

RETURN TO:

Westbank Indian Band  
Lands Department  
102 - 515 Highway 97 South  
Kelowna, B.C. V1Z 3J1  
Fax: (604) 769-4036

**APPLICATION FOR REGISTRATION  
INDIAN LANDS**

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

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

**NAMES OF PARTIES TO INSTRUMENT**

Grantor

Surname	Given Names	No.
<u>Her Majesty the Queen</u>	_____	_____
_____	_____	_____
_____	_____	_____

Grantee

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

Instrument Type Modification of lease (or Code) \_\_\_\_\_

Instrument Date March 16, 1994

Purpose \_\_\_\_\_ (or Code) \_\_\_\_\_

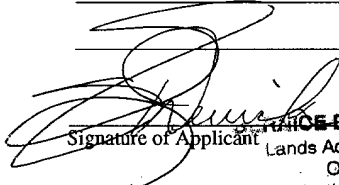
W.I.B. Control No. \_\_\_\_\_

**LAND DESCRIPTION**

Province: BRITISH COLUMBIA                      Band Name: WESTBANK INDIAN BAND

Reserve Name: TSINSTIKEPTUM INDIAN RESERVE NO. (9) 10

Parcel	Parcel Identification Number (PIN)	List of Supporting Documentation
<u>Lot 208 Plan 75334 CLR</u>	<u>902002197</u>	_____
_____	_____	_____
_____	_____	_____

 Michael DERRICKSON  
Signature of Applicant      Lands Administration Officer      Westbank Band

604-769-3101  
Telephone No. of Applicant

22 March '94  
Date

**ACCEPTANCE**

This Application for Registration has been accepted and the instrument has been entered in the appropriate Register. This instrument has been registered under number: 219760 Date: 1994/MAR/25 Hour: 11:11 a.m.

  
Registrar

C A N A D A

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

MODIFICATION OF LEASE

THIS INDENTURE made in quadruplicate as of March 16<sup>th</sup>, 1994  
and dated for reference March 16<sup>th</sup>, 1994.

BETWEEN:

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

(hereinafter called "Her Majesty")

OF THE FIRST PART

AND:

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

(hereinafter called the "Lessee")

OF THE SECOND PART

W H E R E A S:

A. The lands hereinafter demised "the "Lands") are part of  
the Tsinstikeptum Indian Reserve No. 9 (the "Reserve") which was  
set apart for the use and benefit of the Westbank Band of Indians  
(the "Band"), which Lands are located in the Province of British  
Columbia and are more particularly known and described as follows:

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

(hereinafter referred to as the "Lands")

excepting and reserving unto Her Majesty all minerals,  
petroleum and natural gas under the Lands;

B. Michael Shane Abel (the "Locatee"), a member of the Band, lawfully in possession of the Lands, has made written application to the Minister of Indian Affairs and Northern Development (the "Minister") for the Lands to be leased for his benefit;

C. Pursuant to Section 58(3) of the Indian Act, Her Majesty granted a Lease for the said Lands effective July 1, 1993, in favour of the Lessee herein, which Lease was registered in the Indian Land Registry in Ottawa, Ontario, as Number 216812 (hereinafter called the "Lease");

D. The parties hereto with the consent of the Locatee are desirous of modifying the said Lease as hereinafter described.

NOW THEREFORE THIS INDENTURE WITNESSETH that pursuant to the said premises and in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration now paid to Her Majesty by the Lessee (the receipt and sufficiency of which are hereby acknowledged) it is hereby expressly agreed and declared by the Lessee and Her Majesty as follows:

1. The Lease is hereby amended by adding in the preamble the description "or ("The Minister")" beside the description ("Her Majesty")".

2. The Lease is hereby amended by deleting Definition 1., which reads as follows:

"1. "Lease Year" means a twelve month period commencing on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ in one calendar year and ending on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ in the immediately succeeding calendar year."

and substituting the following therefore:

"1. "Lease Year" means a twelve month period commencing on the first day of July in one calendar year and ending on the 30th day of June in the immediately succeeding calendar year."

3. The Lease is hereby amended by inserting the following section immediately after Section 3.3:

"3.4 Any action taken by Her Majesty relating to prospecting and drilling for minerals shall not interfere with existing improvements on the Lands."

4. The Lease is hereby amended by deleting Section 9.2.a., which reads as follows:

"9.2 a. if the mortgagee takes possession of the Premises or acquires the Lessee's equity of redemption then the mortgagee will covenant and agree in writing with Her Majesty to perform and observe all the Lessee's covenants and agreements under the Lease until the Lease is duly assigned to an assignee with the Minister's consent and the assignee covenants and agrees as provided in subsection 9.2.c;"

and substituting the following therefore:

"9.2 a. if the mortgagee takes possession of the Premises or acquires the Lessee's equity of redemption then the mortgagee will covenant and agree in writing with Her Majesty to perform and observe all the Lessee's covenants and agreements under the Lease until the Lease is duly assigned to an assignee with the Minister's consent, not to be unreasonably withheld, and the assignee covenants and agrees as provided in subsection 9.2.c;"

5. The Lease is hereby amended by deleting Section 17.2, which reads as follows:

"17.2 Without limiting the generality of Article 13 and notwithstanding section 17.1 the Lessee will ensure that all new sublessees conduct environmental assessments compatible with the Environmental Assessment and Review Process Guidelines Order (SOR/84-467), 1984, or its successor legislation and any regulation made thereunder, and compatible with all applicable federal policies and procedures, as amended or replaced including all such amendments made subsequent to the effective date of this Lease."

and substituting the following therefore:

---

"17.2 Without limiting the generality of Article 13 and notwithstanding section 17.1 the Lessee will ensure that all new sublessees conduct environmental assessments compatible with the Environmental Assessment and Review Process Guidelines Order (SOR/84-467), 1984, or its successor legislation and any regulation made thereunder, and compatible with all applicable federal policies and procedures, as amended or replaced including all such amendments made subsequent to the effective date of this Lease. This provision shall not apply to a mortgagee of a sublessee who acquires title to the sublessee's interest in the Premises by foreclosure."

6. The Lease is hereby amended by deleting Section 30.3, which reads as follows:

"30.3 The Lessee may in its discretion determine whether or not to restore and repair the Damaged Improvements PROVIDED THAT it notifies the Minister of its decision in that regard within sixty (60) days of the damage or destruction occurring and PROVIDED further that notice to the Minister of the Lessee's decision not to restore or repair will not be considered valid or effective unless it includes the written consent of all Approved Mortgagees."

and substituting the following therefore:

"30.3 Unless the Lessee is required to rebuild or repair loss or damage pursuant to the provisions of paragraph 9.2(d), the Lessee may in its discretion determine whether or not to restore and repair the Damaged Improvements PROVIDED THAT it notifies the Minister of its decision in that regard within sixty (60) days of the damage or destruction occurring and PROVIDED further that notice to the Minister of the Lessee's decision not to restore or repair will not be considered valid or effective unless it includes the written consent of all Approved Mortgagees."

7. The Lease is hereby amended by capitalizing the word "Rent" in paragraph 30.5.c. and the second paragraph of 30.5.

8. The Lease is hereby amended by deleting Section 35.1, which reads as follows:

---

"35.1 If the Lessee:

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

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

and substituting the following therefore:

"35.1 If the Lessee:

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

then the Minister may give the Lessee forty-five (45) days written notice of the default."

9. The Lease is hereby amended by deleting Section 35.2, which reads as follows:

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

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

and substituting the following therefore:

---

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

- a. the default is a default mentioned in subsection 35.1.a or is reasonably capable of being cured within forty-five (45) days after the notice is given and the Lessee fails to cure the default within the forty-five (45) days; or
- b. the default is not a default mentioned in subsection 35.1.a and is not reasonably capable of being cured within forty-five (45) days after the notice is given and the Lessee fails to commence to cure the default promptly upon receipt of the notice and to proceed to cure it with all due diligence to completion; then the Minister may by notice to the Lessee subject to section 35.6 declare the Term ended."

10. The Lease is hereby amended by deleting Sections 35.5 and 35.6, which read as follows:

"35.5 No notice to the Lessee under subsections 35.1.a, 35.1.b or Article 39 will be valid for any purpose unless and until a copy of such notice is also given to any Approved Mortgagee who has provided the Minister in writing with an address in British Columbia to which the Minister may mail and deliver copies of notices. The copy of such notice may be given to the Approved Mortgagee at the address specified by the Approved Mortgagee and otherwise on the same terms and conditions as applicable to notices referred to in Article 51.

35.6 Any curing of a default by an Approved Mortgagee will be construed as curing of that default by the Lessee."

and substituting the following therefore:

"35.5 No notice to the Lessee under subsections 35.1.a, 35.1.b or Article 39 will be valid for any purpose unless and until a copy of such notice is also given to any Approved Mortgagee and to any registered mortgagees of the registered sublessees, in all cases who have provided the Minister in writing with an address in British Columbia to which the Minister may mail and deliver copies of notices. The copies of such notices may be given to any Approved Mortgagee and any registered mortgagees of the registered sublessees at their respective addresses specified by any Approved Mortgagee and any registered

mortgagees of the registered sublessees and otherwise shall be on the same terms and conditions as applicable to notices referred to in Article 51.

35.6 Any Approved Mortgagee receiving notice of default in accordance with Section 35.5 hereof shall be entitled to cure the default pursuant to, and within the time frame provided for in this Article. Any curing of a default by an Approved Mortgagee will be construed as curing of that default by the Lessee."

11. The Lease is hereby amended by deleting Section 36.1, which reads as follows:

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

and substituting the following therefore:

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

12. The Lease is hereby amended by deleting Section 37.2, which reads as follows:

"37.2 If the Lessee fails to perform any Lessee's covenant, then without limiting any other remedy of the Minister under this Lease the Minister may order the Lessee in writing to perform the covenant, and if the Lessee does not perform it within thirty (30) days of such order the Minister may but will not be obligated to do whatever is reasonably necessary to perform it. The Lessee will pay

---

to Her Majesty as additional Rent any reasonable cost or expense incurred by the Minister in performing the covenant forthwith upon demand by the Minister."

and substituting the following therefore:

"37.2 If the Lessee fails to perform any Lessee's covenant, then without limiting any other remedy of the Minister under this Lease the Minister may order the Lessee in writing to perform the covenant, and if the Lessee does not perform it within forty-five (45) days of such order the Minister may but will not be obligated to do whatever is reasonably necessary to perform it. The Lessee will pay to Her Majesty as additional Rent any reasonable cost or expense incurred by the Minister in performing the covenant forthwith upon demand by the Minister."

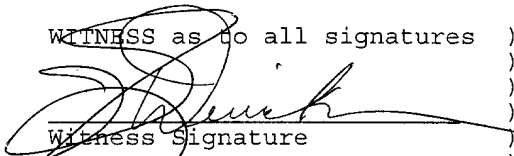
13. All other covenants, agreements, terms and conditions of the Lease shall be and continue to be in full force and effect, except insofar as they are expressly varied herein.

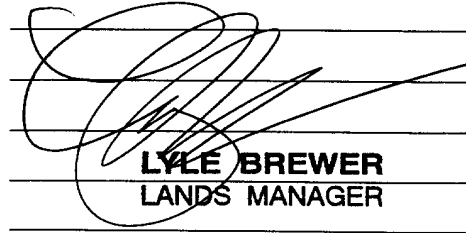
14. This Modification and Indenture shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

15. Time shall continue to be of the essence in this Lease.

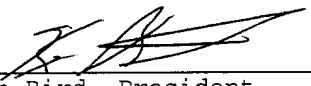
IN WITNESS WHEREOF the Chief and Council of the Westbank Indian Band of Indians, on behalf of Her Majesty the Queen in Right of Canada pursuant to the authority delegated duly under Section 60 of the Indian Act, have hereunto set their hands and seals on the day, month, and year first above written.

WITNESS as to all signatures )

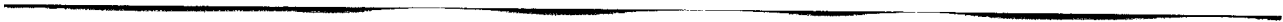
  
Witness Signature )  
**BERNICE DERRICKSON** )  
Address Lands Administration )  
Officer )  
Westbank Band )  
Occupation )

  
**LYLE BREWER**  
**LANDS MANAGER**

THE COMMON SEAL of  
K-WEST EQUITIES CORP. was  
hereunto affixed in the  
presence of:

  
\_\_\_\_\_  
Kevin Bird, President

c/s



I, MICHAEL SHANE ABEL, Locatee, hereby acknowledge that I have read and understood the contents hereof and have sought and obtained the advice of my lawyer and consent and agree to this Modification of Lease this 18<sup>th</sup> day of March, 1994.

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

Christina )  
Name )

1018 Carmel Crest Kelowna )  
Address )

Secretary )  
Occupation )

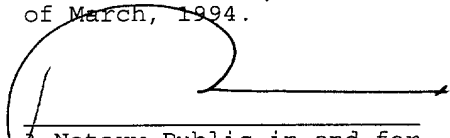
Mike Abel  
MICHAEL SHANE ABEL

AFFIDAVIT OF WITNESS

I, Chris Laird, of 1018 Colmels Cres  
in the City of Kelowna, in the Province  
of British Columbia, make oath and say:

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

SWORN before me in the )  
City of Kelowna, )  
in the Province of British )  
Columbia this 18<sup>th</sup> day )  
of March, 1994. )



Chris Laird

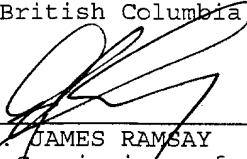
A Notary Public in and for  
the Province of British  
Columbia  
A Commissioner for taking  
oaths within the Province  
of British Columbia.

**GEORD HOLLAND**  
#304 - 546 Leon Ave.  
Kelowna, B.C. V1Y 6J6  
Barrister & Solicitor

PROOF OF EXECUTION BY CORPORATION

I certify that on the 16th day of March, 1994 at Kelowna, in the Province of British Columbia, Kevin Bird, who is personally known to me, appeared before me and acknowledged to me that he is the authorized signatory of K-West Equities Corp. and that he is the person who subscribed his name as signing officer of the said company to the annexed instrument, and that he was duly authorized to subscribe his name as aforesaid (and that the corporation existed at the date the instrument was executed by the corporation)\*\*.

IN TESTIMONY of which I set my hand and seal of office at the City of Kelowna, in the Province of British Columbia, this 16th day of March, 1994.

  
\_\_\_\_\_  
D. JAMES RAMSAY  
A Commissioner for taking  
Affidavits within British  
Columbia.

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

\* If signing officer is personally known to the officer taking the acknowledgement strike out the words in brackets.

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





# WESTBANK INDIAN COUNCIL

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

## BAND COUNCIL RESOLUTION Chronological Number: \_\_\_\_\_

The undersigned Chief and Councillors of the Westbank Band do hereby certify that the following is a resolution that was passed, duly moved, seconded and approved by a majority of the Council at a duly convened meeting at the Administration Offices of the Band at 515 Highway 97 South, Tsinstikeptum Indian Reserve No. 10, on the \_\_\_ day of March, 1994.

### WHEREAS:

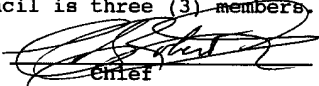
- A. By Order in Council P.C. 1989-998 dated May 25th, 1989 issued pursuant to Section 60 of the Indian Act, the Westbank Band, as represented by its duly elected Council, has been granted the authority to control and manage lands within the Band's reserves;
- B. Michael Shane Abel, a member of the Westbank Band, is in lawful possession of the whole of Lot 208, Tsinstikeptum Indian Reserve No. 9, as shown on Plan of Survey No. 75234, registered in the Canada Lands Surveys Records at Ottawa;
- C. By an Indenture of Lease (the "Lease") dated the 1st day of July, 1993, and deposited in the Indian Land Registry at Ottawa on the 27th day of October, 1993 under number 216812, the Minister of the Department of Indian Affairs and Northern Development (the "Minister"), as represented by the Council of the Westbank Band, acting on behalf of Her Majesty the Queen in Right of Canada, did lease unto K-West Equities Corporation, (the "Lessee") certain lands in Tsinstikeptum Indian Reserve No. 9, the Province of British Columbia, for a term of ninety-nine (99) years commencing on the 1st day of July, 1993, which lands are more particularly described as follows:

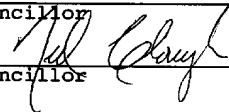
The whole of Lot 208, Tsinstikeptum Indian Reserve No. 9, as shown on Plan of Survey No. 75234, registered in the Canada Lands Surveys Records at Ottawa.  
(the "Lands")

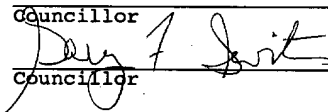
- D. The Lease provides that K-West Equities Corporation, shall not sublease, assign or mortgage its interest in the Lands, or any part thereof, without first obtaining the prior written consent of the Minister, as represented by the Band;
- E. K-West Equities Corporation, has requested the consent of the Minister to a Modification of Lease dated the 16th day of March 1994;

**THAT WE DO HEREBY RESOLVE AND AGREE THAT**, on behalf of the Minister and as authorized by Order in Council P.C. 1989-998 dated May 25th, 1989 issued pursuant to Section 60 of the Indian Act, we do hereby consent to the Modification of Lease dated the 16th day of March, 1994, between Her Majesty the Queen in Right of Canada and K-West Equities Corporation.

A quorum for the Westbank Band Council is three (3) members.

  
Chief

Councillor \_\_\_\_\_  
  
Councillor \_\_\_\_\_

Councillor \_\_\_\_\_  
  
Councillor \_\_\_\_\_

\_\_\_\_\_, 1994

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

AND

K-WEST EQUITIES CORP.

MODIFICATION OF LEASE

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

Att: D. JAMES RAMSAY

Receipt Stamp

**RECEIVED**

**MAR 25 1994**

Lands Directorate  
SINGAPORE

Registration Stamp

Registration No. 219760 Date 1994/MAR/25 Time 11:11

Indian Land Registry  
REGISTRATION CONTROL SHEET

Sec. 53 and/or 60 Bands WEST BANK

Region BC Instrument type 70

COMPUTER REGISTRATION INFORMATION (For computerized reserves only.)

LOG # P 8126 LOG DATE 1994/MAR/25 R.E.P. No \_\_\_\_\_

INSTRUMENT NAME (Addendum) Modification of lease CODE 70

RESERVE NAME SINSTIKREPTUM # 9 CODE 7420

PURPOSE NAME \_\_\_\_\_ CODE \_\_\_\_\_

TERM \_\_\_\_\_ FROM \_\_\_\_\_ TO \_\_\_\_\_

RETIRE PIN: YES \_\_\_\_\_ NO

CP REQUIRED YES \_\_\_\_\_ NO

PIN(s)	LEGAL DESCRIPTION/LAND AFFECTED
<u>902002197</u>	<u>LOT 208 CLSR 75234</u>

REMARKS/REGISTRATION NOS. AFFECTED Lease Reg # 216812. Deleted and inserts various clauses.

NEW PIN(S) CREATED	LEGAL DESCRIPTION

REGISTRATION NOS. (CARRIED OVER) \_\_\_\_\_

EXAMINED by [Signature] Date 1994/MAR/25

Initial verification by \_\_\_\_\_ Date \_\_\_\_\_

Final verification by \_\_\_\_\_ Date \_\_\_\_\_