

INDIGENOUS SERVICES CANADA

NOTICE OF REFERENDUM

TAKE NOTICE THAT a referendum vote will be held by secret ballot to determine if a majority of the participating voters of the Upper Nicola Indian Band are in favour of, and approve of:

An Amendment of Designation, in the Province of British Columbia, in Thompson-Nicola Regional District, of Lots 142 and 143 of Douglas Lake Indian Reserve No. 3, as shown on Survey Plan 109302 CLSR BC, recorded in the Canada Lands Surveys Records in Ottawa, Ontario, together containing approximately 2.78 hectares (6.869 acres), as described in Annex "A" attached to this Notice of Referendum.

AND FURTHER TAKE NOTICE THAT the question to be submitted to the voters is:

Are you in favour of, and do you approve of, the Amendment of Designation of Lots 142 and 143, for the purposes set out in Annex "A" to the Notice of Referendum signed by the Electoral Officer and dated April 1, 2025.

AND FURTHER TAKE NOTICE THAT the referendum will be held on May 28, 2025 and the voters may vote between the hours of 9:00 am and 8:00 pm, local time, at a polling station located at:

Upper Nicola Band Office
2225 Village Road
Douglas Lake IR3, British Columbia, V0E 1S0

AND FURTHER TAKE NOTICE THAT:

1. Voters may vote either by a mail-in ballot or in person at a polling station, but not both.
2. A mail-in ballot package (including a Notice of Referendum, a mail-in ballot, and an information package) will be mailed or delivered to voters who reside off the reserve and for whom an address has been provided by the Upper Nicola Indian Band to the electoral officer.

At the request of a voter who resides on the reserve, the electoral officer will provide the voter with these documents.

3. If a voter was mailed, delivered or provided a mail-in ballot, the voter may only vote in person at a polling station if:

- a) the voter returns the mail-in ballot to the electoral officer or deputy electoral officer; or
- b) where the voter has lost the mail-in ballot, the voter provides the electoral officer or deputy electoral officer with a written affirmation that the voter has lost the mail-in ballot, signed by the voter in the presence of the electoral officer, deputy electoral officer, a justice of the peace, a notary public or a commissioner for oaths.

AND FURTHER TAKE NOTICE THAT an information meeting will be held at the date, time, and location shown below:

Wednesday April 30, 2025 at 5:30 pm
N'kwala Gym
9410 N'kwala Road
Douglas Lake IR3, British Columbia, V0E 1S0

AND FURTHER TAKE NOTICE THAT a list of voters is being posted at the same time and at the same locations as this Notice of Referendum. Upon request, the electoral officer or deputy electoral officer will confirm whether or not the name of a person is on the voters list.

An application for a change to the voters list may be made to the electoral officer at the address noted below. For further information, please see the document entitled "Voting and the List of Voters" attached to the voters list.

DATED at Vancouver, British Columbia, on April 1, 2025.

**Pascoe,
Ron**

Digitally signed by Pascoe, Ron
DN: C=CA, O=GC, OU=ISC-SAC,
CN="Pascoe, Ron"
Reason: I am the author of this
document
Location:
Date: 2025.04.01 13:43:02-07'00"
Foxit PDF Editor Version: 2024.4.1

Ron Pascoe, Electoral Officer
Indigenous Services Canada
600 - 1138 Melville Street
Vancouver, BC V6E 4S3
Telephone: (236) 268-3647

ANNEX A

UPPER NICOLA INDIAN BAND AMENDMENT DESIGNATION DOCUMENT FOR AFFORDABLE HOUSING ON DOUGLAS LAKE INDIAN RESERVE NO. 3

BACKGROUND:

- A. Douglas Lake Indian Reserve No. 3 (the “Reserve”) in the Province of British Columbia is a reserve within the meaning of the *Indian Act* and has been set apart for the use and benefit of the Upper Nicola First Nation (“Upper Nicola”), a band within the meaning of the *Indian Act*.
- B. By Designation dated July 29, 2021, and accepted by the Minister of Indigenous Services on March 2, 2022, Lot 142 in the Reserve as shown on Plan 109302 CLSR BC (the “Original Designated Lands”) was designated by Upper Nicola for affordable housing purposes and registered in the Indian Lands Registry System under number 6131826, a copy of which is attached as Schedule “A” (altogether, the “Original Designation”).
- C. Pursuant to the Original Designation, Upper Nicola developed affordable housing for members and their families on the Original Designated Land through a British Columbia government affordable housing program that required the entity managing the housing to have a leasehold interest in the land (the “Project”).
- D. The development of the Project was completed in Spring 2024. The Project has provided affordable housing to Upper Nicola members with 26 residential units. The Project continues to be operated by the Upper Nicola Band Housing Society (“UNB Housing Society”).
- E. Upper Nicola proposes to amend the Original Designation to include Lot 143, Survey Plan 109302 CLSR BC (the “Amendment”). The sole purpose of the Amendment is to increase the size of the Original Designated Lands to accommodate infrastructure for the Project, which extends into Lot 143.
- F. Section 21 of the Original Designation provides that the Original Designation may be amended, provided that if there are any rights or interests existing under the Original Designation, then either the rights or interests must not be affected by the amendment, or the holder of the rights or interests must have agreed to the amendment.
- G. There are no custom interests or rights of individual members on the lands to be designated.

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- H. By Resolution dated December 2, 2024, Upper Nicola's Band Council ("Council") requested that the Minister of Indigenous Services order a referendum to determine if the majority of Upper Nicola's electors voting at the referendum are in favour of the proposed Amendment.
- I. The Minister of Indigenous Services ordered a referendum as requested by Upper Nicola under section 3(1) of the *Indian Referendum Regulations* on March 20, 2025.
- J. On [Insert Date], a majority of Upper Nicola's electors voting at the referendum assented to the Amendment in accordance with the *Indian Act* and the *Indian Referendum Regulations*.

TERMS OF THE DESIGNATION:

The Designation Amendment

1. The Original Designation for the Project was for Lot 142 of Douglas Lake Indian Reserve No. 3, legally described as follows:

In the Province of British Columbia
In Thompson-Nicola Regional District
In Douglas Lake Indian Reserve No. 3

All of Lot 142 shown on Plan 109302 CLSR BC recorded in the Canada Lands Surveys Records in Ottawa.

Containing about 2.65 hectares (6.548 acres) more or less.

(the "Original Designated Lands")

2. The proposed Amendment is to add Lot 143 to the Original Designated Lands. Lot 143 must be designated to accommodate infrastructure for the Project built on Lot 142 that extends into part of Lot 143.
3. Under Subsection 38(2) of the *Indian Act*, Upper Nicola hereby designates by way of surrender that is not absolute, to Canada, all of the rights and interests of Upper Nicola and its members required to carry out the purposes of the Original Designation and the Amendment in those parts of the Reserve described as follows:

ANNEX A

In the Province of British Columbia
In Thompson-Nicola Regional District
In Douglas Lake Indian Reserve No. 3

Firstly, all of Lot 142 shown on Plan 109302 CLSR BC recorded in the Canada Lands Surveys Records in Ottawa, containing about 2.65 hectares (6.548 acres); and,

Secondly, all of Lot 143 shown on Plan 109302 CLSR BC recorded in the Canada Lands Surveys Records in Ottawa, containing about 0.134 hectares (0.331 acres).

Together the two parcels contain approximately 2.78 hectares (6.869 acres) more or less.

(collectively, the “Amended Designated Lands”)

4. The Amended Designated Lands exclude all mines and minerals, whether precious or base, solid, liquid or gaseous.
5. The Amended Designated Lands are subject to all third-party encumbrances on them as of the date of the Amendment, which include:
 - a) ILRS Registration No. 6131826 – OCPC: Ministerial Order No. 2022-010 – Accepting Designation, 2022/03/02
 - b) ILRS Registration No. 6131827 – Designation for Lease, 2022/03/02
 - c) ILRS Registration No. 6139496 – Lease - Residential, 2022/10/01
 - d) ILRS Registration No. 6144775 – Mortgage, 2024/04/02
 - e) ILRS Registration No. 6144788 – Assignment, 2024/04/02
 - f) ILRS Registration No. 6144792 – Mortgage, 2024/04/02

Duration of the Original Designation and Lease

6. The Original Designated Lands are designated for ninety-nine (99) years from March 2, 2022, the date that the Minister of Indigenous Services accepted the Original Designation.

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7. The Original Designated Lands were leased by Canada on the direction of Upper Nicola to the UNB Housing Society, a registered not-for-profit society for affordable housing for Upper Nicola members and their families. The Lease is for a term of ninety-nine (99) years (the “Lease”).
8. The term of any lease or other interest granted or issued under the Original Designation or the Amendment will end at least one day before the end of the Amendment.

Authorized Uses of the Amended Designated Lands

9. Leases of all or part of the Amended Designated Lands may only be granted for the Project on terms consistent with the Original Designation and the Amendment.
10. The Lease contains terms that are consistent with the Original Designation, and is registered in the ILRS under Registration No. 6139496, a copy of which is attached as Schedule “B”.
11. The Lease will be amended to add Lot 143 to the legal description of the Amended Designated Lands after the proposed Amendment is approved.
12. Leases under the Original Designation and the Amendment may allow assignments, mortgages and subleases.
13. Easements, permits, rights-of-way, licences, restrictive covenants, and other commercially reasonable agreements, interests, and rights (“Other Instruments”) may be granted, issued, or entered into with respect to all or part of the Amended Designated Lands if reasonably necessary for, or in aid of, the primary purpose of a lease or use of the Amended Designated Lands or, at council’s discretion, use of the adjacent Reserve lands. This includes the ability to enter into non-disturbance agreements with sublessees and mortgagees of any lease (or any lease derived from such lease) to allow for, if the lessee’s interest in the lease is terminated:
 - (i) such sublessees and mortgagees to continue undisturbed on the terms and conditions of their original interests;
 - (ii) the grant of new leases to such sublessees and mortgagees, which, in the case of any such sublessee or tenant under a derivative lease, would be for rent determined under the terms of such sublease or derivative lease, as the case may be; or
 - (iii) both (i) and (ii).

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14. The term of any lease or Other Instruments granted or issued under the Original Designation or the Amendment must not extend beyond the term of the Amendment.
15. Leases and Other Instruments must include the First Nation as a party.

Rent

16. An appraisal of the Original Designated Lands was prepared by Equity Valuation and Consulting Services Ltd. and dated April 2, 2021. It appraised the fair market rent of the Original Designated Lands at \$17,500 per annum on an annual basis for a ninety-nine (99) year term lease. Despite the appraised value, the Lease rents for the Original Designated Lands are a nominal value.
17. An additional appraisal of Lot 143 has not been prepared because the Amendment relates to affordable housing at a nominal prepaid rent (\$1.00) for the entire ninety-nine (99) year term of the Lease, which will include the rent for Lot 143 once the Original Designation and the Lease are amended.
18. The purpose of the Original Designation was to enable Upper Nicola to participate in the *British Columbia Indigenous Housing Fund* program to provide affordable housing on the Reserve. Under the Original Designation, the Lease for the Project is for nominal rent. Upper Nicola continues to believe that the Upper Nicola community will receive greater social benefits from the Lease for the Project than from a lease of the Amended Designated Lands for economic development purposes.
19. As the purpose of the Project is to provide social benefits for Upper Nicola, rent and fees for any ancillary interests issued under paragraph 6 may be nominal, in the sole discretion of the Council.

Deposit of Rent and Fees

20. All payments made to Canada under any lease or other interest granted or issued under the Original Designation or the Amendment will continue to be credited to Upper Nicola as Indian moneys, except for any payments that are reimbursements of moneys spent by Canada, Canada's administrative fees identified in the lease or interest, or other similar payments.

Acknowledgments of the First Nation

21. Designations are normally undertaken to provide a fair market revenue stream to a First Nation. Upper Nicola acknowledges that the Lease for the Project does not provide a fair market revenue stream to Upper Nicola. Upper Nicola accepts that the Project is intended

ANNEX A

to and will, through the development and operation of affordable housing units and the accrual of rents from the occupants to the UN Housing Society, benefit the Upper Nicola community.

22. Upper Nicola further acknowledges that if the lessee provides the leasehold interest in the Lease as security for financing, including by way of mortgage, and the lessee subsequently does not make the required payments or meet the other obligations required under the financing agreement, then the lender could cause the Lease to be assigned to another entity to manage the Project. The Lease will, however, remain restricted to the purposes of the Project.

Revocation of Designation

23. Council may, by way of resolution, request that Canada's Minister responsible for accepting designations under the *Indian Act* revoke the Original Designation and/or the Amendment over the whole or any part of the Designated Lands, as long as there are no existing rights or interests issued under the Original Designation or the Amendment on the affected Designated Lands.

Future Amendment of Amended Designation

24. Council may, by way of resolution, request that Canada's Minister responsible for accepting designations under the *Indian Act* amend the Amendment to correct a typographical or manifest error, but, if there are any rights or interests existing under the Original Designation or the Amendment, then, either the rights or interests must not be affected by the amendment, or the holders of the rights or interests must have agreed to the amendment.

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Recommendation of the Amendment

1. Under section 39.1 of the *Indian Act*, Council hereby recommends to the Minister of Indigenous Services that the Original Designation shall be amended to include Lot 143 as part of the Amended Designated Lands.

This Amendment of the Original Designation is executed on _____, 2025.

SIGNED AND DELIVERED BY the)
Chief and Council of the Upper Nicola First)
Nation in the presence of:)

Chief Daniel Manuel

Signature of Witness to all
Signatures)

Councillor Brian Holmes

(Name of Witness)

Councillor Frederick (Scotty) Holmes

(Position/Title)

Councillor Dennis MacDonald

Councillor Mathew Manuel

Councillor Jeanette McCauley

Councillor Stuart Michel

ANNEX A

)
)
) _____
) Councillor Kevin William Ned
)
)
) _____
) Councillor Craig Shintah
)
)
) _____
) Councillor Ira R. Tom
)



Application for Registration

Privacy Act Statement

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

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

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

As stated in the *Privacy Act*, you have the right to access your personal information and request changes to incorrect information. Contact our office (toll-free) at 1-800-567-9604 to notify us about incorrect information. For more information on privacy issues and the *Privacy Act* in general, you can consult the Privacy Commissioner at 1 (800) 282-1376.

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

Registration Number	Received Date	Regional File Number
6131826	2022/03/09	GCDOCS #98732106 & 99427355

NAME OF PARTIES TO INSTRUMENT	
<u>Name</u> Crown Canada	Grantor
<u>Name</u> N/A	Grantee

Instrument Type Ministerial Order 015
Instrument Date 2022/03/02
Purpose
Remarks ACCEPTS DESIGNATION# 6131827

LAND DESCRIPTION	
Province :	BRITISH COLUMBIA
Reserve Name	07250 - DOUGLAS LAKE 3
Legal Description - Land Affected	LOT 142 CLSR 109302

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

Applicant Email : Band Email :

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

Return To :	
Qui Nguyen 600-1138 MELVILLE ST VANCOUVER, BRITISH COLUMBIA V6E 4S3	

Registration Number
Registration Date: Mar 15, 2022 and Time:

Signature of Registration Officer Date

Comments

Reason for return

Signature of Registration Officer Date

SCHEDULE "A"

Ministre des
Services aux AutochtonesMinister of
Indigenous Services

Ottawa, Canada K1A 0H4

Ministerial Order Accepting a Designation of Reserve Lands

Whereas the Upper Nicola First Nation assented to a designation on July 29, 2021;

Therefore, pursuant to section 39.1 of the *Indian Act*:

I, Patty Hajdu, Minister of Indigenous Services, on the recommendation of the council of the Upper Nicola First Nation, in accordance with sections 39.1 and 40.1 of the *Indian Act*, accept the designation made to Her Majesty in right of Canada by the Upper Nicola First Nation of a portion of Douglas Lake Indian Reserve No. 3, British Columbia, for leasing for affordable housing purposes, which designation was assented to by the Upper Nicola First Nation on July 29, 2021 and is set out in the attached Schedule.

Dated at Gatineau, Quebec, this 2nd day of March, 2022.

A handwritten signature in black ink, appearing to read 'P. Hajdu'.

Minister of Indigenous Services

DESIGNATION FOR LEASING FOR AFFORDABLE HOUSING

BACKGROUND:

- A. Douglas Lake Indian Reserve No. 3 (the “Reserve”) in the Province of British Columbia is a reserve within the meaning of the *Indian Act* and has been set apart for the use and benefit of the Upper Nicola First Nation (“Upper Nicola”), a band within the meaning of the *Indian Act*.
- B. Upper Nicola wishes to develop for members and their families, affordable housing on the Reserve through a British Columbia government affordable housing program, which requires that the entity managing the housing have at least a leasehold interest in the land.
- C. Upper Nicola wants to designate certain lands in the Reserve to Her Majesty in right of Canada (“Canada”) for affordable housing purposes, as more particularly set out in this document (the “Designation”).
- D. Upper Nicola proposes that a lease be granted to the Upper Nicola Band Housing Society (“UN Housing Society”). The UN Housing Society is a not-for-profit society created for the purpose of developing and providing affordable housing and other services for members of Upper Nicola and their families, in accordance with the values and needs of the Upper Nicola.
- E. UN Housing Society and British Columbia Housing Management Commission (“BC Housing”), propose entering into agreements under the provincial Indigenous Housing Fund program operated by BC Housing. The Project will be managed and operated by UN Housing Society. BC Housing will provide a construction loan and an operating subsidy.
- F. By Resolution dated March 1, 2021, Upper Nicola’s Band Council (“Council”) requested that the Minister of Indigenous Services order a referendum to determine if the majority of Upper Nicola’s electors voting at the referendum are in favour of the proposed Designation.
- G. The Minister of Indigenous Services ordered a referendum under section 3(1) of the *Indian Referendum Regulations* on June 7, 2021, to determine if the majority of Upper Nicola’s electors voting at the referendum are in favour of the proposed Designation.
- H. On July 29, 2021, a majority of Upper Nicola’s electors voting at the referendum assented to this Designation in accordance with the *Indian Act* and the *Indian Referendum Regulations*.

TERMS OF THE DESIGNATION:

Lands Being Designated

1. Under Subsection 38(2) of the *Indian Act*, Upper Nicola hereby designates by way of surrender that is not absolute, to Canada, all of the rights and interests of Upper Nicola and its members required to carry out the purposes of this Designation in those parts of the Reserve described as follows:

In the Province of British Columbia
In Thompson-Nicola Regional District
In Douglas Lake Indian Reserve No. 3

All of Lot 142 shown on Plan 109302 CLSR BC recorded in the Canada Lands Surveys Records in Ottawa.

Containing about 2.65 hectares (6.548 acres) more or less.

(the “Designated Lands”).

2. The Designated Lands exclude all mines and minerals, whether precious or base, solid, liquid or gaseous.
3. As of the date of the Designation there are no registered third-party encumbrances on the Designated Lands.

Duration of Designation and Leases

4. This Designation will start on the date that the Minister of Indigenous Services accepts it and will continue for a term of ninety-nine (99) years.
5. The term of any lease or other interest granted or issued under this Designation will end at least one day before the end of this Designation.

Development of the Designated Lands

6. The Designated Lands will be leased by Canada on the direction of Upper Nicola:
 - (a) for the development and operation of a residential project for affordable housing for Upper Nicola members and their families, and
 - (b) the initial lessee will be the UN Housing Society, a registered not-for-profit society, or another entity acceptable to Canada and Upper Nicola,

(the “Affordable Housing Project”)

on terms consistent with this Designation.

7. Any such lease may allow assignments, subleases, and mortgages and may be used as security to obtain financing and to secure other obligations related to the Designated Lands or otherwise.
8. Canada may grant or issue easements, permits, rights-of-way, licences of occupation, or other interests that may be necessary for, or in aid of, the primary purposes of any lease or of any uses of the Reserve adjacent to the Designated Lands.
9. Canada may enter into any reasonable agreements in aid of the primary purposes of any lease.
10. The terms and conditions of any lease, interest, or agreement granted, issued, entered into, or amended by Canada under this Designation require the consent of Council by way of resolution.
11. Upper Nicola, as represented by Council, must be a contractual party to the lease of the Designated Lands for the Affordable Housing Project, and any associated interest or agreement.
12. Any resolution given to Canada from Council under this Designation constitutes conclusive evidence to Canada that the resolution is valid and the information contained in it is true.

Rent

13. An appraisal of the Designated Lands was prepared by Equity Valuation and Consulting Services Ltd. and dated April 2, 2021. It appraised the fair market rent of the Designated Lands at \$17,500 per annum on an annual basis for a ninety-nine (99) year term lease. Despite the appraised value, the lease rents for the Designated Lands will be a nominal value.
14. Where lands are designated for economic development purposes, leases of designated lands must be at fair market rent. However, the purpose of this Designation is to enable Upper Nicola to participate in the British Columbia Indigenous Housing Fund program to provide affordable housing on the Reserve. Under this Designation, any lease for the Affordable Housing Project will be for nominal rent. Upper Nicola believes that the Upper Nicola community will receive a greater benefit from a lease for the Affordable Housing Project than from a lease of the Lands for economic development purposes.
15. As the purpose of the Affordable Housing Project is to provide social benefits for Upper Nicola, rent and fees for any ancillary interests issued under paragraph 8 may be nominal, in the sole discretion of the Council.

Deposit of Rent and Fees

16. All payments made to Canada under any lease or other interest granted or issued under

this Designation will be credited to Upper Nicola as Indian moneys, except for any payments that are reimbursements of moneys spent by Canada, Canada's administrative fees identified in the lease or interest, or other similar payments.

Acknowledgments of the First Nation – Affordable Housing Project

17. Designations are normally undertaken to provide a fair market revenue stream to a First Nation and Upper Nicola acknowledges that a lease for the Affordable Housing Project will not provide a fair market revenue stream to Upper Nicola. Upper Nicola accepts that the Affordable Housing Project is intended to and will, through the development of affordable housing and the accrual of rents from the occupants to the UN Housing Society, benefit the Upper Nicola community.
18. An appraisal of the Designated Lands was prepared by Equity Valuation and Consulting Services Ltd. and dated April 2, 2021. It appraised the fair market rent of the Designated Lands at \$17,500 per annum for a ninety-nine (99) year term lease.
19. Upper Nicola further acknowledges that if the lessee provides the leasehold interest in the lease as security for financing, including by way of mortgage, and the lessee subsequently does not make the required payments or meet the other obligations required under the financing agreement, then the lender could cause the Lease to be assigned to another entity to manage the Affordable Housing Project.

Revocation of Designation

20. Council may, by way of resolution, request that Canada's Minister responsible for accepting designations under the *Indian Act* revoke this Designation over the whole or any part of the Designated Lands, as long as there are no existing rights or interests issued under this Designation on the affected Designated Lands.

Amendment of Designation

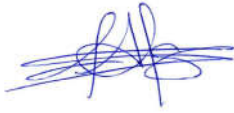
21. Council may, by way of resolution, request that Canada's Minister responsible for accepting designations under the *Indian Act* amend this Designation to correct a typographical or manifest error, but, if there are any rights or interests existing under this Designation, then, either the rights or interests must not be affected by the amendment, or the holders of the rights or interests must have agreed to the amendment.

Recommendation of Designation

22. Under section 39.1 of the *Indian Act*, Council hereby recommends to the Minister of Indigenous Services the acceptance of this Designation.

This Designation is executed on July 29, 2021.

SIGNED AND DELIVERED BY the
Chief and Council of the Upper Nicola First
Nation in the presence of:



Signature of Witness to all
Signatures)

Jamilynn Viviers Stange, CD, BBA

(Name of Witness)

Executive Assistant to Chief and Council
of the Upper Nicola Band.

(Position/Title)



Chief Harvey McLeod



Councilor Stacie Coutlee



Councilor Fred (Scotty) Holmes



Councilor Wallace Michel



Councilor Mathilda (Matty) Chilhitzia



Councilor Brian Holmes



Councilor David Lindley



Councilor Jeanette McCauley

Councilor Kevin Ned

Application for Registration

Privacy Act Statement

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

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

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

As stated in the *Privacy Act*, you have the right to access your personal information and request changes to incorrect information. Contact our office (toll-free) at 1-800-567-9604 to notify us about incorrect information. For more information on privacy issues and the *Privacy Act* in general, you can consult the Privacy Commissioner at 1 (800) 282-1376.

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

<u>Registration Number</u>	<u>Received Date</u>	<u>Regional File Number</u>
6139496	2023/03/31	

NAME OF PARTIES TO INSTRUMENT	Grantor
<u>Name</u> Crown Canada	
	Grantee
<u>Name</u> UPPER NICOLA BAND HOUSING SOCIETY	

Instrument Type	Lease 014
Instrument Date	2022/10/01
Purpose	RESIDENTIAL
Remarks	

LAND DESCRIPTION	
Province :	BRITISH COLUMBIA
Reserve Name	07250 - DOUGLAS LAKE 3
Legal Description - Land Affected	LOT 142 Canada Lands Surveys Record 109302

List of Supporting documentation (must be attached to document or a registration number quoted)			
Other	BCR	5/9/23	1:46:45PM
Other	INSURANCE	5/9/23	1:56:53PM

Applicant Email :	Band Email :
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	()		
Signature of Applicant	Tel. number of Applicant	email	Date

Return To :
Sandeep Heer 1138 Melville St, Vancouver, BC V6E 4S3 Vancouver, BRITISH COLUMBIA V6E 4S3

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

Comments

Reason for return		
	Signature of Registration Officer	Date

AFFORDABLE RENTAL HOUSING LEASE

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
as represented by the Minister of Indigenous Services

AND:

UPPER NICOLA BAND,
as represented by Council

AND:

UPPER NICOLA BAND HOUSING SOCIETY

AND:

BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION

AND:

PROVINCIAL RENTAL HOUSING CORPORATION

For lands in Douglas Lake Indian Reserve No. 3

Commencement Date: October 1, 2022

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SCHEDULE A – Band Council Resolution

SCHEDULE B – Assignment Consent Agreement

SCHEDULE C – Mortgage Acknowledgment Agreement

AFFORDABLE RENTAL HOUSING LEASE

This lease is made between:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
as represented by the Minister of Indigenous Services

(the "**Lessor**")

and:

UPPER NICOLA BAND,
a "band" within the meaning of the *Indian Act*, as represented by Council

(the "**First Nation**")

and:

UPPER NICOLA BAND HOUSING SOCIETY,
a society incorporated under the *Societies Act*,
S.B.C. 2015, c. 18; Incorporation No. S0071044

(the "**Lessee**")

and:

BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION,
a corporation continued under the *Ministry of Lands, Parks and*
Housing Act, R.S.B.C. 1996, c. 307

(the "**Commission**")

and:

PROVINCIAL RENTAL HOUSING CORPORATION,
a corporation owned by Her Majesty the Queen in right of British Columbia

(the "**PRHC**").

BACKGROUND:

- A. The Lands are part of the Reserve, which is held for the use and benefit of the First Nation.
- B. The members of the First Nation designated the Lands on July 29, 2021, which designation was accepted by the Minister of Indigenous Services on March 2, 2022 and is registered in the Registry under No. 6131826.
- C. The Lessee intends to construct and operate an Affordable Housing project on the Lands for the benefit of the First Nation.
- D. The Commission has agreed to provide financial assistance to the Lessee to assist with the construction and operating costs of an Affordable Housing project to be constructed on the Lands for the benefit of the First Nation.
- E. The Lessor is authorized to grant this Lease under subsection 53(1) of the Indian Act.
- F. The First Nation authorized the execution of this Lease by the signatories for the First Nation, as evidenced by the Band Council Resolution attached as Schedule A.
- G. This Lease is a blend of leasehold provisions between the Lessor and Lessee and contractual provisions between the Parties.

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

1. DEFINITIONS

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

“Additional Rent” means any amount payable to the Lessor under this Lease, other than Prepaid Rent.

“Additional Fees” means any amount payable to the First Nation under this Lease.

“Affordable Housing” means housing with average rents equal to, or lower than, average rates in comparable and comparably situated private-market rental housing.

“Alterations” means any substantial (in the reasonable opinion of the Lessor or the First Nation) alterations, restorations, renovations, relocations, reductions,

additions, expansions, reconstructions, removals, replacements, repairs or modifications of all or part of the Improvements.

“Appendix” means an attachment to this Lease labeled as an Appendix, which is for information purposes only and does not form part of this Lease.

“Area Development Plan” means a general conceptual plan that is prepared and certified by an Architect or Engineer on the basis that it may be relied upon by each of the Parties, which identifies the Premises and sets out the basic development principles for the Lands, or the applicable part of the Lands, including principles governing land use, transportation, infrastructure and the protection of the Environment, as amended from time to time.

“Architect” means a person who is licensed as an architect in the province of British Columbia.

“Artifact” means any burial site, human remains or any item of archeological or cultural interest.

“Authority” means any federal, provincial, municipal, First Nation or other governmental authority having jurisdiction in respect of the Premises, or the occupation or use of the Premises, including any utility company lawfully acting under its statutory power.

“Authorized Uses” means the uses referred to in section 4.1.

“Commencement Date” means October 1, 2022.

“Construction Plan” means, dependent on the stage of construction, individually or collectively, plans, design briefs, construction specifications, cost estimates, as-built plans and any other documents of the Improvements reasonably required by each of the Lessor, the First Nation, and the Commission, prepared and certified by an Architect or Engineer on the basis that it may be relied upon by each of the Parties, including all site plans drawn to scale showing the following required features with appropriate dimensions:

- (a) Boundary lines with dimensions and acreage, natural and artificial features of the Premises and contiguous property.
- (b) “North” arrow.
- (c) Title block, including drawing scale, date, developer’s name and address and reference numbers.
- (d) Location, dimension, size and construction specifications of roads, parking lots and driving aisles.

- (e) Location, dimension, size and construction specifications of buildings and structures (including number of units, storeys, floor area, number of rooms) as well as dimensions of front, side and back yards.
- (f) Location, dimension, size and construction specifications of on-site sanitary sewer connections and of existing and proposed water mains.

“Contaminant” includes any toxic substance, deleterious substance, hazardous substance, hazardous waste, hazardous recyclable, ozone-depleting substance, halocarbon, pesticide, and waste, and any similar substance defined in any Environmental Laws of Canada or the province of British Columbia, whether or not applicable to the Lands.

“Council” means the First Nation’s “council of the band” within the meaning of the Indian Act.

“Eligible Occupant” means:

- (a) a First Nation person whose household income is at or below the household income limit prescribed in the Operating Agreement, whether or not the Operating Agreement is in force, or as the Commission may otherwise prescribe, so long as the Commission has advised the Lessee in writing of such household income limit; and
- (b) the family in the household of such person within the meaning of the First Nation’s housing policy, as amended from time to time, and the Family Homes on Reserves and Matrimonial Interests or Rights Act, SC 2013, c 20.

“Engineer” means a person who is licensed as an engineer in the province of British Columbia.

“Environment” has the meaning given it in the *Canadian Environmental Protection Act*, 1999, S.C. 1999, c. 33.

“Environmental Laws” means:

- (a) any Laws relating, in whole or in part, to the assessment or protection of the Environment; and
- (b) any decisions, determinations, mitigation measures, standards, codes, guidelines or environmental protection measures made pursuant to those Laws.

“Environmental Review” means the Lessor’s environmental review process referred to in section 10.1.

“Gross Negligence or Willful Misconduct” means any act or failure to act (whether sole, joint or concurrent) by a Party that was intended to cause or was in reckless

disregard of, or wanton indifference to, the harmful consequences to the safety or property of a Person which the Party knew, or should have known, would result from such act or omission, but does not include any act or failure to act that constitutes mere ordinary negligence or was done or omitted to be done in accordance with the express instructions or approval of the relevant Parties.

"Improvements" means improvements, as determined according to the common law, including any buildings, structures, works, facilities, infrastructure, services, landscaping and other improvements made by any Person and that are, from time to time, situated on the Lands, including any Alterations to any of them.

"Indian Act" means the *Indian Act*, R.S.C. 1985, c. I-5.

"Lands" means those lands more particularly known and described as:

In the Province of British Columbia
In Thompson-Nicola Regional District
In Douglas Lake Indian Reserve No. 3

All of Lot 142 shown on Plan 109302 CLSR BC recorded in the Canada Lands Surveys Records in Ottawa.

Containing about 2.65 hectares (6.548 acres) more or less.,

excepting all Minerals, and, without derogating from section 3.2, subject to the following interests:

NIL.

"Laws" means all laws, statutes, regulations, codes and by-laws, as amended or replaced from time to time.

"Lease" means this lease agreement, and all Schedules attached to it, as amended from time to time.

"Minerals" means ore of metal and every natural substance that can be mined and that:

- (a) occurs in fragments or particles lying on, above or adjacent to the bedrock source from which it is derived and commonly described as talus;
- (b) is in place or position in which it was originally formed or deposited, as distinguished from loose, fragmentary or broken rock or float, which, by decomposition or erosion of rock, is found in wash, loose earth, gravel or sand; and
- (c) includes coal, petroleum and all other hydrocarbons, regardless of gravity and howsoever and wheresoever recovered, natural gas, methane, coal bed methane

and other gases, building and construction stone, limestone, dolomite, marble, shale, clay, sand and gravel.

“Minister” means the Minister of Indigenous Services or any successor or replacement Minister.

“Mortgage” means any mortgage charging the Lessee’s leasehold interest in the Premises and includes any debenture, deed of trust, bond, assignment of rent or by any other means made to a Mortgagee as security.

“Mortgagee” means a lender under a Mortgage.

“Operating Agreement” means an agreement entered into or to be entered into between the Lessee and the Commission, that, among other things, provides for the Commission to provide assistance to the Lessee to construct the Improvements and operate the Premises for Affordable Housing purposes, as amended or replaced from time to time.

“Party” means a party to this Lease and **“Parties”** means more than one of them.

“Person” includes any individual, partnership, firm, company, corporation, incorporated or unincorporated association or society, co-tenancy, joint venture, syndicate, fiduciary, estate, trust, bank, government, governmental or quasi-governmental agency, board, commission or authority, organization or any other form of entity however designated or constituted, or any group, combination or aggregation of any of them.

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

“Prepaid Rent” means the amount set out in section 5.3.

“Project” has the meaning given it in section 81 of the *Impact Assessment Act*, S.C. 2019, c. 28, s. 1, but does not include a project that is in one of the classes of projects designated under section 88 of that Act, and any similar concept in any amended, succeeding, or replacement Law.

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

“Release” includes discharge, dispose of, spray, inject, inoculate, abandon, deposit, spill, leak, leach, seep, pour, emit, empty, throw, dump, place or exhaust.

“Rent” means Additional Rent and Prepaid Rent.

“Reserve” means Douglas Lake Indian Reserve No. 3.

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

“Sublease” means a leasehold interest granted by the Lessee to a Sublessee, which for greater certainty does not include a Mortgage by way of a sublease, and a residency agreement that provides the occupant with residency rights to a unit on the Premises but does not provide the occupant with any interest in land.

“Sublessee” means the tenant or occupant in any Sublease.

“Substantial Completion” means the date on which a written certificate by an Architect or Engineer is delivered to each of the Lessor, the First Nation, and the Commission certifying to them that:

- (a) the Improvements are substantially complete in all material respects, in a proper and workmanlike manner, and in accordance with the Area Development Plan, the Construction Plan and the requirements in this Lease, except for deficiencies the correction of which, in the opinion of the Architect or Engineer, will be adequately addressed by the Lessee;
- (b) all permits for occupancy required by an Authority have been obtained; and
- (c) the Improvements are ready for occupancy.

“Taxes” means any tax of an Authority applicable to the granting of this Lease or the payment of Rent.

“Term” means the period starting on the Commencement Date and expiring 98 years and 5 months later on February 28, 2121, unless this Lease otherwise ends early.

“Trustee” means a trust company appointed in writing by the First Nation.

“Unavoidable Delay” means any delay, stoppage or interruption resulting from any of the following:

- (a) strike, lock-out or other labour dispute;
- (b) material or labour shortage not within the control of the Lessee;
- (c) stop-work order issued by any court, tribunal of competent jurisdiction or Authority, provided that such order was not issued as the result of any act or fault of the Lessee;
- (d) fire, explosion or other casualty;
- (e) flood, wind, earthquake or act of God;

- (f) applicable Laws or orders of any Authority; or
 - (g) other similar circumstances beyond the reasonable control of the Lessee and not avoidable by the exercise of reasonable effort or foresight by the Lessee,
- but does not include the inability of the Lessee to meet its financial obligations under this Lease or otherwise.

2. INTERPRETATION AND GENERAL PROVISIONS

- 2.1 Definitions** – Defined words are capitalized for ease of reference. A defined word may be read as having an appropriate corresponding meaning when it is used in the plural or verb form.
- 2.2 Parts of the Lease** – These are the parts of this Lease: article (1.); section (1.1); subsection (1.1.1); and paragraph (1.1.1.1). Unless stated otherwise, any reference in this Lease to an article, section, subsection, or paragraph means the appropriate part of this Lease.
- 2.3 Headings** – All headings in this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit, enlarge, modify or explain the scope or meaning of the Lease or any of its provisions.
- 2.4 Extended Meaning**
 - 2.4.1** A word in the singular form may be read in the plural form if the context allows it and a word in the plural form may be read in the singular form if the context allows it. All genders are included in any gender expressed.
 - 2.4.2** The words “include”, “includes” and “including” are to be read as if they are followed by the phrase “without limitation”.
 - 2.4.3** The phrase “this Lease ends” includes an ending by expiration of the Term and an earlier termination. The phrases “earlier termination” and “early termination” include a surrender.
 - 2.4.4** The phrases “on the Lands” or “on the Premises” includes in, under and above such Lands or Premises.
 - 2.4.5** Unless otherwise stated in this Lease, the construction of Improvements includes the making of any alterations to an Improvement.
- 2.5 Joint and Several** – If the Lessee is more than one Person, then all covenants and agreements of the Lessee are joint and several.
- 2.6 Statutes** – Any reference to a statute means that statute, and any regulations made under it, all as amended or replaced from time to time.

- 2.7 **Governing Laws** – This Lease will be governed by and interpreted in accordance with the applicable Laws of Canada and of the Province of British Columbia.
- 2.8 **Entire Agreement** – Except with respect to the other agreements explicitly referred to in this Lease, this Lease constitutes the entire agreement between the Parties with respect to the subject matter of this Lease and supersedes and revokes any and all previous discussions, negotiations, arrangements, letters of intent, offers to lease and representations. There are no other covenants, agreements, representations, or warranties between the Parties whatsoever other than those set out in this Lease.
- 2.9 **Modification** – Any modifications of this Lease must be in writing and executed in the same manner as this Lease.
- 2.10 **Consent and Approval** – Unless any part of this Lease states otherwise, when a Party is required to provide consent or approval under this Lease, that consent or approval will not be unreasonably withheld.
- 2.11 **Time is of the Essence** – Time is of the essence in this Lease and time will remain of the essence notwithstanding any extension of time granted to a Party.
- 2.12 **Severability** – If any part of this Lease is declared or held invalid for any reason, the invalidity of that part will not affect the validity of the remainder of the Lease, which will continue in full force and effect and be construed as if this Lease had been executed without the invalid part.
- 2.13 **Survival of Obligations and Rights** – If a part of this Lease states that it survives when this Lease ends, then the survival of that part is only to the extent required for the performance of any obligations, and the exercise of any rights, pertaining to it.
- 2.14 **Others Performing the Lessee's Obligations**
- 2.14.1 The Lessee may allow any Person to perform any of the Lessee's obligations under this Lease, but in doing so the Lessee will ensure performance of such obligations by such Persons and it in no way affects the Lessee's obligation to perform.
- 2.14.2 The Commission and PRHC may perform any of the Lessee's obligations under this Lease, including having the same rights as the Lessee to cure a breach of this Lease, but are under no obligation to do so.

3. PREMISES & MINERALS

3.1 Lessee's Rights to the Premises – The Lessor hereby leases the Lands to the Lessee to hold during the Term, and the Lessee is entitled to quiet enjoyment of the Lands for the Term, subject to every other part of this Lease.

3.2 Prior Rights – This Lease is subject to any existing interest or right given for or attaching to the Premises, whether or not the Lessee has notice of such prior interest or right.

3.3 Other Interests – The Lessor reserves the right to further grant other interests on the Premises without compensation to the Lessee, including by way of permit, easement, right-of-way or other similar interest in the Lands, in favour of any Authority or other Person, as long as the grant of interest has no material adverse effect on the Authorized Uses. On notice being delivered by the Lessor, the Lessee will promptly sign and deliver to each of the Lessor and the First Nation the necessary documentation to subordinate the Lessee's right and interest in the Premises under this Lease to such other interest.

3.4 Access – The grant of this Lease does not grant the Lessee any rights of access over any other lands of the Lessor. The Lessee will secure and maintain legal access (be it by public or private road, water, air or otherwise) to and from the Premises.

3.5 Minerals

3.5.1 The Lessor reserves all Minerals on the Lands and retains the right to enter the Premises to prospect for, drill for, work, extract or produce Minerals, lay pipeline and build such tanks, stations, improvements and roads as may be necessary, subject to reasonable prior notice being provided to the Lessee, provided that the activity has no material adverse effect on the Authorized Uses.

3.5.2 If there is any interference with the Lessee's rights under this Lease, caused by the exercise of the Lessor's rights under subsection 3.5.1, that is less than a material adverse effect on the Authorized Uses, then the Lessor will determine the amount of any compensation and deliver notice to the Lessee of such amount. Such interference is not a default of the Lessor's covenant of quiet enjoyment.

3.5.3 If the Lessee disagrees with the compensation determined by the Lessor under subsection 3.5.2, then the Lessee may, within 60 days from delivery of the notice referred to in subsection 3.5.2, refer the matter to Federal Court for a review of the determination of compensation. If the Lessee fails to refer the matter to Federal Court within the specified time, then the compensation will be deemed to be that set out in the Lessor's notice.

4. USE OF THE PREMISES

- 4.1 Authorized Uses** – The Lessee will not use the Premises for any purposes except for the purposes of constructing and operating Affordable Housing for Eligible Occupants who are members of the First Nation and their families, and any homes that may be permitted under or pursuant to the First Nation's housing policy, as amended, from time to time, and any ancillary services related to and in support of such purposes.
- 4.2 First Nation Housing Policy** – The Lessee and the First Nation agree that the Lessee will:
- 4.2.1** comply with the First Nation's housing policy as it exists from time to time; and
 - 4.2.2** provide the First Nation, in a timely manner, with any reasonably requested reports to ensure compliance with the First Nation's housing policy.
- 4.3 Compliance with Operating Agreement** - The Lessee, the Commission and PRHC agree that the Lessee will operate, manage and maintain the Premises in accordance with the Operating Agreement. If the Lessee defaults on the Operating Agreement, then the Commission and PRHC will exercise any remedies available under the Operating Agreement or other agreement between the Lessee, the Commission and PRHC. If the Operating Agreement is terminated by the Commission, then this Lease may be assigned under subsection 11.1.2.
- 4.4 Nuisance** – Except as required by the construction or removal of the Improvements, the Lessee will not cause, permit or suffer any nuisance at the Premises.
- 4.5 Waste**
- 4.5.1** The Lessee will not cause, permit or suffer the commission of any waste of the Premises.
 - 4.5.2** The Lessee will not cause, permit or suffer the removal of any sand, gravel, topsoil, or other constituent material of the Lands, except as required by the clearing and construction permitted under this Lease and applicable Laws, in which case, such removal will not constitute waste.
- 4.6 Garbage** – The Lessee will not cause, permit or suffer any garbage or debris to be placed or left at the Premises, except as is reasonably necessary in accordance with the Authorized Uses.
- 4.7 No Vacating or Abandoning the Premises** – The Lessee will not vacate or abandon the Premises without the prior consent of each of the Lessor, the First

Nation, and the Commission. If the Premises are vacated or abandoned without such consent, then the Lessor may, among its other remedies:

- 4.7.1 enter the Premises as the agent of the Lessee, either by force or otherwise, without being liable for any action or for any loss or damage caused by the entry or the use of force;
- 4.7.2 let the Premises as the agent and at the risk of the Lessee;
- 4.7.3 receive rent for any letting; and
- 4.7.4 apply such rent to any expense incurred by the Lessor in the entry and letting of the Premises and to any monies owing to the Lessor under this Lease in such proportions and order of priority as is determined by the Lessor in the Lessor's sole discretion.

For greater certainty, the vacating or abandoning of portions of the Premises by subtenants or occupiers is not considered the vacating or abandoning of such portions by the Lessee.

4.8 Inspection

- 4.8.1 The Lessee will provide each of the Lessor, the First Nation, and the Commission with reasonable access to inspect, including the conducting of site assessments, audits or other tests on, and investigations of, the Premises. Except in the case of an emergency, at least 7 days notice will be provided to exercise this right of access. If the inspection is in response to a default of this Lease, or if in the process of inspecting the Premises, a default is discovered or confirmed, then the Lessor's reasonable expenses under this section are deemed to be Additional Rent and the First Nation's reasonable expenses under this section are deemed to be Additional Fees.
- 4.8.2 During the last 12 months of the Term and as long as the Lessee's use and enjoyment of the Premises are not unreasonably interfered with, the First Nation may:
 - 4.8.2.1 display signs on the Premises advertising the Premises for lease; and
 - 4.8.2.2 on reasonable notice being delivered to the Lessee, allow prospective lessees and their advisors access to the Premises so that they may inspect or perform any reasonable assessments of the Premises, provided that the Lessee may require its representative to attend such inspection or assessment.

4.9 Artifacts and Survey Monuments

4.9.1 If any Artifact is discovered on the Premises, then the Lessee will immediately cease any work in the area of such Artifact and promptly notify the First Nation of such Artifact. If there are no applicable First Nation or federal Laws relating to the disturbance of such Artifact, then the Lessee will comply with the requirements set out in the Laws of British Columbia, even if not applicable on the Reserve, and with the reasonable requirements of the First Nation.

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

4.10 Representations about the Premises and their Use

4.10.1 The Lessee acknowledges and agrees that the Lessor is leasing the Premises to the Lessee on an “as is – where is” basis.

4.10.2 The Lessee acknowledges and agrees that none of the Lessor, the Minister, the First Nation, Council, or their respective officials, servants, employees, agents, contractors, subcontractors or other legal representatives has made any representations or warranties, including with respect to:

4.10.2.1 the condition of the Premises, including the Premises' compliance with applicable Laws or the presence of Contaminants on the Premises;

4.10.2.2 issues of title or encumbrances affecting title;

4.10.2.3 access to and from the Premises; or

4.10.2.4 the suitability of the Premises for the Lessee.

4.10.3 The Lessee represents and warrants that, prior to the Commencement Date, it conducted an inspection of the Premises, including any investigations that it deemed prudent regarding the Premises' compliance with applicable Laws, title, encumbrances, access and the presence of Contaminants on the Premises.

4.10.4 The Lessee represents and warrants that it is satisfied that the Premises are suitable for its intended uses and that those uses are within the Authorized Uses.

5. RENT

5.1 **Payments** – All payments made by the Lessee to the Lessor under this Lease will be:

5.1.1 paid in Canadian dollars;

- 5.1.2 made payable to the Receiver General for Canada;
- 5.1.3 paid without any prior demand, set-off, deduction or abatement; and
- 5.1.4 accompanied by any applicable Taxes.
- 5.2 **Outstanding Amounts** – The Lessor may apply any outstanding amounts owed to it by the Lessee under the Lease as the Lessor sees fit.
- 5.3 **Prepaid Rent** – The Lessee paid Prepaid Rent of \$1 to the Lessor on the Commencement Date, the receipt of which is hereby acknowledged by the Lessor and the sufficiency of which is hereby acknowledged by the Lessor and the First Nation.
- 5.4 **Additional Rent** – If, at any time before or after this Lease ends, the Lessor incurs any expenses by reason of any failure of the Lessee to perform or observe any of the Lessee's obligations to the Lessor under this Lease, then the amount of each expense, together with interest, accruing from the date of such expense, and an administration fee of 15% of the expenses will be payable to the Lessor as Additional Rent and will be promptly paid by the Lessee on notice from the Lessor.
- 5.5 **Additional Fees** – If, at any time before or after this Lease ends, the First Nation incurs any expenses by reason of any failure of the Lessee to perform or observe any of the Lessee's obligations to the First Nation under this Lease, then the amount of each expense, together with interest, accruing from the date of such expense, and an administration fee of 15% of the expenses will be payable to the First Nation as Additional Fees and will be promptly paid by the Lessee on notice from the First Nation. Additional Fees will be paid in Canadian dollars, accompanied by any applicable Taxes, and without any set-off, deduction, or abatement.
- 5.6 **Arrears to Bear Interest** – If Rent or any other sum owing to the Lessor or the First Nation by the Lessee under this Lease is not paid when it is due, then the Lessee will pay interest on the unpaid amount at the prime lending rate established by the Bank of Canada, calculated quarterly and compounded semi-annually, plus 5% per annum, from the date the Rent or sum is due until the date that the payment is received. This stipulation for interest will not prejudice or affect any remedies of the Lessor or the First Nation under this Lease or otherwise, or be construed to relieve the Lessee from any default in paying Rent or other sum at the time and in the manner specified in this Lease.
- 5.7 **Recovery of Taxes, Additional Rent and Interest through Distraint** – The Lessor may recover Taxes, Additional Rent and interest due to the Lessor as if they were unpaid Rent at common law.

5.8 **Survival of Sections** – Sections 5.4 to 5.6, inclusively, survive when this Lease ends.

6. CONSTRUCTION

6.1 **No Construction Before Review** – The Lessee will not construct any Improvements, or alter the Premises in anticipation of such construction, without first having:

6.1.1 obtained all applicable approvals and authorizations for such Improvements under section 6.4;

6.1.2 finalized an Area Development Plan for the area to be developed in relation to such Improvements under section 6.5;

6.1.3 delivered an applicable Construction Plan for such Improvements under section 6.6; and

6.1.4 obtained a written determination from the Lessor under section 10.1 that the applicable Project pertaining to such Improvements may proceed.

6.2 **Alterations** – Sections 6.1, 6.5, 6.6, and 8.2 do not apply to alterations of Improvements, provided that the making of such alterations does not constitute a Project.

6.3 Stop Work Orders and Injunctions

6.3.1 If section 6.1 is breached, then, in addition to any other remedy available to either the Lessor, the First Nation, or the Commission:

6.3.1.1 each such Party may issue a “stop work order”, which such Party is entitled to post in conspicuous locations on the Premises, and the Lessee must ensure that all unauthorized work on the Premises ceases;

6.3.1.2 the First Nation may bar any Person who is providing any services for the construction of Improvements or for altering the Premises from the Reserve until such time as the breach is rectified by obtaining all of the required approvals, authorizations and determinations required under section 6.1;

6.3.1.3 the Lessee will promptly remediate any damage to the Premises arising from such breach that is not otherwise approved of, authorized or consented to in a determination as required by section 6.1; and

6.3.1.4 each such Party is entitled to obtain an injunction from a court of competent jurisdiction against the continuation of such breach, such

Party's costs of which (including legal costs on a solicitor and own client basis) are to be paid promptly upon notice as Additional Rent or Additional Fees, as the case may be.

6.3.2 The Lessor, the First Nation, and the Commission will notify each other of their actions under this section.

6.4 **Authority Authorization** – The Lessee will apply to all appropriate Authorities for any applicable approvals or authorizations necessary for the Lessee to construct any Improvements.

6.5 **Area Development Plan**

6.5.1 If there is no finalized Area Development Plan consistent with any Improvements proposed to be constructed, then the Lessee will deliver to each of the Lessor, the First Nation, and the Commission an Area Development Plan consistent with such Improvements.

6.5.2 Within 45 days following the delivery of an Area Development Plan to the Lessor and the First Nation, each of the Lessor, the First Nation, and the Commission may request additional information regarding the Area Development Plan and the Lessee will provide such information to each of the Lessor, the First Nation, and the Commission. If the requesting Party is not reasonably satisfied with such information, then such Party may request further information and this process will continue until such Party is reasonably satisfied. The Area Development Plan is considered final:

6.5.2.1 if a request for any additional information is not made within the 45 day request period; or

6.5.2.2 each Party that has requested information has confirmed to the Lessee that such Party is satisfied with the information received.

6.5.3 If any Improvements proposed to be constructed are not consistent with a finalized Area Development Plan, then the Lessee will request an amendment to the plan by delivering to each of the Lessor, the First Nation, and the Commission a copy of the proposed amendments. The process and deadline for review will be the same as for the original Area Development Plan, which will be considered amended and final in the same manner as for the original Area Development Plan.

6.6 **Construction Plan** – For any Improvements proposed to be constructed, the Lessee will provide to each of the Lessor, the First Nation, and the Commission a certified Construction Plan that is consistent with the applicable Area Development Plan and this Lease.

6.7 Release of Liability – The Lessee, on its behalf and on behalf of any Person deriving an interest from, or on the Premises because of, the Lessee's interest in this Lease, acknowledges and agrees that none of the Lessor, the Minister, the First Nation, Council, or the Commission owes a duty of care to the Lessee or any such Person in reviewing any Area Development Plans and Construction Plans, as such review is solely for the benefit of the Lessor, the First Nation, and the Commission, respectively. As such, the Lessee releases each of the Lessor, the Minister, the First Nation, Council, and the Commission and their respective officials, servants, employees, agents, contractors, subcontractors and other legal representatives from any liability associated with their respective reviews of, and the Lessee's implementation of, any Area Development Plan and any Construction Plan. This section survives when this Lease ends.

6.8 Construction Compliance

6.8.1 Once all applicable approvals, authorizations, plans and determinations referred to in section 6.1 have been obtained, finalized or delivered, as the case may be, for any Improvements, the Lessee will promptly construct such Improvements in a proper and workmanlike manner and in accordance with such approvals, authorizations, plans and determinations, and all British Columbia building, fire, electrical and other similar codes in effect at the time of such construction to the same extent as if the Lands were fee simple lands in British Columbia owned by a private individual.

6.8.2 The Lessee will notify each of the Lessor, the First Nation, and the Commission if commencement of construction or Substantial Completion of any Improvements is impacted by an Unavoidable Delay and will act diligently, and take all reasonable steps that a prudent owner would take, to remove any such Unavoidable Delay.

6.9 Security for Construction – If requested by the First Nation, the Lessee will, prior to constructing any Improvements, deliver to the First Nation concurrent with the applicable Construction Plan security for construction in an amount at least equal to 50% of the estimated cost of the work, including payment of all labour and material in connection with the work. Such security must be of a type and in a form satisfactory to the First Nation with sureties, if required, approved by the First Nation.

6.10 Substantial Completion – Improvements will not be occupied until they are Substantially Complete. Substantial Completion may occur in respect of portions of the Improvements.

6.11 Plans and Drawings

6.11.1 The Lessee will promptly deliver to each of the Lessor, the First Nation, and the Commission reproducible as-built or record drawings of completed Improvements, and any completed substantial alterations, certified by an

Architect or Engineer that industry standards and British Columbia codes have been met.

- 6.11.2 The Lessee will maintain an updated chronological record of all Area Development Plans and Construction Plans and will maintain copies of such plans and all revisions made to them. Within 30 days of a request by either the Lessor, the First Nation, or the Commission, the Lessee will provide the requesting Party with a copy of the updated chronological record and copies of such plans and revisions to the plans for any year identified by the requesting Party.

7. IMPROVEMENTS

- 7.1 **Ownership of Improvements During the Term** – The Parties acknowledge and agree that, as between them, any Improvements constructed during the Term are deemed not to be the property of the Lessor or the First Nation during the Term of this Lease, and neither the Lessor nor the First Nation will have any responsibility or liability for such Improvements. Notwithstanding such ownership of such Improvements by the Lessee, any removal of any such Improvements will require the consent of the First Nation.

7.2 Damage to, or Destruction of, Improvements

- 7.2.1 Subject to subsections 7.2.2 and 7.2.3, if any Improvements are damaged or destroyed during the Term, then:
- 7.2.1.1 the Lessee will promptly notify each of the Lessor, the First Nation, and the Commission;
 - 7.2.1.2 this Lease will not be deemed to have ended;
 - 7.2.1.3 there will be no reduction or postponement of Rent; and
 - 7.2.1.4 the Lessee will repair or replace the Improvements within a reasonable time and, to the extent possible, to a standard at least substantially equal in quality of material and workmanship to the original material and workmanship.
- 7.2.2 If the Improvements are damaged or destroyed in excess of 25% of their full replacement cost, in the opinion of an Engineer or Architect engaged by the Lessee at its cost, during the last five years of the Term, then the Lessee may, within 30 days after receipt of the opinion of the Engineer or Architect, deliver to the Lessor written notice that the Lessee elects not to repair or replace the Improvements.
- 7.2.3 If the Lessee delivers notice under subsection 7.2.2, then this Lease will be deemed to be terminated on the 60th day after the date of damage or

destruction. In such case, all Parties will apply, permit to be applied or cause the Trustee to apply or permit to be applied, the proceeds of the insurance referred to in section 8.6 to:

- 7.2.3.1 first, to pay the cost of demolishing the Improvements and removing from the Premises all debris and waste, and of restoring the Premises to a clean, safe, and level condition (and this section continues after the early termination of this Lease, with reasonable access being provided by the First Nation, to the extent necessary for the Lessee to promptly complete these activities);
- 7.2.3.2 second, to pay all Rent owing as at the termination date;
- 7.2.3.3 third, to pay to the Mortgagee the balance of principal, interest and other charges owing under the Mortgage; and
- 7.2.3.4 fourth, the balance to be paid to the First Nation.

7.3 Repair & Maintenance

- 7.3.1 Neither the Lessor, the First Nation, nor the Commission will be required to maintain or make any repairs to any of the Premises.
- 7.3.2 The Lessee will repair and maintain the Premises in good order and condition in all respects to the standard consistent with the age and nature of the Improvements as would be maintained by a prudent owner.

8. INSURANCE

- 8.1 **Errors and Omissions Insurance** – The Lessee will provide evidence to each of the Lessor, the First Nation, and the Commission that errors and omissions insurance, with minimum limits of \$1,000,000 per claim and annual aggregate, is obtained with respect to design work of the Architects or Engineers on any Improvements to be constructed.
- 8.2 **Construction Insurance** – From the date that construction is started on the Premises, including the stockpiling of construction materials on the Premises in anticipation of construction, to Substantial Completion, and any other time an Improvement is being constructed, the Lessee will ensure that the following insurance is obtained and maintained:
 - 8.2.1 Commercial general liability insurance against claims for bodily injury (including death), personal injury or property damage arising in connection with the use of the Premises for construction. The policy will be written on a commercial general liability basis with liability limits of at least \$10,000,000 per occurrence (or any other higher amount that either the Lessor or the First Nation reasonably requires

by delivery of notice to the Lessee before construction begins) and with each of the Lessor, the First Nation and the Commission as additional insureds.

8.2.2 “Wrap up” construction insurance to cover “all risks” of physical damage to, or loss of, the Improvements (including goods and materials to be incorporated in the Improvements while in storage at the site or in transit to it) and must include the perils of flood and earthquake (for any properties located in earthquake zones classified as high to extreme by the Institute for Catastrophic Loss Reduction or its successor). The policy will be written in an amount at least equal to such Improvements’ full replacement value, plus no less than 25% of budgeted “soft costs”, and with the Lessee, the First Nation, and the Commission as named insureds, and with loss payable to the insureds and all Mortgagees as their respective interests may appear. The policy may, despite subsection 6.10, allow for full or partial occupancy of the Improvements prior to completion of construction and allow for the testing and commissioning of equipment installed as part of the Improvements.

8.3 **Liability & Property Insurance** – The Lessee will ensure that the following insurance is maintained during the Term and any other period it may be in possession of the Premises, including any period where the Lessee is removing the Improvements under section 13.2, notwithstanding section 13.5:

8.3.1 Commercial general liability insurance against claims for bodily injury (including death), personal injury or property damage arising in connection with the use of the Premises. The policy will be written on a commercial general liability basis with liability limits of at least \$10,000,000 per occurrence (or to any higher amount that either the Lessor or the First Nation reasonably requires by delivery of notice to the Lessee) and with each of the Lessor, the First Nation and the Commission as additional insureds.

8.3.2 Property insurance to cover “all risks” of physical damage to, or loss of, the Improvements and must include the perils of flood and earthquake (for any properties located in earthquake zones classified as high to extreme by the Institute for Catastrophic Loss Reduction or its successor) and blanket by-laws and sewer backup coverage. The policy will be written in an amount at least equal to such Improvements’ full replacement value, with the Lessee, the First Nation, and the Commission as named insureds, and with loss payable to the insureds and all Mortgagees as their respective interests may appear.

8.3.3 Any other insurance that may be reasonably required from time to time by either the Lessor or the First Nation and that a prudent owner of the Premises would obtain.

8.4 **General Insurance Provisions**

8.4.1 Every insurance policy required under this Lease in which the Lessor, the First Nation, or the Commission is an additional or named insured will contain:

- 8.4.1.1 an agreement by the insurer that it will not cancel the policy without first giving such Party at least 60 days prior notice;
 - 8.4.1.2 a clause to the effect that any release from liability entered into prior to any loss will not affect the right of such Party to recover;
 - 8.4.1.3 a waiver of subrogation by the insurers against such Party; and
 - 8.4.1.4 a provision that the policies will not be invalidated by any act, omission or negligence of any Person that is not within the knowledge or control of such Party.
- 8.4.2 All property insurance policies will confirm that no co-insurance applies, to prevent any Parties from becoming co-insurers.
- 8.4.3 The Lessee will not do anything, or permit or suffer anything to be done, at the Premises that might cause the insurance policies required by this Lease to be invalidated or cancelled.
- 8.4.4 On the Commencement Date, the Lessee will promptly deliver certificates evidencing every insurance policy that is required by this Lease to each Party insured under such insurance, and will deliver to each such Party, at least 15 days before the expiry of any such insurance, a certificate of renewal, or other evidence satisfactory to each such Party, that the insurance has been renewed or replaced.
- 8.4.5 The Lessee will provide each of the Lessor and the First Nation with a written statement, prepared and signed by a qualified insurance professional, confirming that the insurance policies obtained for the benefit of such Party satisfy the terms of the Lease.
- 8.4.6 The Lessee will, upon request from the Lessor or the First Nation, deliver to the requesting Party a certified copy of every requested insurance policy.
- 8.5 Release of Insured Claims – The Lessee releases:**
- 8.5.1 the Lessor and the Lessor's officials, servants, employees, agents, contractors, subcontractors and other legal representatives from all liability for loss (including economic loss), damage or injury (including any loss, damage or injury that may arise out of the negligence or omission of any of them) in any way caused by or resulting from any of the perils or injury against which it has covenanted in this Lease to insure;
 - 8.5.2 the First Nation and the First Nation's officials, servants, employees, agents, contractors, subcontractors and other legal representatives from all liability for loss (including economic loss), damage or injury (including any loss, damage or injury that may arise out of the negligence or omission of any of them) in any way

caused by or resulting from any of the perils or injury against which it has covenanted in this Lease to insure; and

- 8.5.3 the Commission and the Commission's officials, servants, employees, agents, contractors, subcontractors and other legal representatives from all liability for loss (including economic loss), damage or injury (including any loss, damage or injury that may arise out of the negligence or omission of any of them) in any way caused by or resulting from any of the perils or injury against which it has covenanted in this Lease to insure.

8.6 Payment of Loss under Insurance

- 8.6.1 The insureds to whom moneys are payable under any or all of the policies of insurance required to be obtained under subsections 8.2.2 or 8.3.2 will ensure that, notwithstanding the terms of the policy or policies, such insurance moneys are directed to be paid to the Trustee.

- 8.6.2 Subject to the qualifications in section 7.2, the insureds will direct the Trustee to use such insurance moneys for the repair or replacement of the Improvements for which such insurance moneys were paid against certificates of the Architect (or such other Person as the First Nation and the Lessee may agree upon) who is in charge of such repair or replacement.

- 8.7 **Cancellation of Insurance** – The Lessee will immediately notify each of the Lessor, the First Nation, and the Commission if any insurance policy in which such Party is an insured is:

- 8.7.1 cancelled or threatened to be cancelled, and promptly deliver evidence of a certificate of renewal or other evidence satisfactory to such Party that the insurance has been renewed or replaced at least 15 days before the cancellation of such policy; or
- 8.7.2 suspended, and promptly provide evidence to such Party that the policy has been reinstated or replaced.

- 8.8 **Payment of Insurance Premiums** – If the insurance premiums are not paid when they become due, then the insured Lessor or First Nation may pay them or obtain any insurance that such Party deems necessary, in such Party's sole discretion, and such Party's payment for this is Additional Rent or Additional Fees, as the case may be, immediately due and payable by the Lessee upon delivery of notice from such Party.

- 8.9 **PRHC Exemption** – If PRHC is the Lessee, then PRHC will not be under any obligation to take out and keep in force any of the insurance required under this article 8, provided that PRHC has in place a program of self-insurance that provides the same or better coverage than the insurance described in this article.

9. LAWS / TAXES / UTILITIES

9.1 Compliance with Laws

- 9.1.1 The Lessee will comply with all applicable Laws regarding this Lease, the Premises or any activity on the Premises and will require and ensure that any other Person on the Premises because of the Lessee's rights under this Lease also complies with all applicable Laws regarding this Lease, the Premises or any activity on the Premises.
- 9.1.2 The Lessee will promptly deliver to each of the Lessor and the First Nation copies of any notice from an Authority requiring something to be done, or stop being done, on the Premises. Once the matter under the notice has been resolved to the Authority's satisfaction, the Lessee will promptly deliver proof, satisfactory to each of the Lessor and the First Nation, evidencing the resolution.
- 9.1.3 On request from the Lessor or the First Nation, the Lessee will either promptly deliver to such Party information from an Authority about the Lessee's compliance, or promptly arrange for written authorization to allow such Party to receive information from an Authority about the Lessee's compliance or non-compliance with applicable Laws.
- 9.1.4 To the extent that the *Fire Services Act*, R.S.B.C. 1996, c. 144, does not apply to the Premises or to the activities carried out on the Premises under this Lease, the Lessee will ensure that the Premises are inspected with the same frequency as required under that Act by a Person who is qualified under that Act to conduct such inspections. That Person will prepare an inspection report, which will include any recommended actions resulting from the inspection. The Lessee will promptly deliver the inspection report to each of the Lessor and the First Nation and promptly comply with the recommended actions in the inspection report and notify each of the Lessor and the First Nation of that compliance when completed.

9.2 Taxes

- 9.2.1 Without limiting the generality of section 9.1, the Lessee will promptly pay all applicable taxes, trade licences, rates, levies, duties and assessments of any kind, together with all charges, penalties and interest imposed by any Authority, whether regarding the Lands, the Improvements, the sales, transactions or business on the Premises, the occupation of the Premises by any Person, or the payment of Rent or other amounts payable by the Lessee.
- 9.2.2 Without in any way relieving or modifying the obligation of the Lessee to comply with subsection 9.2.1, the Lessee may contest or appeal the validity or amount of any tax, trade licence, rate, levy, duty, assessment, charge, penalty or interest referred to in subsection 9.2.1, provided that the Lessee promptly commences any proceedings to contest or appeal such validity or amount and continues the

proceedings with all due diligence and does not cause a charge, encumbrance or claim to be made against the Premises.

- 9.2.3 The Lessee will, on request by the Lessor or the First Nation, provide such Party with official receipts of the Authority or other proof satisfactory to such Party evidencing payment of any applicable taxes, trade licences, rates, levies, duties, assessments, charges, penalties or interest.

9.3 Utilities

- 9.3.1 Neither the Lessor nor the First Nation will be required to provide or secure any services, utilities or facilities to the Premises. The Lessee will provide or secure and maintain all services, utilities and facilities required from time to time for the use of the Premises.
- 9.3.2 The interruption of any service, utility or facility provided to the Premises will not be considered a disturbance of the Lessee's enjoyment of the Premises or render either the Lessor or the First Nation liable for any loss, injury or damages to the Lessee or relieve the Parties from their obligations under this Lease.

10. ENVIRONMENT

10.1 Environmental Review

- 10.1.1 For the purposes of this section:

- 10.1.1.1 **"Decision Maker"** means the Minister, when the Minister is representing the Lessor under this Lease, and means Council, or a Person designated by Council, if the First Nation takes over the position of the Lessor under this Lease by operation of law; and
- 10.1.1.2 **"Designated Project"** has the meaning given to it in the *Impact Assessment Act*, S.C. 2019, c. 28, s. 1, and any similar concept in any amended, succeeding, or replacement Law.

- 10.1.2 This section does not apply to a Designated Project.

- 10.1.3 The Lessee will deliver to the Decision Maker (and, if the Minister is the Decision Maker, then also to the First Nation) any information about a proposed Project reasonably requested by the Decision Maker, including:

- 10.1.3.1 an environmental review report of such Project that includes such information as the Decision Maker reasonably requires; and
- 10.1.3.2 a certificate from an Architect or Engineer certifying that such Project complies with the Area Development Plan, the Construction Plan and this Lease,

to enable the Decision Maker:

- 10.1.3.3 to determine the environmental effects of such Project as the Decision Maker may by applicable Law be required to make; or
 - 10.1.3.4 if no applicable Law requires such determination, then, in the discretion of the Decision Maker, to determine whether or not, subject to any mitigation measures that the Decision Maker reasonably requires, the Project is likely to cause any significant adverse environmental effects.
- 10.1.4 If the Decision Maker is not reasonably satisfied with any information delivered under subsection 10.1.3, then the Decision Maker will notify the Lessee of each inadequacy (and, if the Minister is the Decision Maker, deliver a copy of such notification to the First Nation.) The Lessee will ensure that the inadequacies are addressed to the reasonable satisfaction of the Decision Maker, which revised information the Lessee will deliver to the Decision Maker (and, if the Minister is the Decision Maker, then also to the First Nation.)
- 10.1.5 If the Decision Maker determines that the Project may proceed, then the Lessee will:
- 10.1.5.1 ensure that the Project, including site preparation, construction, operation and decommissioning of the Project, will comply with any mitigation measures, including monitoring and compliance, that the Decision Maker reasonably requires under such determination; and
 - 10.1.5.2 deliver to the Decision Maker (and, if the Minister is the Decision Maker, then also to the First Nation) certification by an Architect or Engineer, or applicable professional, of the implementation, within the timelines specified in such determination, of all mitigation measures, including monitoring and compliance, required under such determination.
- 10.1.6 If the Decision Maker reasonably determines that the Project may not proceed, then:
- 10.1.6.1 the Decision Maker will deliver reasons for such determination to the Lessee (and, if the Minister is the Decision Maker, deliver a copy to the First Nation) and the Commission; and
 - 10.1.6.2 the Lessee releases the Lessor, the Decision Maker, the First Nation, and their respective officials, servants, employees, agents, contractors, subcontractors and other legal representatives for the inability of the Lessee to use the Premises as anticipated.

10.2 Environmental Site Assessment

- 10.2.1 Prior to the execution of this Lease, the Lessee completed an environmental site assessment of the environmental condition of the Premises, a report of which is titled "PHASE 1 ENVIRONMENTAL SITE ASSESSMENT Douglas Lake IR 3, Residential Subdivision Site 7 Douglas Lake, BC", prepared by TerraWest Environmental Inc., and dated May 15, 2020, and the Lessee represents, warrants and agrees that all Parties may rely upon this report.
- 10.2.2 Within 8 months before the expiration of the Term, or within 120 days after the earlier termination of this Lease, the Lessee will complete an environmental site assessment of the environmental condition of the Premises at that time and will provide each of the Lessor and the First Nation with a report, reasonably satisfactory to each of them, on such condition. The report will state that it may be relied upon by all Parties and the Lessee agrees that all Parties may rely upon it.
- 10.2.3 The environmental site assessment reports referred to in subsections 10.2.1 and 10.2.2 will be *prima facie* evidence of the environmental condition of the Premises immediately prior to the Commencement Date and immediately prior to the expiration of this Lease or immediately after the earlier termination of this Lease, as the case may be.
- 10.2.4 By the end of the Term, or within 60 days after the report referred to in subsection 10.2.2 is issued if this Lease ends early, the Lessee will remediate the Premises to the environmental condition of the Premises identified in the report referred to in subsection 10.2.1 or to such other environmental condition as may be acceptable to both the Lessor and the First Nation, but, if the Lessor and the First Nation disagree upon such other environmental condition, then to the more stringent requirements of either of them.

10.3 Contaminants and Releases

- 10.3.1 By the end of the Term or within 90 days after the earlier termination of this Lease, the Lessee will remove from the Premises any Contaminants that are, or have been, located, stored or incorporated on the Premises and, upon removal, will promptly provide each of the Lessor and the First Nation with documentation satisfactory to each of them, confirming the completion of the removal satisfactory to each of them and any Authority.
- 10.3.2 Upon the Release of any Contaminants, the discovery by the Lessee of a Release of any Contaminants, or the Lessee's receipt of notice by any Person following their discovery of a Release of any Contaminants on the Premises, the Lessee will:
- 10.3.2.1 immediately deliver notice to the Lessor, the First Nation and any appropriate Authority of the occurrence of the Release;

- 10.3.2.2 ensure that any notice includes details relating to the Release, including the time and extent of the Release, the estimated amount of Contaminants Released, the remedial action taken prior to the delivery of the notice, the remedial action that the Lessee intends to take in order to contain or rectify the Release and any Persons observed who appeared to have caused or who were in the vicinity of the Release;
- 10.3.2.3 immediately remove from the Premises any Contaminants Released, and take all remedial action necessary to fully rectify the effects of the Release, in compliance with all reasonable requests by each of the Lessor and the First Nation and all applicable Environmental Laws;
- 10.3.2.4 provide each of the Lessor and the First Nation with an environmental site assessment report, reasonably satisfactory to each of them, specifying the Lessee's activities under paragraph 10.3.2.3 and the state of the Premises after the completion of such activities as compared to the state of the Premises prior to the Release, and stating that such report may be relied upon by all Parties, and the Lessee agrees that all Parties may rely on such report; and
- 10.3.2.5 undertake such further activities as either the Lessor or the First Nation may reasonably require to remove Contaminants Released and rectify the Release, based on the report referred to in this subsection.

10.4 **Survival of Article** – This article survives when this Lease ends.

11. ASSIGNMENTS, SUBLEASES & MORTGAGES

11.1 Assignments

11.1.1 The Lessee may not assign its interest in this Lease:

- 11.1.1.1 unless the proposed assignee is PRHC or a Person who has entered into an Operating Agreement with the Commission with respect to the Lands; and
- 11.1.1.2 without the consent of each of the Lessor, the First Nation, and the Commission, which consents will not be unreasonably withheld,

and no assignment is valid until the proposed assignee has executed a written agreement with the Parties substantially in the form of the Assignment Consent Agreement attached as Schedule B.

11.1.2 If the Operating Agreement is terminated by the Commission, then the Commission will provide written notice of such termination to the Lessor, the First Nation, and any Mortgagee. By the date of such termination, or promptly after it, the Lessee and PRHC (as the assignee, or the assignee identified by PRHC) will

each execute and deliver, or cause to be executed and delivered, an Assignment Consent Agreement, substantially in the form attached as Schedule B, to the Lessor, the First Nation, and the Commission for their respective consents under this section.

11.1.3 An assignment of the Lessee's interest in this Lease will not relieve or discharge the Lessee from any of its covenants or agreements under this Lease, unless such Party benefitting from any such covenant or agreement has agreed, in writing, to release the Lessee from such covenant or agreement. For greater certainty, any such agreements by the Lessor and the First Nation need not be consistent with each other.

11.2 **Subleases** – If the Lessee grants a Sublease, then:

11.2.1 such Sublease must only rent a single residential unit to a Sublessee; and

11.2.2 consent of the Lessor, the First Nation and the Commission is not required.

11.3 **Residency Agreements** -

11.3.1 The Lessee may enter into residency agreements with Eligible Occupants.

11.3.2 Residency agreements do not require the prior consent of the Lessor or the First Nation.

11.4 **Mortgages**

11.4.1 Although the Lessee may Mortgage its interest in this Lease without the consent of either the Lessor, the First Nation, or the Commission, no Mortgage is valid until the proposed Mortgagee has entered into a Mortgage Acknowledgement Agreement, substantially in the form attached as Schedule C.

11.4.2 Subject to the qualifications in section 7.3, the Lessee will ensure that any Mortgage will provide that the proceeds of all property insurance policies with respect to the Premises will be used solely for repairing or replacing the Premises as set out under this Lease.

11.4.3 The Lessee will ensure that any Mortgage does not conflict with the terms of this Lease, and by complying with such Mortgage, the Lessee will not be in default of this Lease.

11.4.4 If the Lessee defaults on any obligation, covenant or agreement in a Mortgage, then the Lessor, the First Nation, or the Commission may cure the default under the Mortgage on the Lessee's behalf and any expenses incurred to cure such default by

11.4.4.1 the Lessor are payable as Additional Rent;

11.4.4.2 the First Nation are payable as Additional Fees; or

11.4.4.3 the Commission are payable,

promptly upon notice from such Party.

11.4.5 For greater certainty, this section 11.3 does not apply to a mortgage of a Sublease or any tenancy derived from a Sublease, none of which require consent of the Lessor or the First Nation or execution of a Mortgage Acknowledgment Agreement to be valid.

11.5 **Registration** – The Lessee will ensure that all assignments of its interest in this Lease, all Mortgages, and any interests in land (other than a Sublease) granted by it under this Lease are submitted to the Registry in a registerable form promptly after execution.

12. DEFAULTS AND EARLY TERMINATION

12.1 Defaults on Obligations Owed to the Lessor

12.1.1 If the Lessee defaults on any obligation owed to the Lessor under this Lease, then the Lessor may deliver to the Lessee a default notice, with a copy to the First Nation, each Mortgagee of a valid Mortgage, and the Commission.

12.1.2 The Lessee will cure the default identified in a default notice within 45 days of delivery of the notice. If such default:

12.1.2.1 can reasonably be cured within 45 days after the default notice is delivered and the Lessee fails to cure such default within the 45 days;
or

12.1.2.2 cannot reasonably be cured within 45 days after the default notice is delivered and the Lessee does not begin to cure such default within the 45 days to the reasonable satisfaction of the Lessor or continue to cure such default with due diligence after beginning to cure,

then the Lessor may take advantage of any remedy available to it at law, including declaring the Term ended and claiming prospective losses, by delivering a termination notice to the Lessee, with a copy to the First Nation, each Mortgagee of a valid Mortgage, and the Commission.

12.1.3 If a default is not cured within the time provided for under this Lease, then the Lessor may, with unrestricted access to the Premises, cure such default in the Lessor's sole discretion. Any of the Lessor's expenses will be Additional Rent promptly payable by the Lessee upon delivery of notice from the Lessor.

12.1.4 If the Lessor begins to cure a default, then the Lessor will have no obligation to continue to cure such default to completion and the Lessor is not liable for any losses or expenses suffered by the Lessee, any Sublessee or any Person on the Lands deriving an interest directly or indirectly from the Lessee arising due to the Lessor's actions under this section.

12.1.5 The Commission and each Mortgagee of a valid Mortgage may cure a default within the same period provided to the Lessee, or within such further period as the Lessor may agree to in writing, provided that the Commission or such Mortgagee, as the case may be, continues diligently to cure to completion. If a default requires the Commission or such Mortgagee to be in possession of the Premises in order to cure, then the Lessor will provide a reasonable period for the Commission or such Mortgagee to obtain such possession and cure the default with due diligence.

12.1.6 If a Mortgagee commences foreclosure proceedings under its Mortgage within the 45-day period referred to in subsection 12.1.2, then:

12.1.6.1 the Mortgagee will promptly notify the Lessor, the First Nation, and the Commission of such proceedings;

12.1.6.2 to the extent that it is able during the course of such proceedings, the Mortgagee will comply with, or cause to be complied with, the Lessee's obligations under this Lease and cure any defaults of the Lease; and

12.1.6.3 the Mortgagee will diligently prosecute such proceedings to a conclusion.

12.2 If, through foreclosure proceedings, a Mortgagee:

12.2.1 obtains a court order entitling the Mortgagee to possession of the Premises and the Lessee's interest in the Lease, then the Mortgagee will promptly deliver to the Lessor, the First Nation, and the Commission a copy of the instrument of foreclosure; and

12.2.2 causes this Lease to be assigned to another Person meeting the requirements of section 11.1.1, then the Mortgagee will promptly deliver to the Lessor, the First Nation, and the Commission a copy of such assignment and an Assignment Consent Agreement, substantially in the form attached as Schedule B, executed by the assignee and, for greater certainty, execution of such agreement by the Lessee is not required. Each of the Lessor, the First Nation, and the Commission will consent to such assignment and execute such agreement if the Mortgagee has cured, or caused to be cured, all defaults of the Lessee under this Lease.

12.3 Defaults on Obligations Owed to the First Nation

12.3.1 If the Lessee defaults on any obligation owed to the First Nation under this Lease, then the First Nation may deliver to the Lessee a default notice, with a copy to the Lessor, each Mortgagee of a valid Mortgage, and the Commission.

12.3.2 The Lessee will cure the default identified in a default notice within 45 days of delivery. If such default:

12.3.2.1 can reasonably be cured within 45 days after delivery of the notice and the Lessee fails to cure such default within the 45 days; or

12.3.2.2 cannot reasonably be cured within 45 days after delivery of the notice and the Lessee does not begin to cure such default within the 45 days to the reasonable satisfaction of the First Nation or continue to cure such default with due diligence after beginning to cure,

then the First Nation may sue the Lessee for damages or take advantage of any other remedy available to it at law. For greater certainty, the First Nation may not terminate this Lease as a remedy.

12.3.3 If a default is not cured within the time provided for under this Lease, then the First Nation may, with unrestricted access to the Premises, cure such default in the First Nation's sole discretion. Any of the First Nation's expenses will be Additional Fees promptly payable by the Lessee upon delivery of notice from the First Nation.

12.3.4 If the First Nation begins to cure a default, then the First Nation will have no obligation to continue to cure such default to completion and the First Nation is not liable for any losses or expenses suffered by the Lessee, any Sublessee or any Person on the Lands deriving an interest directly or indirectly from the Lessee arising due to the First Nation's actions under this section.

13. END OF LEASE

13.1 **Surrender of Premises** – Subject to section 13.2:

13.1.1 when this Lease ends the Lessee will peaceably surrender and yield up the Premises to the Lessor and the First Nation, as to their respective interests, in the condition required by the terms of this Lease; and

13.1.2 all Improvements will be the property of the First Nation absolutely, free of all encumbrances and for no compensation.

13.2 **Notice to Remove Improvements** – If, on or before the 90th day after this Lease ends, the First Nation notifies the Lessee that the Improvements described in such notice are to be removed from the Premises, then the Lessee will

promptly remove them and will leave the remainder of the Premises in good and substantial repair and condition and free from all debris to the reasonable satisfaction of the First Nation.

- 13.3 **Failure to Remove Improvements** – If the Lessee does not promptly remove the Improvements as required under section 13.2, then the First Nation may remove and dispose of them in the First Nation's sole discretion and return the Premises to a good and substantial repair and condition and free from all debris. Upon notice from the First Nation, the Lessee will promptly pay as Additional Fees all of the First Nation's expenses incurred under this section. The First Nation will not be responsible to the Lessee, or any other Person on the Lands deriving an interest directly or indirectly from the Lessee, for any loss suffered by the Lessee or such Person, as the case may be, as a result of the First Nation's actions under this section.
- 13.4 **Securing the Premises** – When this Lease ends, the Lessee will promptly remove any garbage or debris from the Premises so that the Premises are in a clean condition to the reasonable satisfaction of the First Nation, and secure the Premises, if necessary, so that the Premises do not pose a danger to any Person.
- 13.5 **Lessee not in Possession** – The Lessee is entitled to access the Premises when this Lease ends only at the reasonable times and on the reasonable conditions set by the First Nation, and only to be able to perform any of the Lessee's obligations that survive after this Lease ends. The Lessee will not be construed as being in possession of the Premises solely by the exercise of the Lessee's obligations under this article.
- 13.6 **Survival of Article** – This article survives when this Lease ends.

14. INDEMNITIES

- 14.1 **Lessee's Indemnity of Lessor** – The Lessee will indemnify and hold harmless the Lessor, the Minister, and their respective officials, servants, employees, agents, contractors, subcontractors and other legal representatives from and for any claims, demands, actions, suits or other proceedings, judgments, damages, penalties, fines, costs (including reasonable legal fees, on a solicitor and own client basis, and reasonable consultant and expert fees), liabilities, losses (including any diminution in the market value of the Premises, based on the Authorized Uses) and sums paid in settlement of any claims that arise during or after the Term and are in any way based upon, arise out of or are connected with:
- 14.1.1 a default of any of the Lessee's obligations under this Lease;
- 14.1.2 any injury to, or death of, any Person on the Premises during the Term;

14.1.3 any damage to, or loss of, property by any Person in any way due to the use of the Premises during the Term;

14.1.4 the Lessor reviewing any Area Development Plan or any Construction Plan;

14.1.5 the Decision Maker determining under an Environmental Review that a Project should not proceed; or

14.1.6 the Lessor's curing or attempt to cure a default of this Lease,

but not if due to the Gross Negligence or Willful Misconduct of the Lessor or the Lessor's officials, servants, employees, agents, contractors, subcontractors or other legal representatives, unless such negligence or misconduct involves a peril against which the Lessee is obligated to obtain and maintain insurance.

14.2 Lessee's Indemnity of First Nation – The Lessee will indemnify and hold harmless the First Nation and the First Nation's officials, servants, employees, agents, contractors, subcontractors and other legal representatives from and for any claims, demands, actions, suits or other proceedings, judgments, damages, penalties, fines, costs (including reasonable legal fees, on a solicitor and own client basis, and reasonable consultant and expert fees), liabilities, losses (including any diminution in the market value of the Premises, based on the Authorized Uses) and sums paid in settlement of any claims, that arise during or after the Term and are in any way based upon, arise out of or are connected with:

14.2.1 a default of any of the Lessee's obligations under this Lease;

14.2.2 any injury to, or death of, any Person on the Premises during the Term;

14.2.3 any damage to, or loss of, property by any Person in any way due to the use of the Premises during the Term;

14.2.4 the First Nation reviewing any Area Development Plan or any Construction Plan;

14.2.5 the First Nation's curing or attempt to cure a default of this Lease; or

14.2.6 the First Nation's removal and disposal of any Improvements and returning the Premises to a good and substantial repair and condition and free from all debris, under section 13.3,

but not if due to the Gross Negligence or Willful Misconduct of the First Nation or the First Nation's officials, servants, employees, agents, contractors, subcontractors or other legal representatives, unless such negligence or misconduct involves a peril against which the Lessee is obligated to obtain and maintain insurance.

14.3 Survival of Article – This article survives when this Lease ends.

15. DELIVERY

15.1 General Requirement

15.1.1 All notices, requests, demands, consents and approvals under this Lease, which will be in writing, and all Rent or Additional Fees to be paid, will be delivered in accordance with this article to the following addresses:

To the Lessor:

Director, Lands and Economic Development
Indigenous Services Canada
British Columbia Regional Office
600 – 1138 Melville Street
Vancouver, BC V6E 4S3

Fax: 604-775-7149

To the First Nation:

Upper Nicola Band
General Delivery
Douglas Lake, BC V0E 1S0

Fax: 250-350-3311

To the Lessee:

Upper Nicola Housing Society
General Delivery
Douglas Lake, BC V0E 1S0

Fax: 250-350-3311

To the Commission:

BC Housing Management Commission
4555 Kingsway
Burnaby, BC V5H 4V8

Fax: 604-439-4722

To PRHC:

Provincial Rental Housing Corporation
4555 Kingsway
Burnaby, BC V5H 4V8

Fax: 604-439-4722

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

15.2 Date of Delivery

- 15.2.1 With respect to any Rent or Additional Fees, it will not be considered to be delivered until actually received by the Lessor or the First Nation, respectively.
- 15.2.2 With respect to any notice, request, demand, consent or approval, if any question arises as to the date on which delivery occurred, then it will be deemed to have been delivered:
- 15.2.2.1 if sent by fax, the day of transmission if transmitted before 3:00 p.m., otherwise, the next day;
- 15.2.2.2 if sent by mail, on the sixth day after the notice was mailed; or
- 15.2.2.3 if sent by any means other than fax or mail, the day it was received.
- 15.3 Change of Contact Information** – Any Party may change its contact information shown in this Lease by informing the other Parties of the new contact information and the change will take effect on the effective date set out in the notice or 30 days after the notice is delivered, whichever is later.

16. DISPUTE RESOLUTION

16.1 Disputes Involving the Lessor

- 16.1.1 Any dispute arising from or under this Lease involving the Lessor that is not resolved by negotiation will be resolved by referral, in the first instance, to the Federal Court or any replacement or successor court having jurisdiction.
- 16.1.2 If the Federal Court refuses jurisdiction or does not determine the dispute, then a Party to the dispute may refer it to any other court that has jurisdiction and the Parties may exercise any other right or remedy that they have under this Lease or otherwise.
- 16.1.3 The Lessee will promptly inform the Commission, PRHC and any Mortgagees of any dispute referred to the courts under this section.
- 16.1.4 If a dispute resolved under this section does not include the Commission or PRHC and either or both of them consider that their respective interests may be affected by the dispute, then the Parties will not object to an application to the court that they be added as intervenors or third parties.
- 16.1.5 If a Mortgagee considers that its interests may be affected by a dispute resolved under this section, then the Parties will not object to an application to the court that it be added as an intervenor or third party.

16.2 Disputes Not Involving the Lessor

- 16.2.1 Any dispute arising from or under this Lease between Parties other than the Lessor will be resolved as follows:

16.2.1.1 Negotiation –

- a) The Party who wishes a dispute to be resolved will deliver a dispute notice to the other Party to the dispute.
- b) Each party to the dispute will promptly designate a senior representative who will attempt in good faith to resolve the dispute by negotiation.

16.2.1.2 Mediation –

- a) If negotiation does not resolve the dispute within 15 days of delivery of the dispute notice, then a party to the dispute may deliver a mediation notice to the other party.

- b) The parties will then promptly appoint a qualified, impartial and experienced mediator, the cost of which will be paid equally by the parties.
- c) If the parties cannot agree on a mediator within 15 days of delivery of the mediation notice, then the mediator will be appointed by the Vancouver International Arbitration Centre (or its successor, or a similar body if neither is available).
- d) Within 10 days of appointment of a mediator, each party will provide the mediator and each other with a written statement of its position about the dispute and summary of the arguments supporting its position.
- e) The mediator will meet with the parties in the mediator's sole discretion in an attempt to resolve the dispute.
- f) The parties will provide any additional information requested by the mediator.
- g) The mediator may hire experts, the cost of which will be paid equally by the parties unless the mediator orders a different division.

16.2.1.3 Arbitration –

- a) If the dispute is not resolved within 30 days of the appointment of a mediator, then, on application by any party to the dispute (with copies to be provided to every other Party not already parties to the dispute, and to each Mortgagee), the dispute may be referred to a single arbitrator under the *Arbitration Act*, S.B.C. 2020, c. 2.
- b) If a Party not already party to the dispute or a Mortgagee considers that its respective interests may be affected by the dispute, then it will promptly provide notice to the parties to the dispute and will be added as parties to the arbitration, its participation in which is at its own cost.
- c) The decision of the arbitrator is final and binding on the parties to the arbitration.
- d) The cost of the arbitrator will be paid equally by the parties to the dispute unless the arbitrator orders a different division.

16.2.2 For greater certainty, if the First Nation takes over the position of the Lessor under this Lease by operation of law, then any dispute arising between the

Parties from or under this Lease will be resolved under this section 16.2 and not section 16.1.

17. MISCELLANEOUS

- 17.1 Deemed Conditions and Covenants** – All agreements, terms, conditions, covenants, provisions, duties and obligations to be performed or observed by the Lessee under this Lease for the benefit of the Lessor are deemed to be conditions as well as covenants.
- 17.2 No Presumption** – There will be no presumption that any ambiguity in any of the terms of this Lease will be interpreted in favour of any Party.
- 17.3 Net Lease for the Lessor** – This Lease is to be a completely carefree triple net lease for the Lessor. Except as otherwise explicitly set out in this Lease, the Lessor will not be responsible during the Term for any costs, charges or expenses arising from or relating to the Premises, the use or occupancy of the Premises, the business carried out on the Premises or any of the Lessee's obligations under this Lease.
- 17.4 No Cost to First Nation** – Except as otherwise explicitly set out in this Lease, the First Nation will not be responsible during the Term for any costs, charges or expenses arising from or relating to the Premises, the use or occupancy of the Premises, the business carried out on the Premises or any of the Lessee's obligations under this Lease.
- 17.5 Binding on Successors** – This Lease will be for the benefit of and be binding upon each Party's respective heirs, successors, executors, administrators, assigns and other legal representatives.
- 17.6 Remedies are Cumulative** – Notwithstanding any part of this Lease that provides a specific remedy, all remedies under this Lease or at law may be exercised at the same time and the exercise of one remedy does not preclude the exercise of any other remedy.
- 17.7 No Waiver** – No condoning, excusing or overlooking of any default of this Lease will operate as a waiver by, or otherwise affect the respective rights of, the other Parties in respect of any continuing or subsequent default. No waiver of these rights will be inferred from anything done or omitted to be done by any Party, except by an express waiver in writing.
- 17.8 No Assumption of Responsibility** – No consent or absence of consent by either the Lessor or the First Nation will in any way be an assumption of responsibility or liability by such Party for any matter subject to or requiring such Party's consent.

EXECUTED in the presence of:

Witness as to the First Nation's
authorized signatories

DOUG SPRINGFORD
Barrister and Solicitor
#8 - 1540 SPRINGHILL DRIVE
KAMLOOPS, BC V2E 2H1
Phone (250) 374-6601

) **Upper Nicola Band, as represented by**
) **Council**

) 
) **Chief Harvey McLeod**

) 
) **Councillor Brian Holmes**

) **Date signed by the First Nation:** Dec 15, 2022

) **We are authorized to sign on behalf of the**
) **First Nation**

EXECUTED in the presence of:

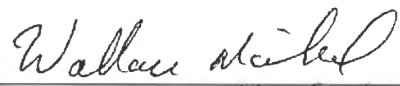
Witness as to the Lessee's
authorized signatory,
Wallace Michel

Witness as to the Lessee's
authorized signatory,
Daniel Manuel

DOUG SPRINGFORD
Barrister and Solicitor
#8 - 1540 SPRINGHILL DRIVE
KAMLOOPS, BC V2E 2H1
Phone (250) 374-6601

) **Upper Nicola Housing Society**

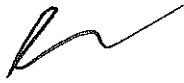
) 
) **Name: Daniel Manuel**
) **Title: Director**

) 
) **Name: Wallace Michel**
) **Title: President**

) **Date signed by the Lessee:** Dec 9, 2022

) **I am authorized to sign on behalf of the**
) **Lessee**

EXECUTED in the presence of:



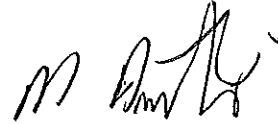
Witness as to the Commission's
authorized signatories/y

CHARLOTTE K. WONG
Barrister & Solicitor
2110 Burquitlam Drive
Vancouver, BC V5P 2P1

(as to Martin Austin signature)

**BRITISH COLUMBIA HOUSING
MANAGEMENT COMMISSION**

per:



Name: Martin Austin
Title: Acting Associate Vice President
Asset Strategies



Name: Michael Pistrin
Title: Director ~~Sara Goldvine~~

Acting Vice President, Development & Asset Strategies
Date signed by the Commission: November 22, 2022

We/I are/am authorized to sign on behalf of
the Commission

EXECUTED in the presence of:



Witness as to PRHC's authorized
signatories/y

CHARLOTTE K. WONG
Barrister & Solicitor
2110 Burquitlam Drive
Vancouver, BC V5P 2P1

(as to

Martin Austin

signature)

PROVINCIAL RENTAL HOUSING
CORPORATION


per:



Name:

Title:

Acting ~~Martin Austin~~
Associate Vice President
Asset Strategies



Name:

Title:

Michael Pistun

~~Sara Goldvine~~

Acting Vice President, Development & Asset Strategies

Date signed by the PRHC: *November 22, 2022*

We/I are/am authorized to sign on behalf of
the Corporation

Schedule "A"



Upper Nicola

Band Council
Resolution

The Council of the Upper Nicola Band	BCR Chronological No.: 2022-07-28-01
Physical: 2225 Village Road, Douglas Lake, BC Mailing: Box 3700, Merritt, British Columbia V0K 1B8	File Reference (if applicable):
Date: July 28, 2022	

Whereas:

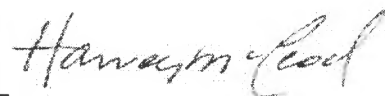
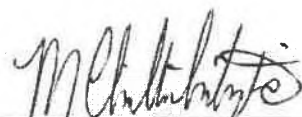


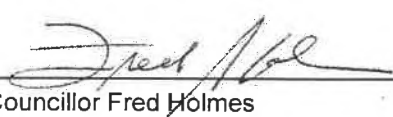


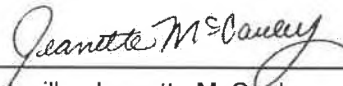

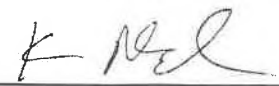
- A) We have negotiated an affordable rental housing lease to be entered into between Her Majesty in right of Canada, Upper Nicola Band, Upper Nicola Band Housing Society, British Columbia Housing Commission and Provincial Housing Corporation (the "Lease");
- B) The Lease in substantially final form, dated July 14, 2022, was provided to legal counsel acting for Upper Nicola Band. This resolution will be appended to the final form of lease to be executed by all parties;
- C) The Council reviewed the Lease and received legal advice on the Lease and this resolution; and
- D) The terms used in the resolution that are defined in the Lease have the same meaning as in the Lease.

Therefore, Be it Resolved that: Council on behalf of Upper Nicola Band:

1. The Lease is acceptable, and Council is satisfied that it should be signed and delivered to those parties of interest as an act of the Band;
2. Confirms that it as received legal and financial advice about the Lease before executing the Lease;
3. Council acknowledges that it has been advised to seek such additional advice concerning its rights and obligations throughout the Term of the Lease as it may require;
4. Consents to the execution of the Lease substantially in the form attached; and
5. Authorizes any two members of Council to execute the Lease on behalf of the First Nation.

Dates: 28 July 2022.

Quorum for this Band consists of (5) FIVE

 Chief Harvey McLeod	 Councillor Mathilda Chillihtzia	 Councillor Stacie Goutlee
 Councillor Brian Holmes	 Councillor Fred Holmes	 Councillor David Lindley
 Councillor Dennis MacDonald	 Councillor Jeanette McCauley	 Councillor Wallace Michel
 Councillor Kevin Ned		

SCHEDULE B

ASSIGNMENT CONSENT AGREEMENT

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

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
as represented by the Minister of Indigenous Services

(the “**Lessor**”)

and:

[FIRST NATION],
a “band” within the meaning of the *Indian Act*, as represented by Council

(the “**First Nation**”)

and:

[LESSEE'S NAME],
a society incorporated under the *Societies Act*,
S.B.C. 2015, c. 18; Incorporation No. **[#]**

(the “**Lessee**”)

and:

BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION,
a corporation continued under the *Ministry of Lands, Parks and*
Housing Act, R.S.B.C. 1996, c. 307

(the “**Commission**”)

and:

PROVINCIAL RENTAL HOUSING CORPORATION,

a corporation owned by Her Majesty the Queen in right of British Columbia

(“PRHC”)

and:

[ASSIGNEE’S NAME],
a society incorporated under the *Societies Act*,
S.B.C. 2015, c. 18; Incorporation No. [#]

(the “Assignee”)

(Collectively the “Parties”).

BACKGROUND

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

NOW THEREFORE, in consideration of the representations, warranties, obligations, covenants and agreements in this agreement, including the payment of \$1 to each Party, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Consent

- 1.1 Each of the Lessor, the First Nation, and the Commission hereby consent to the Assignment.

2. Covenants and Representations of Assignee

- 2.1 The Assignee covenants with each of the Lessor, the First Nation, the Commission, and PRHC to observe and perform all of the obligations, covenants and agreements in the Lease to be observed or performed by the Lessee from and after the date of the assignment of the Lease.

- 2.2 The Assignee represents and warrants to each of the Lessor, the First Nation, the Commission, and PRHC that the person or persons signing this agreement on the Assignee's behalf have the authority to bind the Assignee to this agreement.
- 2.3 The Assignee makes the same representations and warranties to each of the Lessor, the First Nation, the Commission, and PRHC that the Lessee made in the Lease.
- 2.4 The Assignee acknowledges and agrees that none of the Lessor, the Minister, the First Nation, Council, or their respective officials, servants, employees, agents, contractors, subcontractors or other legal representatives has made any representations or warranties, including with respect to:
- 2.4.1 the condition of the Premises, including the Premises' compliance with applicable Laws or the presence of Contaminants on the Premises;
- 2.4.2 issues of title or encumbrances affecting title;
- 2.4.3 access to and from the Premises; or
- 2.4.4 the suitability of the Premises for the Lessee.

3. General

- 3.1 The Lease will survive the execution of this agreement and will not merge in this agreement.
- 3.2 Any terms not defined in this agreement but defined in the Lease have the same meanings that are given to them in the Lease.
- 3.3 This agreement will enure to the benefit of and be binding upon the Parties and their respective heirs, administrators, successors, representatives and assigns.
- 3.4 All headings are for convenience and reference only. They are not to be used to define, limit, enlarge, modify or explain the scope or meaning of any provision.
- 3.5 This agreement may be executed in one or more counterparts, each of which is considered to be an original but all of which together constitute one and the same document.

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

) **HER MAJESTY THE QUEEN IN RIGHT**
) **OF CANADA**, as represented by the
) Minister of Indigenous Services
)

)
)
) _____
) [Name]
)

EXECUTED in the presence of:)
) **[FIRST NATION]**, as represented by
) Council
)
)
)
)
)

Witness as to the First Nation's)
authorized signatory) Signature
)
) I am authorized to sign on behalf of the
) First Nation
)

EXECUTED in the presence of:)
) **[LESSEE'S NAME]**
)
)
)
)
)
)

Witness as to the Lessee's)
authorized signatory) [Name]
)
)
) I am authorized to sign on behalf of the
) Lessee
)

EXECUTED in the presence of:)
) **[ASSIGNEE'S NAME]**
)
)
)
)
)
)

Witness as to the Assignee's)
authorized signatory) [Name]
)
)
) I am authorized to sign on behalf of the
) Assignee
)

EXECUTED in the presence of:)
) **BRITISH COLUMBIA HOUSING**
) **MANAGEMENT COMMISSION**
) per:
)
)
)
)
)
_____)

Witness as to the Commission's
authorized signatory

)
)
)
)
)
)
)

[Name]
[Title]

Date signed by the Commission: _____

I am authorized to sign on behalf of the
Commission

EXECUTED in the presence of:

)
)
)
)
)

**PROVINCIAL RENTAL HOUSING
CORPORATION**

per:

Witness as to PRHC's authorized
signatory

)
)
)
)
)
)
)

[Name]
[Title]

Date signed by the PRHC: _____

I am authorized to sign on behalf of PRHC

SCHEDULE "A" TO AN ASSIGNMENT CONSENT AGREEMENT

(attach a copy of the Assignment)

SCHEDULE C

MORTGAGE ACKNOWLEDGMENT AGREEMENT

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

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
as represented by the Minister of Indigenous Services

(the “Lessor”)

and:

[FIRST NATION],
a “band” within the meaning of the *Indian Act*, as represented by Council

(the “First Nation”)

and:

[LESSEE'S NAME],
a society incorporated under the *Societies Act*,
S.B.C. 2015, c. 18; Incorporation No. [#]

(the “Lessee”)

and:

BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION,
a corporation continued under the *Ministry of Lands, Parks and
Housing Act*, R.S.B.C. 1996, c. 307

(the “Commission”)

and:

PROVINCIAL RENTAL HOUSING CORPORATION,
a corporation owned by Her Majesty the Queen in right of British Columbia

(“PRHC”)

and:

[MORTGAGEE’S NAME],
[Include incorporation information, such as: a bank under the *Bank Act*, S.C. 1991,
c. 46]

(the “Mortgagee”)

(Collectively the “Parties”).

BACKGROUND:

- A. The Lessor leased certain lands in the Reserve to the Lessee, by way of a lease to which the First Nation is a Party and which is dated [Month Day, Year] and registered in the Registry under No. [#] (the “Lease”).
- B. The Lessee wants to mortgage its interest in the Lease to the Mortgagee by way of the proposed mortgage (the “Mortgage”) attached as Schedule “A” to this agreement.
- C. Under the Lease, the Mortgage is not valid until the Mortgagee has entered into this agreement.

NOW THEREFORE, in consideration of the obligations, covenants and agreements in this agreement, including the payment of \$1 to each Party, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. REPRESENTATIONS

- 1.1 The Lessor represents and warrants that, to the best of the Lessor’s knowledge but with no investigation on the part of the Lessor, the Lessee is not in default under the Lease.
- 1.2 The First Nation represents and warrants that, to the best of the First Nation’s knowledge but with no investigation on the part of the First Nation, the Lessee is not in default under the Lease.
- 1.3 The Commission represents and warrants that, to the best of its knowledge but with no investigation on its part, the Lessee is not in default under the Lease.
- 1.4 Except as otherwise explicitly set out in this agreement, the Mortgagee acknowledges and agrees that none of the Lessor, the Minister, the First Nation, Council, or their respective officials, servants, employees, agents, contractors,

subcontractors or other legal representatives has made any representations or warranties, including with respect to:

- 1.4.1 the condition of the Premises, including the Premises' compliance with applicable Laws or the presence of Contaminants on the Premises;
- 1.4.2 issues of title or encumbrances affecting title;
- 1.4.3 access to and from the Premises; or
- 1.4.4 the suitability of the Premises for the Lessee.

2. NO EFFECT ON LEASE OR THE RIGHTS OF THE LESSOR, THE FIRST NATION, OR THE COMMISSION UNDER IT

- 2.1 Except as provided in this agreement, the Mortgage is subject and subordinate to the Lease and the rights under the Lease of the Lessor, the First Nation, and the Commission.
- 2.2 Neither the Mortgage nor this agreement will change any terms of the Lease.

3. COPIES OF NOTICES

- 3.1 The Lessor will deliver to the Mortgagee copies of any default notices under the Lease and the Mortgagee or the Commission may cure the default within the time period specified in the notice on behalf of the Lessee.
- 3.2 The First Nation will deliver to the Mortgagee copies of any default notices under the Lease and the Mortgagee or the Commission may cure the default within the time period specified in the notice on behalf of the Lessee.
- 3.3 The Lessor will deliver to the Mortgagee and the Commission copies of any termination notices under the Lease.

4. DEFAULT OF MORTGAGE

- 4.1 If the Lessee is in default under the Mortgage, each of the Lessor, the First Nation, and the Commission may cure the default on behalf of the Lessee.

5. RIGHTS AND OBLIGATIONS OF THE MORTGAGEE

- 5.1 The Mortgagee has all of the rights provided to, and obligations required of, a Mortgagee under section 11.3 and article 12 of the Lease as if they were terms of this agreement between the Parties.

- 5.2 Despite subsection 11.1.3 of the Lease, the Mortgagee is not responsible for any defaults of the Lease arising after the date upon which it has assigned its interest in the Lease.
- 5.3 The Mortgagee will ensure that the Mortgage does not conflict with the Lease or, by the Lessee complying with the Mortgage, cause the Lessee to default on the Lease.
- 5.4 The Mortgagee will attorn as tenant under the Lease on its terms and conditions until the Lease is assigned in accordance with the provisions of the Lease if the Mortgagee takes possession of the Premises or takes any action (including, without limitation, appointing a receiver or receiver-manager, but not including curing a monetary default of the Lessee prior to taking possession of the Premises) to enforce the Mortgagee's security under the Mortgage.
- 5.5 Without limiting section 5.4, the Mortgagee will not cause or permit any assignment of an interest in the Lease in exercising its remedies under the Mortgage or at law except in accordance with the provisions of the Lease.
- 5.6 The Mortgagee's obligations under this article 5 end upon assignment of its interest in the Lease in accordance with the terms of the Lease, but a release of the Mortgagee's obligations under this section does not release any obligations of the Lessee.
- 5.7 The Mortgagee will ensure that the Mortgage provides that the proceeds of all property insurance policies with respect to the Premises will be used for repairing or replacing the Premises as set out in the Lease.
- 5.8 Unless the Mortgagee has foreclosed the Lessee's interest in the Lease and elected to continue this agreement and be bound as a tenant under the Lease, this agreement ends when the debt secured by the Mortgage has been paid in full or has ceased to be covered by the Mortgage and the Mortgagee has filed a discharge of its Mortgage in the Registry.
- 5.9 The Mortgagee will promptly file a discharge in the Registry when the Lease is no longer subject to the Mortgage.
- 5.10 The bankruptcy or insolvency of the Lessee will not be used by the Mortgagee to give the Mortgagee any greater rights or advantage over the Lessor than the Mortgagee would otherwise have had under this agreement.
- 5.11 The Mortgagee represents and warrants to each of the Lessor, the First Nation, and the Commission that the person or persons signing this agreement on the Mortgagee's behalf have the authority to bind the Mortgagee to this agreement.

6. GENERAL

6.1 Delivery

- 6.1.1 Any delivery under this agreement is to be made in accordance with this article to the following addresses:

To the Lessor:

Director, Lands and Economic Development
Indigenous Services Canada
British Columbia Regional Office
600 – 1138 Melville Street
Vancouver, BC V6E 4S3

Fax: [#]

To the First Nation:

[First Nation]
[First Nation's Address]

Fax: [#]

To the Lessee:

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

Fax: [#]

To the Commission:

BC Housing Management Commission
4555 Kingsway
Burnaby, BC V5H 4V8

Fax: 604-439-4722

To PRHC:

Provincial Rental Housing Corporation
4555 Kingsway
Burnaby, BC V5H 4V8

Fax: 604-439-4722

To the Mortgagee:

[Mortgagee's Name]
[Mortgagee's Address]

Fax: [#]

- 6.1.2 If any question arises as to the date on which a delivery is made, it will be deemed to have been made:
- 6.1.2.1 if sent by fax, the day of transmission if transmitted before 3:00 p.m., otherwise, the next day;
 - 6.1.2.2 if sent by mail, on the sixth day after the notice was mailed; or
 - 6.1.2.3 if sent by any means other than fax or mail, the day it is received.
- 6.1.3 If the postal service is interrupted or threatened to be interrupted, then any delivery will only be made by means other than mail.
- 6.1.4 Any change in contact information will take effect 30 days after the notice is delivered to the other Parties.
- 6.2 **Definitions** – Any terms not defined in this agreement but defined in the Lease have the same meanings that are given to them in the Lease.
- 6.3 **Headings** – All headings are for convenience and reference only. They are not to be used to define, limit, enlarge, modify or explain the scope or meaning of any provision.
- 6.4 **Consent** – Any consent to be provided under this agreement must not be unreasonably withheld or delayed.
- 6.5 **No Merger** – If the Mortgagee becomes the tenant under the Lease, then this agreement will not merge in the Lease.
- 6.6 **Binding on Successors** – This agreement will enure to the benefit of and be binding upon the Parties and their respective heirs, executors, administrators, successors, assigns and other legal representatives.
- 6.7 **Counterpart Execution** – This agreement may be executed in one or more counterparts, each of which is considered to be an original but all of which together constitute one and the same document.

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

) **HER MAJESTY THE QUEEN IN RIGHT**
) **OF CANADA**, as represented by the
) Minister of Indigenous Services

)
)
)
) _____
) [Name]
)

EXECUTED in the presence of:)
) **[FIRST NATION]**, as represented by
) Council
)
)
)
)

Witness as to the First Nation's)
authorized signatory) Signature
) I am authorized to sign on behalf of the
) First Nation
)

EXECUTED in the presence of:)
) **[LESSEE'S NAME]**
)
)
)
)

Witness as to the Lessee's)
authorized signatory) [Name]
)
)
) I am authorized to sign on behalf of the
) Lessee
)

EXECUTED in the presence of:)
) **[MORTGAGEE'S NAME]**
)
)
)
)

Witness as to the Mortgagee's)
authorized signatory) [Name]
)
)
) I am authorized to sign on behalf of the
) Mortgagee
)

EXECUTED in the presence of:)
) **BRITISH COLUMBIA HOUSING**
) **MANAGEMENT COMMISSION**
)
) per:
)

)	
)	
_____)	_____
Witness as to the Commission's	)	[Name]
authorized signatory	)	[Title]
)	
	)	Date signed by the Commission: _____
)	
	)	I am authorized to sign on behalf of the
	)	Commission

EXECUTED in the presence of:	)	PROVINCIAL RENTAL HOUSING
	)	CORPORATION
	)	per:
)	
)	

)	
_____)	_____
Witness as to PRHC's authorized	)	[Name]
signatory	)	[Title]
)	
	)	Date signed by the PRHC: _____
)	
	)	I am authorized to sign on behalf of PRHC
)	

SCHEDULE “A” TO A MORTGAGE ACKNOWLEDGEMENT AGREEMENT

(attach a copy of the Mortgage)

Certificate of Liability Insurance – Page 1 of 2

This certificate of Insurance neither affirmatively nor negatively amends, extends or alters the coverage afforded by the policies scheduled herein. It is furnished as a matter of information only, confers no rights upon the holder and is issued with the understanding that the rights and liabilities of the parties will be governed by the original policy or policies as they may be lawfully amended by endorsement.

Certificate Holder			Name and address of Insured		
Her Majesty the Queen in Right of Canada, as Represented by the Minister of Indigenous Services Director, Lands and Economic Development Indigenous Services Canada British Columbia Regional Office 600-1138 Melville Street Vancouver BC V6E 4S3			Upper Nicola Indian Band and Upper Nicola Holdings Limited Partnership and Upper Nicola Band Housing Society General Delivery, Douglas Lake, B.C. V0E 1S0		
Type of Insurance	Insurer	Policy Number	Deductible		Limits of Liability
Commercial General Liability, Contingent Employers Liability Included, Primary.	100% Lloyds Underwriters as per Contract No. B0572NA21BN03	FNC0575	\$ 1,000 Bodily Injury/Property Damage Deductible		\$10,000,000 Bodily Injury & Property Damage – Each Occurrence \$10,000,000 Aggregate Limit \$10,000,000 Personal and Advertising Injury \$10,000,000 Non-Owned Automobile Liability \$ 5,000,000 Tenants Legal Liability – Any One Premises \$ 5,000,000 Professional Liability – Health Care Services- Errors & Omissions \$5,000,000 Forest Fire Fighting Extension \$2,000,000
Builders Risk Non Reporting	60% Lloyds Underwriters as per Contract No. B0572NA22BN01; 30% Northbridge General Insurance; 10% Peace Hills General Insurance	FNC0575	\$2,500 Deductible \$10,000		Sewer Backup Included Replacement Cost Included Blanket By Laws Included
Policy Effective Date: April 1, 2022 to Policy Expiry Date: April 1, 2023					

Operations Covered: First Nations Community including Silviculture and Land Survey

Additional Insured(s):

Her Majesty the Queen in Right of Canada, as Represented by the Minister of Indigenous Services (the "Lessor") AND
Upper Nicola Band, as represented by Council (the "First Nation") AND
Upper Nicola Band Housing Society (the "Lessee") AND
British Columbia Housing Management Commission (the "Commission") AND
Provincial Rental Housing Corporation (the "PRHC").



Certificate of Liability Insurance – Page 2 of 2

This certificate of Insurance neither affirmatively nor negatively amends, extends or alters the coverage afforded by the policies scheduled herein. It is furnished as a matter of information only, confers no rights upon the holder and is issued with the understanding that the rights and liabilities of the parties will be governed by the original policy or policies as they may be lawfully amended by endorsement.

Certificate Holder

Her Majesty the Queen in Right of Canada, as
Represented by the Minister of Indigenous Services
Director, Lands and Economic Development Indigenous Services
Canada
British Columbia Regional Office
600-1138 Melville Street
Vancouver BC V6E 4S3

Name and address of Insured

Upper Nicola Indian Band and
Upper Nicola Holdings Limited Partnership and
Upper Nicola Band Housing Society
General Delivery, Douglas Lake, B.C. V0E 1S0

It is hereby understood and agreed that the **above mentioned Additional Insureds** are listed as Additional Insureds to the above noted policy with respect to Commercial General Liability but only with respect to the operations of the Name Insured. Policy Limits are not increased by such addition. **RE:** Affordable Rental Housing Lease, for Lands in Douglas Lake Indian Reserve No. 3. Waiver of Subrogation Included in favor of the Additional Insureds.

CANCELLATION NOTICE:

Should the above described policy be cancelled before the expiration date thereof, the Insurer will endeavour to mail **15** days written notice to the Certificate Holder, but failure to mail such notice shall impose no obligation or liability of any kind upon either the Insurer or HUB International Insurance Brokers.

Issued at: Kamloops BC

HUB International Insurance Brokers

Chad Belbin - Authorized Representative

Date: December 12, 2022