

LEASE OF DESIGNATED LANDS

BETWEEN:

HIS MAJESTY THE KING IN RIGHT OF CANADA,
as represented by the Minister of Indigenous Services

AND:

[LESSEE'S NAME]

For lands in [Reserve Name] Indian Reserve No. [#]

Commencement Date: [Month Day, Year]

DRAFTING NOTES:

- 1. Not everything within square brackets needs to be filled in, just fields, which are highlighted in grey onscreen. To move between fields, press F11 and ensure that all fields are complete. F11 will also take you to each cross-reference but these do not need to be manually updated as they will be updated in step 3.**
- 2. Remove all bolded red drafting language before finalizing the lease.**
- 3. Update all cross-references and the Table of Contents before finalizing the lease by pressing CTR+A to highlight everything and then pressing F9.**

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SCHEDULE A – Improvements Existing at Commencement Date

SCHEDULE B – Band Council Resolution

SCHEDULE C – Assignment Consent Agreement

SCHEDULE D – Mortgage Acknowledgment Agreement

SCHEDULE E – Sublease **[OPTIONAL: Acknowledgement / Consent / Consent and Non-Disturbance]** Agreement

[OPTIONAL: SCHEDULE F – Form of Sublease

SCHEDULE ? – Form of Band Council Resolution]

LEASE OF DESIGNATED LANDS

This lease is made between:

HIS MAJESTY THE KING IN RIGHT OF CANADA,
as represented by the Minister of Indigenous Services

(the “**Lessor**”)

and:

[LESSEE'S NAME] [OPTIONAL – If the Lessee is a corporation, limited partnership, society, utility or municipality, then type a comma after the Lessee's Name and include the statute under which the entity received its authority and its incorporation number, if applicable. Corporate example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345 Limited Partnership example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345, as general partner of [NAME OF LIMITED PARTNERSHIP], registered under the *Partnership Act*, R.S.B.C. 1996, c. 348; Registration No. Y12345 End of option]

(the “**Lessee**”).

BACKGROUND:

- A. The Lands are part of the Reserve, which is held for the use and benefit of the First Nation.
- B. The members of the First Nation designated the Lands on [Month Day, Year], which designation was accepted by **[Choose accepting entity and delete the other: the Governor in Council by PC [#] OR Order of the Minister of Indigenous Services]** on [Month Day, Year] and is registered in the Registry under No. [#].
- C. The Lessor is authorized to grant this Lease under subsection 53(1) of the *Indian Act*.
- D. The Council consented to the Lessor granting this Lease on its terms, as evidenced by the Band Council Resolution attached as Schedule B.

NOW THEREFORE, for mutual consideration, the Parties agree as follows:

1. INTERPRETATION

1.1 **Definitions** – In this Lease, including the recitals, the following terms have the meanings ascribed to them in this section 1.1:

1.1.1 **“Additional Rent”** means the amounts payable to the Lessor referred to in section 4.9.

OPTIONAL – If option 1 (periodic rent) is chosen in the rent section, then include the following definition of “Annual Rent”. Otherwise, delete it.

1.1.2 **“Annual Rent”** means the amounts set out as such in section 4.3.

End of Option.

OPTIONAL – If option 1 (periodic rent) or option 3 (prepaid nominal rent) is chosen in the rent section, then include the following definitions of “Appraisal” and “Appraiser”. Otherwise, delete them.

1.1.3 **“Appraisal”** means a written opinion of the Fair Market Rent prepared by an Appraiser in accordance with generally accepted appraisal practices.

1.1.4 **“Appraiser”** means a person who is accredited as an appraiser by the Appraisal Institute of Canada or its successor.

End of Option.

1.1.5 **“Architect”** means a person who is licensed as an architect in the province of [Name of Province].

1.1.6 **“Artifact”** means a burial site, human remains, or an item of archeological or cultural interest.

1.1.7 **“Authority”** means:

1.1.7.1 a federal, provincial, municipal, First Nation, or other governmental authority having jurisdiction in respect of the Premises or activities on the Premises; or

1.1.7.2 a utility company lawfully acting under its statutory power.

1.1.8 **“Authorized Uses”** means the uses referred to in section 3.1.

1.1.9 **“Business Day”** means a day that is not a Saturday, a Sunday, a federal or [Name of Province] statutory holiday, or National Indigenous Peoples Day.

1.1.10 **“Codes”** means **[Note: Insert applicable codes. For example, in BC:** the BC Building Code, the BC Fire Code, and all requirements of the *Building Act*, S.B.C. 2015, c. 2, that would be applicable to an Improvement if it were built on fee

simple lands in the province of British Columbia (other than the City of Vancouver) owned by a Person other than the Crown.]

1.1.11 “**Commencement Date**” means [Month Day, Year].

1.1.12 “**Construction and Environmental Management Plan**” means:

1.1.12.1 plans, design briefs, and construction specifications; and

1.1.12.2 all other documents reasonably required by the Decision Maker relating to the construction, operation, or decommissioning, as the case may be,

of the subject Improvements, which comply with or are consistent with:

1.1.12.3 applicable Codes and Laws;

1.1.12.4 an applicable Development Plan; and

1.1.12.5 all terms and conditions of a Decision Maker’s determination, including all mitigation measures, timelines, and monitoring, required under an applicable Environmental Review,

and include plans to address how the impacts on the Environment during construction, operation, or decommissioning, as the case may be, of the subject Improvements will be managed, including the management of soil, water, waste, traffic, and fire safety.

1.1.13 “**Contaminant**” means a substance regulated under the Laws of Canada, the First Nation, or the province of [Name of Province] (whether or not the province has jurisdiction in respect of the protection of the Environment as it pertains to the Premises or the occupation or use of the Premises) relating to the protection of the Environment, including, for greater certainty, a toxic substance, deleterious substance, hazardous substance, hazardous waste, hazardous recyclable, ozone-depleting substance, halocarbon, pesticide, and waste.

1.1.14 “**Council**” means the First Nation’s “council of the band” within the meaning of the *Indian Act*, and any successor.

1.1.15 “**Decision Maker**” means the Minister, when the Minister is representing the Lessor under this Lease, and, if the First Nation takes over the position of the Lessor under this Lease by operation of law, the Council or a Person designated by the Council.

1.1.16 “**Development Plan**” means a scaled site plan for the Premises, prepared and certified by an Architect or Engineer on the basis that it may be relied upon by each of the Parties, which includes a “North” arrow, title block, drawing scale,

date, developer's name and address, reference numbers, and the following features, including their location and dimensions where applicable:

- 1.1.16.1 Boundary lines, acreage, natural and artificial features, and contiguous property.
 - 1.1.16.2 Roads, parking lots, and driving aisles.
 - 1.1.16.3 Buildings and structures, including number of units, storeys, floor area, number of rooms, and dimensions of front, side, and rear yards.
 - 1.1.16.4 On-site sanitary sewer connections.
 - 1.1.16.5 Existing and proposed water mains.
- 1.1.17 **"Engineer"** means a person who is licensed as an engineer in the province of [Name of Province].
- 1.1.18 **"Environment"** has the meaning given it in the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33.
- 1.1.19 **"Environmental Review"** means the environmental review process referred to in section 8.3, whether conducted before or after the Commencement Date.
- 1.1.20 **"Exempt Project"** means a Project:
- 1.1.20.1 that is in one of the classes of projects designated under section 88 of the IAA; or
 - 1.1.20.2 for which a Decision Maker is not required to conduct an Environmental Review by section 91 of the IAA,
- and includes any similar concepts in an amended, succeeding, or replacement Law.

There are 3 options for the definition of "Fair Market Rent". Choose one and delete the others.

OPTION 1 – If option 2 (prepaid fair market rent) is chosen in the rent section, then delete all definitions of "Fair Market Rent" so that the next definition after "Exempt Project" is "First Nation". End of Option 1.

OPTION 2 – If option 1 (periodic rent) is chosen in the rent section, then use the following:

- 1.1.21 **"Fair Market Rent"** means the most probable annual rent that the Premises should bring in a competitive and open market, reflecting all conditions of this Lease and assuming the following conditions:

- 1.1.21.1 The Lessor and the Lessee are typically motivated, well informed, well advised, and are acting prudently in an arm's length transaction.
- 1.1.21.2 A reasonable time is allowed for exposure in the open market and the rent represents the normal consideration for the Premises unaffected by undue stimuli or special fees or concessions granted by anyone associated with the transaction.
- 1.1.21.3 The Premises are owned by the Lessor in fee simple, free of all charges and encumbrances other than those registered in the Registry, and the inalienability or Indian reserve status of the Lands must not be a discounting factor and must not be used as a basis to lower valuation in comparing the Premises to other properties, whether or not such properties are Indian reserve lands.
- 1.1.21.4 The Lands do not include the Improvements made after the Commencement Date and the contributory value of the Lessee's Improvements must not be taken into account.

End of Option 2.

OPTION 3 – If option 3 (prepaid nominal rent) is chosen in the rent section, then use the following:

1.1.22 **“Fair Market Rent”** means the most probable lump-sum rent that the Premises should bring, for the period from the happening of the event referred to in section 4.7.1 until the end of the Term, in a competitive and open market, reflecting all conditions of this Lease and assuming the following conditions:

- 1.1.22.1 The Lessor and the Lessee are typically motivated, well informed, well advised, and are acting prudently in an arm's length transaction.
- 1.1.22.2 A reasonable time is allowed for exposure in the open market and the rent represents the normal consideration for the Premises unaffected by undue stimuli or special fees or concessions granted by anyone associated with the transaction.
- 1.1.22.3 The Premises are owned by the Lessor in fee simple, free of all charges and encumbrances other than those registered in the Registry, and the inalienability or Indian reserve status of the Lands must not be a discounting factor and must not be used as a basis to lower valuation in comparing the Premises to other properties, whether or not such properties are Indian reserve lands.
- 1.1.22.4 The Lands do not include the Improvements made after the Commencement Date and the contributory value of the Lessee's Improvements must not be taken into account.

End of Option 3.

1.1.23 “**First Nation**” means [First Nation] and includes any successors.

1.1.24 “**Gross Negligence or Wilful Misconduct**” means an act or failure to act (whether sole, joint, or concurrent) by a Party that was intended to cause or was in reckless disregard of, or wanton indifference to, the harmful consequences to the safety or property of a Person which the Party knew, or should have known, would result from such act or omission, but does not include an act or failure to act that constitutes mere ordinary negligence or occurred in accordance with the express instructions or approval of the relevant other Party.

1.1.25 “**IAA**” means the *Impact Assessment Act*, S.C. 2019, c. 28, s. 1.

1.1.26 “**Improvements**” means the improvements to the freehold, as determined according to the common law, forming part of the Lands from time to time, including any:

1.1.26.1 buildings, structures, works, facilities, infrastructure, and utility services; and

1.1.26.2 equipment, machinery, apparatus, and other such fixtures forming part of an improvement, but excluding Trade Fixtures.

1.1.27 “**Indian Act**” means the *Indian Act*, R.S.C. 1985, c. I-5.

OPTIONAL – If option 1 (periodic rent) is chosen in the rent section, then include the following definition of “Initial Period”. Otherwise, delete it.

1.1.28 “**Initial Period**” means the five-year period starting on the Commencement Date and ending on [Month Day, Year].

End of Option.

1.1.29 “**Lands**” means those lands more particularly known and described as:

[Legal Description],

excepting all Minerals, and, without derogating from section 2.2, subject to the following interests:

[List interests or enter "nil"].

1.1.30 “**Laws**” means all applicable laws, statutes, regulations, codes, orders, and by-laws of an Authority, as amended or replaced from time to time.

1.1.31 “**Lease**” means this lease agreement, and all Schedules attached to it, as amended from time to time.

1.1.32 “**Minerals**” means ore of metal and every natural substance that can be mined and that:

- 1.1.32.1 occurs in fragments or particles lying on, above, or adjacent to the bedrock source from which it is derived and commonly described as talus; and
- 1.1.32.2 is in 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,

including:

- 1.1.32.3 coal, petroleum, and other hydrocarbons, regardless of gravity and howsoever and wheresoever recovered;
 - 1.1.32.4 natural gas, methane, coal bed methane, and other gases; and
 - 1.1.32.5 building and construction stone, limestone, dolomite, marble, shale, clay, sand, and gravel.
- 1.1.33 **“Minister”** means the Minister with responsibility, from time to time, for administering this Lease.
- 1.1.34 **“Mortgage”** means a mortgage, debenture, deed of trust, bond, assignment of rents, or any other means by which the Lessee’s leasehold interest in the Premises is used as security for a loan.
- 1.1.35 **“Mortgagee”** means a mortgagee under a valid Mortgage.
- 1.1.36 **“Party”** means a party to this Lease.

OPTIONAL – If option 1 (periodic rent) is chosen in the rent section, then include the following definition of “Period”. Otherwise, delete it.

- 1.1.37 **“Period”** means, as the case may be:
- 1.1.37.1 the Initial Period;
 - 1.1.37.2 a five-year period starting on the day following the end of a preceding five-year period; or
 - 1.1.37.3 the last period of the Term, which may be less than five years, starting on the day following the end of the last full five-year period.

End of Option.

- 1.1.38 **“Person”** includes an individual, partnership, firm, company, corporation, incorporated or unincorporated association or society, co-tenancy, joint venture, syndicate, fiduciary, estate, trust, bank, government, governmental or quasi-governmental agency, board, commission or authority, organization, any other

form of entity however designated or constituted, and any combination of any of them.

1.1.39 **“Premises”** means the Lands and Improvements or any part of the Lands and Improvements.

There are 3 options for Prepaid Rent. Choose one and delete the others.

OPTION 1 – If option 1 (periodic rent) is chosen in the rent section, then delete all definitions of “Prepaid Rent”. End of Option 1.

OPTION 2 – If option 2 (prepaid fair market rent) is chosen in the rent section, then use the following:

1.1.40 **“Prepaid Rent”** means the amount set out in section 4.5.

End of Option 2.

OPTION 3 – If option 3 (prepaid nominal rent) is chosen in the rent section, then use the following:

1.1.41 **“Prepaid Rent”** means the amount set out in section 4.6.

End of Option 3.

1.1.42 **“Project”**:

1.1.42.1 has the meaning given it in section 81 of the IAA;

1.1.42.2 includes any designated activities under section 87 of the IAA; and

1.1.42.3 includes any similar concepts in an amended, succeeding, or replacement Law.

1.1.43 **“Registry”** means the registry with registration jurisdiction over the Lands.

There are 3 options for “Rent”. Choose one and delete the others.

OPTION 1 – If option 1 (periodic rent) is chosen in the rent section, then use the following:

1.1.44 **“Rent”** means Additional Rent, Annual Rent, and Fair Market Rent.

End of Option 1.

OPTION 2 – If option 2 (prepaid fair market rent) is chosen in the rent section, then use the following:

1.1.45 **“Rent”** means Additional Rent and Prepaid Rent.

End of Option 2.

OPTION 3 – If option 3 (prepaid nominal rent) is chosen in the rent section, then use the following:

1.1.46 “**Rent**” means Additional Rent, Fair Market Rent, and Prepaid Rent.

End of Option 3.

1.1.47 “**Reserve**” means [Reserve Name] Indian Reserve No. [#].

1.1.48 “**Schedule**” means an attachment to this Lease labeled as a Schedule, which forms part of and is integral to this Lease.

OPTIONAL – Include the following if the use of Standards is chosen in the environmental sections offering this choice (see sections 8.6 and 11.3.2). Otherwise, delete it.

1.1.49 “**Standard**” means the amount of a Contaminant, based on the more conservative standard set out in the:

1.1.49.1 *Canadian Environmental Quality Guidelines* established by the Canadian Council of Ministers of the Environment, as amended or replaced from time to time; or

1.1.49.2 laws and published guidelines of the province of [Name of Province],

below which is considered acceptable for the uses to which the particular part of the Premises are being put.

End of Option.

1.1.50 “**Sublease**” means a leasehold interest in the Premises granted by the Lessee to a sublessee, which, for greater certainty, does not include a Mortgage by way of a sublease.

1.1.51 “**Sublessee**” means a sublessee under a Sublease.

1.1.52 “**Substantial Completion**” means the date on which a written certificate by an Architect or Engineer is provided to the Lessor certifying to the Lessor that:

1.1.52.1 the Improvements are substantially complete in all material respects, in a proper and workmanlike manner, and in accordance with the applicable Development Plan, the applicable Construction and Environmental Management Plan, and applicable Codes and Laws, except for minor deficiencies which, in the opinion of the Architect or Engineer, will not render the Improvements unfit for occupancy;

1.1.52.2 all permits for occupancy required by an Authority have been obtained; and

1.1.52.3 the Improvements are ready for occupancy.

1.1.53 “**Taxes**” means a tax imposed by an Authority in relation to the granting of this Lease or the payment of Rent.

1.1.54 “**Term**” means the period starting on the Commencement Date and expiring on [Month Day, Year], unless this Lease otherwise ends early.

1.1.55 “**Trade Fixtures**” means trade fixtures as determined at common law.

1.1.56 “**Trustee**” means a trust company appointed in writing by the Lessor.

1.1.57 “**Unavoidable Delay**” means a delay, stoppage, or interruption resulting from:

1.1.57.1 strike, lock-out, or other labour dispute;

1.1.57.2 material or labour shortage not within the control of the Party;

1.1.57.3 stop-work order issued by an Authority or a court or tribunal of competent jurisdiction, on the condition that such order is not issued as a result of an act or fault of the Party;

1.1.57.4 fire, explosion, or other casualty;

1.1.57.5 pandemic, epidemic, or other widespread illness or disease that results in mandated employee lockdowns or business closures;

1.1.57.6 flood, wind, earthquake, or act of God;

1.1.57.7 any Law, on the condition that the application of such Law is not as a result of an act or fault of the Party; or

1.1.57.8 other similar circumstances beyond the reasonable control of the Party and not avoidable by the exercise of reasonable effort or foresight by the Party,

but does not include the inability of the Party to meet its financial obligations under this Lease or otherwise.

1.2 **Form of Definition** – Defined words are capitalized for ease of reference. A defined word may be read as having an appropriate corresponding meaning when it is used in the plural or verb form.

1.3 **Headings** – 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 this Lease or any of its provisions.

1.4 **Extended Meaning**

- 1.4.1 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.
- 1.4.2 The words “include”, “includes”, and “including” are to be read as if they are followed by the phrase “without limitation”.
- 1.4.3 The phrase “this Lease ends” includes an ending by expiration of the Term and an earlier termination. The phrases “earlier termination” and “early termination” include a surrender.
- 1.4.4 The phrases “on the Lands”, “in the Lands”, or “on the Premises” includes in, on, under, and above such Lands or Premises.
- 1.4.5 Unless stated otherwise, the construction of Improvements includes the making of alterations to an Improvement.
- 1.5 **Joint and Several** – If the Lessee is more than one Person, then all of the Lessee’s obligations are joint and several.
- 1.6 **Statutes** – A reference to a statute means that statute and all regulations made under it, all as amended or replaced from time to time.
- 1.7 **Governing Laws** – This Lease will be governed by and interpreted in accordance with the Laws of Canada and of the province of [Name of Province].
- 1.8 **Entire Agreement** – This Lease constitutes the entire agreement between the Parties with respect to the subject matter of this Lease and supersedes and revokes all previous discussions, negotiations, arrangements, letters of intent, offers to lease, representations, and warranties. There are no obligations, covenants, agreements, representations, or warranties between the Parties with respect to the subject matter of this Lease other than those explicitly set out in this Lease.
- 1.9 **Modification** – A modification of this Lease must be in writing and executed in the same manner as this Lease.
- 1.10 **Consent and Approval** – Unless stated otherwise, when a Party is required to provide consent or approval under this Lease, that consent or approval will not be unreasonably withheld.
- 1.11 **Time is of the Essence** – Time is of the essence in this Lease and time will remain of the essence notwithstanding any extension of time granted to a Party.
- 1.12 **Severability** – If a part of this Lease is declared or held invalid for any reason, then the invalidity of that part will not affect the validity of the remainder of this Lease, which will continue in full force and effect and be construed as if this Lease had been executed without the invalid part.

- 1.13 **Survival of Obligations and Rights** – If a part of this Lease states that it survives when this Lease ends, then the survival of that part is only to the extent required for the performance of any continuing obligations and the exercise of any rights pertaining to them.
- 1.14 **Business Day** – If the date for the occurrence or performance of anything under this Lease falls on a day that is not a Business Day, then the date for its occurrence or performance will be automatically extended to the next Business Day.

2. THE PREMISES

- 2.1 **Lessee's Rights to the Premises** – The Lessor hereby leases the Premises to the Lessee to have and to hold during the Term for the Authorized Uses, and the Lessee is entitled to quiet enjoyment of the Premises for the Term, under the terms of this Lease.
- 2.2 **Subject to Prior Interests and Rights** – This Lease is subject to all valid, existing interests in, and rights in relation to, the Premises, whether or not the Lessee has notice of them.
- 2.3 **Reservation of Minerals**
- 2.3.1 The Lessor reserves all Minerals on the Lands and retains the right, subject to reasonable prior notice being provided to the Lessee, to enter the Premises to prospect for, drill for, work, extract, and produce Minerals and to lay pipeline and build such tanks, stations, improvements, and roads as may be reasonably necessary, on the condition that the activity has no material adverse effect on the Authorized Uses.
- 2.3.2 If there is any interference with the Lessee's rights under this Lease due to the exercise of the Lessor's rights under section 2.3.1 that is less than a material adverse effect on the Authorized Uses, then the Lessor will determine the amount of any compensation and provide notice to the Lessee of such amount. Such interference is not a default of the Lessor's covenant of quiet enjoyment.
- 2.3.3 If the Lessee disagrees with the compensation determined by the Lessor under section 2.3.2, then the Lessee may, within 60 days of delivery of the notice referred to in section 2.3.2, refer the matter to Federal Court for a review of the determination of compensation. If the Lessee fails to refer the matter to Federal Court within the specified time, then the compensation set out in the Lessor's notice will be final and binding on the Parties.
- 2.4 **Reservation for Other Interests and Rights**
- 2.4.1 The Lessor reserves the right to grant other interests in, or rights in relation to, the Premises without compensation to the Lessee, including by way of permit,

easement (statutory or otherwise), right-of-way, or other similar interest in, or right in relation to, the Lands, in favour of an Authority or any other Person, as long as the grant of interest or right has no material adverse effect on actual or potential use of the Lands for the Authorized Uses.

- 2.4.2 Prior to granting an interest or right under section 2.4.1, the Lessor will provide the Lessee with information about the proposed interest or right to give the Lessee an opportunity to provide any comments respecting any material adverse effects the proposed interest or right may have on the actual or potential use of the Lands for the Authorized Uses.
- 2.4.3 On notice being delivered by the Lessor, the Lessee will promptly sign and provide to the Lessor the necessary documentation to subordinate the Lessee's right and interest in the Premises under this Lease to an interest or right granted in accordance with this section 2.4.
- 2.5 **Access** – The grant of this Lease does not grant the Lessee any rights of access over any other lands of the Lessor. The Lessee will secure and maintain legal access (be it by public or private road, water, air, or otherwise) to and from the Premises.

3. USE OF THE PREMISES

- 3.1 **Authorized Uses** – The Lessee will not use the Premises for any purposes except for the following purposes:
- [List the Uses]
- 3.2 **Nuisance** – Except as required by the construction, repair, rebuilding, replacement, or removal of Improvements, the Lessee will not cause, permit, or suffer a nuisance on the Premises.
- 3.3 **Waste**
- 3.3.1 The Lessee will not cause, permit, or suffer any waste of the Premises.
- 3.3.2 The Lessee will not cause, permit, or suffer the removal of sand, gravel, topsoil, or other constituent material of the Lands, except as required by the clearing and construction permitted in this Lease and any Law, in which case, such removal will not constitute waste.
- 3.4 **Garbage** – The Lessee will not cause, permit, or suffer garbage or debris to be placed or left at the Premises, except as is reasonably necessary in accordance with the Authorized Uses.
- 3.5 **No Vacating or Abandoning the Premises** – The Lessee will not vacate or abandon the Premises without the prior consent of the Lessor. The Lessee will be considered to be in possession and control of the Premises from and after the

Commencement Date, even though construction of proposed Improvements may not have commenced, and will, at its cost, secure the Premises during such time as would a reasonably prudent owner in occupation.

3.6 **Inspection**

3.6.1 The Lessee will provide the Lessor with reasonable access to inspect the Premises, including conducting site assessments, audits, and other tests on, and investigations of, the Premises. Except in the case of an emergency, reasonable notice will be provided to exercise this right of access. If the inspection is in response to a default of this Lease, or if, in the process of inspecting the Premises, a default is discovered or confirmed, then the Lessor's reasonable expenses under this section 3.6.1 are Additional Rent.

3.6.2 During the last 12 months of the Term and as long as the Lessee's use and enjoyment of the Premises are not unreasonably interfered with, the First Nation may:

3.6.2.1 display signs on the Premises advertising the Premises for lease; and

3.6.2.2 on reasonable notice being provided to the Lessee, allow prospective lessees and their advisors access to the Premises so that they may inspect or perform any reasonable assessments of the Premises, however, the Lessee may require its representative to attend such inspection or assessment.

3.7 **Artifacts** – If an Artifact is unearthed or discovered on the Premises, then the Lessee will:

3.7.1 promptly notify the Council;

3.7.2 cease further activity that could affect the Artifact;

3.7.3 take reasonable measures to protect the Artifact;

3.7.4 comply with the direction of an Authority and the reasonable requirements of the Council in relation to the handling of the Artifact; and

3.7.5 if there are no First Nation or federal Laws relating to the handling of such an Artifact, at the written direction of the Lessor, comply with the requirements in the laws of the province of [Name of Province] relating to the protection of heritage objects or sites such as the Artifact, to the extent possible, even if such laws are not applicable on the Premises.

3.8 **Survey Monuments** – If a legal survey monument is disturbed, damaged, or destroyed during the Term, then the Lessee will ensure that it is replaced by a licensed surveyor to the satisfaction of the Surveyor General of Canada.

3.9 **Representations about the Premises and their Use**

- 3.9.1 The Premises are leased to the Lessee on an “as is – where is” basis.
- 3.9.2 Without limiting section 1.8, the Lessor, the Minister, and their officials, servants, employees, agents, contractors, subcontractors, and other legal representatives have not made any representations or warranties with respect to:
 - 3.9.2.1 the condition of the Premises, including the Premises’ compliance with Laws and the presence of Contaminants on the Premises;
 - 3.9.2.2 issues of title, encumbrances affecting title, and matters contained within the Registry;
 - 3.9.2.3 access to and from the Premises; and
 - 3.9.2.4 the suitability of the Premises for the Lessee.
- 3.9.3 The Lessee represents and warrants that:
 - 3.9.3.1 prior to the Commencement Date, it inspected the Premises, including conducting all investigations that it deemed prudent regarding the matters referred to in sections 3.9.2.1 - 3.9.2.3; and
 - 3.9.3.2 it is satisfied that the Premises are suitable for its intended uses and that those uses are within the Authorized Uses.
- 3.10 **Others Performing the Lessee’s Obligations** – The Lessee may allow any Person to perform any of the Lessee’s obligations in this Lease, but in doing so the Lessee will ensure performance of such obligations by such Person and it in no way affects the Lessee’s obligation to perform.

4. **RENT**

- 4.1 **Payments** – All payments made by the Lessee to the Lessor under this Lease will be:
 - 4.1.1 paid in Canadian dollars;
 - 4.1.2 made payable to the Receiver General for Canada;
 - 4.1.3 paid without any prior demand, set-off, deduction, or abatement; and
 - 4.1.4 accompanied by applicable Taxes.
- 4.2 **Outstanding Amounts** – The Lessor may apply payments received against outstanding amounts owed to it by the Lessee under this Lease in the Lessor’s sole discretion.

There are 3 options for the payment of rent. Choose one and delete the others.

OPTION 1 – If the rent is periodic, then use the following and choose either sub-option A (annual) or B (monthly):

4.3 Annual Rent

Sub-option A: Annual payments:

4.3.1 The Lessee will pay Annual Rent to the Lessor in the following amounts, plus applicable Taxes, on or before [Month Day]:

4.3.1.1 in the Initial Period, an amount of \$[Amount] per year; and

4.3.1.2 in each subsequent Period, the greater of the Annual Rent paid in the previous Period or Fair Market Rent.

Sub-option B: Monthly payments:

4.3.2 The Lessee will pay Annual Rent to the Lessor in the following amounts, plus applicable Taxes, on or before the [Day (e.g. 1st)] day of each month:

4.3.2.1 in the Initial Period, an amount of \$[Amount] in 12 monthly installments of \$[Amount]; and

4.3.2.2 in each subsequent Period, the greater of 1/12th of the Annual Rent paid in the previous Period or 1/12th of Fair Market Rent.

End of Sub-options

4.3.3 The Lessee has no right to a refund of Annual Rent if this Lease ends early.

4.4 **Fair Market Rent Determination** – The process to determine Fair Market Rent is as follows:

4.4.1 No later than 90 days and no more than 120 days before the beginning of a Period, the Lessee will obtain an Appraisal (the “**Lessee’s Appraisal**”) to determine Fair Market Rent for that Period and provide a copy of it to the Lessor. The Lessee’s choice of Appraiser (the “**Lessee’s Appraiser**”) and terms of reference for the Appraisal must be approved of in advance by the Lessor. The Lessee’s Appraisal must state that it can be relied on by all Parties. The cost of the Lessee’s Appraisal will be borne by the Lessee.

4.4.2 Within 120 days of delivery of the Lessee’s Appraisal, the Lessor may obtain an Appraisal using the same terms of reference used for the Lessee’s Appraisal (the “**Second Appraisal**”), a copy of which the Lessor will promptly provide to the Lessee. The Second Appraisal must state that it can be relied on by all Parties. If a Second Appraisal is not obtained in such time, then Fair Market Rent will be the amount determined in the Lessee’s Appraisal.

- 4.4.3 If the Fair Market Rent determined in the Lessee's Appraisal is:
- 4.4.3.1 equal to or higher than in the Second Appraisal, then Fair Market Rent will be the amount determined in the Lessee's Appraisal and the cost of the Second Appraisal will be borne by the Lessor;
 - 4.4.3.2 no more than 15.0% lower than in the Second Appraisal, then Fair Market Rent will be the amount determined in the Second Appraisal and the cost of the Second Appraisal will be borne by the Lessor; or
 - 4.4.3.3 more than 15.0% lower than in the Second Appraisal, then the Appraiser of the Second Appraisal (the "**Second Appraiser**") and the Lessee's Appraiser will promptly discuss the two appraisals so as to jointly determine Fair Market Rent within 60 days of delivery of the Second Appraisal to the Lessee and Fair Market Rent will be the jointly determined amount. If the jointly determined amount is closer to the amount determined in the Second Appraisal than to the amount determined in the Lessee's Appraisal (or where the differences between them are equal), then the cost of the Second Appraisal and the costs for the work of both Appraisers under this section 4.4.3.3 will be borne by the Lessee (any amount of which already paid by the Lessor will become payable by the Lessee as Additional Rent). Otherwise, the cost of the Second Appraisal will be borne by the Lessor and each Party will bear its costs for the work of its own Appraiser under this section 4.4.3.3.
- 4.4.4 If the Appraisers are unable to jointly determine Fair Market Rent within the period set out in section 4.4.3.3, then the Parties will agree upon a third, independent Appraiser to promptly review the two Appraisals and determine Fair Market Rent, which determination is final and binding on the Parties. If such determination is closer to the amount determined in the Second Appraisal than to the amount determined in the Lessee's Appraisal (or where the differences between them are equal), then the cost of the Second Appraisal, the costs for the work of both Appraisers under section 4.4.3.3, and the costs for the work of the third Appraiser under this section 4.4.4 will be borne by the Lessee (any amount of which already paid by the Lessor will become payable by the Lessee as Additional Rent). Otherwise, each Party will bear its costs for its own Appraisal, its costs for the work of its own Appraiser under section 4.4.3.3, and 50% of the costs for the work of the third Appraiser under this section 4.4.4.
- 4.4.5 If the Lessee fails to comply with section 4.4.1 in the time allowed, then the Lessor may at any later time obtain an Appraisal and determine Fair Market Rent based on the valuation in the Appraisal, which determination is final and binding on the Parties. When Fair Market Rent is determined under this section 4.4.5, the Lessor will promptly notify the Lessee of such amount and provide a copy of the Appraisal. The cost of the Appraisal will become payable by the Lessee as Additional Rent.

End of Option 1.

OPTION 2 – If rent is prepaid at fair market value, then use the following:

4.5 Prepaid Rent

- 4.5.1 The Lessee paid Prepaid Rent of \$[Amount] to the Lessor on the Commencement Date.
- 4.5.2 The Lessee has no right to a refund of any Prepaid Rent if this Lease ends early.

End of Option 2.

OPTION 3 – If rent is prepaid and nominal, then use the following:

- 4.6 **Prepaid Rent** – The Lessee paid Prepaid Rent of \$1 for the Term to the Lessor on the Commencement Date, the receipt and sufficiency of which are hereby acknowledged.
- 4.7 **Payment of Fair Market Rent if the Lessee is not Beneficially-owned by the First Nation**
 - 4.7.1 If the Lessee who executed this Lease ceases to be 100% beneficially-owned by the First Nation, or if a new Person becomes the Lessee who is not 100% beneficially-owned by the First Nation, then the Lessee will promptly notify the Lessor of this event and Fair Market Rent is due upon the happening of such event and payable on the terms of this section 4.7 and section 4.8.
 - 4.7.2 Within 15 days of Fair Market Rent being determined under section 4.8, the Lessee will pay such amount, applicable Taxes, and interest accrued from the date Fair Market Rent became due.
- 4.8 **Fair Market Rent Determination** – The process to determine Fair Market Rent is as follows:
 - 4.8.1 Within 90 days of the happening of an event referred to in section 4.7.1, the Lessee will obtain an Appraisal (the “**Lessee’s Appraisal**”) to determine Fair Market Rent for the period from the happening of such event to the end of the Term and provide a copy of it to the Lessor. The Lessee’s choice of Appraiser (the “**Lessee’s Appraiser**”) and terms of reference for the Appraisal must be approved of in advance by the Lessor. The Lessee’s Appraisal must state that it can be relied on by all Parties. The cost of the Lessee’s Appraisal will be borne by the Lessee.
 - 4.8.2 Within 120 days of delivery of the Lessee’s Appraisal, the Lessor may obtain an Appraisal using the same terms of reference used for the Lessee’s Appraisal (the “**Second Appraisal**”), a copy of which the Lessor will promptly provide to the Lessee. The Second Appraisal must state that it can be relied on by all Parties. If

a Second Appraisal is not obtained in such time, then Fair Market Rent will be the amount determined in the Lessee's Appraisal.

4.8.3 If the Fair Market Rent determined in the Lessee's Appraisal is:

4.8.3.1 equal to or higher than in the Second Appraisal, then Fair Market Rent will be the amount determined in the Lessee's Appraisal and the cost of the Second Appraisal will be borne by the Lessor;

4.8.3.2 no more than 15.0% lower than in the Second Appraisal, then Fair Market Rent will be the amount determined in the Second Appraisal and the cost of the Second Appraisal will be borne by the Lessor; or

4.8.3.3 more than 15.0% lower than in the Second Appraisal, then the Appraiser of the Second Appraisal (the "**Second Appraiser**") and the Lessee's Appraiser will promptly discuss the two appraisals so as to jointly determine Fair Market Rent within 60 days of delivery of the Second Appraisal to the Lessee and Fair Market Rent will be the jointly determined amount. If the jointly determined amount is closer to the amount determined in the Second Appraisal than to the amount determined in the Lessee's Appraisal (or where the differences between them are equal), then the cost of the Second Appraisal and the costs for the work of both Appraisers under this section 4.8.3.3 will be borne by the Lessee (any amount of which already paid by the Lessor will become payable by the Lessee as Additional Rent). Otherwise, the cost of the Second Appraisal will be borne by the Lessor and each Party will bear its costs for the work of its own Appraiser under this section 4.8.3.3.

4.8.4 If the Appraisers are unable to jointly determine Fair Market Rent within the period set out in section 4.8.3.3, then the Parties will agree upon a third, independent Appraiser to promptly review the two Appraisals and determine Fair Market Rent, which determination is final and binding on the Parties. If such determination is closer to the amount determined in the Second Appraisal than the amount determined in the Lessee's Appraisal (or where the differences between them are equal), then the cost of the Second Appraisal, the costs for the work of both Appraisers under section 4.8.3.3, and the costs for the work of the third Appraiser under this section 4.8.4 will be borne by the Lessee (any amount of which already paid by the Lessor will become payable by the Lessee as Additional Rent). Otherwise, each Party will bear its costs for its own Appraisal, its costs for the work of its own Appraiser under section 4.8.3.3, and 50% of the costs for the work of the third Appraiser under this section 4.8.4.

4.8.5 If the Lessee fails to comply with section 4.8.1 in the time allowed, then the Lessor may at any later time obtain an Appraisal and determine Fair Market Rent based on the valuation in that Appraisal, which determination is final and binding on the Parties. When Fair Market Rent is determined under this section 4.8.5, the

Lessor will promptly notify the Lessee of such amount and provide a copy of the Appraisal. The cost of the Appraisal will become payable by the Lessee as Additional Rent.

End of Option 3.

4.9 **Additional Rent** – The Lessee will pay to the Lessor as Additional Rent, no later than 30 days after notice from the Lessor has been delivered, the amount of:

4.9.1 Additional Rent referred to in a provision of this Lease; or

4.9.2 any other expenses reasonably incurred by the Lessor, before or after this Lease ends, due to, in whole or in part, a failure of the Lessee to perform or observe its obligations in this Lease,

plus an administration fee of 15% of such amount.

4.10 **Arrears to Bear Interest** – If Rent is not paid when due, or any other time interest is stipulated to be due, then the Lessee will pay the Lessor interest on the unpaid amount at the prime lending rate established by the Bank of Canada plus 5% per annum, calculated quarterly and compounded semi-annually, from the date that such unpaid amount is due until the date that the payment is received. This interest provision does not relieve the Lessee from its obligation to pay Rent at the time and in the manner specified in this Lease and will not prejudice or affect the remedies of the Lessor under this Lease or otherwise.

4.11 **Survival of Sections** – Sections 4.9 – 4.10 survive when this Lease ends.

5. IMPROVEMENTS

5.1 **Existing Improvements** – The Parties confirm that the Improvements on the Lands at the Commencement Date are identified in Schedule A of this Lease.

5.2 **Ownership of Improvements During the Term** – Improvements constructed during the Term will not be the property or liability of the Lessor during the Term, on the condition that the Lessee will not remove any such Improvements without the prior consent of the Lessor, in its sole discretion, however, this limitation does not prohibit the Lessee from repairing, rebuilding, or replacing, in whole or in part, Improvements in accordance with the terms of this Lease.

5.3 **Ownership of Trade Fixtures** – Trade Fixtures installed during the Term will not be the property or liability of the Lessor during the Term. Any such Trade Fixtures may be removed from the Premises during the Term without the consent of the Lessor, on the condition that any damage caused to the Premises by removing such Trade Fixtures will be promptly rectified.

5.4 Requirements to Construct, Operate, or Remove

5.4.1 The Lessee will not construct, operate, or remove any Improvements, except for those related to an Exempt Project, or modify the Premises in anticipation of such construction, operation, or removal, without first having:

5.4.1.1 obtained all applicable building permits, approvals, and authorizations for such construction, operation, or removal under section 5.5;

5.4.1.2 obtained the Decision Maker's written determination under an Environmental Review that the applicable Project pertaining to such construction, operation, or removal may proceed; and

5.4.1.3 obtained the Decision Maker's written confirmation that an applicable Construction and Environmental Management Plan to implement such Project complies with the applicable Environmental Review.

5.4.2 The Lessee will not construct, operate, or remove any Improvements related to an Exempt Project, or modify the Premises in anticipation of such construction, operation, or removal, without first having obtained all applicable building permits, approvals, and authorizations for such construction, operation, or removal under section 5.5. For greater certainty:

5.4.2.1 the Lessee is still required to submit appropriate information under section 8.3.3 for the Decision Maker to determine if such construction, operation, or removal constitutes an Exempt Project; and

5.4.2.2 sections 8.3.4 - 8.3.7, 8.4, and 8.5 do not apply to such construction, operation, or removal.

5.5 **Authority Authorization** – The Lessee will apply to all appropriate Authorities for all applicable building permits, approvals, and authorizations necessary for the Lessee to construct, operate, or remove any Improvements.

5.6 Construction Compliance

5.6.1 Once the requirements of section 5.4 have been met in relation to proposed Improvements, the Lessee will ensure that such Improvements are **[OPTIONAL – determine if there should be a time element to completing construction, such as: promptly]** constructed in a proper and workmanlike manner in accordance with:

5.6.1.1 applicable Codes, Laws, building permits, approvals, and authorizations;

5.6.1.2 any applicable Development Plan and Construction and Environmental Management Plan; and

- 5.6.1.3 the terms and conditions, including all mitigation measures, timelines, and monitoring, required by an applicable determination made under an Environmental Review.

OPTIONAL – Include the following section if a time element such as “promptly” is NOT used in section 5.6.1:

- 5.6.2 Except as may be specifically set out in this Lease, the Lessee will not be required to commence construction of any Improvements within any period of time, even after the requirements of section 5.4 have been met with respect to such Improvements, on the condition that, once construction of the Improvements has commenced, such construction will be pursued to completion with commercially reasonable diligence in accordance with this Lease and, without limiting the generality of the foregoing, no Improvements under construction will be left unfinished in an unsafe, unsightly, or uneconomic condition.

End of Option.

- 5.7 **Security for Construction** – The Lessee will, prior to constructing any Improvements, provide to the Lessor, concurrently with the applicable certified Construction and Environmental Management Plan, written evidence that a performance bond, letter of credit, or other similar security has been obtained in an amount at least equal to 50% of the estimated cost of the work, including all labour and material in connection with the work. Such security must be in a form satisfactory to the Lessor with sureties, if required, approved of by the Lessor.
- 5.8 **Substantial Completion** – Improvements must not be occupied until they are Substantially Complete. Substantial Completion may occur in respect of portions of the Improvements.
- 5.9 **Drawings and Plans**
- 5.9.1 The Lessee will promptly provide to the Lessor reproducible as-built or record drawings, certified by an Architect or Engineer that applicable Codes and Laws have been met, of all completed Improvements and any completed substantial alterations.
- 5.9.2 The Lessee will maintain an updated chronological record of all finalized Construction and Environmental Management Plans relating to the Premises. Within 30 days of a request by the Lessor, the Lessee will provide the requesting Party with a copy of the updated chronological record and copies of such plans for any year identified by the requesting Party.
- 5.10 **Repair & Maintenance** – The Lessor has no obligation to maintain or repair any Improvements. Subject to section 5.12, the Lessee will repair and maintain the Premises as would a prudent owner, keeping the Premises in good order and condition in all respects consistent with their age and nature.

OPTIONAL – Add the following section if the Lessee will be required to get regular engineering reports to assist in determining what repair and maintenance needs exist:

5.11 Report of Engineering Firm - To assist the Lessee with its obligations under section 5.10, the Lessee will obtain from a reputable, independent professional engineering firm, at least every five years during the Term, a building condition report with respect to each building forming part of the Improvements that sets out the items requiring repair or replacement, appropriate timelines for completing such repairs and replacements, and the estimated cost to complete each such item. The Lessee will promptly provide a copy of such report to the Lessor and promptly carry out such repairs and replacements in accordance with the timeline set out in such report. To avoid duplication, such report will not be required if one is required on a regular basis under applicable Codes or Laws.

End of Option.

5.12 Damage to, or Destruction of, Improvements – If any Improvements are damaged or destroyed during the Term, then:

5.12.1 the Lessee will promptly notify each of the Lessor and the Council;

5.12.2 this Lease will not end;

5.12.3 there will be no reduction or postponement of Rent; and

There are two options for the remainder of this section 5.12. Choose one and delete the other.

OPTION 1 – Use the following language if the Lessee will be required to rebuild with substantially similar Improvements after damage or destruction:

5.12.4 within a reasonable time after such damage or destruction, the Lessee will repair, rebuild, or replace the Improvements with such other Improvements that are, to the extent possible, to a standard at least substantially equal in quality of material and workmanship to the original Improvements and, when considered together with the balance of the Improvements on the Premises, must not, in the reasonable opinion of the Lessor, materially diminish the economic value of the Premises.

End of Option 1.

OPTION 2 – Use the following language if the Lessee will have discretion (subject to Laws, zoning, and an Environmental Review) to determine what, if any, Improvements to construct after damage or destruction:

5.12.5 within a reasonable time after such damage or destruction, the Lessee will repair, rebuild, or replace the Improvements with such other Improvements as the Lessee deems necessary or expedient, including:

5.12.5.1 Improvements that are substantially similar to those that were damaged or destroyed; or

5.12.5.2 Improvements that differ in any of their size, use, form, and character from those that were damaged or destroyed,

on the condition that:

5.12.5.3 any damaged or destroyed Improvements will not be left in an unsafe or unsightly condition;

5.12.5.4 the Lessee will repair, rebuild, or replace any Improvements that are reasonably necessary in order to facilitate access to and use of any other portions of the development situate on the Premises; and

5.12.5.5 rebuilt or replacement Improvements must be constructed to a standard that is at least substantially equal in quality of material and workmanship to the original Improvements and, when considered together with the balance of the Improvements on the Premises, must not, in the reasonable opinion of the Lessor, materially diminish the economic value of the Premises.

End of Option 2.

6. INSURANCE

6.1 **Errors and Omissions Insurance** – The Lessee will provide evidence to the Lessor that errors and omissions insurance, with minimum limits of \$1,000,000 per occurrence and annual aggregate, is obtained with respect to the design work of the Architects or Engineers for proposed Improvements estimated to be valued at more than \$250,000.

6.2 **Construction Insurance** – From the earlier of the date upon which construction of an Improvement starts or the date upon which stockpiling construction materials on the Premises in anticipation of such construction starts through until Substantial Completion of the Improvement, the Lessee will ensure that the following insurance is obtained and maintained to the extent that coverage is not available under the insurance required in section 6.3:

6.2.1 “Wrap up” commercial general liability insurance against claims for bodily injury (including death), personal injury, and property damage arising in connection with the use of the Premises for construction, which must:

- 6.2.1.1 be written on a commercial general liability basis with liability limits of at least \$5,000,000 per occurrence (or any higher amount that the Lessor reasonably requires, by providing notice to the Lessee before construction begins); and
- 6.2.1.2 include the Lessor as an additional insured.
- 6.2.2 Builders risk construction insurance to cover “all risks” of physical damage to, or loss of, the Improvements (including goods and materials to be incorporated in the Improvements while in storage at the site or in transit to it), which must:
 - 6.2.2.1 be written in an amount at least equal to such Improvements’ full replacement value, plus no less than 25% of budgeted “soft costs”;
 - 6.2.2.2 include the Lessor as a named insured;
 - 6.2.2.3 to prevent the Lessor from becoming a co-insurer, include either a stated amount co-insurance endorsement or confirm that no co-insurance applies; and
 - 6.2.2.4 include reasonable coverage for flood and for earthquake (for properties located in earthquake zones classified as high to extreme by the Institute for Catastrophic Loss Reduction or its successor).

The insurance may allow for full or partial occupancy of the Improvements prior to completion of construction and allow for the testing and commissioning of equipment installed as part of the Improvements.

6.3 Liability & Property Insurance – Subject to section 6.2, the Lessee will ensure that the following insurance is obtained and maintained during the Term and for any period the Lessee is on the Premises to remove Improvements and Trade Fixtures under section 11.2:

- 6.3.1 Commercial general liability insurance against claims for bodily injury (including death), personal injury, and property damage arising in connection with the use of the Premises, which must:
 - 6.3.1.1 be written on a commercial general liability basis with liability limits of at least \$[Amount] per occurrence (or any higher amount that the Lessor reasonably requires, by providing notice to the Lessee); and
 - 6.3.1.2 include the Lessor as an additional insureds.
- 6.3.2 Property insurance to cover “all risks” of physical damage to, or loss of, the Improvements, which must:
 - 6.3.2.1 be written in an amount at least equal to the Improvements’ full replacement value;

- 6.3.2.2 include the Lessor as a named insured;
 - 6.3.2.3 to prevent the Lessor from becoming a co-insurer, include either a stated amount co-insurance endorsement or confirm that no co-insurance applies;
 - 6.3.2.4 include reasonable coverage for flood and for earthquake (for properties located in earthquake zones classified as high to extreme by the Institute for Catastrophic Loss Reduction or its successor); and
 - 6.3.2.5 include by-laws coverage and sewer backup coverage.
- 6.3.3 Equipment breakdown insurance against the explosion of pressure vessels, mechanical or electrical breakdown of machinery and equipment, air conditioning or refrigeration equipment, and miscellaneous apparatus (and production machinery where applicable), which must:
- 6.3.3.1 be written on a repair or replacement basis in an amount at least equal to the full replacement value of the Improvements housing the equipment and any adjacent or ancillary Improvements in which the Lessee's interest is insurable; and
 - 6.3.3.2 include the Lessor as a named insured.
- 6.3.4 Other insurance reasonably required from time to time by the Lessor and that a prudent owner of the Premises might reasonably obtain.

6.4 **General Insurance Provisions**

- 6.4.1 Every insurance policy required under this Lease in which the Lessor is an additional or named insured must:
- 6.4.1.1 contain an agreement by the insurer that it will not cancel the policy without first giving the Lessor at least 30 days prior notice;
 - 6.4.1.2 contain a clause to the effect that a release from liability entered into prior to any loss will not affect the right of the Lessor to recover;
 - 6.4.1.3 contain a waiver of subrogation by the insurers against the Lessor;
 - 6.4.1.4 contain a provision that the policies will not be invalidated by any act, omission, or negligence of any Person that is not within the knowledge or control of the Lessor;
 - 6.4.1.5 include features customarily included by prudent owners in the province of [Name of Province] in:

- 6.4.1.5.1 property insurance for improvements similar to the Improvements; and
 - 6.4.1.5.2 liability insurance for the type of business carried on by the Lessee on the Premises;
 - 6.4.1.6 include features reasonably required by the Lessor; and
 - 6.4.1.7 not include any non-standard, special, or unusual exclusions or restrictive endorsements without first getting the written consent of the Lessor.
- 6.4.2 The Lessee will not do anything, or permit or suffer anything to be done, on the Premises that might cause the insurance policies required by this Lease to be invalidated or cancelled.
- 6.4.3 The Lessee will:
- 6.4.3.1 on the Commencement Date, provide certificates evidencing every insurance policy that is required at that time by this Lease to the Lessor;
 - 6.4.3.2 from time to time when an insurance policy is required under this Lease, provide certificates evidencing such policy to the Lessor; and
 - 6.4.3.3 prior to an insurance policy required under this Lease expiring, provide to the Lessor a certificate of renewal or other evidence satisfactory to the Lessor that the insurance has been renewed or replaced.
- 6.4.4 Upon request by the Lessor, the Lessee will provide the Lessor whichever of the following is requested:
- 6.4.4.1 a written statement, prepared and signed by a qualified insurance professional, confirming that the insurance policies obtained for the benefit of the Lessor satisfy the requirements of this Lease; and
 - 6.4.4.2 a certified copy of each requested insurance policy.
- 6.5 **Release of Insured Claims** – The Lessee releases the Lessor, the Minister, and their officials, servants, employees, agents, contractors, subcontractors, and other legal representatives from all liability for loss (including economic loss), damage, and injury (including loss, damage, and injury arising out of the negligent acts or omissions of any of them) in any way caused by or resulting from any of the perils or injury against which it has covenanted in this Lease to insure.

- 6.6 **Payment of Loss under Insurance** – The insureds to whom money is payable under an insurance policy required to be obtained under sections 6.2.2, 6.3.2, or 6.3.3 will ensure that:
- 6.6.1 notwithstanding the terms of such policy, such money is directed to be paid to the Trustee; and
 - 6.6.2 the Trustee uses such money first for the repair, replacement, or rebuilding of the Improvements for which such money was paid, against certificates of the Architect (or such other Person as the Parties may agree upon) who is in charge of such repair, replacement, or rebuilding.
- 6.7 **Cancellation of Insurance** – The Lessee will promptly notify the Lessor if an insurance policy required under this Lease is:
- 6.7.1 cancelled or threatened to be cancelled, and promptly provide evidence of a certificate of renewal or other evidence satisfactory to the Lessor that the insurance has been renewed or replaced before the cancellation of such policy; or
 - 6.7.2 suspended, and promptly provide evidence to the Lessor that the policy has been reinstated or replaced.
- 6.8 **Payment of Insurance Premiums** – If a policy's insurance premium is not paid when due, then the Lessor may pay the premium or obtain any insurance that the Lessor deems necessary, in the Lessor's sole discretion, the cost of which is payable by the Lessee as Additional Rent.

7. LAWS / TAXES / SERVICES

7.1 Laws

- 7.1.1 The Lessee will comply with all Laws regarding this Lease, the Premises, and activities on the Premises and will require all those for whom the Lessee is responsible in law to comply with all Laws regarding this Lease, the Premises, and activities on the Premises.
- 7.1.2 The Lessee will promptly provide to the Lessor copies of any notice that it receives from an Authority requiring something to be done, or stop being done, on the Premises. Once the matter under the notice has been resolved to the Authority's satisfaction, the Lessee will promptly provide reasonably satisfactory evidence to the Lessor.
- 7.1.3 On request from the Lessor, the Lessee will either promptly provide to the Lessor reasonably satisfactory information from an Authority about the Lessee's compliance with Laws or promptly arrange for written authorization to allow the

Lessor to receive information from an Authority about the Lessee's compliance with Laws.

7.1.4 To the extent that the *[Name of Provincial Law Related to Fire Services]* does not apply to the Premises or to the activities carried out on the Premises under this Lease, the Lessee will ensure that the Premises are inspected with the same frequency as required under that Act by a Person qualified under that Act to conduct such inspections. That Person will prepare an inspection report, which must include recommended actions resulting from the inspection. The Lessee will promptly provide the inspection report to the Lessor, comply with the recommended actions in the inspection report, and notify the Lessor of such compliance when completed.

7.2 **Taxes**

7.2.1 Without limiting the generality of section 7.1, the Lessee will promptly pay all applicable taxes (including property taxes), trade licences, rates, levies, duties, and assessments of any kind, together with all applicable charges, penalties, and interest imposed by an Authority, regarding the Lands, the Improvements, the sales, transactions, or business on the Premises, the occupation of the Premises by any Person, or the payment of Rent or other amounts payable by the Lessee.

7.2.2 Without relieving or modifying the obligation of the Lessee to comply with section 7.2.1, the Lessee may, at its expense, contest or appeal the validity or amount of any tax, trade licence, rate, levy, duty, assessment, charge, penalty, or interest referred to in section 7.2.1, on the condition that the Lessee promptly commences any proceedings to contest or appeal such validity or amount, continues the proceedings with all due diligence, and does not cause a charge, encumbrance, or claim to be made against the Premises.

7.2.3 On request by the Lessor, the Lessee will provide to the Lessor official receipts of an Authority, or other proof satisfactory to the Lessor, evidencing payment of applicable taxes, trade licences, rates, levies, duties, assessments, charges, penalties, and interest.

7.3 **Services**

7.3.1 The Lessee will provide, secure, and maintain all services, utilities, and facilities required from time to time for the use of the Premises.

7.3.2 The Lessor has no obligation to provide, secure, or maintain any services, utilities, and facilities to or on the Premises.

7.3.3 The interruption of a service, utility, or facility referred to in section 7.3.1 will not be considered a disturbance of the Lessee's right to enjoyment of the Premises or relieve the Parties from their respective obligations in this Lease.

8. ENVIRONMENT

There are two options for the next section. Choose one and delete the other.

OPTION 1 – If the uses are likely to raise significant environmental issues (such as manufacturing, recycling, heavy industry, or residential developments treating their own waste), then use the following:

8.1 Compliance with Environmental Laws

- 8.1.1 The Lessee will not use the Premises to generate, manufacture, refine, treat, transport, store, handle, transfer, produce, or process any Contaminants, except as may be reasonably required for the Authorized Uses and in compliance with Laws related to the protection of the Environment.
- 8.1.2 The Lessee will not carry out operations or activities, or construct, operate, or decommission any Improvements, that in the reasonable opinion of the Lessor materially increase the risk of liability to the Lessor (whether directly or indirectly) as a result of the application of Laws related to the protection of the Environment.
- 8.1.3 If the Lessor reasonably determines that the promulgation of, or the amendment to, a Law related to the protection of the Environment has materially increased the probability or extent of the Lessor's liability under such Law with respect to the Authorized Uses, then the Lessee is responsible to the Lessor for such potential liability and the Parties will, if the Lessor reasonably considers it necessary, negotiate an amendment to this Lease to better reflect this assumption of such potential liability by the Lessee.

End of Option 1.

OPTION 2 – If the uses are unlikely to raise significant environmental issues (such as office, retail, or residential developments connected to waste services), then use the following:

- 8.2 **Compliance with Environmental Laws** – The Lessee will not use the Premises to generate, manufacture, refine, treat, transport, store, handle, transfer, produce, or process any Contaminants, except as may be reasonably required for the Authorized Uses and in compliance with Laws related to the protection of the Environment.

End of Option 2.

8.3 Environmental Review Process

- 8.3.1 As a “designated project”, as defined in the IAA, has its own process under the auspices of a different federal authority than the Minister, sections 8.3.2 - 8.3.7, 8.4, and 8.5 do not apply to a designated project, and any similar concept in any amended, succeeding, or replacement Law.

- 8.3.2 Sections 8.3.3 - 8.3.7 only apply to the Decision Maker's environmental review process with respect to a Project and do not limit the processes or powers of any other federal authority with assessment responsibilities for such Project.
- 8.3.3 If the Lessee considers that a proposed Project is an Exempt Project, then it will provide the Decision Maker sufficient information about the proposed Project for the Decision Maker to determine if the Project is an Exempt Project. If the Decision Maker determines that the proposed Project is an Exempt Project, then further review of such Project is not required and sections 8.3.4 - 8.3.7, 8.4, and 8.5 do not apply to such Project.
- 8.3.4 The Lessee will provide the Decision Maker all information about a proposed Project reasonably required by the Decision Maker, including:
- 8.3.4.1 an environmental site assessment of the environmental condition of the Premises affected by such Project, stating that it may be relied upon by all Parties;
 - 8.3.4.2 a Development Plan consistent with the Project; and
 - 8.3.4.3 an environmental review report of such Project,
- to enable the Decision Maker to determine the environmental effects of such Project:
- 8.3.4.4 as the Decision Maker may by Law be required to make; or
 - 8.3.4.5 in the reasonable discretion of the Decision Maker, if the First Nation takes over the position of the Lessor under this Lease by operation of law and no Law requires a determination.
- 8.3.5 If the Decision Maker is not reasonably satisfied with any information provided under section 8.3.4, then the Decision Maker will notify the Lessee of each inadequacy. The Lessee will ensure that the inadequacies are addressed to the reasonable satisfaction of the Decision Maker, which revised information the Lessee will provide to the Decision Maker.
- 8.3.6 If the Decision Maker determines that the Project may proceed, then the Lessee will:
- 8.3.6.1 ensure that implementation of the Project, including site preparation, construction, operation, and decommissioning, complies with all terms and conditions, including all mitigation measures, timelines, and monitoring, required by the Decision Maker's determination; and
 - 8.3.6.2 provide the Decision Maker with evidence, to the reasonable satisfaction of the Decision Maker, of compliance with such terms, conditions, mitigation measures, timelines, and monitoring.

- 8.3.7 If the Decision Maker determines that the Project may not proceed, then:
- 8.3.7.1 the Decision Maker will provide reasons for such determination to the Lessee; and
 - 8.3.7.2 subject to such appeals as may be permitted by law, the Lessee releases the Lessor, the Decision Maker, and their officials, servants, employees, agents, contractors, subcontractors, and other legal representatives for the Lessee's inability to use the Premises as anticipated.
- 8.4 **Construction and Environmental Management Plan**
- 8.4.1 The Lessee will provide the Decision Maker with a Construction and Environmental Management Plan for the implementation of each Project.
- 8.4.2 The Decision Maker will review the Construction and Environmental Management Plan to confirm if it meets the requirements of the applicable Environmental Review. If further information is required, then the Decision Maker will notify the Lessee and the Lessee will provide such additional information to the Decision Maker. This process will continue until the Decision Maker confirms in writing that the Decision Maker is reasonably satisfied that the Construction and Environmental Management Plan meets the requirements of the applicable Environmental Review.
- 8.4.3 The Lessor and the Decision Maker do not owe, individually or in any combination, a duty of care to the Lessee (and any Sublessee, any Mortgagee, and any other Person deriving from the Lessee, directly or indirectly, an interest in, or right in relation to, the Premises) because of their reviews of any Construction and Environmental Management Plan, as such reviews are solely for their benefit. The Lessee releases the Lessor, the Decision Maker, and their officials, servants, employees, agents, contractors, subcontractors, and other legal representatives from any liability associated with their reviews of, and the Lessee's implementation of, a Construction and Environmental Management Plan. This section 8.4.3 survives when this Lease ends.
- 8.5 **Environmental Bond** – The Lessee acknowledges that a Decision Maker may require security for the decommissioning of a Project as a mitigation measure in a determination under an Environmental Review of such Project. If such security is required, then the Lessee will provide the Lessor with security (such as an environmental bond, letter of credit, or other security) reasonably acceptable to the Lessor, in terms and amount, for the decommissioning of such Project. The Lessee will provide the security to the Lessor promptly after notification and the security must remain a paid up, valid security until the completion of the decommissioning of the Project, whether that is before or after this Lease ends.

There are 2 options for the next section. Choose one and delete the other.

OPTION 1 – If remediation is to be to the level set out in the Standards, then use the following:

- 8.6 **Contaminants** – If the Premises are exposed to a Contaminant in an amount that may cause levels of the Contaminant on the Premises to exceed its Standard, then the Lessee will:
- 8.6.1 promptly notify the Lessor, the Council, and any appropriate Authority of the exposure, ensuring that the notice includes details relating to the exposure, including the time and extent of the exposure, the remedial action taken prior to providing the notice, the remedial action that the Lessee intends to take in order to contain or rectify the exposure, and any Persons observed who appeared to have caused or who were in the vicinity of the exposure;
 - 8.6.2 promptly take all remedial action necessary to reduce the Contaminant on the Premises to a level that is at or below its Standard and to fully rectify the effects of the exposure off the Premises, both on and off the Reserve, in compliance with all Laws and all reasonable requests of the Lessor;
 - 8.6.3 provide the Lessor with an environmental site assessment report (which is reasonably satisfactory to each of them and which states that it may be relied upon by the Parties) evidencing the results of the Lessee’s activities under section 8.6.2; and
 - 8.6.4 undertake such further activities as the Lessor reasonably requires for the Lessee to reduce the Contaminant on the Premises to a level that is at or below its Standard and to fully rectify the effects of the exposure off the Premises, both on and off the Reserve, based on the report referred to in section 8.6.3.

End of Option 1.

OPTION 2 – If remediation is to be to the condition existing at the Commencement Date, then use the following:

- 8.7 **Contaminants** – If the Premises are exposed to a Contaminant, then the Lessee will:
- 8.7.1 promptly notify the Lessor, the Council, and any appropriate Authority of the exposure, ensuring that the notice includes details relating to the exposure, including the time and extent of the exposure, the remedial action taken prior to providing the notice, the remedial action that the Lessee intends to take in order to contain or rectify the exposure, and any Persons observed who appeared to have caused or who were in the vicinity of the exposure;
 - 8.7.2 promptly remove all such Contaminant from the Premises and take all remedial action necessary to fully rectify the effects of the exposure off the Premises, both on and off the Reserve, in compliance with all Laws and all reasonable requests of the Lessor;

- 8.7.3 provide the Lessor with an environmental site assessment report (which is reasonably satisfactory to each of them and which states that it may be relied upon by the Parties) evidencing the results of the Lessee's activities under section 8.7.2; and
- 8.7.4 undertake such further activities as the Lessor may reasonably require for the Lessee to remove all such Contaminant from the Premises and to fully rectify the effects of the exposure off the Premises, both on and off the Reserve, based on the report referred to in section 8.7.3.

End of Option 2.

8.8 **Environmental Representations and Warranties** – The Lessee represents and warrants that:

- 8.8.1 the Lessee's operations on the Premises do not involve the location, storage, incorporation, or manufacture of Contaminants, except in accordance with this Lease; and
- 8.8.2 the Lessee, its affiliates, and their respective directors and senior officers have not been prosecuted for any offences, or received any orders or administrative, monetary, or other similar penalties, under any law related to the protection of the Environment.

8.9 **Survival of Section 8** – This section 8 survives when this Lease ends.

9. ASSIGNMENTS, MORTGAGES & SUBLEASES

9.1 Assignments

- 9.1.1 The Lessee may not assign its interest in this Lease without the consent of the Lessor, in its discretion, and no assignment is valid until the proposed assignee has entered into an Assignment Consent Agreement, substantially in the form attached as Schedule C, with any changes as may be agreed to by the Parties and the assignee.
- 9.1.2 An assignment of the Lessee's interest in this Lease will not relieve or discharge the Lessee from any of its obligations in this Lease, unless the Lessor has agreed, in writing, to release the Lessee from it.

9.2 Mortgages

- 9.2.1 Although the Lessee may Mortgage its interest in this Lease without the consent of the Lessor, no Mortgage is valid until the proposed Mortgagee has entered into a Mortgage Acknowledgement Agreement, substantially in the form attached as Schedule D, with any changes as may be agreed to by the Parties and the Mortgagee.

- 9.2.2 The Lessee will ensure that any Mortgage does not conflict with the terms of this Lease and, by complying with such Mortgage, the Lessee will not be in default of this Lease.
- 9.2.3 If the Lessee defaults on an obligation in a Mortgage, then the Lessor may cure the default under the Mortgage on the Lessee's behalf and all expenses incurred by such Party to cure such default are payable by the Lessee as Additional Rent.
- 9.2.4 If the Lessee defaults on an obligation in this Lease, then:
- 9.2.4.1 any default notice issued by the Lessor under section 10 will not be valid for any purpose unless and until a copy of such notice is also provided to all Mortgagees of valid Mortgages;
 - 9.2.4.2 a Mortgagee of a valid Mortgage may cure or cause to be cured a default of this Lease on behalf of the Lessee within the time period specified in this Lease or in the applicable default notice, whichever is greater, from the date of delivery of the notice to the Mortgagee; and
 - 9.2.4.3 if the Mortgagee notifies the Lessor within the cure period that the Mortgagee has taken or intends to take formal proceedings to enforce its Mortgage and protect its position, then:
 - 9.2.4.3.1 the Mortgagee will have sufficient time to pursue such proceedings to their conclusion, acting expeditiously, to enforce its Mortgage and protect its position;
 - 9.2.4.3.2 once such proceedings are commenced, the Lessor will not exercise any of its remedies (except for its rights to cure in accordance with section 10.2.4), on the condition that the Mortgagee actively prosecutes such proceedings to their conclusion; and
 - 9.2.4.3.3 if, upon the conclusion of such proceedings, the rights of the Lessee have been released to the Mortgagee or foreclosed or sold, then, on the condition that all previous defaults under this Lease that are capable of being cured have been fully cured, the Mortgagee or, subject to section 9.2.6, the purchaser will become the Lessee.
- 9.2.5 Notwithstanding anything contained in this Lease, all obligations to construct Improvements in this Lease will not apply to a Mortgagee of a valid Mortgage during a period in which the Mortgagee is exercising its rights under section 9.2.4.3.
- 9.2.6 A Mortgagee may exercise all of its rights and remedies with respect to this Lease and the Lessee's leasehold interest in the Premises, including the right to sell or assign the Lease or to appoint a receiver of the Lessee or a receiver of the

Premises (either by appointment under a security instrument or by an appointment by a court order) and take possession and administer the Premises (including with respect to the collection of rents and realizing any other rights or benefits of the Lessee in respect of the Premises), on the condition that, if the Mortgagee exercises any such power of sale or assignment, then the sale or assignment will not be valid without the consent of the Lessor and until the proposed assignee has entered into an Assignment Consent Agreement, substantially in the form attached as Schedule C, with any changes as may be agreed to by the Parties and the assignee.

9.2.7 The Lessee will not surrender any part of this Lease or the Premises, and the Lessor will not accept any such surrender, without the prior written consent of each Mortgagee of a valid Mortgage.

9.2.8 Notwithstanding any other provisions of this Lease, a Mortgagee will not be responsible for the Lessee's obligations in this Lease, including any requirement to take out or maintain insurance or any requirement to indemnify, unless and until either:

9.2.8.1 the Mortgagee becomes the Lessee by obtaining an order absolute of foreclosure in respect of this Lease or by taking an assignment of this Lease, and then only for the period in which the Mortgagee is the Lessee; or

9.2.8.2 the Mortgagee is in possession of the Premises (through the exercise of its default remedies or otherwise), and then only for the period in which the Mortgagee is in possession of the Premises, and the Mortgagee will not be considered to be in possession of the Premises as a result of the appointment of a receiver of the Lessee by a court or with court approval of the actions of such a receiver.

9.2.9 The Lessee will give each Mortgagee of a valid Mortgage reasonable notice of a dispute commenced in court under section 14.1.

9.2.10 The Lessee will give each Mortgagee of a valid Mortgage reasonable notice of an arbitration of a dispute under section 14.2 and each such Mortgagee will have the option of participating in the arbitration proceedings if such Mortgagee, acting reasonably, considers that such proceedings may affect the security of its Mortgage or the value of such security.

9.2.11 For greater certainty, this section 9.2 does not apply to a mortgage of a Sublease, which does not require consent of the Lessor, or entering into a Mortgage Acknowledgment Agreement, to be valid.

There are 4 options for the Sublease sections. Choose one and delete the others.

OPTION 1 – If consent is NOT required for subleases and the Lessor would NOT like a contractual relationship with Sublessees, then use the following:

9.3 **Subleases** – Although the Lessee may sublet the Premises without the consent of the Lessor:

9.3.1 the term of a Sublease must end at least one day before the end of the Term;

9.3.2 a Sublease must be consistent with the terms of the Lease; and

9.3.3 a Sublease must include a term that it is subordinate to this Lease and that it will automatically terminate when this Lease ends.

End of Option 1.

OPTION 2 – If consent is NOT required for subleases but the Lessor would like a contractual relationship with Sublessees, then use the following:

9.4 **Subleases**

9.4.1 The Lessee may sublet the Premises without the consent of the Lessor.

9.4.2 The term of a Sublease must end at least one day before the end of the Term.

9.4.3 A Sublease must be consistent with the terms of this Lease.

9.4.4 A Sublease must include a term that it is subordinate to this Lease and that it will automatically terminate when this Lease ends.

9.4.5 A Sublease is not valid until the Sublessee has entered into a Sublease Acknowledgment Agreement, substantially in the form attached as Schedule E, with any changes as may be agreed to by the Parties and the Sublessee.

9.4.6 An assignment of a Sublease is not valid until the proposed assignee has entered into a Sublease Acknowledgment Agreement, substantially in the form attached as Schedule E, with any changes as may be agreed to by the Parties and the assignee.

End of Option 2.

OPTION 3 – If consent is required for subleases (e.g., where required by the Designation or when rent is nominal), then use the following:

9.5 **Subleases**

9.5.1 The Lessee will not sublet the Premises without the consent of the Lessor.

9.5.2 The term of a Sublease must end at least one day before the end of the Term.

9.5.3 A Sublease must be consistent with the terms of this Lease.

- 9.5.4 A Sublease must include a term that it is subordinate to this Lease and that it will automatically terminate when this Lease ends.
- 9.5.5 A Sublease is not valid until it has received the consent of each of the Lessor and the Sublessee has entered into a Sublease Consent Agreement, substantially in the form attached as Schedule E, with any changes as may be agreed to by the Parties and the Sublessee.
- 9.5.6 An assignment of a Sublease is not valid until the proposed assignee has entered into a Sublease Consent Agreement, substantially in the form attached as Schedule E, with any changes as may be agreed to by the Parties and the assignee.

OPTIONAL – Include the following section if Subleases require fair market rent:

- 9.5.7 A Sublease must require the payment of fair market rent. The Lessee will promptly and diligently collect such rent. The Lessee will pay as Additional Rent any difference between the fair market rent required by this section 9.5.7 and the amount of rent actually received if fair market rent is not charged and diligently collected. Fair market rent means the most probable rent that the subleased portion of the Premises should bring in a competitive and open market, reflecting all conditions of this Lease and the Sublease and assuming the following conditions:
- 9.5.7.1 The Lessee and the Sublessee are typically motivated, well informed, well advised, and are acting prudently in an arm's length transaction.
- 9.5.7.2 A reasonable time is allowed for exposure in the open market and the rent represents the normal consideration for the subleased portion of the Premises unaffected by undue stimuli or special fees or concessions granted by anyone associated with the transaction.
- 9.5.7.3 The subleased portion of the Premises are owned by the Lessor in fee simple, free of all charges and encumbrances other than those registered in the Registry, and the inalienability or Indian reserve status of the Lands must not be a discounting factor and must not be used as a basis to lower valuation in comparing the subleased portion of the Premises to other properties, whether or not such properties are Indian reserve lands.
- 9.5.7.4 The subleased portion of the Premises do not include Improvements made after the date on which the Sublease begins and the contributory value of the Sublessee's Improvements must not be taken into account.
- 9.5.8 By January 31st on each year of this Lease, the Lessee will provide the Lessor with a statutory declaration setting out for the previous year of the Lease the rent required under each Sublease, the date upon which such rent was required, the rent actually received and the date of such receipt.

End of optional language.

End of Option 3.

OPTION 4 – If Sublessees are to have non-disturbance rights, then use one of the following options:

Option 4A – Use if sublease consent is NOT required:

9.6 Subleases

- 9.6.1 The Lessee may grant Subleases without the consent of the Lessor.
- 9.6.2 A Sublease is not valid until the Sublessee has entered into a Sublease Non-Disturbance Agreement, substantially in the form attached as Schedule E, with any changes as may be agreed to by the Parties and the Sublessee.
- 9.6.3 A Sublease is not valid unless it is substantially in the form attached as Schedule F, with any changes as may be agreed to by the Parties and the Sublessee.
- 9.6.4 An assignment of a Sublease is not valid until the proposed assignee has entered into a Sublease Non-Disturbance Agreement, substantially in the form attached as Schedule E, with any changes as may be agreed to by the Parties and the assignee.

End of Option 4A.

Option 4B – Use if sublease consent is required:

9.7 Subleases

- 9.7.1 A Sublease is not valid until it has received the consent of the Lessor and the Sublessee has entered into a Sublease Consent and Non-Disturbance Agreement, substantially in the form attached as Schedule E, with any changes as may be agreed to by the Parties and the Sublessee.
- 9.7.2 A Sublease is not valid unless it is substantially in the form attached as Schedule F, with any changes as may be agreed to by the Parties and the Sublessee.
- 9.7.3 An assignment of a Sublease is not valid until the proposed assignee has entered into a Sublease Consent and Non-Disturbance Agreement, substantially in the form attached as Schedule E, with any changes as may be agreed to by the Parties and the assignee.

End of Option 4B.

End of Option 4.

9.8 **Registration** – The Lessee will ensure that all assignments of its interest in this Lease, Mortgages, Subleases, and interests in land granted by it under this Lease are submitted to the Registry in a registerable form promptly after execution. The Lessee will require that any tenancies or other interests in land granted by any Sublessee be submitted to the Registry in a registerable form promptly after execution.

10. REMEDIES

10.1 Insolvency

10.1.1 Each of the following is considered to be an event of insolvency:

10.1.1.1 The Lessee makes an assignment for the benefit of creditors or otherwise starts proceedings under any bankruptcy or insolvency laws.

10.1.1.2 A receiver (including a receiver-manager, interim receiver, trustee, liquidator, and other custodian) of the Lessee's interest in the Premises is appointed, other than by a Mortgagee who has entered into a Mortgage Acknowledgement Agreement under section 9.2.1.

10.1.1.3 The Lessee is declared or becomes bankrupt or insolvent.

10.1.1.4 If the Lessee is a corporation or limited partnership, an application, petition, certificate, or order is made or granted to wind-up or dissolve the Lessee, voluntarily or not.

10.1.2 The Lessee will promptly provide notice to the Lessor of the happening of any of the events in section 10.1.1.

10.1.3 An event of insolvency is conclusively deemed to be an incurable default of this Lease and, upon such default, the Lessor may take advantage of any legal and equitable remedies available, including, without providing a default notice, declaring the Term ended and claiming prospective losses, by providing a termination notice to the Lessee, with a copy to each Mortgagee of a valid Mortgage.

10.2 Other Defaults

10.2.1 If the Lessee defaults on an obligation owed to the Lessor in this Lease, then the Lessor may provide a default notice to the Lessee, with a copy to each Mortgagee of a valid Mortgage.

10.2.2 If the default is of an outstanding Rent payment and the Lessee does not cure such default within 15 days after the default notice is delivered, then the Lessor may take advantage of any legal and equitable remedies available, including commencing an action for specific performance or by declaring the Term ended

and claiming prospective losses, by providing a termination notice to the Lessee, with a copy to each Mortgagee of a valid Mortgage.

10.2.3 If the default is not of an outstanding Rent payment and if such default:

10.2.3.1 can reasonably be cured within 30 days after the default notice is delivered and the Lessee fails to cure such default within the 30 days;
or

10.2.3.2 cannot reasonably be cured within 30 days after the default notice is delivered and the Lessee does not begin to cure such default within the 30 days to the reasonable satisfaction of the Lessor or continue to cure such default with due diligence after beginning to cure,

then the Lessor may take advantage of any legal and equitable remedies available, including by commencing an action for specific performance or by declaring the Term ended and claiming prospective losses, by providing a termination notice to the Lessee, with a copy to each Mortgagee of a valid Mortgage.

10.2.4 If a default is not cured within the time allowed in this Lease, or is not being diligently cured under section 10.2.3.2, then the Lessor may, with unrestricted access to the Premises, cure it in the Lessor's sole discretion, and the Lessor's expenses related to such curing are Additional Rent. If the Lessor begins to cure the default, then the Lessor will have no obligation to continue to cure it to completion and the Lessor is not liable for any losses or expenses suffered as a result by the Lessee, any Sublessee, or any Person deriving an interest directly or indirectly from the Lessee.

10.2.5 At the Lessor's sole discretion, copies of default notices and termination notices provided under this section 10 may be provided to the First Nation, any Sublessees, any other Person deriving an interest directly or indirectly from the Lessee's rights in this Lease, and any Authority.

10.3 **Additional Lessor Remedy for Unpaid Taxes, Additional Rent, and Interest** – The Lessor may recover Taxes, Additional Rent, and interest due to the Lessor as if they were unpaid rent at common law.

10.4 **Additional Lessor Remedy for Vacating or Abandoning** – Subject to the provisos set out in section 3.5, if the Premises are vacated or abandoned without the consent of the Lessor, then, upon providing a default notice in accordance with section 10.2 and expiry of the applicable cure period, the Lessor may:

10.4.1 enter the Premises as the agent of the Lessee, by reasonable force if required, without being liable for any loss or damage caused by the entry or the use of force, except to the extent that such loss or damage is caused by or contributed to by the Lessor's Gross Negligence or Wilful Misconduct;

- 10.4.2 let the Premises as the agent of the Lessee and at the Lessee's risk;
- 10.4.3 receive rent for the letting; and
- 10.4.4 apply such rent to any expenses incurred by the Lessor in the entry and letting of the Premises and to any money owing to the Lessor under this Lease in such proportions and order of priority as is determined by the Lessor in the Lessor's sole discretion.
- 10.5 **Additional Remedy for Breaches of Sections 5.4 and 5.6 – Stop Work Orders and Injunctions** – If section 5.4 or 5.6 is breached, then, in addition to any other remedy available to the Lessor:
- 10.5.1 the Lessor may issue a “stop work order”, which the Lessor is entitled to post in conspicuous locations on the Premises, and the Lessee will ensure that all unauthorized work on the Premises ceases;
- 10.5.2 the Lessee will promptly remediate any damage to the Premises arising from such breach that is not otherwise permitted, approved of, or authorized, as required by sections 5.4 and 5.6; and
- 10.5.3 the Lessor is entitled to obtain an injunction from a court of competent jurisdiction against the continuation of such breach, the Lessor's costs of which (including legal costs on a solicitor and own client basis) are, contingent upon success of the injunction application, Additional Rent.
- 10.6 **Remedies are Cumulative** – Notwithstanding any part of this Lease that provides a specific remedy, 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.
- 10.7 **Unavoidable Delay** – A default of this Lease will not be a default if it was due to, caused by, or materially contributed to by Unavoidable Delay, on the condition that the Party claiming the benefit of Unavoidable Delay promptly:
- 10.7.1 provides the other Party with notice of the Unavoidable Delay;
- 10.7.2 in good faith and in a commercially reasonable manner puts itself in a position to carry out the terms of this Lease notwithstanding the Unavoidable Delay; and
- 10.7.3 carries out the terms of this Lease once the Unavoidable Delay has ceased.
- 10.8 **Curing of Defaults by Others** – The curing of a default of this Lease by or on behalf of a Person other than the Lessee will be construed as a curing of that default by the Lessee.

11. END OF LEASE

11.1 Surrender of Premises – Subject to section 11.2:

11.1.1 when this Lease ends, the Lessee will peaceably surrender and yield up the Premises to the Lessor in the condition required by the terms of this Lease; and

11.1.2 all Improvements, and all Trade Fixtures not already removed at that time, will be the property of the Lessor absolutely, free of all encumbrances and for no compensation.

11.2 Removal of Improvements and Trade Fixtures

11.2.1 If, within 90 days:

11.2.1.1 of the end of the Term; or

11.2.1.2 after the report referred to in section 11.3.1 is issued if this Lease ends early,

the Lessor notifies the Lessee that the Improvements and Trade Fixtures described in such notice are to be removed from the Premises, then the Lessee will promptly remove them and will leave the remainder of the Premises in good and substantial repair and condition and free from all debris to the reasonable satisfaction of the Lessor.

11.2.2 If the Lessee does not promptly remove the Improvements and Trade Fixtures as required under section 11.2.1, then the Lessor may remove and dispose of them in the Lessor's sole discretion and return the Premises to a good and substantial repair and condition and free from all debris, and the Lessor's expenses related to such work are Additional Rent. The Lessor is not liable for any losses or expenses suffered as a result by the Lessee, any Sublessees, and any other Person on the Lands deriving an interest directly or indirectly from the Lessee.

11.3 Environmental Assessment and Contaminant Removal

11.3.1 Within 8 months before the expiration of the Term, or within 90 days after the earlier termination of this Lease, the Lessee will complete a sufficient environmental site assessment to establish the environmental condition of the Premises at that time and will provide the Lessor with a report (which is reasonably satisfactory to the Lessor and which must state that it may be relied upon by the Parties).

There are 2 options for the next section. Choose one and delete the other.

OPTION 1 – If remediation is to be to the level set out in the Standards, then use the following:

11.3.2 By the end of the Term, or within 90 days after the report referred to in section 11.3.1 is issued if this Lease ends early, the Lessee will remove from the Premises, to the reasonable satisfaction of the Lessor and any Authority, all Contaminants on the Premises in excess of their applicable Standard.

End of Option 1.

OPTION 2 – If remediation is to be to the condition existing at the Commencement Date, then use the following:

11.3.3 By the end of the Term, or within 90 days after the report referred to in section 11.3.1 is issued if this Lease ends early, the Lessee will, subject to its obligations relating to the Improvements under this section 11, remediate the Premises to their environmental condition prior to the Commencement Date, including removing from the Premises, to the reasonable satisfaction of the Lessor and any Authority, all Contaminants brought onto the Premises during the Term.

End of Option 2.

11.4 **Securing the Premises** – When this Lease ends, the Lessee will promptly secure the Premises to the reasonable satisfaction of the Lessor so that the Premises do not pose a danger to any Person.

11.5 **Access after Lease Ends** – The Lessee is entitled to access the Premises when this Lease ends only at the reasonable times and on the reasonable conditions set by the Lessor and only to be able to perform any of the Lessee’s obligations that survive after this Lease ends. Such access will not be construed as providing any rights of possession to the Premises.

11.6 **Survival of Section 11** – This section 11 survives when this Lease ends.

12. INDEMNITIES

12.1 **Lessee’s Indemnities** – The Lessee will indemnify and hold harmless the Lessor, the Minister, and their officials, servants, employees, agents, contractors, subcontractors, and other legal representatives (each being an “**Indemnified**”) from and for any claims, demands, actions, suits, and other proceedings, judgments, damages, penalties, fines, costs (including reasonable legal fees, on a solicitor and own client basis, and reasonable consultant and expert fees), liabilities, losses, and sums paid in settlement of any claims that arise during or after the Term and are in any way based upon, arise out of, or are connected with:

12.1.1 a breach of any of the Lessee’s obligations in this Lease;

- 12.1.2 an injury to, or death of, a Person on the Premises during the Term, other than a Person on the Premises under a right or interest granted by the Lessor under section 2.2 or 2.4;
 - 12.1.3 damage to, or loss of, property by a Person in any way due to the use of the Premises during the Term;
 - 12.1.4 the Decision Maker reviewing a Construction and Environmental Management Plan;
 - 12.1.5 the Decision Maker determining under an Environmental Review that a Project may not proceed; or
 - 12.1.6 the Indemnified curing or attempting to cure a default of this Lease,
 - but not if due to the Gross Negligence or Wilful Misconduct of such Indemnified, unless such negligence or misconduct involves a peril against which the Lessee is obligated to obtain and maintain insurance.
- 12.2 **Survival of Section 12** – This section 12 survives when this Lease ends.

13. DELIVERY

13.1 General Requirement

13.1.1 All notices, requests, demands, consents, and approvals to be provided under this Lease, which must be in writing, all other documents to be provided under this Lease, and all Rent to be paid will be delivered in accordance with this section 13 to the following addresses:

To the Lessor:

Director, Lands and Economic Development
 Indigenous Services Canada
 [Regional Office]
 [Regional Office's Address]

Fax: [#]

Email: [Email]

To the Lessee:

[Lessee's Name]
 [Lessee's Address]

Fax: [#]

Email: [Email]

13.1.2 If the postal service is interrupted or threatened to be interrupted, then any notice, request, demand, consent, or approval will only be sent by means other than mail.

13.2 **Date of Delivery**

13.2.1 Rent will not be considered to be delivered until actually received by the Lessor.

13.2.2 If a question arises as to the date on which a notice, request, demand, consent, approval, or document provided under this Lease is delivered, then it will be conclusively deemed to have been delivered:

13.2.2.1 if sent by fax or email, the day of transmission if transmitted before 3:00 p.m. [Time zone] time, otherwise, the next day;

13.2.2.2 if sent by mail, on the sixth day after the notice was mailed; or

13.2.2.3 if sent by means other than fax, email, or mail, the day it was received.

13.3 **Change of Contact Information** – A Party may change its contact information by informing the other Party of the new contact information and the change will take effect on the effective date set out in the notice or 30 days after the notice is delivered, whichever is later.

14. **DISPUTE RESOLUTION**

14.1 **Disputes Involving Canada as Lessor** – Subject to section 14.2, a dispute arising under this Lease that is not resolved by negotiation will be resolved by referral, in the first instance, to the Federal Court or any replacement or successor court having jurisdiction. If the Federal Court refuses jurisdiction or does not determine the dispute, then a Party to the dispute may refer it to any other court that has jurisdiction and the Parties may exercise any other right or remedy that they have under this Lease or otherwise.

14.2 **Disputes Not Involving Canada as Lessor** – If the First Nation takes over the position of the Lessor under this Lease by operation of law, then a dispute arising under this Lease will be resolved as follows:

14.2.1 Negotiation: The Party that wishes a dispute to be resolved will provide a dispute notice to the other Party to the dispute. Each such Party will promptly designate a senior representative to attempt in good faith to resolve the dispute by negotiation.

14.2.2 Mediation: If negotiation does not resolve the dispute within 15 days of delivery of the dispute notice, then either Party may provide a mediation notice to the other Party. The Parties will then promptly appoint a qualified, impartial, and

experienced mediator, the cost of which will be paid equally by both Parties. If the Parties cannot agree on a mediator within 15 days of delivery of the mediation notice, then the mediator will be appointed by the [Name of Provincial Arbitration Centre] (or its successor, or a similar body if neither is available). Within 10 days of appointment of a mediator, each Party will provide the mediator and each other with a written statement of its position about the dispute and summary of the arguments supporting its position. The mediator will meet with the Parties in the mediator's sole discretion in an attempt to resolve the dispute. The Parties will provide any additional information requested by the mediator. The mediator may hire experts, the cost of which will be paid equally by both Parties unless the mediator orders a different division.

14.2.3 **Arbitration:** If the dispute is not resolved within 30 days of the appointment of a mediator, then, on application by a Party to the dispute, the dispute may be referred to a single arbitrator and determined by arbitration administered by the [Name of Provincial Arbitration Centre] (or its successor, or a similar body if neither is available). The decision of the arbitrator is final and binding on both Parties. The cost of the arbitrator will be paid equally by both Parties unless the arbitrator orders a different division.

15. MISCELLANEOUS

15.1 **Deemed Conditions and Covenants** – All agreements, terms, conditions, covenants, provisions, duties, and obligations to be performed or observed by the Lessee under this Lease for the benefit of the Lessor are conclusively deemed to be conditions as well as covenants.

15.2 **No Presumption** – There will be no presumption that an ambiguity in a term of this Lease is to be interpreted in favour of any particular Party.

15.3 **Absolute Net Lease for the Lessor** – This Lease is to be an absolute net lease for the Lessor. Except as otherwise explicitly set out in this Lease, the Lessor will not be responsible during the Term for any costs, charges, and expenses arising from or relating to the Premises, the use or occupancy of the Premises, the business carried out on the Premises, or any of the Lessee's obligations in this Lease.

15.4 **Binding on Successors** – This Lease will be for the benefit of and be binding upon each Party's respective heirs, successors, executors, administrators, assigns, and other legal representatives.

15.5 **No Waiver** – No condoning, excusing, or overlooking of a default of this Lease will operate as a waiver by, or otherwise affect the respective rights of, the other Parties in respect of a continuing or subsequent default. A waiver must be in writing and no waiver will be inferred from anything done or omitted to be done by a Party.

- 15.6 **No Assumption of Responsibility** – No consent or approval, or absence of consent or approval, by the Lessor will in any way be an assumption of responsibility or liability by the Lessor for any matter subject to or requiring the Lessor’s consent or approval.
- 15.7 **Not a Joint Venture** – Nothing in this Lease will be construed as creating a relationship of agency, partnership, joint venture, or other such association between the Parties.

There are 3 options for the Lessee’s authority. Choose one and delete the others.

OPTION 1 – If the Lessee is an individual, then delete both of options 2 and 3 and ensure that an affidavit of execution (see end of Lease) accompanies the Lease. End of Option 1.

OPTION 2 – If the Lessee is a corporation, then use the following:

- 15.8 **Corporate Authority** – The Lessee represents and warrants that the Lessee:
 - 15.8.1 has all necessary authority to enter into this Lease and to perform all of the obligations contained in this Lease;
 - 15.8.2 is a corporation duly incorporated under the laws of the province of [Name of Province], is not a reporting company, and is a valid and subsisting company in good standing with the [Name of Province] corporate registry; and
 - 15.8.3 will remain in good standing with the [Name of Province] corporate registry.

End of Option 2.

OPTION 3 – If the Lessee is a limited partnership, then use the following:

- 15.9 **Authority** – The Lessee represents and warrants that the Lessee:
 - 15.9.1 has all necessary authority to enter into this Lease and to perform all of the obligations contained in this Lease;
 - 15.9.2 is the general partner of a limited partnership formed under the laws of the province of [Name of Province];
 - 15.9.3 is a corporation duly incorporated under the laws of the province of [Name of Province], is not a reporting company, and is a valid and subsisting company in good standing with the [Name of Province] corporate registry; and
 - 15.9.4 will remain in good standing with the [Name of Province] corporate registry.

End of Option 3.

- 15.10 **Counterpart Execution** – This Lease may be executed in one or more counterparts, each of which is considered to be an original but all of which together constitute one and the same document. Upon execution by a Party,

such Party will promptly provide a copy of its originally executed Lease to the other Party.

The Parties have executed this Lease on the dates indicated below.

HIS MAJESTY THE KING IN RIGHT OF CANADA, as represented by the Minister of Indigenous Services

[Name]

Date signed by the Lessor:_____

EXECUTED in the presence of:

)
)
)
)
)

[LESSEE'S NAME]

If the Lessee is a limited partnership, they sign as:

[LESSEE'S NAME], general partner of
[NAME OF LIMITED PARTNERSHIP]

Witness as to the Lessee's
authorized signatory

)
)
)
)
)
)
)
)
)

[Name]

[Title]

Date signed by the Lessee:_____

I have authority to bind the Lessee

SCHEDULE A

IMPROVEMENTS EXISTING AT COMMENCEMENT DATE

When preparing the lease, ISC must assess the status of the Improvements existing on the Lands at the Commencement Date and make a determination as to what information should appear in this schedule. There are two options. Use one and delete the other.

OPTION 1 – If there are no Improvements on the Lands, then use the following:

None.

End of Option 1.

OPTION 2 – If there are pre-existing Improvements on the Lands, then list them below:

-
-

End of Option 2.

SCHEDULE B

BAND COUNCIL RESOLUTION

WHEREAS:

- A. We have reviewed a “Lease of Designated Lands” to be entered into between His Majesty the King in right of Canada and [Lessee's Name], to which this resolution is to be attached as a schedule; and
- B. The terms used in this resolution that are defined in the Lease have the same meaning as in the Lease.

BE IT RESOLVED that the Council, on behalf of [First Nation]:

- A. has read and understood the Lease terms;

OPTIONAL – Include the following if the lease stems from a general designation.

- B. to the extent required by the policies or customs of the [First Nation], has consulted with the [First Nation] membership regarding the Lease and has obtained its consent to the Lease;

End of optional language.

- C. has been advised by the Lessor to receive independent legal and financial advice about the Lease before executing it and to continue to obtain such advice about the First Nation’s rights and obligations throughout the Term of the Lease; and
- D. consents to the execution of the Lease on its terms.

CARRIED at a duly convened and conducted meeting on _____, 20____.

Quorum for the Council is _____ members.

Chief

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

SCHEDULE C

ASSIGNMENT CONSENT AGREEMENT

This agreement commences on [Month Day, Year] and is made between:

HIS MAJESTY THE KING IN RIGHT OF CANADA,
as represented by the Minister of Indigenous Services

(the “**Lessor**”)

and:

[LESSEE’S NAME] [OPTIONAL: If the Lessee is a corporation, limited partnership, society, utility or municipality, then type a comma after the Lessee’s Name and include the statute under which the entity received its authority and its incorporation number, if applicable. Corporate example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345 Limited Partnership example: , incorporated under the Business Corporations Act, S.B.C. 2002, c. 57; Incorporation No. X12345, as general

partner of **[NAME OF LIMITED PARTNERSHIP]**, registered under the *Partnership Act*, R.S.B.C. 1996, c. 348; Registration No. Y12345 **End of option]**

(the “**Lessee**”)

and:

[ASSIGNEE’S NAME] **[OPTIONAL: If the Assignee is a corporation, limited partnership, society, utility or municipality, then type a comma after the Assignee’s Name and include the statute under which the entity received its authority and its incorporation number, if applicable. Corporate example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345 Limited Partnership example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345, as general partner of** **[NAME OF LIMITED PARTNERSHIP]**, registered under the *Partnership Act*, R.S.B.C. 1996, c. 348; Registration No. Y12345 **End of option]**

(the “**Assignee**”)

(collectively the “**Parties**”).

BACKGROUND

- A. The Lessor leased certain lands in the Reserve to the Lessee, by way of a lease dated [Month Day, Year] and registered in the Registry under No. [#] (the “**Lease**”).
- B. The Lessee wants to assign its right and interest in the Lease to the Assignee by entering into an assignment agreement (the “**Assignment**”), **[OPTIONAL: a copy of]** which is attached as Schedule “A” to this agreement.
- C. Under the Lease, the Assignment is not valid without the consent of the Lessor and without the Parties entering into this agreement.

NOW THEREFORE, in consideration of the representations, warranties, obligations, covenants, and agreements in this agreement, the Parties agree as follows:

1. CONSENT, COVENANTS & REPRESENTATIONS

1.1 Consent

1.1.1 The Lessor hereby consents to the Assignment.

1.1.2 The assignment of the Lessee’s interest in the Lease under the Assignment will not relieve or discharge the Lessee from any of its obligations or liabilities under the Lease.

1.2 Covenants and Representations of Assignee

- 1.2.1 The Assignee covenants with the Lessor to observe and perform all of the obligations in the Lease to be observed or performed by the Lessee from and after the date of the assignment of the Lease.
- 1.2.2 Except as explicitly set out in this agreement, the Lessor, the Minister, and their officials, servants, employees, agents, contractors, subcontractors, and other legal representatives have not made any representations or warranties with respect to:
- 1.2.2.1 the terms of the Lease;
 - 1.2.2.2 the condition of the Premises, including the Premises' compliance with Laws and the presence of Contaminants on the Premises;
 - 1.2.2.3 issues of title, encumbrances affecting title, and matters contained within the Registry;
 - 1.2.2.4 access to and from the Premises; and
 - 1.2.2.5 the suitability of the Premises for the Assignee.
- 1.2.3 The Assignee makes the same representations and warranties to the Lessor that the Lessee made in the Lease, with the Commencement Date meaning the effective date of the Assignment.
- 1.2.4 The Assignee represents and warrants to the Lessor that the person or persons signing this agreement on the Assignee's behalf have the authority to bind the Assignee to this agreement.
- 1.2.5 The Assignee's delivery information is as follows:

[Assignee's Name]
[Assignee's Address]

Fax: [#]

Email: [Email]

2. GENERAL

- 2.1 **No Merger** – The Lease will survive the execution of this agreement and will not merge in this agreement.
- 2.2 **Definitions** – A term not defined in this agreement but defined in the Lease has the same meaning as in the Lease.

EXECUTED in the presence of:

)

[ASSIGNEE'S NAME]

)

**If the Assignee is a limited partnership,
they sign as:**

**[ASSIGNEE'S NAME], general partner of
[NAME OF LIMITED PARTNERSHIP]**

Witness as to the Assignee's
authorized signatory

)

)

[Name]

)

)

I have authority to bind the Assignee

)

SCHEDULE “A” TO AN ASSIGNMENT CONSENT AGREEMENT

(attach [a copy of] the Assignment)

SCHEDULE D

MORTGAGE ACKNOWLEDGMENT AGREEMENT

This agreement commences on [Month Day, Year] and is made between:

HIS MAJESTY THE KING IN RIGHT OF CANADA,
as represented by the Minister of Indigenous Services

(the “**Lessor**”)

and:

[LESSEE’S NAME] [OPTIONAL: If the Lessee is a corporation, limited partnership, society, utility or municipality, then type a comma after the Lessee’s Name and include the statute under which the entity received its authority and its incorporation number, if applicable. Corporate example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345 Limited Partnership example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345, as general partner of [NAME OF LIMITED PARTNERSHIP], registered under the *Partnership Act*, R.S.B.C. 1996, c. 348; Registration No. Y12345 End of option]

(the “**Lessee**”)

and:

[MORTGAGEE’S NAME] [OPTIONAL: If the Mortgagee is a corporation, bank, or financial institution, then type a comma after the Mortgagee’s Name and include the statute under which the entity received its authority and its incorporation number, if applicable. For example: , a bank under the *Bank Act*, S.C. 1991, c. 46 End of option]

(the “**Mortgagee**”)

(collectively the “**Parties**”).

BACKGROUND:

- A. The Lessor leased certain lands in the Reserve to the Lessee, by way of a lease dated [Month Day, Year] and registered in the Registry under No. [#] (the “**Lease**”).
- B. **[Set out all assignments and modifications of the Lease and modify definition if necessary.]**

- C. The Lessee wants to mortgage its interest in the Lease to the Mortgagee by way of the mortgage (the “**Mortgage**”), [OPTIONAL: a copy of] which is attached as Schedule “A” to this agreement.
- D. Under the Lease, the Mortgage is not valid until the Mortgagee has entered into this agreement.

NOW THEREFORE, in consideration of the representations, warranties, obligations, covenants, and agreements in this agreement, the Parties agree as follows:

1. THE MORTGAGE

1.1 Representations and Warranties

- 1.1.1 The Lessor represents and warrants to the Mortgagee that the Lease has not been modified or assigned, except as set out in Recital B.
- 1.1.2 The Lessor represents and warrants that, to the best of its knowledge but with no investigation on its part, the Lessee is not in default of any obligations owed to it under the Lease.
- 1.1.3 Except as explicitly set out in this agreement, the Lessor, the Minister, and their officials, servants, employees, agents, contractors, subcontractors, and other legal representatives have not made any representations or warranties with respect to:
 - 1.1.3.1 the terms of the Lease;
 - 1.1.3.2 the condition of the Premises, including the Premises’ compliance with Laws and the presence of Contaminants on the Premises;
 - 1.1.3.3 issues of title, encumbrances affecting title, and matters contained within the Registry; and
 - 1.1.3.4 access to and from the Premises.
- 1.1.4 The Mortgagee represents and warrants to the Lessor that the person or persons signing this agreement on the Mortgagee’s behalf have the authority to bind the Mortgagee to this agreement.
- 1.2 **Default of Mortgage** – If the Mortgagee gives the Lessee a notice of default under the Mortgage, then the Mortgagee will provide notice of such default to the Lessor and the Lessor may cure the default on behalf of the Lessee.
- 1.3 **Rights and Obligations of the Mortgagee**
 - 1.3.1 Except as set out in this agreement, the Mortgage is subject and subordinate to the Lease and to the Lessor’s rights under the Lease.

- 1.3.2 The Mortgagee will ensure that the Mortgage does not conflict with the Lease or, by the Lessee complying with the Mortgage, cause the Lessee to default on the Lease.
- 1.3.3 The Mortgagee will have all the rights and obligations of a Mortgagee set out in section 9.2 of the Lease as terms of this agreement between the Parties.
- 1.3.4 The Lessor will provide the Mortgagee with a copy of a default notice provided by the Lessor to the Lessee under the Lease and the Mortgagee may cure the default within the period specified in the notice on behalf of the Lessee.
- 1.3.5 The Lessor will provide the Mortgagee with a copy of a termination notice provided by the Lessor to the Lessee under the Lease.
- 1.3.6 The Mortgagee will promptly file a discharge in the Registry when the Lease is no longer subject to the Mortgage.

2. GENERAL

2.1 Delivery

- 2.1.1 Delivery under this agreement is to be made in accordance with this section 2.1 to the following addresses:

To the Lessor:

Director, Lands and Economic Development
Indigenous Services Canada
[Regional Office]
[Regional Office's Address]

Fax: [#]

Email: [Email]

To the Lessee:

[Lessee's Name]
[Lessee's Address]

Fax: [#]

Email: [Email]

To the Mortgagee:

[Mortgagee's Name]

[Mortgagee's Address]

Fax: [#]

Email: [Email]

- 2.1.2 If a question arises as to the date on which a delivery is made, it will be conclusively deemed to have been made:
- 2.1.2.1 if sent by fax or email, the day of transmission if transmitted before 3:00 p.m. [Time zone] time, otherwise, the next day;
 - 2.1.2.2 if sent by mail, on the sixth day after the notice was mailed; or
 - 2.1.2.3 if sent by means other than fax, email, or mail, the day it is received.
- 2.1.3 If the postal service is interrupted or threatened to be interrupted, then delivery will only be made by means other than mail.
- 2.1.4 A Party may change its contact information by informing the other Parties of the new contact information and the change will take effect on the effective date set out in the notice or 30 days after the notice is delivered, whichever is later.
- 2.2 **Definitions** – A term not defined in this agreement but defined in the Lease has the same meaning as in the Lease.
- 2.3 **Headings** – 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 a provision.
- 2.4 **Binding on Successors** – This agreement will enure to the benefit of and be binding upon the Parties and their respective heirs, executors, administrators, successors, assigns, and other legal representatives.
- 2.5 **Counterpart Execution** – This agreement may be executed in one or more counterparts, each of which is considered to be an original but all of which together constitute one and the same document. Upon execution by a Party, such Party will promptly provide a copy of its originally executed agreement to the other Parties.

The Parties have executed this agreement as of the date first written above.

**HIS MAJESTY THE KING IN RIGHT OF
CANADA**, as represented by the Minister
of Indigenous Services

SCHEDULE “A” TO A MORTGAGE ACKNOWLEDGEMENT AGREEMENT

(attach a copy of the Mortgage)

SCHEDULE E

There are 4 options for this Schedule. Use one and delete the others.

OPTION 1 – If Option 1 was chosen in the Subleases section, then delete this Schedule in its entirety and remove it from the Table of Contents. End of Option.

OPTION 2 – If Option 2 was chosen in the Subleases section, then use the following:

SUBLEASE ACKNOWLEDGMENT AGREEMENT

To: HIS MAJESTY THE KING IN RIGHT OF CANADA (the “Head Lessor”)

From: [SUBLESSOR’S NAME] [OPTIONAL: If the Sublessor is a corporation, limited partnership, society, utility or municipality, then type a comma after the Sublessor’s Name and include the statute under which the entity received its authority and its incorporation number, if applicable. Corporate example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345 Limited Partnership example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345, as general partner of [NAME OF LIMITED PARTNERSHIP], registered under the *Partnership Act*, R.S.B.C. 1996, c. 348; Registration No. Y12345 End of option]

(the “Sublessor”)

and:

[SUBLESSEE’S NAME] OPTIONAL: If the Sublessee is a corporation, limited partnership, society, utility or municipality, then type a comma after the Sublessee’s Name and include the statute under which the entity received its authority and its incorporation number, if applicable. Corporate example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345 Limited

Partnership example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345, as general partner of **[NAME OF LIMITED PARTNERSHIP]**, registered under the *Partnership Act*, R.S.B.C. 1996, c. 348; Registration No. Y12345 **End of option]**
(the “**Sublessee**”)

(collectively the “**Parties**”).

Regarding: [Land Description] (the “**Subleased Premises**”)

BACKGROUND

- A. The Head Lessor leased certain lands in the Reserve to the Sublessor, by way of a lease dated [Month Day, Year] and registered in the Registry under No. [#] (the “**Head Lease**”).
- B. **[Set out all assignments and modifications of the Lease and modify definition if necessary.]**
- C. The Sublessor granted a sublease of the Subleased Premises to the Sublessee (the “**Sublease**”), **[OPTIONAL: a copy of]** which Sublease is attached as Schedule “A” to this agreement.
- D. Under the Head Lease, the Sublease is not valid without this agreement being entered into for the benefit of the Head Lessor.

NOW THEREFORE, in consideration of the representations, warranties, obligations, covenants, and agreements in this agreement, the Sublessor and the Sublessee agree with the Head Lessor as follows:

1. COVENANTS OF THE SUBLESSOR AND THE SUBLESSEE

1.1 Required Lease Terms

- 1.1.1 The Sublessor and Sublessee each represent, warrant, covenant, and agree that the Sublease contains the following terms:
 - 1.1.1.1 The term of the Sublease will end at least one day before the end of the Head Lease Term.
 - 1.1.1.2 The Sublease is expressly subject and subordinate to the Head Lease and to the rights of the Head Lessor under the Head Lease.

- 1.1.1.3 The Sublease is consistent with the Head Lease and, in the event of conflict between the terms of the Head Lease and the terms of the Sublease, the terms of the Head Lease will govern.
- 1.1.2 If the Sublease does not expressly contain the terms required by section 1.1.1, then such terms are hereby conclusively deemed to form part of the Sublease, which such terms will prevail over other terms of the Sublease, from time to time, to the extent of any conflict.
- 1.1.3 Without limiting section 1.1.1 of this agreement:
 - 1.1.3.1 the Sublessee will comply with all Laws regarding the Sublease, the Subleased Premises, and any activity on the Subleased Premises;
 - 1.1.3.2 the Sublessee will develop the Subleased Premises in accordance with the Sublease and all environmental, use, and other development conditions and restrictions contained in, or arising from, the Head Lease and applicable to the Subleased Premises;
 - 1.1.3.3 the Sublessee waives any statutory or common law rights that it may have allowing the Sublessee to keep the unexpired term of the Sublease or remain in occupation of any part of the Subleased Premises if the Head Lease ends before the expiration of the Term;
 - 1.1.3.4 on request from the Head Lessor, the Sublessee will promptly provide such Party written authorization to receive information from an Authority about the Sublessee's compliance or non-compliance with Laws regarding the Sublease, the Subleased Premises, or any activity on the Subleased Premises; and
 - 1.1.3.5 the Head Lessor may enter the Subleased Premises at any time during reasonable hours for the purpose of ensuring compliance with the terms of this agreement and the Head Lease, including, without limitation, the implementation of any terms and conditions, including all mitigation measures, timelines, and monitoring, required by a determination under an Environmental Review applicable to the Subleased Premises.
- 1.2 **Release and Indemnity** – The Sublessee releases the Head Lessor, the Minister, and their officials, servants, employees, agents, contractors, subcontractors, and other legal representatives (the “**Releasees**”) from all liability for loss (including economic loss), damage, and injury (including loss, damage, and injury arising out of the negligent actions or omissions of any Releasee) in any way caused by or resulting from:
 - 1.2.1 any of the perils or injury against which the Sublessor has covenanted in the Head Lease to insure in relation to the Subleased Premises;

- 1.2.2 the Decision Maker determining under an Environmental Review that a Project proposed for the Subleased Premises should not proceed; or
- 1.2.3 the Head Lessor curing or attempting to cure a default under section 10 of the Head Lease in relation to the Subleased Premises,
and will indemnify and hold harmless the Releasees from any:
 - 1.2.4 claims, demands, actions, suits, and other proceedings;
 - 1.2.5 judgments, liens, penalties, fines, and damages;
 - 1.2.6 costs (including, but not limited to, solicitor-client costs, consultant fees, and expert fees), liabilities, and losses (including economic losses); and
 - 1.2.7 sums paid in settlement of any matter,
of any kind, because of, or in connection with, the matters referred to in sections 1.2.1 - 1.2.3.

1.3 Representations and Warranties

- 1.3.1 The Sublessor represents and warrants to the Head Lessor that the person or persons signing this agreement on the Sublessor's behalf have the authority to bind the Sublessor to this agreement.
- 1.3.2 The Sublessee represents and warrants to the Head Lessor that the person or persons signing this agreement on the Sublessee's behalf have the authority to bind the Sublessee to this agreement.
- 1.3.3 Except as explicitly set out in this agreement, the Head Lessor, the Minister, and their officials, servants, employees, agents, contractors, subcontractors, and other legal representatives have not made any representations or warranties with respect to:
 - 1.3.3.1 the terms of the Head Lease and the Sublease;
 - 1.3.3.2 the condition of the Premises, including the Premises' compliance with Laws and the presence of Contaminants on the Premises;
 - 1.3.3.3 issues of title, encumbrances affecting title, and matters contained within the Registry;
 - 1.3.3.4 access to and from the Premises and the Subleased Premises; and
 - 1.3.3.5 the suitability of the Subleased Premises for the Sublessee.

Witness as to the Sublessee's)
authorized signatory)
) [Name]
)
) I have authority to bind the Sublessee
)

SCHEDULE "A" TO A SUBLEASE ACKNOWLEDGEMENT AGREEMENT

(attach a copy of the Sublease)

End of Option 2.

OPTION 3 – If Option 3 was chosen in the Subleases section, then use the following:

SUBLEASE CONSENT AGREEMENT

This agreement commences on [Month Day, Year] and is made between:

HIS MAJESTY THE KING IN RIGHT OF CANADA,
as represented by the Minister of Indigenous Services

(the "Head Lessor")

and:

[SUBLESSOR'S NAME] [OPTIONAL: If the Sublessor is a corporation, limited partnership, society, utility or municipality, then type a comma after the Sublessor's Name and include the statute under which the entity received its authority and its incorporation number, if applicable. Corporate example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345 Limited Partnership example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345, as general partner of [NAME OF LIMITED PARTNERSHIP], registered under the *Partnership Act*, R.S.B.C. 1996, c. 348; Registration No. Y12345 End of option]

(the "Sublessor")

and:

[SUBLESSEE’S NAME] [OPTIONAL: If the Sublessee is a corporation, limited partnership, society, utility or municipality, then type a comma after the Sublessee’s Name and include the statute under which the entity received its authority and its incorporation number, if applicable. Corporate example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345 Limited Partnership example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345, as general partner of [NAME OF LIMITED PARTNERSHIP], registered under the *Partnership Act*, R.S.B.C. 1996, c. 348; Registration No. Y12345 End of option]

(the “**Sublessee**”)

(collectively the “**Parties**”).

BACKGROUND

- A. The Head Lessor leased certain lands in the Reserve to the Sublessor, by way of a lease dated [Month Day, Year] and registered in the Registry under No. [#] (the “**Lease**”).
- B. **[Set out all assignments and modifications of the Lease and modify definition if necessary.]**
- C. The Sublessor has granted a sublease of the Subleased Premises to the Sublessee (the “**Sublease**”), [OPTIONAL: a copy of] which Sublease is attached as Schedule “A” to this agreement.
- D. Under the Head Lease, the Sublease is not valid without the consent of the Head Lessor and without the Parties entering into this agreement.

NOW THEREFORE, in consideration of the representations, warranties, obligations, covenants, and agreements in this agreement, the Parties agree as follows:

1. SUBLEASE CONSENT

- 1.1 **Consent** – The Head Lessor hereby consents to the Sublease.

2. COVENANTS OF THE SUBLESSOR AND THE SUBLESSEE

2.1 Required Lease Terms

2.1.1 The Sublessor and Sublessee each represent, warrant, covenant, and agree that the Sublease contains the following terms:

- 2.1.1.1 The term of the Sublease must end at least one day before the end of the Head Lease Term.
- 2.1.1.2 The Sublease must be expressly subject and subordinate to the Head Lease and to the rights of the Head Lessor under the Head Lease.
- 2.1.1.3 The Sublease must be consistent with the Head Lease and, in the event of conflict between the terms of the Head Lease and the terms of the Sublease, the terms of the Head Lease will govern.

OPTIONAL – Include the following section if Subleases require fair market rent:

- 2.1.1.4 The Sublease rent must be at least at fair market value, which means the most probable rent that the Subleased Premises should bring in a competitive and open market, reflecting all conditions of the Head Lease and the Sublease and assuming the following conditions:
 - 2.1.1.4.1 The Sublessor and the Sublessee are typically motivated, well informed, well advised, and are acting prudently in an arm's length transaction.
 - 2.1.1.4.2 A reasonable time is allowed for exposure in the open market and the rent represents the normal consideration for the Subleased Premises unaffected by undue stimuli or special fees or concessions granted by anyone associated with the transaction.
 - 2.1.1.4.3 The Subleased Premises are owned by the Head Lessor in fee simple, free of all charges and encumbrances other than those registered in the Registry, and the inalienability or Indian reserve status of the Lands must not be a discounting factor and must not be used as a basis to lower valuation in comparing the Subleased Premises to other properties, whether or not such properties are Indian reserve lands.
 - 2.1.1.4.4 The Subleased Premises do not include Improvements made after the date on which the Sublease begins and the contributory value of the Sublessee's Improvements must not be taken into account.

End of Optional language.

2.1.2 If the Sublease does not expressly contain the terms required by section 2.1.1, then such terms are hereby conclusively deemed to be part of the Sublease,

which such terms will prevail over other terms of the Sublease, from time to time, to the extent of any conflict.

2.1.3 Without limiting section 2.1.1 of this agreement:

- 2.1.3.1 the Sublessee will comply with all Laws regarding the Sublease, the Subleased Premises, and any activity on the Subleased Premises;
- 2.1.3.2 the Sublessee will develop the Subleased Premises in accordance with the Sublease and all environmental, use, and other development conditions and restrictions contained in, or arising from, the Head Lease that are applicable to the Subleased Premises;
- 2.1.3.3 the Sublessee waives any statutory or common law rights that it may have allowing the Sublessee to keep the unexpired term of the Sublease or remain in occupation of any part of the Subleased Premises if the Head Lease ends before the expiration of the Term;
- 2.1.3.4 on request from the Head Lessor, the Sublessee will promptly provide such Party written authorization to receive information from an Authority about the Sublessee's compliance with Laws regarding the Sublease, the Subleased Premises, or any activity on the Subleased Premises; and
- 2.1.3.5 the Head Lessor may enter the Subleased Premises at any time during reasonable hours for the purpose of ensuring compliance with this agreement and the terms of the Head Lease, including, without limitation, the implementation of any terms, conditions, or mitigation measures identified in an Environmental Review of a Project on the Subleased Premises.

2.2 **Release and Indemnity** – The Sublessee releases the Head Lessor, the Minister, and their officials, servants, employees, agents, contractors, subcontractors, and other legal representatives (the “**Releasees**”) from all liability for loss (including economic loss), damage, and injury (including loss, damage, and injury arising out of the negligent actions or omissions of any Releasee) in any way caused by or resulting from:

- 2.2.1 any of the perils or injury against which the Sublessor has covenanted in the Head Lease to insure in relation to the Subleased Premises;
- 2.2.2 the Decision Maker determining under an Environmental Review that a Project proposed for the Subleased Premises should not proceed; or
- 2.2.3 the Head Lessor curing or attempting to cure a default under section 10 of the Head Lease in relation to the Subleased Premises,

and will indemnify and hold harmless the Releasees from any:

- 2.2.4 claims, demands, actions, suits, and other proceedings;
- 2.2.5 judgments, liens, penalties, fines, and damages;
- 2.2.6 costs (including, but not limited to, solicitor-client costs, consultant fees, and expert fees), liabilities, and losses (including economic losses); and
- 2.2.7 sums paid in settlement of any matter,

of any kind, because of, or in connection with, the matters referred to in sections 2.2.1 - 2.2.3.

2.3 Representations and Warranties

- 2.3.1 The Sublessor represents and warrants to the Head Lessor that the person or persons signing this agreement on the Sublessor's behalf have the authority to bind the Sublessor to this agreement.
- 2.3.2 The Sublessee represents and warrants to the Head Lessor that the person or persons signing this agreement on the Sublessee's behalf have the authority to bind the Sublessee to this agreement.
- 2.3.3 Except as explicitly set out in this agreement, the Head Lessor, the Minister, and their officials, servants, employees, agents, contractors, subcontractors, and other legal representatives have not made any representations or warranties with respect to:
 - 2.3.3.1 the terms of the Head Lease and the Sublease;
 - 2.3.3.2 the condition of the Premises, including the Premises' compliance with Laws and the presence of Contaminants on the Premises;
 - 2.3.3.3 issues of title, encumbrances affecting title, and matters contained within the Registry;
 - 2.3.3.4 access to and from the Premises and the Subleased Premises; and
 - 2.3.3.5 the suitability of the Subleased Premises for the Sublessee.

3. GENERAL

- 3.1 **Definitions** – A term not defined in this agreement but defined in the Lease has the same meaning as in the Lease.
- 3.2 **Headings** – 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 a provision.

- 3.3 **Binding on Successors** – This agreement will enure to the benefit of and be binding upon the Parties and their respective heirs, executors, administrators, successors, assigns, and other legal representatives.
- 3.4 **Counterpart Execution** – This agreement may be executed in one or more counterparts, each of which is considered to be an original but all of which together constitute one and the same document. Upon execution by a Party, such Party will promptly provide a copy of its originally executed agreement to the other Parties.

The Parties have executed this agreement as of the date first written above.

HIS MAJESTY THE KING IN RIGHT OF CANADA, as represented by the Minister of Indigenous Services

[Name]

EXECUTED in the presence of:) **[SUBLESSOR’S NAME]**
) **If the Sublessor is a limited partnership,**
) **they sign as:**

[SUBLESSOR’S NAME], general partner
of **[NAME OF LIMITED PARTNERSHIP]**

Witness as to the Sublessor’s) [Name]
authorized signatory)
) I have authority to bind the Sublessor
)

EXECUTED in the presence of:) **[SUBLESSEE’S NAME]**
) **If the Sublessee is a limited partnership,**
) **they sign as:**

[SUBLESSEE’S NAME], general partner
of **[NAME OF LIMITED PARTNERSHIP]**

Witness as to the Sublessee's)
authorized signatory)

) _____

) [Name]

)

) I have authority to bind the Sublessee

)

SCHEDULE “A” TO A SUBLEASE CONSENT AGREEMENT

(attach a copy of the Sublease)

End of Option 3.

OPTION 4 – If Option 4 was chosen in the Subleases section, then use the following:

SUBLEASE [OPTIONAL: Include if Option 4B was chosen in the Subleases section: CONSENT AND] NON-DISTURBANCE AGREEMENT

This agreement commences on [Month Day, Year] and is made between:

HIS MAJESTY THE KING IN RIGHT OF CANADA,
as represented by the Minister of Indigenous Services

(the “Head Lessor”)

and:

[SUBLESSOR’S NAME] [OPTIONAL: If the Sublessor is a corporation, limited partnership, society, utility or municipality, then type a comma after the Sublessor’s Name and include the statute under which the entity received its authority and its incorporation number, if applicable. Corporate example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345 Limited Partnership example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345, as general partner of [NAME OF LIMITED PARTNERSHIP], registered under the *Partnership Act*, R.S.B.C. 1996, c. 348; Registration No. Y12345 End of option]

(the “Sublessor”)

and:

[SUBLESSEE’S NAME] [OPTIONAL: If the Sublessee is a corporation, limited partnership, society, utility or municipality, then type a comma after the Sublessee’s Name and include the statute under which the entity received its authority and its incorporation number, if applicable. Corporate example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345 Limited Partnership example: , incorporated

under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345, as general partner of **[NAME OF LIMITED PARTNERSHIP]**, registered under the *Partnership Act*, R.S.B.C. 1996, c. 348; Registration No. Y12345 **End of option]**

(the “**Sublessee**”)

(collectively the “**Parties**”).

BACKGROUND:

- A. The Head Lessor leased certain lands in the Reserve to the Sublessor, by way of a lease dated [Month Day, Year] and registered in the Registry under No. [#] (the “**Head Lease**”).
- B. **[Set out all assignments and modifications of the Head Lease and modify definition if necessary.]**
- C. The Sublessor wants to sublease a portion of its interest in the Head Lease to the Sublessee by way of the proposed sublease (the “**Sublease**”), **[OPTIONAL: a copy of]** which is attached as Schedule “A” to this agreement.
- D. Under the Head Lease, the Sublease is not valid until the Sublessee has entered into this agreement.

NOW THEREFORE, in consideration of the representations, warranties, obligations, covenants, and agreements in this agreement, the Parties agree as follows:

1. COVENANTS OF THE SUBLESSOR AND THE SUBLESSEE

- 1.1 **Compliance** – The Sublessor and Sublessee each represent, warrant, covenant, and agree that:
 - 1.1.1 the Sublessee will comply with all Laws regarding the Sublease, the Subleased Premises, and any activity on the Subleased Premises;
 - 1.1.2 the Sublessee will develop the Subleased Premises in accordance with the Sublease and all environmental, use, and other development conditions and restrictions contained in, or arising from, the Head Lease that are applicable to the Subleased Premises;
 - 1.1.3 subject to section 2 of this agreement, the Sublessee waives any statutory or common law rights that it may have allowing the Sublessee to keep the unexpired term of the Sublease or remain in occupation of any part of the Subleased Premises if the Head Lease ends before the expiration of the Term;

- 1.1.4 on request from the Head Lessor, the Sublessee will promptly provide such Party written authorization to receive information from an Authority about the Sublessee's compliance with Laws regarding the Sublease, the Subleased Premises, or any activity on the Subleased Premises;
- 1.1.5 the Head Lessor may enter the Subleased Premises at any time during reasonable hours for the purpose of ensuring compliance with the terms of this agreement and the Head Lease, including, without limitation, the implementation of any terms, conditions, or mitigation measures identified in an Environmental Review of a Project on the Subleased Premises; and
- 1.1.6 the Sublessor and Sublessee will not modify the Sublease without the prior written consent of the Head Lessor.
- 1.2 **Release and Indemnity** – The Sublessee releases the Head Lessor, the Minister, and their officials, servants, employees, agents, contractors, subcontractors, and other legal representatives (the “**Releasees**”) from all liability for loss (including economic loss), damage, and injury (including loss, damage, and injury arising out of the negligent actions or omissions of any Releasee) in any way caused by or resulting from:
 - 1.2.1 any of the perils or injury against which the Sublessor has covenanted in the Head Lease to insure in relation to the Subleased Premises;
 - 1.2.2 the Decision Maker determining under an Environmental Review that a Project proposed for the Subleased Premises should not proceed; or
 - 1.2.3 the Head Lessor curing or attempting to cure a default under section 10 of the Head Lease in relation to the Subleased Premises,
and will indemnify and hold harmless the Releasees from any:
 - 1.2.4 claims, demands, actions, suits, and other proceedings;
 - 1.2.5 judgments, liens, penalties, fines, and damages;
 - 1.2.6 costs (including, but not limited to, solicitor-client costs, consultant fees, and expert fees), liabilities, and losses (including economic losses); and
 - 1.2.7 sums paid in settlement of any matter,
of any kind, because of, or in connection with, the matters referred to in sections 2.2.1 - 2.2.3.
- 1.3 **Representations and Warranties**

- 1.3.1 The Sublessor represents and warrants to the Head Lessor that the person or persons signing this agreement on the Sublessor's behalf have the authority to bind the Sublessor to this agreement.
- 1.3.2 The Sublessee represents and warrants to the Head Lessor that the person or persons signing this agreement on the Sublessee's behalf have the authority to bind the Sublessee to this agreement.
- 1.3.3 Except as explicitly set out in this agreement, the Head Lessor, the Minister, and their officials, servants, employees, agents, contractors, subcontractors, and other legal representatives have not made any representations or warranties with respect to:
 - 1.3.3.1 the terms of the Head Lease and the Sublease;
 - 1.3.3.2 the condition of the Premises, including the Premises' compliance with Laws and the presence of Contaminants on the Premises;
 - 1.3.3.3 issues of title, encumbrances affecting title, and matters contained within the Registry;
 - 1.3.3.4 access to and from the Premises and the Subleased Premises; and
 - 1.3.3.5 the suitability of the Subleased Premises for the Sublessee.

2. NON-DISTURBANCE RIGHTS

- 2.1 **Right to Cure and Non-Disturbance** – If a Head Lease default occurs, then the Head Lessor will give notice of the default to the Sublessee, and:
 - 2.1.1 if the default is capable of being remedied by the Sublessee, then the Sublessee has the right to remedy the default within the same period afforded the Sublessor under the Head Lease; and
 - 2.1.2 if the default is not capable of being remedied by the Sublessee, and the default did not arise from an act or omission of the Sublessee, a subtenant of the Sublessee, any other person on the Subleased Premises because of the Sublessee's rights under its Sublease, or any other person for whom the Sublessee is responsible in law, then the Sublessee has the rights set out in section 2.2 of this agreement.
- 2.2 **Attornment and New Lease**
 - 2.2.1 If the Head Lessor terminates the Head Lease and the Sublessee has rights arising from section 2.1.2 of this agreement, then, subject to section 2.2.2 of this agreement:

- 2.2.1.1 the Sublessee and the Head Lessor will attorn to each other upon all the terms, conditions, covenants, and agreements contained in the Sublease, except as may be modified by this agreement, and will attorn to the continued rights of the mortgagee of any then existing mortgage of the Sublease;
- 2.2.1.2 if requested by the Sublessee and there is no outstanding mortgage of the Sublease (or, if a mortgage exists, the mortgagee has consented), the Head Lessor and the Sublessee will enter into a new lease for the balance of the term of the Sublease upon all the terms, conditions, covenants, and agreements contained in the Sublease, except as may be modified by this agreement (“**New Lease**”);
- 2.2.1.3 if a mortgage of the Sublease existed prior to the termination of the Head Lease and the Head Lessor and the Sublessee enter into a New Lease, then:
 - 2.2.1.3.1 the Sublessee will grant a new mortgage of the New Lease to the mortgagee of the Sublease, unless alternate financing arrangements are made by the Sublessee to the satisfaction of such mortgagee; and
 - 2.2.1.3.2 if required by the New Lease, the Head Lessor and the Sublessee will provide consent or enter into any other agreement with the mortgagee of the New Lease as may be required by the New Lease.
- 2.2.2 The obligations of the Head Lessor to attorn to the Sublessee as tenant on the terms, conditions, covenants, and agreements contained in the Sublease and for the Head Lessor to enter into a New Lease on such terms, conditions, covenants, and agreements, both as may be modified by this agreement, is subject to the Sublessee having remedied all defaults of the Head Lease that pertain to the Subleased Premises (except for defaults of the Sublessor that are not capable of being remedied by the Sublessee).

2.3 **Modifications**

- 2.3.1 [Include as necessary]

OPTIONAL: Include the following if the Head Lease requires the consent of the Head Lessor to any Subleases (Option 4B in Subleases section):

3. **CONSENT**

3.1 **Consent to Sublease**

- 3.1.1 The Head Lessor hereby consents to the Sublease.

End of Option.

4. GENERAL

4.1 Delivery

4.1.1 Delivery under this agreement is to be made in accordance with this section 4.1.1 to the following addresses:

To the Head Lessor:

Director, Lands and Economic Development
Indigenous Services Canada
[Regional Office]
[Regional Office's Address]

Fax: [#]

Email: [Email]

To the Sublessor:

[Sublessor's Name]
[Sublessor's Address]

Fax: [#]

Email: [Email]

To the Sublessee:

[Sublessee's Name]
[Sublessee's Address]

Fax: [#]

Email: [Email]

4.1.2 If a question arises as to the date on which a delivery is made, it will be conclusively deemed to have been made:

4.1.2.1 if sent by fax or email, the day of transmission if transmitted before 3:00 p.m. [Time zone] time, otherwise, the next day;

4.1.2.2 if sent by mail, on the sixth day after the notice was mailed; or

[SUBLESSOR'S NAME], general partner
of **[NAME OF LIMITED PARTNERSHIP]**

Witness as to the Sublessor's
authorized signatory

) _____
) [Name]
) I have authority to bind the Sublessor
)

EXECUTED in the presence of:

) **[SUBLESSEE'S NAME]**
)
)

) _____
) [Name]

Witness as to the Sublessee's
authorized signatory

) I have authority to bind the Sublessee

SCHEDULE “A” TO A SUBLEASE [OPTIONAL: Include if Option 4B was chosen in the Subleases section: CONSENT AND] NON-DISTURBANCE AGREEMENT

(attach a copy of the Sublease)

SCHEDULE F

FORM OF SUBLEASE

(attach the form of Sublease)

Ensure that the form of Sublease complies with ISC Leasing Policy:

- The term of a Sublease must end at least one day before the end of the Head Lease Term.
- The Sublease must be consistent with the terms of the Head Lease.
- The Sublease must include a term that it is subordinate to the Head Lease and that it will automatically terminate when the Head Lease ends.
- Sublease rent can be any amount if the Head Lease rent is fair market value. If rent under the Head Lease is for less than fair market value (e.g., nominal rent to a First Nation entity), then Sublease rent is to be fair market rent.

End of Option 4.

OPTIONAL – When an individual executes the Lease or any of the Schedules on that individual’s own behalf, then include the following right after the signatures:

AFFIDAVIT OF WITNESS

I, _____ (name), of
_____ (name of city, town, village, etc. where you live),
_____ (name of province where you live), make oath and
say:

1. I saw _____ sign the lease.
2. I know the person referred to in paragraph 1 and I believe that that person is at least [age of majority in Province] years old.
3. I am the person who signed my name as witness on the lease and I am at least [age of majority in Province] years old.

SWORN before me in the _____)
of _____, in the)
Province of _____)
this _____ day of _____, 20____)
_____))
A Notary Public in and for the Province)
of _____)
or a Commissioner for taking Oaths.)
_____))
Address)
_____))
Telephone # / Fax #)
_____))
Notary’s Authority)
_____)

Witness

** Must be signed by a person who is not a party to the lease.

OPTIONAL: If a CILA and/or CIFA is required, then use the following:

CERTIFICATE OF INDEPENDENT LEGAL ADVICE

I, _____, of the _____ (city, town, village, etc.) of _____, in the Province of _____, DO HEREBY CERTIFY AS FOLLOWS:

1. I am a member in good standing with the Law Society of _____ (Province) and am entitled to practice as a lawyer in _____ (Province).
2. I have been retained in my professional capacity by [First Nation] (the “**First Nation**”) to act as legal counsel to advise the First Nation with respect to the legal nature and effect of a proposed lease between His Majesty the King in right of Canada, the First Nation, and [Lessee's Name] of [Legal Description] for a term of [#] years (the “**Legal Advice**”).
3. I provided an overview of the Legal Advice at a duly convened and conducted meeting of the First Nation’s Band Council held at _____ (location) on _____ (date).
4. I attended an information meeting for members of the First Nation on _____ (date) between the hours of _____ and _____ at _____ (location) and provided an overview of the Legal Advice.

DATED at the _____ (city, town, village, etc.) of _____, in the Province of _____, this _____ day of _____, 20____.

Barrister and Solicitor

CERTIFICATE OF INDEPENDENT FINANCIAL ADVICE

I, _____, of the _____ (city, town, village, etc.) of _____, in the Province of _____, DO HEREBY CERTIFY AS FOLLOWS:

1. I am a member in good standing of the _____ Institute of Chartered Accountants and qualified to practice as a Chartered Accountant in the Province of _____.
2. I have been retained in my professional capacity by [First Nation] (the “**First Nation**”) to advise the First Nation with respect to the financial nature and effect of a proposed lease between His Majesty the King in right of Canada, the First Nation, and [Lessee's Name] of [Legal Description] for a term of [#] years, including but not limited to the costs and risks to the First Nation in obtaining rents from sublessees beneficially through a First Nation entity as opposed to those costs and risks from a fair market rent head lease between the Lessor and an arm’s-length lessee (the “**Financial Advice**”).
3. At a duly convened and conducted meeting of the First Nation’s Band Council held at _____ (*location*) on _____ (*date*), I provided the First Nation with the Financial Advice and was able to answer questions about the Financial Advice.
4. At an information meeting for members of the First Nation on _____ (*date*) between the hours of _____ and _____ at _____ (*location*), I provided an overview of the Financial Advice and was able to answer questions about the Financial Advice.

DATED at the _____ (city, town, village, etc.) of _____, in the Province of _____, this _____ day of _____, 20_____.

Witness

CHARTERED ACCOUNTANT

End of Option.