this regard.

3.5 Assignee's Representations

- 3.5.1 The *assignee* represents and warrants to the *landlord* that the person or persons signing this agreement on the *assignee's* behalf have the authority to bind the *assignee* to this agreement.
- 3.5.2 The *assignee* makes the same representations and warranties (with any necessary changes in points of detail) to the *landlord* that the *tenant* made in the Lease.

_____) I have the authority to bind the corporation.

SCHEDULE D – 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>, [if applicable: 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 May 1, 2016 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 the *lender* to the *landlord* and the *tenant* and other good and valuable consideration, the receipt and sufficiency of which are hereby 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.
2. The *landlord* hereby acknowledges receipt of a copy of 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 as follows [nil if not completed]:

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*, other than as follows [nil if not completed]:

-
5. The *lender* has all of the rights and obligations of a “lender” under the *lease* as though section 11.3 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 13.8 of the *lease* (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 and notices to the *landlord* or the *tenant* may be made in accordance with the notice provisions set out in the *lease*.
 10. Deliveries and notices to the *lender* may be made to the following address or fax:

 <LENDER’S NAME>
 <LENDER’S ADDRESS>

 Fax: (###) ###-####
 11. Any change in address or fax will take effect 10 days after the *lender* gives the *landlord* written notice of it.
 12. 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.

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

<NAME>

Manager, Lands and Economic Development
BC Region

) <TENANT>
)
)
)

) By: _____
)

Witness as to the *tenant's* authorized
signatory

) Name:
)

) Title:
)

) I have the authority to bind the corporation.
)

) <LENDER>
)
)
)

) _____
)

As to the *lender's* authorized
signatory

) Name:
)

) Title:
)

) I have the authority to bind the corporation
)

[Signature page to a lender agreement dated <MONTH DAY, YEAR>]

SCHEDULE E – COUNCIL RESOLUTION



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	December 2, 2014		
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: Angeline (aka Anne) Allison is the Certificate of Possession holder for Lot 111 Plan 60092 C.L.S.R.;

WHEREAS: Gablecraft Homes requests support for a lease on Lot 111, Plan 60092 pursuant to subsection 58(3) of the *Indian Act* for 150 years;

WHEREAS: The proposed use of the property shall be for mixed use, that is, residential, commercial and mobile home park.

THEREFORE BE IT RESOLVED THAT:

The Penticton Indian Band Council, HEREBY SUPPORTS, the proposed 150 year subsection 58(3) lease pursuant to the *Indian Act* on Lot 111 Plan 60092 C.L.S.R., Penticton Indian Reserve No. 1 by Gablecraft Homes for mixed uses (residential, commercial, mobile home park and light industrial);

FURTHER BE IT RESOLVED THAT:

The proposed lease does not conflict with any of the existing Penticton Indian Band Bylaws;

FURTHER BE IT RESOLVED THAT:

The support of this lease is conditional upon receipt and compliance with the schedules, particularly the environmental conditions; and

FINALLY BE IT RESOLVED THAT:

The compensation shall be at fair market value/highest and best use for the 150 year term.


(Councillor Inez Pierre)


(Chief Jonathan Kruger)


(Councillor Clinton George)


(Councillor Clint Gabriel)


(Councillor Dolly Kruger)


(Councillor Travis Kruger)


(Councillor Joseph Pierre)


(Councillor Timothy Lezard)


(Councillor Kevin Gabriel)

SCHEDULE F – DECLARATION OF TRUST

DECLARATION OF TRUST

THIS DECLARATION OF TRUST is made and effective as of the ____ day of ____, ____, by _____ [tenant, tenant's assignee or lender, as applicable, in accordance with the Head Lease] (the "Trustee").

W H E R E A S:

- A. On _____, the [tenant] 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 Trustee wishes to have the advantage of a waiver of forfeiture provided in the Head Lease on condition the Trustee executes this Declaration of Trust.

NOW THIS TRUST DECLARATION WITNESSES as follows:

1. INTERPRETATION

- 1.1 **Definitions:** In this Trust Declaration, including the above Recitals, 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 Exhibit "A" to this Trust Declaration;
- (c) **"Curable Defaults"** has the meaning given to that term 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 [tenant], on [date].
- (f) **"Leased Lands"** means the property leased to [tenant] pursuant to the Head Lease, as described in Recital A above;
- (g) **"Trust"** means the trust created by this Trust Declaration;
- (h) **"Trust Property"** means the entire interest of the Trustee in the Leased Lands, including the reversion following subletting, and all property substituted

therefore, including all income, rent, fees, charges, assessments, and proceeds of any kind from the subletting of the Leased Lands;

- (i) **“Trust 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;
- (j) **“Trustee”** means the [*tenant, tenant’s assignee or lender*, as applicable, in accordance with the Head Lease].

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 and this Trust Declaration will be terminated.

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 31st 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 subtenants 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 the Trustee;

- (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;
- (d) do all commercially reasonable (that is, commercially reasonable solely from the perspective and interests of the Beneficiary) acts and things 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 the Beneficiary a new trust declaration in the form hereof by executing and delivering a Consent to act as Trustee in the form attached as Exhibit "A" 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 not less than 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
Indigenous and Northern Affairs 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.

EXECUTED in the presence of:

As to the Authorized Signatory of the
Trustee

) SIGNED by the **TRUSTEE** by its duly
) authorized signatory:

)

)

)

)

) _____
[NAME]

)

)

)

)

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

)

)

EXHIBIT "A"
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:

EXECUTED in the presence of:

As to the Authorized Signatory of the Trustee

) SIGNED by the **TRUSTEE** by its duly
) authorized signatory:

)

)

)

)

) _____
) [NAME]

)

)

)

)

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

)

)

APPENDIX "A"

LANDHOLDER CONSENT

I, Angeline Mary Anne Allison (also known as Angeline Mary Anne Kruger), member of the Penticton Indian Band, **HEREBY ACKNOWLEDGE AND DECLARE** (and understand that the Her Majesty in right of Canada ("Canada") is specifically relying on this acknowledgement and declaration) the following:

1. I am in lawful possession of the *land*, as defined in the lease to be entered into between Canada and Warren Avenue Development Corp. (the "**Tenant**") to be dated as of May 1, 2016, to which I will also be a party (the "**Lease**"), and to which this Landholder Consent is to be attached as an appendix.
2. I applied for the Lease to be granted for a term of 150 years by completing an Application dated December 17, 2015. I acknowledge that my Application contains my release of certain claims against Canada which are related to the granting of the Lease and my agreement to indemnify Canada for certain claims brought against Canada which are related to the granting of the Lease. I am advised by Indigenous and Northern Affairs Canada that a copy of my Application is located in Canada's file number VAN-E 5643-07397-111 UNC;
3. I read and understood all the terms and conditions of the Lease;
4. I was advised by Indigenous and Northern Affairs Canada to respectively seek independent legal and independent financial advice before signing this Landholder Consent;
5. I declare that I have obtained independent legal advice from my own solicitor, Krista Robertson, of Victoria, British Columbia, prior to signing this consent as certified by the Certificate of Independent Legal Advice attached as Exhibit "A" hereto;
6. I have not relied on the legal or financial advice of anyone except my own legal and financial advisors; and
7. Under the Lease, the Tenant will pay Canada the prepaid rent for the entire 150 year term of the Lease, which money Canada will deposit to my account.

I REQUEST that Canada enter into the Lease with the Tenant.

DATED this 2nd day of May, 2016.

Bernadine Allison
Witness

Angeline Mary Anne Allison
Landholder

EXHIBIT "A"

CERTIFICATE OF INDEPENDENT LEGAL ADVICE

I, Krista Robertson, on behalf of Janes Freedman Kyle Law Corporation, Barristers & Solicitors (the "Firm"), of 816 – 1175 Douglas Street, Victoria, British Columbia, V8W 2E1, certify that:

1. I am a member in good standing of the Law Society of British Columbia, qualified to practice law in British Columbia;
2. The Firm was retained by Angeline Mary Anne Allison, also known as Angeline Mary Anne Kruger (the "Client") to act as independent legal counsel to the Client and to advise as to:
 - (a) the legal nature and effect on the Client of the Lease agreement, including its Appendix "A" Landholder Consent to which this certificate is an Exhibit (the "Lease") and the Application referred to in paragraph #2 of the Landholder Consent;
 - (b) the rights that the Client would give up by executing the Lease, Landholder Consent and the Application referred to in paragraph #2 of the Landholder Consent; and
 - (c) the obligations that the Client would incur by executing the Lease (collectively the "Legal Advice");
3. I believe that the Client understood the Legal Advice; and
4. It appeared that the Client executed the Landholder Consent without any fear, threats, coercion, or undue influence of, or from, any person.

Signed at Penticton (name of city, town, village, etc.), British Columbia,
on May 2, 2016 (date).

Signed in the presence of:

Bernadine Allison
(signature of witness)

Bernadine Allison
(name of witness)

615C-6th Ave, Keremeas, BC
(address) V6X-1N0

)
)
)
)
)
)
)
)
)
)
)

(signature)
(Krista Robertson)