

CANADA

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

THIS INDENTURE made as of the 16th day of November, A.D. 1974.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

(hereinafter called "Her Majesty")

OF THE FIRST PART

AND:

WESTBANK INDIAN BAND DEVELOPMENT
COMPANY LIMITED, a company incorporated
pursuant to the laws of the Province of
British Columbia having its head office
at 2203 Hayman Road, Kelowna, British
Columbia

(hereinafter called the "Lessee")

OF THE SECOND PART

WHEREAS:

A. The lands hereinafter described are part of those lands known as Tsinstikeptum Indian Reserve No. 10, which has been set apart for the use and benefit of the Westbank Band of Indians;

B. The lands hereinafter described were surrendered for lease by Surrender dated the 14th day of January, 1974 and accepted by Order-in-Council No. 1974-1366 dated the 13th day of June, 1974;

C. The Council of the Westbank Band of Indians has, by Resolution No. 982-35-75 dated the 16th day of November, 1974 approved and consented to the lease of the lands hereinafter described.

*I hereby certify that this document is a true copy of the original lease made as of November 16th, 1974 & executed by Her Majesty. Irene Stewart
Solicitor*

NOW THEREFORE the Minister of Indian Affairs and Northern Development hereinafter referred to as the "Minister", on behalf of Her Majesty the Queen in Right of Canada under the authority of Section 53(1) of the Indian Act, Chapter I-6, Revised Statutes of Canada, 1970, DOTH HEREBY DEMISE AND LEASE unto the Lessee all and singular that certain parcel or tract of land situate, lying and being in the Vernon Assessment District, in the Province of British Columbia, and more particularly known and described as:

Lot "A", Tsinstikeptum Indian Reserve No. 10,
Osoyoos Division Yale District, Plan 26644

hereinafter referred to as the "Demised Lands", but excepting and reserving unto the Minister all mines and quarries and all minerals whether solid, liquid or gaseous which now or hereinafter may be found to exist within, upon or under the Demised Lands.

- A. TO HAVE AND TO HOLD the Demised Lands for and during the term of Ninety-nine (99) years commencing on the 13th day of June, 1974 and terminating on the 12th day of June, 2073, (hereinafter referred to as the "Term").
- B. YIELDING AND PAYING rent as follows:
- (1) For that part of the Demised Lands shown outlined in red on the Plan attached as Schedule "A" hereto, (hereinafter referred to as "Stage One"),
- (a) As Primary Rent, on the last day of the fourth year of the Term, the greater of:
- (i) the sum of Two Hundred Fifty-five Thousand Dollars (\$255,000.00), with interest

on such sum and any balance thereof remaining unpaid at the rate of Fifteen percent (15%) per annum from the commencement date of the Term until the Primary Rent has been paid, which interest at the rate aforesaid will be calculated yearly, not in advance, until the Primary Rent has been paid, or

(ii) Fifty percent (50%) of the total Basic Rent paid or payable to the Lessee under all the subleases of Stage One or any part thereof, granted by the Lessee from the commencement date of the Term to the date of the Lessee making full payment of the Primary Rent to the Minister.

It is hereby agreed that the Primary Rent may be paid at any time during the first four years of the Term either in a lump sum payment or by instalments provided that full payment of the Primary Rent will be made on or before the last day of the fourth year of the Term and provided further that if the Lessee shall pay the said Primary Rent by instalments, the date for determining the amount of Primary Rent payable to the Minister in accordance with the provisions of this paragraph will be the date on which the last instalment of said rent is made by the Lessee.

(b) As Yearly Rent, on the 12th day of June of each and every year of the Term (which said annual date is hereinafter referred to as the "Payment Date") that sum which is

equal to the total of the Yearly Rents received by the Lessee under all the sub-leases of Stage One or any part thereof in force at any time during the twelve-month period immediately prior to the Payment Date in question less the Expenses for Stage One incurred or paid during the same twelve-month period by the Lessee.

In the event the Expenses for Stage One in any twelve-month period exceed the total of the Yearly Rents received by the Lessee for such twelve-month period the amount of such excess may be carried forward and be calculated in Expenses for the next succeeding twelve-month period.

(2) For each Parcel of Land of that portion of the Demised Lands shown outlined in green on the Plan attached hereto as Schedule "A" (hereinafter referred to as the "Remainder Portion"),

(a) As Primary Rent, on the last day of the four year period of the Term commencing on the Development Date of such parcel, the greater of:

(i) an amount fixed and determined by the Minister which in the opinion of the Minister represents the Fair Market Value of the Parcel of Land in question as at the Development Date of such parcel. The Minister will make such determination and will give the Lessee notice thereof by registered mail no

later than 60 days after the Lessee has delivered a Development Plan of such parcel to the Minister. Interest on the amount so fixed and determined by the Minister and any balance thereof remaining unpaid will be at the rate of Fifteen percent (15%) per annum from the Development Date of such parcel until the Primary Rent has been paid, which interest at the rate aforesaid will be calculated yearly, not in advance, until the said Primary Rent has been paid, or

(ii) Fifty percent (50%) of the total Basic Rent paid or payable to the Lessee under all the sub-leases of the Parcel of Land in question or any part thereof, granted by the Lessee from the Development Date of such parcel to the date of the Lessee making full payment of the Primary Rent to the Minister.

It is hereby agreed that the Primary Rent for the Parcel of Land in question may be paid at any time during the said four year period commencing on the Development Date of such parcel, either in a lump sum payment or by instalments provided that full payment of the Primary Rent will be made on or before the last day of the four year period and provided further that if the Lessee shall pay the Primary Rent by instalments, the date for determining the amount of Primary Rent payable to the Minister in accordance with the provisions of this paragraph will be the date

on which the last instalment of said rent is made by the Lessee.

(b) As Yearly Rent, on the 12th day of June of each and every year of that part of the Term commencing on the Development Date of such parcel that sum which is equal to the total of the Yearly Rents received by the Lessee under all the sub-leases of such parcel or any part thereof in force at any time during the twelve-month period immediately prior to the Payment Date in question less the Expenses for such Parcel of Land incurred or paid during the same twelve-month period by the Lessee.

In the event the Expenses for such Parcel in any twelve-month period exceed the total of the Yearly Rents received by the Lessee for such twelve-month period the amount of such excess may be carried forward and be calculated in Expenses for the next succeeding twelve-month period.

(c) The sum of \$1.00 on the 13th day of June in each and every year of the Term.

FOR THE PURPOSES OF THIS PARAGRAPH B THE PARTIES HERETO COVENANT EACH WITH THE OTHER THAT:

1. The Lessee will keep or cause to be kept accurate records of all rent receipts and expenditures so that the Yearly Rent due by the Lessee under sub-paragraphs (1)(b) and (2)(b) of this Paragraph B may be accurately determined. The Minister, his agents and officers will have the right during regular business hours, upon giving the Lessee twenty-four (24) hours' notice, to

examine the Lessee's records in order to confirm the accuracy of such records, and to conduct an audit, and the Lessee will make available to the Minister, his agents and officers any information that the Minister may require in conducting such an examination or audit. The results of an audit conducted by the Minister will be binding on the Lessee and if such results differ from the determinations previously made by the Lessee, the Minister will deliver a report of the audit to the Lessee, and any deficiency or overpayment with regard to the Yearly Rent in question will be adjusted and paid by the Lessee to the Minister or by the Minister to the Lessee, as the case may be, in accordance with such report, provided that at the option of the Minister, any overpayment by the Lessee may be carried forward as a credit on account of the Yearly Rent to be paid at the next succeeding Payment Date. The cost of the audit will be borne by the Lessee in the event the Lessee's records are inaccurate.

2. Rent under this Lease will be paid to the Minister at his Department in the City of Ottawa, in the Province of Ontario, or to such person or body corporate and at such other place as the Minister may, from time to time, in writing designate and may be paid by certified cheque or bill of exchange.

3. In this Paragraph B:

(a) Basic Rent means the rent referred to as such in the subleases of Stage One and the Remainder Portion.

(b)(i) Development Date means that date during the Term on which the Minister shall notify the Lessee of the determination he has made pursuant to sub-paragraph (2)(a)(i) of Paragraph B hereof, with respect to a Parcel of Land.

(ii) It is hereby agreed that the Lessee will not, prior to the Development Date, commence work on a Parcel of Land in order to develop and use it for the purposes permitted in sub-paragraphs 4 and 5 of Paragraph C herein.

(c) Expenses for a Parcel of Land means all outgoings of the Lessee of every nature and kind whatsoever incurred or paid with respect to such parcel during the twelve-month period immediately prior to a Payment Date which are deductible expenses under the Income Tax Act of Canada as amended from time to time or any equivalent legislation but will not include any amount for which the Lessee has set up a reserve in its books in connection with the calculation of expenses for such parcel in any previous twelve-month period prior to the twelve-month period in question nor will it include any expenditures which are paid from the proceeds of Basic Rent paid to the Lessee under all subleases of such parcel or any part thereof in force at any time during such twelve-month period or any expenditures which are paid from the proceeds of any financing obtained by the Lessee with respect to such parcel.

(d) Expenses for Stage One means all outgoings of the Lessee of every nature and kind whatsoever incurred or paid with respect to Stage One during the twelve-month period immediately prior to a Payment Date which are deductible expenses under the Income Tax Act of Canada as amended from time to time or any equivalent legislation, but will not include any amount for which the Lessee has set up a reserve in its books in connection with the calculation of expenses for Stage One in any previous twelve-month period prior to the twelve-month period in question nor will it include any expenditures which are paid from the proceeds of the Basic Rent paid to the Lessee under all the subleases of Stage One or any part thereof in force at any time during such twelve-month period or any expenditures which are paid from the proceeds of any financing obtained by the Lessee with respect to Stage One.

(e) Fair Market Value means the amount for which a willing seller would have sold in the open market to a willing buyer a Parcel of Land assuming:

(i) that parcel were held in fee simple and were unimproved having the services available thereto that would be required for a development of the type shown on the Development Plan of that parcel delivered by the Lessee to the Minister,

(ii) the use of that parcel were for the purposes permitted in sub-paragraphs 4 and 5 of Paragraph C herein, and

(iii) the only improvements permitted to be constructed on that parcel were such improvements as are permitted to be constructed in accordance with sub-paragraph 7 of Paragraph C herein.

(f) Parcel of Land means any part of the Remainder Portion which is proposed to be developed and will be developed and used by the Lessee for the purposes permitted in sub-paragraphs 4 and 5 of Paragraph C herein, or for any other purpose to which the Minister has given his prior written consent, and may include the whole of the Remainder Portion.

(g) Yearly Rents means the rent referred to as Yearly Rent in the subleases of Stage One and the Remainder Portion.

C. THE PARTIES HERETO COVENANT AND AGREE EACH WITH THE OTHER THAT:

1. The Lessee shall and will well and truly pay or cause to be paid the said rent in the manner before stated without any deduction, defalcation or abatement whatever.

2. The Lessee will pay and discharge or cause to be paid and discharged all rates, taxes, duties, assessments, impositions and burdens whatsoever lawfully charged upon the Demised Lands or upon the Lessee or occupier in respect thereof.

3. The Lessee will not, without the prior written consent of the Minister, use or suffer or permit any

person or corporation to use Stage One or any part thereof or any buildings or improvements at any time erected or placed thereon or on any portion thereof except for the purpose of a single family dwelling in accordance with the provisions of Schedule "B" hereto, or for the purpose set out in sub-paragraph 5 of this Paragraph C.

4. The Lessee will not without the prior written consent of the Minister, use or suffer or permit any person or corporation to use the Remainder Portion or any part thereof or any buildings or improvements at any time erected or placed thereon or on any portion thereof except in accordance with a development and resource study of the Demised Lands entitled "A Development Study 1973", produced by Interform Planning and Design Ltd., and dated March 30th, 1973 (hereinafter referred to as the "Development Study"), or for the purpose set out in sub-paragraph 5 of this Paragraph C.

5. The Lessee may erect, construct or install a building on the Demised Lands to be used by the Lessee to administer the development of the Demised Lands in accordance with the provisions of this Lease.

6. Subject to sub-paragraphs 7, 8 and 9 of this Paragraph C the Lessee may at its own expense, during the Term, construct, demolish, alter, remodel and replace buildings or any part thereof and make such other improvements including the construction of roads, the installation of water, sewer, electricity, gas, telephone and other utility systems on the Demised Lands and make any alterations, additions, or changes in and to the Demised Lands as it considers necessary and convenient for its use of the Demised Lands.

7. The Lessee will obtain the Minister's written consent in advance for any construction, demolition, alteration, remodelling or replacement of any improvements on the Demised Lands or for any alteration, improvements, or changes to the Demised Lands which are not effected or not to be effected in accordance with the Development Study, provided that the Minister will not withhold his consent if in the opinion of an independent appraiser acceptable to the Minister the value of the Demised Lands and the buildings and improvements on the Demised Lands will not be reduced as a result of such construction, demolition, alteration, remodelling or replacement not effected in accordance with the Development Study.

8. Any construction, demolition, alteration, remodelling or replacement of any improvements or any part thereof on the Demised Lands will be prosecuted with reasonable diligence to completion, free and clear of any and all mechanics' liens or other liens, conditional sales contracts, or similar claims or encumbrances against the Demised Lands, the improvements, Her Majesty or any mortgagee, and will in any event be completed within two years from the commencement thereof.

9. All buildings to be erected on the Demised Lands and all alterations and remodelling thereof will be constructed in accordance with the standards laid down by the National Building Code of Canada, as amended from time to time to the date of construction, alteration, or remodelling, as the case may be, and also in accordance with the building standards, if any, instituted and laid down by the Westbank Indian Band Council

concerning any construction on Tsinstipkeptum Indian Reserve No. 10. In the event there is any conflict in the standards laid down by the National Building Code of Canada and the building standards, if any, instituted and laid down by the Westbank Indian Band Council, the aforesaid standards set out in the National Building Code of Canada will prevail. In addition, all buildings to be constructed on the Demised Lands will conform to the fire safety standards as laid down by the Federal Government/Dominion Fire Commissioner from time to time and to the date of construction.

10. Except in performing the construction and installations referred to in sub-paragraph 6 of this Paragraph C, the Lessee will not remove or allow the removal of any sand, gravel, marl, topsoil, or other material forming part of the Demised Lands and will not cut down, remove or allow the removal of any trees on the Demised Lands without having first obtained the written consent of the Minister.

11. The Lessee may, during the Term, in connection with the installation of sewage, electricity, gas, telephone and other utility systems which may be required by the Lessee to service the Demised Lands or any part thereof and any structures or buildings thereon, grant easements over the Demised Lands or any part thereof to any public utility.

12. Subject to sub-paragraph 10 of this Paragraph C, the Lessee will not suffer or permit the commission of any waste upon the Demised Lands.

13. The Lessee will not create, permit or suffer any nuisance or obnoxious activity on the Demised Lands.

14. The Lessee will at all times during the Term, maintain the grounds of the Demised Lands in good order, properly preserve the trees growing thereon, and will exercise control of noxious weeds on the said lands and prevent their increase thereon and their spreading to adjoining property.

15. The Lessee will not subdivide the Demised Lands or any portion thereof without having first obtained the written consent of the Minister.

16. The Minister or any person or persons designated by the Minister will have the right upon giving the Lessee twenty-four hours notice, either verbally or in writing, to enter upon the Demised Lands or any part thereof for the purpose of inspecting any buildings, or other improvements made therein or thereon, and for such other purposes as the Minister may deem necessary.

17. At no time will the Minister be obliged to furnish any services or facilities or to make repairs or alterations in or to the Demised Lands. The Lessee hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Demised Lands and all improvements thereon and will, during the Term keep or cause to be kept the buildings and all other improvements in and upon the Demised Lands, both exterior and interior, structural and otherwise in a good and tenantable state of repair.

18. The Lessee will, during the Term, at its own expense, promptly observe, perform, execute and comply with all laws, rules, requirements, orders, directions, ordinances, and regulations of every authority having

such competence, civic, municipal, provincial, federal, Band or otherwise, concerning the Demised Lands and buildings, or other improvements constructed therein and thereon not inconsistent with the Indian Act, and all amendments thereto as from time to time enacted, PROVIDED THAT the Lessee shall have the right to contest the validity of such laws, rules, requirements, orders, directions, ordinances, and regulations, if proceedings relating thereto are commenced before the expiration of sixty (60) days after the Lessee has first been notified of any breach of any such laws, rules, requirements, orders, directions, ordinances and regulations. If and whenever the Lessee shall contest the validity of any such rules, requirements, orders, directions, ordinances, or regulations, the Lessee will indemnify and save the Minister harmless from all loss, damage, cost and expense suffered by the Minister by reason of the Lessee undertaking such proceedings and the Lessee will conduct such proceedings after the commencement thereof expeditiously and with all reasonable diligence, and further, the Lessee will furnish such security as may be required by the Minister to safeguard the rights of Her Majesty in the event the said proceedings would adversely affect Her Majesty.

19. The Lessee will indemnify and save harmless the Minister against any and all claims, suits, or causes of action by or on behalf of any person or persons, corporation or corporations, or any municipal or governmental authority arising from the conduct or management of any work, business or things whatsoever done in or about the Demised Lands during the Term or arising during the Term from any condition of any building,

walk, or driveway or arising from the neglect or tort of the Lessee, its agents, contractors, servants, or employees, or from any accident, damage or injury whatsoever however caused to any person or party in or about the Demised Lands.

20. (a) At all times during the Term, the Lessee will, at its own cost and expense, insure and keep insured or cause to be insured and kept insured all improvements erected on the Demised Lands or any part thereof, with one or more companies satisfactory to the Minister in the sum of not less than one hundred percent (100%) of their full replacement cost against loss or damage by fire and other perils now or hereafter from time to time embraced by or defined in a standard fire insurance extended coverage or additional perils supplemental contract. For the purpose of this sub-paragraph 20(a), replacement cost will be as may be agreed upon between the Minister and the Lessee, or if the parties are unable to agree as to what constitutes a proper basis for the purpose of the foregoing provisions of this sentence, the question will be determined by reference to the Federal Court of Canada, pursuant to Section 17 of the Federal Court Act as may be amended from time to time. Any and all policies of insurance will be for the mutual benefit of Her Majesty, the Lessee, any sublessee and other loss payee, each as their respective interests may appear and will show Her Majesty as an insured. The parties agree that, notwithstanding the foregoing, the proceeds of such insurance will be dealt with for the

purpose of repair or replacement in accordance with sub-paragraph 21(a) of this Paragraph C, or, in the event of complete or substantially complete destruction, in accordance with sub-paragraph 21(b) hereof.

(b) The Lessee hereby releases Her Majesty, Her successors and assigns, from any and all liability for loss or damage caused by any of the perils against which the Lessee shall have insured or against which by the terms of this Lease the Lessee is obliged to insure, and whether or not such loss or damage may have arisen out of the negligence of Her Majesty.

(c) At all times during the Term, the Lessee will, at its own cost and expense, maintain with one or more companies satisfactory to the Minister, comprehensive general liability insurance against claims for personal injury, death or property damage or loss occurring upon, in or about the Demised Lands, arising out of or resulting from the possession, occupation, use and control of the Demised Lands by the Lessee, such insurance to afford protection to the limit of not less than \$500,000.00 in respect to injury or death to a single person, of not less than \$500,000.00 in respect to any one occurrence and to the limit of not less than \$500,000.00 in respect to property damage from any one accident. The Minister will have the right from time to time to increase or decrease the aforesaid amounts and upon giving notice thereof to the Lessee, such amount will

then apply. Any and all policies for such insurance will be in the names of and for the mutual benefit of Her Majesty and the Lessee.

(d) The Lessee will pay all the premiums under the aforesaid policies as they become due and payable and in default of payment by the Lessee, the Minister may pay the same and add the amount so paid to the rent next payable and may collect the same as rent with all rights of distress and otherwise as reserved to the Minister in respect of rent in arrears.

(e) All policies of insurance (or certificates thereof at the option of the Minister) or other evidence of continuity of insurance will be delivered to the Minister accompanied by evidence satisfactory to the Minister that the premiums thereon have been paid not less than five (5) days prior to the expiration of any then current policy.

21. (a) In the event of damage to or partial destruction of any of the improvements on the Demised Lands, the Lessee will enforce the obligation of any sublessee under his sublease to repair, remodel, alter or replace such improvements to substantially the same replacement cost the improvements had before such damage or partial destruction; PROVIDED that in the event

(a) the Lessee has not sublet that portion of the Demised Lands on which such improvements are located, or

(b) there is no obligation on the sublessee under his sublease to repair, remodel, alter or replace such improvements, or

(c) if there is such obligation, the sub-lessee has not commenced construction within two (2) years of the damage to or destruction of the improvements,

the Lessee will at its own expense, remodel, alter or restore the improvements to substantially the same replacement cost as they had before such damage or destruction.

(b) In the event of complete destruction of any of the improvements on the Demised Lands, the Lessee will enforce the obligation of any sub-lessee under his sublease to reconstruct or replace such improvements with new improvements which will be of a value of not less than the replacement cost of the old improvements prior to their damage or destruction; PROVIDED that in the event

(a) the Lessee has not sublet that portion of the Demised Lands on which the old improvements were located, or

(b) there is no obligation on the sublessee under his sublease to reconstruct or replace such improvements, or

(c) if there is such obligation, the sub-lessee has not commenced construction within two (2) years of the destruction of the improvements,

the Lessee will at its own expense, reconstruct or replace the improvements with new improvements which will be of a value of not less than the replacement costs of the old improvements prior to their damage or destruction.

(c) Any replacement, repair, or reconstruction of the improvements or any part thereof, pursuant to the provisions of sub-paragraphs 21(a) and 21(b) of this Paragraph C will commence within two (2)

years after such damage or destruction and such replacement, repair or reconstruction of the said improvements will be subject to the provisions of sub-paragraphs 7, 8, and 9 hereof.

(d) For the purpose of sub-paragraphs 21(a) and 21(b) of this Paragraph C, if the Minister and the Lessee cannot agree on the replacement cost of the improvements or any part thereof, the matter will be referred for determination to the Federal Court of Canada pursuant to Section 17 of the Federal Court Act as may be amended from time to time and the decision of the Federal Court will be final and binding upon the parties hereto.

(e) Notwithstanding the provisions of sub-paragraphs 21(a) and 21(b) of this Paragraph C, if complete destruction or serious damage should occur during the last five (5) years of the Term to any of the improvements on the Demised Lands, the Lessee may at its option in the event that it is obliged to repair, reconstruct, or replace such improvements under sub-paragraphs 21(a) and 21(b) hereof, decline to repair, reconstruct or replace the improvements. In such event, any insurance or other monies available by reason of the fire or other casualty causing destruction or damage will be divided between Her Majesty, the Lessee and any other loss payee.

22. Subject to the terms of this Lease and the provisions of the Indian Act and in particular Section 54 thereof, and subject to having first obtained the written consent of the Minister and so long as the

Lessee is not in default hereunder, the Lessee may, during the Term, assign, mortgage, sublet or otherwise encumber this Lease as to the whole or any portion of the Demised Lands for the whole or any part of the Term, provided that, every such assignment, mortgage, sublease or other encumbrance will be subject and subordinate to the covenants and conditions of this Lease and the rights of the Minister hereunder, and no assignee, mortgagee, sublessee or encumbrancee or anyone claiming by or through such assignee, mortgagee, sublessee or encumbrancee will have any greater rights to the Demised Lands or any portion thereof than the Lessee then had under the Lease. PROVIDED FURTHER that the Lessee is not released from any of the covenants and agreements contained in this Lease by reason of any such assignment, mortgage, sublease or encumbrance and that it will be a term of any assignment of this Lease other than a mortgage of the Lease granted by way of assignment of lease, that the assignee will covenant in writing to abide by the full terms of this Lease.

23. All subleases of Stage One will be in the form of sublease attached hereto as Schedule "C" except for minor non-substantive changes unless the written consent of the Minister or his authorized representative is first obtained to a different form of sublease.

24. Prior to granting any sublease of the Remainder Portion, the Lessee will obtain the written consent of the Minister to the form of such sublease.

25. If the Lessee shall at any time during the Term:

- (a) file a petition in bankruptcy or make an assignment for the benefit of creditors;
- (b) be adjudicated a bankrupt or insolvent;

(c) file any petition or institute any proceedings under any bankruptcy or insolvency act seeking to effect a reorganization or a composition;

(d) have the leasehold interest created hereunder seized in execution or by a process of law and not released within one hundred and twenty (120) days from the date of such seizure;

(e) be subject to the appointment of a Receiver or a Trustee who is not discharged within one hundred and twenty (120) days from the date of such appointment;

(f) fail to pay the rent reserved hereunder within ninety (90) days after being payable, whether formally demanded or not;

(g) fail to pay taxes on the Demised Lands and improvements thereon to the appropriate authorities within ninety (90) days of their due date;

(h) vacate the Demised Lands with monies under this Lease owing to Her Majesty;

(i) fail to fulfill, perform or observe any other covenants herein contained, and such default continuing for a period of ninety (90) days after Her Majesty has given notice to remedy such default;

(j) allow any person, corporate body or other body or institution, not a bank chartered under the Bank Act or a member of the Westbank Indian Band as determined in accordance with the Indian Act R.S.C. 1970, Ch. I-6, as amended from time to time, or its equivalent legislation at such time, to become a shareholder of the Lessee; or

(k) fail to perform or observe any of the covenants made by the Lessee to a lending institution in connection with any financing obtained therefrom and guaranteed by Her Majesty, so that it becomes necessary for Her Majesty to fulfill Her guarantee to such lending institution;

it will be lawful for the Minister, without further notice to declare the Term ended and this Lease terminated and thereupon these presents and everything herein contained and the estate or Term will absolutely cease, determine and be void without re-entry or any other act or any suit or legal proceedings to be brought or taken, provided the Minister will nevertheless be entitled to recover from the Lessee the rent then

accrued, or accruing, and moreover that any right of action by the Minister against the Lessee in respect of any antecedent breach of any of the covenants, provisos, stipulations or conditions contained in this Lease will not be thereby prejudiced; PROVIDED FURTHER that in such event, the Minister or his agent may re-enter the Demised Lands or any portion thereof, and thereafter have, possess and enjoy them as if this Lease had not been made. PROVIDED ALSO that in such event, the Lessee will indemnify and save harmless the Minister, his officers, servants and agents from all loss, damage, costs, and expenses resulting therefrom.

PROVIDED ALWAYS that if the leasehold estate hereby demised shall from time to time be mortgaged by the Lessee to a lending institution by mortgage or trust deed, and the Minister has in writing consented to such mortgage or trust deed, then, so long as such mortgage or trust deed shall continue in force, and until the delivery of a deed to the purchaser at a sale in foreclosure of the mortgage or trust deed, notice of default in the performance of the covenants of this Lease as is hereby required to be given to the Lessee will simultaneously be given to the mortgagee or trustee, and such mortgagee or trustee will have the right, within the respective periods as prescribed in this paragraph and for an additional period of thirty (30) days thereafter and to the same extent and with the same effect as though done by the Lessee, to take such action or to make such payment as may be necessary or appropriate to cure any such default.

26. In the event it becomes necessary for Her Majesty to fulfill Her guarantee as set forth in sub-paragraph

25(k) of this Paragraph C, the Lessee will upon the Minister's request assign its interest in this Lease to Her Majesty.

27. No merger of any of Her Majesty's interest in the Demised Lands nor a surrender of this Lease will occur by reason of an assignment of said Lease to Her Majesty by the Lessee or any assignee of the Lessee. The doctrine of merger is hereby expressly excluded.

28. In the event the Minister should, prior to the expiration of the Term, forfeit this Lease or accept a surrender thereof, the Minister will, upon the written request of any sublessee which he has approved and provided such sublessee is not in default under his sublease, grant a lease, with the consent of the Westbank Indian Band Council by resolution, to the sublessee of that portion of the Demised Lands described in the sublease upon such of the terms and conditions as are contained in the sublease as would be applicable in a lease directly from the Minister to the sublessee. In the event the Minister grants any such lease, the sublessee will pay rent to the Minister under the lease as of the date of the granting of said lease in the same amount and at the same time as such rent became due and payable under his sublease, notwithstanding the fact that the sublessee may have made a prepayment to the Lessee, prior to the sublessee being granted a lease by the Minister, of all or any portion of the Yearly Rent accruing due and payable under his sublease on or after the date of the granting of the said lease by the Minister. It is hereby understood and agreed that any payment of the Yearly Rent

made in advance in accordance with the terms of the sublease on the due date therein stated will not be considered a prepayment hereunder if the due date for such payment is prior to the date of the granting of said lease by the Minister. In addition, in such circumstances, the Minister agrees to grant easements over the Demised Lands or any part thereof to any public utilities in replacement of any easements which may have been granted to such public utilities by the Lessee.

29. (a) Where, in the opinion of the Minister, the Lessee has failed to perform any of the covenants or obligations of the Lessee under or in respect of this Lease, the Minister may order the Lessee in writing to rectify the failure, and failing compliance within ninety (90) days of such order, the Minister may perform or cause to be performed any such covenant or obligation or any parts thereof, and for such purpose may do such things as may be requisite and he will be reimbursed therefor from the Lessee forthwith and any sum so incurred or spent by the Minister will be collectible from the Lessee by the Minister as additional rent together with prevailing bank interest thereon until fully paid and realized.

(b) The obtaining of a judgment or judgments on any covenant herein contained will not operate as a merger of such covenant.

(c) In the event of any default hereunder, the Lessee will pay full costs arising therefrom, and

whether before action or otherwise, and at the option of the Minister, upon a solicitor and client basis.

30. At the expiration of the Term or sooner termination of this Lease, the Lessee will, subject to the provisions of sub-paragraph 31 of this Paragraph C, peaceably surrender and yield up the Demised Lands together with any improvements thereon to Her Majesty in a good and tenantable repair, free of all claims whatsoever and without the payment or allowance by the Minister of any sum of money whatsoever to the Lessee and without notice from the Minister, any right to notice to quit or vacate being hereby expressly waived by the Lessee, any law, usage or custom to the contrary notwithstanding.

31. At the expiration of the Term or sooner termination of this Lease, the Lessee will be entitled if not in default hereunder to remove from the Demised Lands and from any building or structure thereon within thirty (30) days after such termination its movable goods, chattels, trade and tenants' fixtures and furnishings.

32. If the Lessee pays the rent hereby reserved, and performs the covenants hereinbefore on its part contained, the Lessee shall and may peaceably possess and enjoy the Demised Lands for the Term, without any interruption or disturbance from the Minister, his successors or assigns, or any other person or persons lawfully claiming by, from, or under him, them or any of them.

33. Termination of this Lease will in no way prejudice the Minister's right to recover unpaid rent or any

other right of action by the Minister with respect to a breach of any covenant or agreement herein contained.

34. If the Lessee vacates the Demised Lands leaving any rent owing and unpaid, it will be lawful for the Minister to seize and sell the goods and chattels of the Lessee at any place to which the Lessee or any other person may have removed them and whether on or off the Demised Lands.

35. No waiver on behalf of Her Majesty of any breach will take place or be binding unless the same be expressed in writing by the Minister and any waiver so expressed will extend only to that particular breach to which such waiver specifically relates and will not be deemed to be a general waiver, or to limit or affect the rights of Her Majesty, with respect to any other breach.

36. No remedy herein conferred upon or reserved to the Minister is intended to be exclusive of any other remedy herein or by law provided, but such remedies will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

37. Illegality or invalidity of any clause or clauses of this Lease will not affect the validity of the remainder, the clause or clauses to be severable and deemed not to be incorporated herein.

38. Whenever in this Lease it is required or permitted that notice or demand be given or served by either party to this Lease to or on the other, such notice or demand, unless provided otherwise in this Lease, will be in writing and will be sufficiently communicated if forwarded by registered mail, addressed as follows:

To the Minister at:

His office in the House of Commons,
Parliament Building, in the City
of Ottawa, K1A 0A6, Ontario

To the Lessee at:

2203 Hayman Road,
Kelowna, British Columbia

Such addresses may be changed from time to time by either party serving notice as above provided. If any question arises as to whether any such notice was communicated to either party, it will be deemed communicated on the day received or on the sixth (6th) day after it was mailed, whichever is the earlier.

39. Time will be of the essence of this Lease.

40. No member of the House of Commons will be admitted to any share or part of this Lease or to any benefit to arise therefrom.

41. The Lessee hereby acknowledges having received a true copy of this Lease.


42. This Lease will enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

43. This Lease will be subject to the provisions of the Indian Act and Regulations established thereunder, and to any legislation in substitution therefor or amendment thereof which may hereafter be enacted or made.

IN WITNESS WHEREOF Gordon Allan Pourpore, Director, Lands and Membership of the Department of Indian Affairs and Northern Development, on behalf of Her Majesty the Queen in Right of Canada has

hereunto set his hand and seal and the Lessee has caused its corporate seal to be affixed in the presence of its duly authorized officers the day, month and year first above written.

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


Name _____)
~~48-121 SWELL ST. OTTAWA~~)
Address _____)
ADMINISTRATIVE SERVICES OFFICER)
Occupation _____)


_____)
for the Minister of)
Indian Affairs and)
Northern Development)

The Common Seal of WESTBANK)
INDIAN BAND DEVELOPMENT)
COMPANY LIMITED was hereunto)
affixed in the presence of:)


_____)
Director and President)

(SEAL)


_____)
Director and Secretary)

SCHEDULE "B"

RESTRICTIONS

1. No more than one dwelling for one family or housing unit, with such further structures as may be necessary for the accommodation of any servant or servants of such one family or household or such further structures as may be incidental and necessary to the use of such one family or household shall be erected on any one lot.
2. No building or any part thereof will be used as a shop, rooming house, boarding house, resort, hospital, private school, hotel or any other place of trade or business, and the same will be used exclusively for the erection thereon of a single family dwelling.
3. No dwelling house, together with ancillary buildings will cover less than ten percent (10%) of the total area of the lot.
4. No lot will be subdivided and no building or part thereof will be let with the intent or purpose that the same or any part or parts thereof will be used or occupied by more than one family or household unit.
5. No debris, vegetation, garbage, or offensive matter of any description will be permitted to accumulate on any lot, or within any dwelling or ancillary building.
6. No billboards, placards, advertising or signs of any description will be erected or displayed upon the lot or

any part thereof, or on any residence or building, or in any window or door of any residence or building on the lot, save and except name plates of any physician or other professional person to be approved by the Lessee and save and except not more than one "For Sale" sign not exceeding three feet by two feet in size.

7. No poultry, swine, sheep, cows, cattle or other livestock will be kept on the lot except only domesticated household pets provided however no such domesticated household pets may be kept for sale or kept in any way which in the opinion of the Lessee may be or become an annoyance or nuisance to the Lessee or to any residents in the neighbourhood.

8. No house trailer, mobile home or camper and no boats, machinery or motor cycle will be located, kept or stored on the lot except in an enclosed roofed building, garage or roofed carport and no truck or commercial vehicle will be stored or kept on any such lot nor stand on such lot except in the course of delivering goods or services to the occupant of the lot.

9. No trees now standing on the lot will be cut or removed except with the written consent of the Lessee and no trees, hedges, or shrubs planted on the lot will be permitted to grow to a height exceeding ten (10) feet provided however that on a corner lot no trees, hedges or shrubs will be permitted to grow to a height exceeding three (3) feet within twenty-five (25) feet of the corner of such lot fronting on two streets.

SUBSTITUTE FORM C - PARTICULARS

- (a) Nature of charge - Sublease
- (b) Address of person entitled to be registered, if different from that shown in instrument.
- (c) Full name, postal address and telephone number of person presenting instrument for registration.
- (d) Declared value \$ _____
- (e) Signature of applicant (agent or solicitor)

DO NOT USE SPACE ABOVE THIS LINE - FOR OFFICE USE ONLY

THIS SUBLEASE dated this _____ day of _____, 19 _____.

BETWEEN:

WESTBANK INDIAN BAND DEVELOPMENT COMPANY LIMITED, a British Columbia company having its head office at 2203 Hayman Road, Kelowna, British Columbia,

(hereinafter called the "Lessor")

OF THE FIRST PART

AND:

(hereinafter called the "Lessee")

OF THE SECOND PART

WHEREAS:

A. The lands and premises situate, lying, and being in the Vernon Assessment District, in the Province of British Columbia, and more particularly known and described as:

(hereinafter called the "Lands") have been set apart by Her Majesty

for the use and benefit of the Westbank Indian Band;

B. The Westbank Indian Band has surrendered inter alia the Lands to Her Majesty by Surrender dated January 14, 1974 which Surrender was accepted by Her Majesty by Order-in-Council No. 1974-1366 dated June 13, 1974;

C. By the Head Lease, Her Majesty as represented by the Minister leased to the Lessor inter alia the Lands for a term of 99 years commencing June 13, 1974;

D. The Lessor has agreed to sublease to the Lessee a portion of the Lands more particularly known and described as:

(hereinafter called the "Premises") and the Lessee has agreed to sublease the Premises from the Lessor.

WITNESSETH that in consideration of the premises and the rents, terms, and conditions herein respectively reserved and contained, the Lessor and Lessee covenant and agree each with the other as follows:

ARTICLE I - DEFINITIONS

1.01 For the purposes of this Sublease:

- A. "Basic Rent" means the rent described in sub-section A of section 4.01 prepayable by the Lessee to the Lessor;
- B. "Commencement Date" means _____, 19____;
- C. "Head Lease" means the lease of, inter alia, the Lands dated November 16, 1974 and made between Her Majesty as represented by the Minister as lessor and the Lessor as lessee, and registered in the Land Registry Office on _____, 1976 under No. _____;

- D. "Her Majesty" means Her Majesty the Queen in right of Canada;
- E. "Indian Act" means the Indian Act, R.S.C. 1970, Chapter 1-6, as may be amended from time to time, and regulations thereunder;
- F. "Lands" means the lands and premises described in preamble A;
- G. "Minister" means the Minister of Indian Affairs and Northern Development, or his successor, appointed under the Indian Act;
- H. "Plans and Specifications" means the plans, elevations, and specifications of any improvements constructed or to be constructed on the Premises and any additions or alterations thereto setting forth the quantities, qualities, and specifications of all materials to be used including;
 - (i) the specification and color of exterior finish,
 - (ii) the specification of roofing materials, and
 - (iii) a plan showing the location on the Premises of the proposed improvements or additions or alterations thereto with respect to all existing topography, finished ground elevations, and boundaries of the improvements;
- I. "Premises" means the lands and premises described in preamble;
- J. "Rent Review Periods" means the successive five year periods of the term immediately following the first 35 years of the term, and the last period of the term, if any, of a duration of less than five years immediately following the said successive five year periods;
- K. "Yearly Rent" means the rent described in sub-section B of section 4.01 payable annually by the Lessee to the Lessor.

ARTICLE II - DEMISE

2.01 The Lessor demises and leases unto the Lessee, ALL AND SINGULAR, the Premises.

ARTICLE III - TERM

3.01 TO HAVE AND TO HOLD the Premises from and including the Commencement Date to and including June 12, 2073.

ARTICLE IV - RENT

4.01 YIELDING AND PAYING THEREFOR the following rents:

- A. The Basic Rent of the sum of \$ _____ as rent prepaid for the term, payable on or before the Commencement Date,
 - B. The Yearly Rent payable annually in advance commencing on the Commencement Date and on each anniversary of the Commencement Date during the term
 - (i) for each of the first 35 years of the term, in an amount equal to one and a half per cent of the Basic Rent, and
 - (ii) for each year of each Rent Review Period in an amount which, in the Lessor's opinion, represents one and a half per cent of the fair market value of the Premises as a fully developed and serviced lot for the purposes permitted under this Sublease as of the commencement of the Rent Review Period in question, but excepting the value of any improvements made, constructed, assembled, or affixed by the Lessee or any assignee of the Lessee's interest in accordance with Article V.
- Such Yearly Rent will not be less than the greater of:

- (iii) the Yearly Rent for the preceding Rent Review Period or, with respect to the first Rent Review Period the Yearly Rent for the first 35 years of the term, or
- (iv) an amount equal to one and a half per cent of the Basic Rent.

The Lessor will endeavor at least 90 days before the commencement of the Rent Review Period in question to make such determination and to give the Lessee notice of such determination. In the absence of or pending such determination, the Lessee will continue to pay Yearly Rent in the same amount as during the preceding Rent Review Period or, with respect to the first Rent Review Period in the same amount as during the first 35 years of the term. If a notice is given after the Rent Review Period in question has begun, any increase in Yearly Rent will be immediately paid by the Lessee to the Lessor. If the Lessee disagrees with the amount of the Yearly Rent as determined by the Lessor, and if the Lessee has paid all rents then due, including any increase of Yearly Rent determined as aforesaid, the Lessee will have the right, at his own expense, within 90 days after receipt of the notice of the determination of the Yearly Rent to refer the matter to the Federal Court of Canada pursuant to section 17(3) of the Federal Court Act, as may be amended from time to time or its equivalent legislation at such time for the determination of the Yearly Rent for the Rent Review Period in question on the basis above provided, and such determination by the Court will be final and binding on both parties. Upon such determination by the Court, any excess or deficiency will be paid by the Lessee to the Lessor, or credited by the Lessor to the Lessee, as the case may be, in accordance with such determination.

ARTICLE V - CONSTRUCTION

5.01 The Lessee will not commence the making, constructing, assembling, or affixing on the Premises of any improvements or additions or alterations thereto without the prior written consent of the Lessor of the Plans and Specifications.

5.02 The Lessee agrees that any improvements to be made, constructed, assembled, or affixed on the Premises, and the Plans and Specifications for such improvements will:

- A. comply with the restrictions set out as Schedule "A" to this Sublease,
- B. comply with the standards of the National Building Code of Canada, as amended from time to time to the date of construction, alteration, or remodelling, as the case may be,
- C. comply with the standards of the building by-laws, if any, made by the Westbank Indian Band Council, as amended from time to time to the date of construction, alteration, or remodelling, as the case may be,
- D. comply with the building regulations made by the Lessor, as amended from time to time to the date of construction, alteration, or remodelling, as the case may be, and
- E. comply with the fire safety standards of the Federal Government/Dominion Fire Commissioner as to the date of construction, alteration, or remodelling, as the case may be.

If there is any conflict in the standards of the National Building Code of Canada and the building by-laws, if any, made by the Westbank Indian Band Council, the standards of the National Building Code of Canada will prevail.

5.03 The Lessor may in its written consent under section 5.01 fix a limit as to the time within which such consent will be valid and the date by which the work for which consent has

been given must be substantially completed.

5.04 The Lessee will make, construct, assemble, or affix or cause to be made, constructed, assembled, or affixed on the Premises improvements or additions or alterations thereto for which the Lessor's written consent has been given;

A. in accordance with good and workmanlike building construction standards, and

B. in a prompt and diligent manner,

and will complete or cause to be completed such construction by the date for the substantial completion of the work fixed by the Lessor.

5.05 The Lessee will pay on demand all fees and disbursements of the Lessor's consultants in connection with the inspecting of the Plans and Specifications and the granting of any consent by the Lessor under section 5.01.

5.06 If the Lessee fails to substantially complete or cause to be substantially completed the construction work within the time fixed for its substantial completion by the Lessor, the Lessor may complete such construction work and on demand made by the Lessor after substantial completion, the Lessee will pay to the Lessor the costs incurred by the Lessor together with, for supervision and overhead, an amount equal to 20 per cent of such costs. All sums so spent by the Lessor will be collectable by the Lessee by the Lessor as additional rent together with interest thereon at the rate provided in sub-section I of section 6.01 until fully paid and satisfied.

5.07 The Lessee will pay all accounts and expenses as they become due for labor performed upon and materials supplied to the Premises. If any mechanics' lien or other lien is filed

for work, labor, services, or material in respect of the Premises or any portion thereof, or in respect of any improvements thereon, the Lessee will indemnify and save harmless the Lessor from and against any loss, damage, cost, and liabilities incurred thereby and all claims, demands, and actions whether at law or in equity arising or which might arise out of such mechanics' lien or other lien and will bond against or discharge the lien within 10 days after written request by the Lessor. If the Lessee fails to so bond against or to discharge the lien within 10 days after the Lessor's request, the Lessor may discharge the lien and upon discharge, the Lessee will pay to the Lessor all monies in connection with the discharge together with interest thereon at the rate herein provided until fully paid and satisfied.

5.08 The Lessor will if necessary extend the time for the substantial completion of any building or other improvement or additions thereto or alterations thereof if there is a delay due to strike, shortage of materials, lockout, fire, extreme weather conditions, or other causes as determined by the Lessor which are beyond the control of the Lessee, but not a lack of funds or any other financial condition.

ARTICLE VI - LESSEE'S COVENANTS

6.01 The Lessee covenants with the Lessor:

- A. To pay or cause to be paid the Basic Rent and Yearly Rent in the manner before stated without any reduction, defalcation, or abatement whatsoever, at the Lessor's office at 2203 Hayman Road, Kelowna, British Columbia, or to such other person or body corporate and such other place as the Lessor may from time to time in writing designate;

- B. To pay, when due, all taxes, rates, duties and assessments that may be charged against or in respect of the Premises or against the Lessee in respect thereof together with all water, sewer, light, power, gas, telephone and other utility service charges and rates, and hook-up charges that may be assessed or charged against or in respect to the Premises or upon the Lessee by any supplier thereof (which may include the Lessor) during the term hereof;
- C. To keep all improvements in and on the Premises both exterior and interior, structural and otherwise, in good and tenantable repair;
- D. Not to remove from the Premises any improvements situate on the Premises, or any part of such improvements;
- E. To permit the Minister and the Lessor and persons authorized by either of them at all reasonable times to enter and examine the condition of the Premises and upon notice by either of them to repair in accordance with such notice, and to indemnify the Lessor against the consequences of any breach thereof. If the Lessee fails to effect such repairs promptly, the Lessor may enter upon the Premises, effect such repairs and charge the costs thereof, together with, for supervision and overhead, an amount equal to 20 per cent of such costs to the Lessee and the Lessee will pay such costs and fee to the Lessor on demand;
- F. That at the expiration of the term or sooner termination of this Lease, the Lessee will peaceably surrender and yield up the Premises, together with any improvements

thereon to the Lessor in good and tenantable repair, free of all claims whatsoever and without payment or allowance by the Lessor of any sum of money whatsoever to the Lessee and without notice from the Lessor, any right to notice to quit or vacate being hereby expressly waived by the Lessee, any law, usage, or custom to the contrary notwithstanding;

- G. Not to use or occupy the Premises or suffer the same to be used or occupied except for the purpose of a single family dwelling in accordance with the provisions of Schedule "A" hereto and not to use or allow the Premises to be used for any purpose which would constitute a nuisance to the Lessor or to other sublessees of the Lessor or to the owners or occupants of the Lands or adjoining lands;
- H. To promptly and at his own expense observe, perform, execute, and comply with all laws, rules, requirements, orders, directions, ordinances, and regulations of every public or local authority or agency concerning the Premises and any buildings or other improvements constructed thereon. The Lessee may contest the validity of such laws, rules, requirements, orders, directions, ordinances, and regulations, if proceedings relating thereto are commenced before the expiration of 60 days after the Lessee has first been notified of any breach of any such laws, rules, requirements, orders, directions, ordinances, and regulations. The Lessee will conduct such proceedings after the commencement thereof expeditiously and with all reasonable diligence and the Lessee will indemnify and save the Lessor harmless from all loss, damage, costs, and expense suffered by the Lessor by reason of the Lessee's undertaking such proceedings;

- I. To pay the Lessor interest at the rate of 10 per cent per annum on all sums due as rent or other charges under this Sublease not paid when due, such interest to be computed on all such amounts from the due date and without the necessity of any demand being made therefor;
- J. Not to suffer or permit the commission of any waste upon the Premises;
- K. Not to subdivide the Premises or any portion thereof;
- L. Not to remove or allow removal of any sand, gravel, marl, topsoil, or other material forming part of the Premises without the prior written approval of the Lessor;
- M. To keep the grounds of the Premises in good order, preserve the trees and exercise control of noxious weeds. The Lessee will within the time specified by the Lessor when any Plans and Specifications are approved by the Lessor in accordance with Article V landscape and thereafter keep landscaped the Premises in the manner specified by the Lessor, plant lawns on the Premises as specified by the Lessor out to the travelled road or roads fronting on the Premises and hard surface to the Lessor's approval all walks and driveways leading from the travelled road or roads fronting on the Premises into the main building erected or to be erected thereon. If the Lessee in the opinion of the Lessor is in default under any of his obligations under this sub-section M of section 6.01, the Lessor may remedy such default and to be reimbursed therefor by the Lessee. Any sum so spent by the Lessor will be collectable from the Lessee by the Lessor as additional rent together with interest thereon at the rate herein

provided in sub-section I of section 6.01 until fully paid and satisfied;

- N. That at no time will the Lessor be required to make repairs or alterations to improvements made or erected on the Premises by the Lessee or any assignee or the Lessee's interest hereunder;
- O. To pay the cost of the preparing of this Sublease.

ARTICLE VII - INSURANCE AND LIABILITY

7.01 The Lessee covenants with the Lessor:

- A. To insure and keep insured at his own cost all improvements erected on the Premises with one or more companies satisfactory to the Lessor in the sum of not less than 100 per cent of their full replacement cost against loss or damage by fire and other perils now or hereafter from time to time embraced by or defined in a standard fire insurance extended coverage or additional perils supplemental contract. For the purposes of this sub-section, replacement cost will be as agreed upon between the Lessor and Lessee, or if the parties are unable to agree at any occasion when replacement cost is to be determined hereunder, either party may refer such determination to the Federal Court of Canada pursuant to section 17 of the Federal Court Act as may be amended from time to time or its equivalent legislation at such time. Any and all policies of insurance will be for the mutual benefit of Her Majesty, the Lessor, the Lessee and any other loss payee, each as their respective interests may appear and will show Her Majesty and the Lessor as insureds. Notwithstanding the foregoing,

the proceeds of such insurance will be dealt with for the purposes of repair or replacement in accordance with sub-section A of section 7.02 hereof or in the event of complete or substantially complete destruction in accordance with sub-section B of section 7.02 hereof;

- B. At his own cost to obtain and maintain with one or more companies satisfactory to the Lessor, comprehensive general liability insurance against claims for personal bodily injury, death, or property damage or loss occurring upon, in or about the Premises, arising out of resulting from the possession, occupation, use, and control of the Premises by the Lessee, such insurance to afford protection to the limit of not less than \$100,000 in respect of injury or death to a single person, of not less than \$100,000 in respect of any one occurrence, and to the limit of not less than \$100,000 in respect of property damage from any one accident. The Lessor will have the right from time to time to increase or decrease the aforesaid amounts and upon giving notice thereof to the Lessee, such amount will then apply. Any and all policies for such insurance will be in the names of and for the mutual benefit of Her Majesty, the Lessor and Lessee;
- C. To pay all the premiums under the policies of insurance described in sub-sections A and B of section 7.01 as they become due and in default of payment, the Lessor may pay the same and add the amount so paid to the rent next payable and may collect the same as rent with all rights and distress and otherwise as reserved to the Lessor in respect of rent in arrears;
- D. To immediately deliver to the Lessor or to such person

as may be designated by the Lessor all policies of insurance described in sub-sections A and B of section 7.01 (or certificates thereof at the option of the Lessor), and not less than five days before the expiration of any then current policy, evidence of continuity of insurance accompanied by evidence satisfactory to the Lessor that the premiums thereon have been paid.

7.02 The Lessee covenants with the Lessor:

- A. That in the event of damage to or partial destruction of any of the improvements on the Premises, the Lessee will immediately, at his own expense, remodel, alter, or restore the improvements to substantially the same replacement cost as they had before such damage or destruction;
- B. That in the event of complete destruction of any of the improvements on the Premises, the Lessee will immediately, at his own expense, reconstruct or replace the improvements with new improvements which will be of a value of not less than the replacement cost of the old improvements before their damage or destruction;
- C. That the provisions of Article V apply to any replacement, repair, or reconstruction of the improvements or any part thereof to be made pursuant to the provisions of sub-sections A and B of section 7.02 hereof;
- D. That for the purposes of sub-sections A and B of section 7.02 hereof, if the Lessor and Lessee cannot agree on the replacement cost of the improvements or any part thereof, the matter will be referred for determination to the Federal Court of Canada pursuant to Section 17 of the Federal Court Act as may be amended from time to time and the decision of the Federal Court will be final and binding upon the parties hereto;

E. That notwithstanding the provisions of sub-sections A and B of section 7.02 hereof, if complete destruction or serious damage should occur during the last five years of the term of the Head Lease to any of the improvements on the Premises, the Lessee may at his option in the event that he is obliged to repair, reconstruct, or replace such improvements under sub-sections A and B of section 7.02 hereof, decline to repair, reconstruct, or replace the improvements. In such event, any insurance or other monies available by reason of the fire or other casualty causing such destruction or damage will be divided between Her Majesty, the Lessor, the Lessee, and any other loss payee as said parties agree that their respective interests in such monies appear immediately before the exercise of the said option and, in default of agreement, as determined by reference to the Federal Court of Canada.

7.03 The Lessor will not be liable to the Lessee for damage to or destruction of any property of the Lessee or for the death or injury of or to the Lessee, his agents, servants, contractors, licencees, and invitees and either on the Premises or on roadways or other common areas of the Lands.

ARTICLE VIII - ASSIGNMENT, SUBLETTING, AND MORTGAGING

8.01 Subject to section 8.02, the Lessee will not, without the prior consent of the Lessor assign this Lease, or sublet, or give any right of occupancy or possession of the Premises or any part thereof.

8.02 The Lessee may mortgage his interest in the Premises so long as;

- A. the mortgagee is a person of financial responsibility,
and

- B. the Lessee has given the Lessor prior written notice of the Lessee's intention to grant a mortgage of his interest in the Premises, which notice will contain the full name and address of the proposed mortgagee.

The granting of a mortgage of the Lessee's interest in the Premises will not affect the Lessor's rights as against the Lessee under this Sublease.

8.03 The Lessee will forward to the Lessor immediately upon receipt thereof any notice, letter, demand, writ, or other document received by the Lessee from any mortgagee of the Lessee's interest in the Premises, a copy of any mortgage of the Lessee's interest in the Premises, and a copy of any modification of any such mortgage.

8.04 Notwithstanding anything else herein contained, if the Lessee mortgages his interest in the Premises to a mortgagee or mortgagees in accordance with section 8.02 and if the Lessor forfeits this Sublease or if the Lessee surrenders this Sublease, the Lessor will give written notice to all such mortgagees whose mortgages are registered against the Premises in the Land Registry Office advising that the Lessor has forfeited this Sublease or that the Lessee has surrendered this Sublease, as the case may be. The Lessor will in such notice to such mortgagees give to the mortgagee whose mortgage interest is last in priority among such mortgages the right exercisable by notice in writing to the Lessor within 30 days from the receipt of the notice to the mortgagee to require the Lessor to enter into a sublease of the Premises on the same terms and conditions as are contained in this Sublease, subject to section 8.06, commencing on the date this Sublease is forfeited or surrendered for the unexpired portion of the term of this Sublease, after:

- A. the mortgagee has paid to the Lessor all monies payable by the Lessee hereunder at the date of the termination or surrender of this Sublease, together with all costs incurred by the Lessor in terminating the Sublease and re-entering the Premises, and

B. the Lessor is satisfied that the mortgagee has discharged all mortgages, charges, liens, and other encumbrances of the Lessee's interest having priority to the mortgage.

If such mortgagee whose interest is last in priority does not exercise its rights within the said 30 day period, or if the conditions set forth in sub-sections A and B above are not fulfilled within an additional 15 day period, the Lessor will not be liable in any respect under this Sublease to such mortgagee and will give such right and in accordance with the same terms to the mortgagee next having priority, until such time as the Lessor has given the right to all such mortgagees. For the purpose of this section 8.04, the Lessor may determine priorities as between mortgagees in accordance with the dates and times on which the applications for the registration of the mortgages respectively were received by the Registrar of Titles at the Land Registry Office at the date of forfeiture or surrender of this Sublease or in accordance with provisions of any registered priority agreements.

8.05 Every assignment, sublease, or grant of any right of possession to the Premises or any part thereof will be subject to the provisions of the Indian Act and subject and subordinate to the terms and conditions of this Sublease and the rights of the Lessor hereunder. No assignee, sublessee, or person having any right of possession to the Premises or any part thereof or any one claiming by or through any of the aforesaid will have any greater rights to the Premises or any portion thereof than the Lessee then had under the Sublease, and the Lessee will not be released from any of the terms and conditions contained herein by reason of any assignment, sublease, or grant of any right of possession to the Premises, or any part thereof. It will be a term of any assignment of this Sublease that the assignee will covenant in writing to abide by all the terms and conditions contained in this Sublease.

8.06 Notwithstanding anything else herein contained,
where:

- A. the Lessor is required to enter into a sublease of the Premises in favor of a mortgagee pursuant to section 8.04, and
- B. the mortgagee is Her Majesty the Queen in right of the Province of British Columbia and its mortgage is made pursuant to the Provincial Home-acquisition Act, R.S.B.C. 1960, chapter 39, as amended from time to time,

sub-section B of section 4.01 will not apply for the period during which Her Majesty the Queen in right of the Province of British Columbia is in actual occupation of the Premises and has not assigned this lease or sublet or given any right of occupancy or possession of the Premises or any part thereof.

ARTICLE IX - DEFAULT AND TERMINATION

9.01 The Lessor may without any form of legal process immediately or at any time thereafter re-enter and take possession of the Premises or any portion of the Premises and become the owner of and remove the Lessee's fixtures and effects therefrom notwithstanding any statute or law to the contrary, and without prejudice to and reserving all other rights, remedies, and recourses of the Lessor if the Lessee or any sublessee or assignee of the Lessee:

- A. files a petition in bankruptcy or makes an assignment for the benefit of creditors;
- B. is adjudicated a bankrupt or insolvent;
- C. files any petition or institutes any proceedings under any bankruptcy or insolvency acts seeking to effect a reorganization or composition;
- D. is subject to the appointment of a receiver or trustee in bankruptcy who is not discharged within 120 days from the date of such appointment;

- E. has his interest in the Sublease seized in execution or by process of law and not released within 120 days from the date of such seizure (except that a mere filing of a writ of execution or a writ of extent with the Sheriff will not be considered a seizure for the purpose of this provision); or
- F. vacates or abandons the Premises with monies owing to the Lessor.

9.02 If the Lessee fails to pay when due any rent reserved hereunder, any other monies payable by the Lessee to the Lessor hereunder, or any tax, rate, duty, or assessment pursuant to sub-section B of section 6.01, and such default continues for a period of 60 days after written notice of non-payment has been given by the Lessor to the Lessee and the mortgagees whose mortgages are registered against the Premises in the Land Registry Office on the date of the notice, or is in default under sub-section D of section 6.01, the Lessor may without any form of legal process immediately or at any time thereafter re-enter and take possession of the Premises or any portion of the Premises and become the owner of and remove the Lessee's fixtures and effects therefrom, notwithstanding any statute or law to the contrary, and without prejudice to and reserving all other rights, remedies, and recourses of the Lessor.

9.03 If the Lessor contends that the Lessee has not complied with, or is not complying with any of the terms or conditions contained in this Sublease to be observed or performed by the Lessee (other than the covenants to pay rent and taxes, and sub-section D of section 6.01) the Lessor may, by notice in writing, so notify the Lessee and the mortgagees whose mortgages are registered against the Premises in the Land Registry Office on the date of the notice. Such notice having been given by the

Lessor to the Lessee and the said mortgagees, the Lessee or the said mortgagees will:

- A. Correct the matters specified in such notice within 15 days after the giving of such notice; or
- B. If more than the said 15 day period is required to correct the matters specified in such notice, commence to correct the matters specified within the said 15 day period and prosecute such matters to completion without delay.

If the matters specified by the Lessor are not corrected or dealt with in accordance with this section 9.03, the Lessor may without any form of legal process immediately or at any time thereafter re-enter and take possession of the Premises or any portion of the Premises and become the owner of and remove the Lessee's fixtures and effects thereon, notwithstanding any statute or law to the contrary, and without prejudice to and reserving all other rights, remedies, and recourses of the Lessor.

9.04 On the Lessor becoming entitled to re-enter the Premises under any of the provisions of this Sublease, the Lessor, in addition to all other rights, will have the right to re-enter the Premises as the agent of the Lessee either by force or otherwise without being liable therefor, and to relet the Premises as the agent of the Lessee, to receive rent therefor as the agent of the Lessee, to take possession of any furniture, or other property on or attached to the Premises and to sell such furniture or other property at public or private sale without notice and to apply the proceeds of such sale and any rent derived from reletting the Premises upon account of the rent under this Sublease and the Lessee will be liable to the Lessor for any deficiency.

9.05 On the Lessor becoming entitled to re-enter the Premises under any of the provisions of this Sublease, the Lessor, in addition to all other rights, will have the right to determine

immediately or at any time thereafter this Sublease and the unexpired term of this Sublease by leaving upon the Premises notice in writing of its intention to do so, and thereupon the Lessee will then immediately pay the Lessor the rent and any other monies for which the Lessee is liable under this Sublease and deliver up possession of the Premises to the Lessor, and the Lessor may re-enter and take possession thereof.

9.06 At or before the termination of this Sublease, the Lessee may if not in default hereunder remove his removable goods, chattels, furnishings, and lessee's fixtures from the Premises and from any building or other improvement thereon but in so doing will immediately make good any damage caused to the Premises resulting from such removal.

9.07 If the Lessor retains the services of a solicitor to collect rent in arrears or other charges or to enforce the performance of any of the terms and conditions in this Sublease to be observed or performed by the Lessee or if the Lessor incurs any expenses in enforcing the performance of any of such terms and conditions, the Lessor will be entitled to collect from the Lessee all reasonable solicitors' fees and expenses in respect thereof as if the same were rent reserved and in arrears hereunder.

9.08 The Lessor will have the same rights and remedies for the recovery of all sums which the Lessee covenants to pay to the Lessor pursuant to this Sublease in addition to the Basic Rent and Yearly Rent, as if such sums were rent in arrears.

ARTICLE X - INDEMNITY

10.01 The Lessee will indemnify and save harmless the Lessor, its servants and agents, from and against any loss, damage, costs, and liabilities including fees of solicitors

and other professional advisers arising in any way from

- A. any act or omission of the Lessee, his agents, servants, contractors, licencees, and invitees,
- B. the use or occupation of the Premises by the Lessee, his agents, servants, contractors, licencees, and invitees,
- C. the conduct or management of any form of any work or things whatsoever done in or about the Premises during the term of this Sublease,
- D. any condition of any building, structure, walk, or driveway,
- E. the neglect or tort of the Lessee, his agents, servants, contractors, licencees, or invitees, or
- F. any accident, damage, or injury whatsoever and however caused to any person or party in or about the Premises,

during the term of this Sublease.

ARTICLE XI - LESSOR'S COVENANTS

11.01 The Lessee upon paying the rents hereby reserved when due in the manner aforesaid and observing and performing each and every of the terms and conditions contained in this Sublease to be observed or performed by the Lessee, will and may peaceably and quietly possess and enjoy the Premises during the term without interruption from or by the Lessor or any person lawfully claiming by, through, or under the Lessor.

11.02 The Lessor will pay the rent reserved by the Head Lease and otherwise maintain the Head Lease in good standing.

ARTICLE XII - GENERAL

12.01 No remedy herein conferred upon or reserved to the Lessor is intended to be exclusive of any other remedy herein

or by law provided, but such remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

12.02 The Lessee will upon demand by the Lessor attorn to or become the tenant of any grantee, mortgagee, or other holder of the Lessor's interest in the Lands, and will cause each assignment, sublease, mortgage, or licence granted in respect of the Premises to contain a provision under which the assignee, sublessee, mortgagee, or licensee thereunder agrees upon demand by the Lessor to attorn to or become the tenant or licensee of any grantee, mortgagee, or other holder of the Lessor's interest in the Lands.

12.03 The Lessee acknowledges that the Lessor has a leasehold interest in the Lands under and by virtue of the Head Lease and notwithstanding any amendment, modification, or renewal of the Head Lease, this Sublease will remain in full force and effect as if this Sublease was derived from the Head Lease as so amended, modified, or renewed.

12.04 The Lessee, his agents, servants, employees, contractors, licensees, and invitees will observe faithfully the rules and regulations as the Lessor may make from time to time as being, in the Lessor's opinion, necessary or desirable for the use, reputation, and enjoyment of the Lands or any part thereof including the Premises. Such rules and regulations will become effective upon written notice thereof being given by the Lessor to the Lessee.

12.05 The illegality or invalidity of any section, sub-section, or clause of this Sublease will not affect the validity of the remainder of this Sublease and the section, sub-section, or clause as the case may be, will be severable and considered not to be incorporated herein.

12.06 Wherever in this Sublease it is required or permitted that notice or demand be given or served by any party to this Sublease to or on the other, such notice or demand will be given or served in writing and forwarded by registered mail addressed as follows:

To the Lessor at:

Westbank Indian Band Development Company Limited
2203 Hayman Road
Kelowna, British Columbia

To the Lessee at:

Such addresses may be changed from time to time by any party by serving notice as above provided.

12.07 Time is of the essence of this Sublease, and of all the terms and conditions hereof.

12.08 No member of the House of Commons will be admitted to any share or part of the within agreement or to any benefit to arise therefrom.

12.09 The whole agreement between the parties is set forth herein, and no representations, warranties, or conditions have been made other than those contained herein, and no agreement collateral hereto will be binding upon the Lessor unless it be made in writing and signed by the Lessor.

12.10 The Lessee hereby acknowledges having received a true copy of this Sublease.

12.11 All covenants, liabilities, and obligations entered into or imposed hereunder upon the Lessee will be joint and several.

12.12 In this Sublease, words in the singular will include the plural, words in the plural will include the singular, and words importing the masculine gender will include the feminine and neuter genders where the context so requires.

12.13 This Sublease will enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors, and permitted assigns.

IN WITNESS WHEREOF Westbank Indian Band Development Company Limited has hereunto caused its common seal to be affixed, attested by the signatures of its proper signing officers duly authorized in that behalf and the Sublessee has hereunto set his hand and seal all as of the day, month and year first above written.

The Common Seal of WESTBANK)
INDIAN BAND DEVELOPMENT)
COMPANY LIMITED was hereunto)
affixed in the presence of:)
)
)
_____)
)
)
_____)

SIGNED, SEALED AND DELIVERED)
by the Lessee in the pres-)
ence of:)
)
)
)
_____)
Name)
)
)
_____)
Address)
)
)
_____)
Occupation)

FOR MAKER

I HEREBY CERTIFY THAT, on the 3rd day of
May, 1976, at Ottawa, in the Province of
Ontario, GORDON ALAN POUPORE, who is personally known to me,
appeared before me and acknowledged to me that he is the
Director, Lands and Membership of the Department of Indian
Affairs and Northern Development, and that he is the person
who subscribed his name to the annexed instrument for the
Minister of Indian Affairs & Northern Development on behalf
of Her Majesty the Queen in Right of Canada. THAT he was
first duly authorized to subscribe his name as aforesaid by
virtue of a Delegation of Authority under Section 53 of the
Indian Act R.S.C. 1970.

IN TESTIMONY whereof I have
hereunto set my hand and Seal of
Office at Ottawa, in the Province
of Ontario, this 3rd day of
May , 1976.

*notary must appear
has a her seal*

James B. Beckwith
A Notary Public in and for the
Province of Ontario

Regional Municipality of)
OTTAWA - CARLETON)
TO WIT:)

I, HARRY HOUSTON
of the City of Ottawa, in the
Province of Ontario; public servant
make oath and say:

1. I was personally present and did see the within instrument duly executed by GORDON ALAN POUPORE of the Department of Indian Affairs and Northern Development.
2. The said instrument was executed at OTTAWA, May 3, 1976
3. I know the said GORDON ALAN POUPORE and that he is in my belief of the full age of nineteen years.
4. I am the subscribing witness to the said instrument and am of the full age of sixteen years.

SWORN before me in the
Regional Municipality of
OTTAWA - CARLETON this 3rd
day of MAY, 1976.

James B. Beckwith

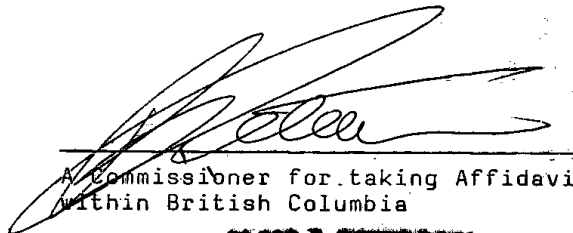
A Notary Public in and for
the Province of Ontario.

Harry Houston

ACKNOWLEDGMENT OF OFFICER OF A CORPORATION

I HEREBY CERTIFY THAT, on the 8th day of April, 1976, at the City of Kelowna, in the Province of British Columbia, Mary Anne Eli and John Norman Lindley, who are personally known to me, appeared before me and acknowledged to me that they are President, and Secretary and Directors of Westbank Indian Band Development Company Limited, and that they are the persons who subscribed their names to the annexed instrument as President and Secretary and Directors of the said Westbank Indian Band Development Company Limited, and affixed the seal of the Westbank Indian Band Development Company Limited, to the said instrument, that they were first duly authorized to subscribe their names as aforesaid, and affix the said seal to the said Instrument, and that such corporation is legally entitled to hold and dispose of land in the Province of British Columbia.

IN TESTIMONY whereof I have hereunto set my Hand and Seal of Office, at the City of Kelowna, in the Province of British Columbia this 8th day of April, 1976


A Commissioner for taking Affidavits
within British Columbia

ALAN I. GIBSON
Commissioner for taking Affidavits
within British Columbia, B.C.

DATED:

BETWEEN:

HER MAJESTY THE QUEEN
IN RIGHT OF CANADA

AND: WESTBANK INDIAN BAND
DEVELOPMENT COMPANY LIMITED

LEASE

DEPARTMENT OF JUSTICE
1900-1055 W. GEORGIA ST.
VANCOUVER, B.C. V6E 3P9

666-6385

IS/ads

VP 25280

EXTRACT FROM THE ARTICLES OF ASSOCIATION OF
WESTBANK INDIAN BAND DEVELOPMENT COMPANY LIMITED
REGARDING THE USE OF ITS SEAL.

Article:

In accordance with 18.1 and 18.2 of the Articles of Association the President and Secretary are hereby authorized for and on behalf of the Company to execute and deliver the Lease Agreement under the common seal of the Company as the act and the deed of the Company.

OFFICERS OF THE COMPANY

<u>NAME</u>	<u>TITLE OR POSITION</u>
John Norman Lindley	Director and President
Mary Anne Eli	Director and Secretary

I DO CERTIFY that the above is a true copy of the Article of the above Company regulating the use of its Seal. I DO FURTHER CERTIFY that the persons named above hold the offices set opposite their respective names.

DATED the *8th* day of *April*, 1976.

Mary A. Eli
Secretary

APPLICATION FOR REGISTRATION

INDIAN LANDS

The undersigned hereby requests that the document, the particulars of which are set out below, be entered, pursuant to the Indian Act, either in the Reserve Land Register or in the Surrendered Lands Register as the case may be.

PARTICULARS

NAME OF PARTIES AND ADDRESS OF ANY PARTY OTHER THAN THE CROWN

Crown Canada to
Westbank Indian Band Development Co. Ltd.

TYPE OF INSTRUMENT: ... lease

DATE OF INSTRUMENT: ... Nov. 16, 1974

LAND DESCRIPTION: Province: ... B.R.I.T.I.S.H. COLUMBIA ...
Reserve & No.: T.S.I.N.S.T.I.K.E.T.Y.M. I.R. #10
Parcel: Plot A Plan 59924 C.L.S.R.

TYPE OF INTEREST OR CHARGE:

MAY 3, 1976.
Date

Signature of Applicant

#5-790 Hwy 97 S.
Address
Kelowna, B.C.

Note

A separate application for registration must be submitted for each separate interest or charge.

Acceptance

The application for registration appearing on the opposite side of this sheet, has been accepted and the instrument has been entered in the appropriate Register. This instrument has been registered under

number 46827 on May 4 1976 at 11:08

a.m.
~~p.m.~~

P.M. Fleming
for Registrar

Rejection

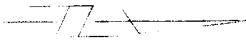
The application for registration appearing on the opposite side of this Sheet, has been rejected due to an error in one or more of the following:

- 1) Legibility
- 2) Type of paper or copy of document faulty
- 3) Identification of parties not correct
- 4) Error in signature or witnessing
- 5) Error in type or term of claim
- 6) Conflicting encumbrance
- 7) Error on application form
- 8) Error relating to the particular type of interest
- 9) Error in land description
- 10) Missing documentation

Comments:
.....
.....
.....
.....

Date

Registrar



Note: All color markers are 21.0" x 11.0" unless otherwise shown.

Wm. E. Maddox
Surveyor

WILLIAM E. MADDOX
B. C. 1858
2511 2ND AVENUE
WASHTON, D. C.

REVISIONS OF SURVEY
INDIAN RESERVE
PLAN SHOWING COMPLETE
ROAD BOUNDARIES

SHARON'S R.

Channel Line

046827

May 4 11:08 AM '76

SOLUTION OF DIRECTORS
RES. # 46826

BAND COUNCIL RESOLUTION
RES. 46825

TSIKSIKERTUM

INDIAN RESERVE NO. 10

BRITISH COLUMBIA

LEASE

NUMBER OF PIECES 63

I CERTIFY THAT THE WITHIN INSTRUMENT IS DULY ENTERED INTO THE REGISTER'S OF INDIAN LANDS AT OTTAWA, IN ACCORDANCE WITH SECTIONS 21 & 55 OF THE INDIAN ACT.

J. J. B. Registrar
REGISTRAR