

**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.aadnc-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) 282-1376.

**Send Two Copies to:**

**Aboriginal Affairs and Northern Development Canada  
 Indian Lands Registry  
 Terrasses de la Chaudiere  
 Ottawa, Ontario K1A 0H4  
 Attention: Registrar of Indian Lands**

<u>Registration Number</u> 5024089	<u>Received Date</u> 2019/01/11	<u>Regional File Number</u> 2019-0036
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<b>NAME OF PARTIES TO INSTRUMENT</b>	
<u>Name</u> Stanley Francis Jack, as to an undivided 1/2 interest patrick Eugene Paul, as to an undivided 1/2 interest	<b>Grantor</b>
<u>Name</u> Royal Heights Properties Inc. (Inc. No. 551343)	<b>Grantee</b>

Instrument Type	Modification of Lease 070
Instrument Date	2019/01/08
FN/SG Land Code	106.1
Purpose	
Remarks	Lease No. 223290

<b>LAND DESCRIPTION</b>	
Province :	BRITISH COLUMBIA
Reserve Name	07421 - TSINSTIKEPTUM 10
Legal Description - Land Affected	LOT 330 Canada Lands Surveys Record 75750

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

Applicant Email : \_\_\_\_\_ Band Email : Lands@wfn.ca

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

<b>Return To :</b>
Lynn Vanderburg Suite 301 515 Highway 97S Kelowna, BRITISH COLUMBIA V4T 1M5

Registration Number \_\_\_\_\_  
 Registration Date: \_\_\_\_\_ and Time: \_\_\_\_\_  
 \_\_\_\_\_  
 Signature of Registration Officer                      Date

Comments \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Clarification \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 Signature of Registration Officer                      Date



WESTBANK FIRST NATION

Westbank Lands Register
Form No. WFN-02

APPROVED AS TO THE FORM BY THE DIRECTOR OF LANDS PURSUANT TO THE WESTBANK FIRST NATION LAND RULES

Signature: [Handwritten Signature]
Date: January 10, 2019

GENERAL INSTRUMENT - PART 1

(This area for Westbank Lands Office use)

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

Porrelli Law
221 3011 Louie Drive, Westbank, BC V4T 3E3
Phone (250) 768-0717
File #Royal Heights

Signature of Applicant, Applicant's Solicitor or Agent

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

PIN LEGAL DESCRIPTION
902005940 Lot 330 Plan CLSR 75750, Tsinstikeptum No. 10

Table with 3 columns: NATURE OF INTEREST: DESCRIPTION, DOCUMENT REFERENCE (page and paragraph), PERSON ENTITLED TO INTEREST. Row 1: Modification of Lease 223290, Entire Instrument, Transferee

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

- [ ] Lease [ ] Agreement for Sale [ ] Licence
[ ] Sublease [ ] Assignment of Mortgage [ ] Easement
[ ] Assignment of Lease [ ] Discharge of Mortgage [ ] Release
[ ] Assignment of Sublease [ ] Permit [X] Other Modification of Lease

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

5. TRANSFEROR(S): including occupation(s), postal address(es) and postal code(s)

STANLEY FRANCIS JACK, Businessman, of 1595 Bear Creek Rd, Westbank, BC V1Z 3X5 as to an undivided 1/2 interest, and PATRICK PAUL, Businessman, of 3545 Elk Rd, Westbank, BC V4T 2H5 as to an undivided 1/2 interest

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

ROYAL HEIGHTS PROPERTIES INC. (Inc. No. 551343) #33 - 1525 Bear Creek Road, Kelowna, BC V1Z 3R6

7. ADDITIONAL OR MODIFIED TERMS: NIL

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

Officer Signature(s)

EXECUTION DATE

Party(ies) Signature(s)

NADINE CASEY FRENCH
Barrister & Solicitor
208, 3011 Louie Drive
Westbank, BC V4T 3E3

As to the signature(s)

Table with 3 columns: Y, M, D. Row 1: 19, 01, 08

Stanley Francis Jack

Patrick Paul

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996 c 124, to take affidavits for use in British Columbia.



WESTBANK FIRST NATION

Westbank Lands Register  
Form No. WFN-05

**EXECUTIONS CONTINUED**

Officer Signature(s)

BARRY M. PORRELLI  
Barrister & Solicitor  
#221 - 3011 LOUIE DRIVE  
WESTBANK, BC V4T 3E3

As to the signature(s)

EXECUTION DATE

Y	M	D
19	01	08

Party(ies) Signature(s)

ROYAL HEIGHTS PROPERTIES INC.  
by its authorized signatory(ies):

Name:

DAW ZARETSKI

Name:

**OFFICER CERTIFICATION:**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act, R.S.B.C. 1996 c 124*, to take affidavits for use in British Columbia.



**WESTBANK FIRST NATION**  
Westbank Lands Register  
Form No. WFN-06

**SCHEDULE**

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

TERMS OF INSTRUMENT – PART 2

MODIFICATION OF LEASE (Amended and Restated)

BETWEEN:

**STANLEY FRANCIS JACK and  
PATRICK EUGENE PAUL**

each as to an undivided ½ interest

(herein collectively referred to as the "Lessor")

AND:

**ROYAL HEIGHTS PROPERTIES INC. (Inc. #551343)**

a British Columbia company having a registered and records office located at  
#33-1525 Bear Creek Road  
Kelowna, BC V1Z 3R6

(the "Lessee")

BACKGROUND:

- A. Her Majesty the Queen in Right of Canada as represented by the Minister of Indian Affairs and Northern Development ("**Her Majesty**") granted a Lease made July 1, 1994 to 471496 B.C. Ltd., a company duly incorporated under the laws of the Province of British Columbia for a term of 99 years commencing July 1, 1994 respecting lands situate on the Tsinstikeptum Indian Reserve No. 10 (the "**Reserve**"), in the Province of British Columbia, more particularly described as:

Lot 330 in the Tsinstikeptum Indian Reserve No. 10, Province of British Columbia as shown on CLSR Plan 75750

(the "**Lands**")

which Lease was registered at the Indian Land Registry at Ottawa on the 25<sup>th</sup> day of July, 1994 under No. 223290 (the "**Lease**").

- B. The Lease was assigned to the Lessee pursuant to an Assignment of Lease dated January 6, 1999 and registered in the Westbank Land Register of the First Nations Self-Government Lands Registry on March 6, 2000 under Number 278956.
- C. As a result of the provisions of the Westbank First Nation Self-Government Agreement entered into by Westbank and Her Majesty on the 3<sup>rd</sup> day of October, 2003, the *Westbank First Nation Self-Government Act*, S.C. 2004, c.17, which came into force on the 1<sup>st</sup> day of April, 2005, Westbank has assumed all land management powers of Her Majesty respecting the Reserve, including acting in the stead of Her Majesty and the Minister in relation to all matters concerning the Lands and the Lease.
- D. By Assignment of Lease the Westbank First Nation assigned the lessor's interest in the Lease to the Lessor herein. The Lessor holds the Certificate of Possession with respect to the Lands.
- E. The Lessor and the Lessee wish to amend and restate the Lease as set out below:

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



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

## 1. DEFINITIONS

- (a) **"Applicable Laws"** means, in respect of the Lands, the Land Rules and any other applicable law, statute, by-law, ordinance, regulation or lawful requirement of the federal, provincial or municipal government or authority, the First Nation or First Nation Council or any public utility lawfully acting under statutory power.
- (b) **"Approved Mortgagees"** means all mortgagees of the leasehold interest herein granted or granted by a Sublessee of the Lessee and whose mortgages have been registered in the Registry and includes Canada Mortgage and Housing Corporation.
- (c) **"Bank of Canada Review"** means the publication so titled that is published by the Bank of Canada on a monthly basis or any similar publication that is published by the Bank of Canada on at least a monthly basis as a replacement for the Bank of Canada Review and in which the per annum interest rate that is charged by Canadian chartered banks to their most creditworthy commercial borrowers from time to time are published.
- (d) **"Environment"** means the air, land, water and all other external conditions or influences under which humans, animals and plants live or are developed.
- (e) **"First Nation"** means the Westbank First Nation or any successor to the First Nation pursuant to a federal statute.
- (f) **"First Nation Council"** means the governing body of the First Nation, elected under the Constitution or otherwise in accordance with Applicable Laws.
- (g) **"Hazardous Substances"** means:
  - (i) explosives;
  - (ii) inflammable oils and materials; and
  - (iii) any substance which when discharged into the Environment is or is likely to injure, damage, or endanger land, water, property, animal or plant life or human health or safety.
- (h) **"Improvements"** means all buildings, structures, works, facilities, services, landscaping and other improvements by whomsoever made and which are at any time and from time to time situate on, under or above the Lands, including all equipment, machinery, apparatus and fixtures (other than trade fixtures) forming part of or attached to the improvements and all alterations, removal, additions to, replacements and substitutions of the "Improvements".



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

- (i) **"Lands"** means Lot 330, Plan 75750, Tsinstikeptum No. 10.
- (j) **"Lease"** means this Indenture of Lease.
- (k) **"Lessor"** means Stanley Francis Jack and Patrick Paul, their successors and assigns.
- (l) **"Minerals"** means ore of metal and every natural substance that can be mined and that:
  - (i) occurs in fragments or particles lying on or above or adjacent to the bedrock source from which it is derived, and commonly described as talus; or
  - (ii) is in the place or position in which it was originally formed or deposited, as distinguished from loose, fragmentary or broken rock or float which by decomposition or erosion of rock, is found in wash, loose earth, gravel or sand, and includes coal, petroleum and all other hydrocarbons; regardless of gravity and howsoever and wheresoever recovered, natural gas, building and construction stone, limestone, dolomite, marble, shale, clay, sand and gravel.
- (m) **"Nutrient"** means any substance or combination of substances defined as a nutrient under the Canadian Environmental Protection Act as amended or replaced from time to time.
- (n) **"Party"** means a party to this Lease and **"Parties"** means all of them.
- (o) **"Person"** includes any individual, partnership, association or corporation.
- (p) **"Premises"** means and includes the Lands and the Improvements and every reference in this Lease to the "Premises" includes a reference to every part of the Lands or the Premises, as the context may require.
- (q) **"Prime Rate"** means, for any particular calendar month the per annum interest rate that is charged by Canadian chartered banks to their most creditworthy commercial borrowers in effect upon the last Wednesday of the month as the rate is ascertained and published for the month in the Bank of Canada Review, or if more than one such rate is published for the last Wednesday of the month, the average of all such rates or if another day or other days are substituted for the last Wednesday of the month in the Bank of Canada Review, the rate or the average of all rates published for the day or days substituted for the last Wednesday of the month.



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- (r) **"Registry"** means the Register of Westbank Lands established by Canada and held in Ottawa, Ontario or successor registry for the Westbank Lands established in accordance with Applicable Laws.
- (s) **"Rent"** means the rent described in Article 5 hereof.
- (t) **"Reserve"** means the Tsinstikeptum Indian Reserve No. 10 of the First Nation.
- (u) **"Sublessee"** means any Sublessee of the Lands whose sublease is registered in the Registry.
- (v) **"Term"** means the 125 year period commencing on the 11th day of January, 2019 and expiring on the 10<sup>th</sup> day of January, 2144.
- (w) **"Toxic Substance"** means any substance defined as a toxic substance under the Canadian Environmental Protection Act as amended or replaced from time to time.
- (x) **"Westbank Lands"** has the meaning ascribed to it in the Westbank First Nation Constitution.

## 2. THE DEMISE

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

## 3. MINERALS

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

## 4. USE OF LANDS

- 4.1 The Lands may be used for any lawful purpose in accordance with Applicable Laws.

## 5. RENT

- 5.1 The Lessee has paid as Rent in the sum of \$20,000.00 and other good and valuable consideration as rent for or in respect of the Lands for the entire Term, the receipt of which is hereby acknowledged.



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5.2 The Lessor acknowledges the Rent has been paid in accordance with Section 5.1 and no other rent of any kind will be payable by the Lessee for the Lands during the Term.

### 6. ASSIGNMENT

6.1 The Lessee may assign this Lease without the consent of the Lessor.

6.2 The Lessee will obtain from any proposed assignee a written agreement whereby the assignee covenants and agrees that it will observe and perform all of the covenants and agreements to be observed or performed by the Lessee under this Lease.

6.3 The assignment of this Lease by the Lessee will not relieve and discharge the Lessee from his obligations or liabilities under this Lease except to the extent such obligations are assumed in writing by the assignee.

6.4 Any assignment must be registered at the Registry and shall be deemed to include the following provisions:

- (a) the assignee is bound by all terms of this Lease; and
- (b) in the event of conflict between the terms of this Lease and the assignment, the terms of this Lease will govern.

6.5 The Lessee may subdivide the Lands or assign leasehold interests in portions of the Lands without the consent of the Lessor. The Lessor will, without payment of further rent or other consideration, promptly and without delay, sign such modifications of lease or replacement headleases as are required to facilitate the Lessee effecting any subdivision or making an assignment. The Lessee will reimburse the Lessor for any reasonable expenses required by the Lessor to comply with his obligation pursuant to this Section 6.6.

### 7. SUBLETTING

7.1 The Lessee may sublet any part of the Premises without the consent of the Lessor.

7.2 Any sublease of the Premises will include the following provisions:

- (a) a sublease may be for any period up to one day before the expiration of the Term of this Lease, and not beyond;
- (b) a sublease will be expressly subject and subordinate to this Lease and to the rights of the Lessor hereunder; and
- (c) a sublease will oblige the Sublessee not to do anything in contravention of this Lease.





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**8. NO RIGHT TO TERMINATE BY LESSOR**

- 8.1 All Rent for the Term has been paid. The Lessor acknowledges and agrees that this Lease cannot be terminated or cancelled prior to the end of the Term for any reason whatsoever without the written consent of the Lessee and Approved Mortgagee, which consent may be arbitrarily withheld.
- 8.2 The Lessor hereby covenants and agrees with the intention that the rights of the Approved Mortgagee herein shall be fully enforceable notwithstanding that such Approved Mortgagee is not privy to the terms of the Lease and the Lessor shall not do anything or make any argument to prevent or obstruct whether directly or indirectly any Approved Mortgagee in taking the benefit of and enforcing the provisions of the Lease expressed to be for the benefit of any Approved Mortgagee based upon the fact that such Approved Mortgagee is not privy to the terms of the Lease.

**9. MORTGAGE**

- 9.1 The Lessee may mortgage the whole or any part of its interest in this Lease by any means without the consent of the Lessor. The Lessor confirms that any Approved Mortgagee may enforce its security to the fullest extent and acquire the leasehold estate in any lawful way and, by its representative or a receiver, as the case may be, take possession of and manage the Lands and sell or assign or sublet the Premises without notice to the Lessor and without the necessity of obtaining any consent from the Lessor or the Lessee. Notwithstanding anything to the contrary herein, the Approved Mortgagee shall be relieved of all obligations or liabilities under the Lease upon such assignment.
- 9.2 The Lessor shall consent to such modifications of this Lease as may be necessary to satisfy the reasonable requirements of Canada Mortgage and Housing Corporation leasehold lending provisions, subject always to the payment of the Lessor's reasonable legal and professional costs relating thereto, provided such modifications do not extend the Term.

**10. REGISTRATION**

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



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### **11. UTILITIES**

11.1 The Lessee is responsible for providing at its expense all services and facilities required by it for use of the Premises.

### **12. TAXES**

12.1 The Lessee will pay on or before the due date in each and every year during the Term all applicable taxes, trade licences, rates, levies, duties and assessments of any kind lawfully imposed by any competent authority, whether in respect of the Premises, fixtures, machinery, equipment or business relating to the Premises or in respect of occupation of the Premises by anyone.

12.2 Without in any way relieving or modifying the obligation of the Lessee to comply with Section 12.1, the Lessee may at its expense, contest or appeal the validity or amount of any tax, trade licence, rate, levy, duty or assessment PROVIDED that the Lessee commences any proceedings to contest or appeal the validity or amount forthwith and continues with the proceedings with reasonable diligence.

### **13. COMPLIANCE WITH LAWS**

13.1 The Lessee, acting reasonably and at its expense, will observe and perform all of its obligations and all matters and things necessary or expedient to be observed or performed by it in connection with the Premises in accordance with Applicable Laws.

13.2 Without in any way relieving or modifying the obligation of the Lessee to comply with Section 13.1, the Lessee may at its expense, contest or appeal the enforceability or validity of any of the Applicable Laws, PROVIDED that the Lessee commences any proceedings to contest or appeal the enforceability or validity thereof or any cost associated therewith forthwith and continues with the proceedings with reasonable diligence.

### **14. NUISANCE**

14.1 The Lessee will not cause, permit or suffer any nuisance at the Premises.

14.2 The normal carrying on at any time by the Lessee of a lawful use as contemplated in Section 4.1 to the standards required of it under any provision of this Lease will not be considered a nuisance for the purposes of this Article 14.

### **15. WASTE**

15.1 The Lessee will not cause, permit or suffer the commission of any waste on the Lands.

15.2 The Lessee will not cause, permit or suffer the removal of any sand, gravel, topsoil, or other material constituting part of the Lands except as required by construction and



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installations permitted by this Lease and otherwise except in compliance with Applicable Laws, in which case, removal will not constitute waste.

### 16. RUBBISH

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

### 17. ENVIRONMENTAL STANDARDS

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

### 18. NO CONTAMINANTS

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

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



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- (d) assume full responsibility for all damages to adjacent land and water caused by any such discharge of Toxic Substances or Nutrients which originated on and whose source is the Premises.

Be it always provided, to the best of the Lessor's knowledge and belief the Lands as of the date of this Lease contain no Toxic Substances.

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

- 19.1 The Lessee will, at its own expense, remedy any damage to the Lands caused by the performance of the Lessee's obligations under Article 18.
- 19.2 The Lessee will implement the appropriate technology, design or repair to mitigate anticipated or remediate actual adverse environmental impacts attributable to the Lessee's use of the Premises immediately following discovery or notice thereof by the Lessee. Further, the Lessee will permit the Lessor's representatives and the representatives of the First Nation Council to enter onto the Premises at all reasonable times and on reasonable prior written notice, to inspect and monitor the Lessee's activities in the course of mitigation and to ensure that the Lessee has taken reasonable steps to mitigate any reasonably anticipated or actual adverse impacts attributable to the Lessee on the Environment to the satisfaction of the Lessor.

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

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

## **21. SURVIVAL OF OBLIGATIONS**

- 21.1 The obligations of the Lessee pursuant to Articles 17, 18 and 19 will survive the expiry or earlier termination of this Lease, save only that, to the extent that the performance of these obligations requires access to or entry upon the Premises or any part thereof after the expiration or earlier termination of this Lease, the Lessee will be afforded reasonable entry and access for purposes at such times and upon such terms and conditions as the First Nation Council may from time to time reasonably specify in writing. If the Lessee, despite being afforded reasonable opportunities to perform such obligations, fails to do so, the Lessor may, at the Lessee's expense, by the Lessor's officers, employees,



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agents or contractors and subcontractors, undertake the performance of any necessary work in order to complete such obligations of the Lessee, but having commenced such work, the Lessor will have no obligation to the Lessee to complete such work.

### **22. ALTERATIONS AND ADDITIONS**

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

### **23. NEW IMPROVEMENTS**

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

### **24. REPAIR OF PREMISES**

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

### **25. SIGNS**

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

### **26. LIABILITY INSURANCE**

26.1 The Lessee will forthwith effect and maintain at its expense liability insurance with the Lessor as an additional insured.

### **27. PROPERTY INSURANCE**

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

### **28. INSURANCE PROVISIONS**

28.1 Every insurance policy required under this Lease will to the extent that it is obtainable contain an agreement by the insurer that it will not cancel or substantially alter the policy without first giving the insureds at least 15 days prior written notice.

28.2 Notwithstanding the foregoing all insurance obligations of the Lessee shall be waived during such time as title to the Lands is held by Canada Mortgage and Housing



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Corporation in the event that it has granted or insured a mortgage and subsequently acquired title to the Lands by reason of the default of the Lessee.

### **29. INSURANCE VALIDATION**

- 29.1 The Lessee will not do, permit or suffer anything to be done at the Premises which might cause any policy of insurance required by this Lease to be invalidated or cancelled, and the Lessee will comply forthwith with every lawful notice in writing from the First Nation Council or any insurer requiring the execution of works or discontinuance of any use of the Premises in order to avoid invalidation or cancellation of any insurance.
- 29.2 The Lessee will; upon request, deliver certificates of the insurance evidencing every policy of insurance that is required by this Lease immediately after the insurance is effected and will, upon written request, deliver a certificate of renewal that the insurance has been renewed or replaced at least ten (10) days before the expiry of any policy of insurance in force.
- 29.3 The Lessee will, upon written request, deliver a copy of every insurance policy taken out by the Lessee with respect to the Premises.

### **30. REINSTATEMENT OF DAMAGED PREMISES**

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

### **31. BUILDINGS, FIXTURES AND CHATTELS**

- 31.1 Ownership of any Improvements made upon or to the Lands by or for the Lessee will vest in the Lessee or any Sublessee, as the case may be, for and during the Term, notwithstanding any rule or law to the contrary. Notwithstanding the foregoing, the Lessor will be entitled, on written notice to the Lessee delivered prior to the commencement of the last year of the Term, to require the Lessee to remove some or all its Improvements from the Lands upon expiry of the Term and leave the Lands in a clean and safe condition.



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31.2 The Lessee will pay all costs and expenses incurred in the removal and disposal of the Improvements and in making good all damage caused to the Lands by the removal thereof forthwith upon demand. The Lessor will not be responsible to the Lessee or Sublessee for any loss suffered by the Lessee or Sublessee as a result of the removal or the disposal of any Improvements, moveable goods, chattels or tenant's fixtures and Improvements which the Lessee fails to remove in accordance herewith.

**32. INDEMNITY**

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

**33. QUIET ENJOYMENT**

33.1 The Lessee, by paying the Rent, may peaceably and quietly possess, hold and enjoy the Lands during the Term without any interruption or disturbance by the Lessor or anyone claiming by or through either of them (except as set out in Section 34.6).

**34. DEFAULT**

34.1 Subject always to Section 8.1, if the Lessee is in default hereunder then the Lessor may give the Lessee notice of such default.

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

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

then, subject to the provisions of this Article 34 and to the rights of the parties under Article 47, the Lessor may take such action as provided in Section 34.6.

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



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- 34.4 Any curing of a default by an Approved Mortgagee or any Sublessee will be construed as curing of that default by the Lessee.
- 34.5 If any disagreement arises as to the occurrence or subsistence of a default hereunder or whether the curing of any such default is promptly commenced, has been substantially completed or is proceeding with reasonable diligence, and without limiting any other remedies or relief that might be available to the Lessee, an Approved Mortgagee or a Sublessee in accordance herewith or at law, the question may be dealt with in accordance with Article 47 of this Lease.
- 34.6 The Lessor acknowledges that in consideration of the Rent, the Lessor will only be able to seek recourse in respect of alleged default by the Lessee hereunder by way of a claim in law against the Lessee for debt or damages, as the case may be, recoverable against the Lessee, the Lands or the rents derived therefrom by the Lessee, or seek an order of a court of competent jurisdiction restraining continuing breach, and has no right to cancel or terminate this Lease.

**35. PERFORMANCE OF COVENANTS**

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

**36. PAYMENTS PAID BY LESSOR**

- 36.1 If at any time before or after the expiration or earlier termination of the Lease the Lessor suffers or incurs any damage, loss or expense by reason of any failure of the Lessee to perform or observe any of the Lessee's covenants or makes any payment for which the





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Lessee is liable under this Lease, or if the Lessor is compelled or, acting reasonably, elects to incur any expense including legal fees in instituting, prosecuting or defending any action or proceeding instituted by reason of any default of the Lessee under this Lease (including any action or proceeding against the Lessee) and succeeds in establishing such default, then in every such case the amount of damage, loss, expense or payment (including reasonable legal fees), together with interest as provided in Section 37.1, will be paid by the Lessee to the Lessor forthwith on demand.

**37. ARREARS TO BEAR INTEREST**

37.1 If any sum owing by the Lessee to the Lessor under this Lease is not paid within thirty (30) days from the date on which it is due then it will bear interest at the Prime Rate in effect from time to time plus 2% per annum from the date the sum is due until the date of the payment by the Lessee, but this stipulation for interest will not prejudice or affect any other remedies of the Lessor under this Lease or otherwise, or be construed to relieve the Lessee from any default.

**38. REMEDIES CUMULATIVE**

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

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

**39. SURRENDER OF POSSESSION**

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

**40. HOLDING OVER**

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

40.2 The month to month tenancy referred to in Section 40.1 will be subject to all the terms and conditions of this Lease except as they are inapplicable to the tenancy from month to month and rent shall be at fair market value.

**41. NET LEASE**

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



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**42. WARRANTIES**

- 42.1 The Lessor warrants that there is satisfactory access to the Premises by public or private road or right of way and the Lessee's obligations hereunder are subject to such access remaining available during the Term.
- 42.2 The Lessor acknowledges that the Lessee is leasing the Lands to the Lessee on the basis that they are capable for development pursuant to the Lessee's intended use and to the best of the Lessor's knowledge there are no environmental, heritage or cultural prohibitions to such development.

**43. CERTIFICATE OF STATUS**

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

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

**44. OTHER ENCUMBRANCES**

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

**45. HEADINGS**

- 45.1 All headings in this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit, enlarge, modify or explain the scope or meaning of the Lease or any of its provisions.
- 45.2 Any reference in this Lease to an Article or Section will mean an Article or Section of this Lease unless otherwise expressly provided.
- 45.3 Any reference in this Lease to Lessee's covenants will be deemed to include all terms and conditions to be performed or observed by the Lessee under this Lease.



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### 46. AMENDMENTS

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

### 47. ARBITRATION

- 47.1 Should there be a disagreement or dispute between the Parties with respect to any matter under this Agreement or the interpretation thereof, the same may be referred jointly by the Parties to a single arbitrator pursuant to the *Arbitration Act* of British Columbia and any amendments thereto and the determination of such arbitrator will be final and binding upon the Parties.
- 47.2 The party requiring arbitration or any other dispute resolution process shall give timely notice of all arbitration proceedings to the Approved Mortgagee and the Approved Mortgagee may participate fully in the proceedings, if in the Approved Mortgagee's reasonable opinion the outcome may affect its security.

### 48. NOTICE

- 48.1 All notices under this Lease must be given in writing and delivered in accordance with this Article 48.
- 48.2 All notices will be delivered to the other Party and no notice will be effective until such delivery has been made.

The addresses for delivery are:

#### To the Lessor:

**STANLEY FRANCIS JACK**

1595 Bear Creek Road  
Westbank, BC V1Z 2Z4

and

**PATRICK PAUL**

3545 Elk Road  
Westbank, BC V4T 2H5



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**To the Lessee:**

**ROYAL HEIGHTS PROPERTIES INC.**  
#33-1525 Bear Creek Road  
Kelowna, BC V1Z 3R6

48.3 Notice will be deemed to have been delivered:

- (a) if delivered by hand, upon receipt;
- (b) if sent by electronic transmission, the next business day after the day of transmission, excluding from the calculation weekends and holidays; or
- (c) if sent by registered mail, four (4) days after the mailing thereof.

48.4 Either party may change the address shown in this agreement by informing the other Party of the new address, and such change will take effect fifteen (15) days after the notice is received.

**49. TIME OF THE ESSENCE**

49.1 Time is of the essence in this Lease.

**50. SEVERABILITY**

50.1 If any part of this Lease is declared or held invalid for any reason, the invalidity of that part will not affect the validity of the remainder which will continue in full force and effect and be construed as if this Lease had been executed without the invalid portion.

**51. ENUREMENT, PLURALITY AND GENDER**

51.1 This Lease will be for the benefit of and be binding upon the heirs, executors, administrators, successors, assigns and other legal representatives, as the case may be, of each of the Parties. Every reference in this Lease to any Party includes the heirs, executors, administrators, successors, assigns and other legal representatives of the Party.

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

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



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### **52. NOT A JOINT VENTURE**

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

52.2 The Parties acknowledge that this Lease does not constitute an association for the purpose of establishing a partnership or joint venture and does not create an agency relationship between the Lessor and the Lessee.

### **53. APPLICABLE LAWS**

53.1 This Lease is subject to and governed by the Land Rules and all other Applicable Laws.

### **54. OTHER ASSURANCES**

54.1 Each of the parties will execute and deliver such further and other documents and assurances as another party hereto may reasonably request to better carry out or document the intentions herein expressed.

### **55. NO OTHER AGREEMENTS BIND THE LANDS**

55.1 The Lessor covenants with the Lessee that he is the sole lawful possessor of the Lands and that this Lease will not violate any agreement with any person who has, or will have, an interest in the Lands or any portion thereof.

### **56. AUTHORITY TO LEASE**

56.1 The Lessor covenants that he has good right, full power and authority to lease the Lands to the Lessee and grant the leasehold estate in the manner and according to the true intent of this Lease.

### **57. EXPROPRIATION**

57.1 If, at any time during the term of the Lease, any public body or paramount authority shall take or expropriate the whole or a portion of the Premises, then the Lessor and the Lessee may exercise fully all rights, remedies and claims for compensation which each may have under applicable legislation. The Lessor and Lessee shall inform each other fully of the claims for compensation made by each of them in the event of any expropriation, shall not claim compensation on any basis inconsistent with this Lease, and shall afford reasonable cooperation with each other in the prosecution of any proper separate claims. The Lessor and Lessee shall co-operate with each other regarding any expropriation of the Lands or any part thereof so that each receives the maximum award to which it is entitled at law.