



ʔAQ'AM

**Lands Management Manual
2016**

TABLE OF CONTENTS

USING THE ḤAQĀM LANDS MANAGEMENT MANUAL AND LAW MAKING POLICIES

Policy 1-1: Using The Ḥaqām Lands Management Manual	9
Policy 1-2: Law Making Process	17

LAND INSTRUMENTS AND CHOOSING AUTHORITIES POLICIES

Policy 2-1: Persons Involved in Land Instrument Transactions	55
Policy 2-2: Land Instruments – Choosing Authorities	59

REGISTRATION POLICY

Policy 3-1: Registration Policy	75
---------------------------------------	-----------

ALLOTMENT AND LAWFUL POSSESSION POLICY

Policy 4-1: Creating Allotments	95
Policy 4-2: Transferring Allotments	118
Policy 4-3: Leases, Licences, Permits, Easements & Other Interests in an Allotment	130

LEASE POLICIES

Policy 5-1: Leases Over Ḥaqām community lands	146
Policy 5-2: Drafting Leases, Mandatory and Optional Terms	169
Policy 5-3: Cancelling a Lease	181

LICENCES, PERMITS, EASEMENTS AND RIGHT-OF-WAYS

Policy 6-1: Licences, Permits, Easements and Right-Of-Ways Over Ḥaqām community lands	201
Policy 6-2: Drafting Licences, Permits, Easements And Right-Of-Ways Using The Mandatory and Optional Terms	230
Policy 6-3: Cancellation of a Licence, Permit or Right-Of-Way at the Request of the Licensee, Permittee or Grantee	243

**CORRECTING AND CANCELLING INTERESTS AND LICENCES GRANTED IN ERROR,
BY MISTAKE OR BY FRAUD**

**Policy 7-1: Correcting Aand Cancelling Interests and Licences Granted in Error, By
Mistake or by Fraud 257**
Expropriation Policy 267

ENVIRONMENTAL REVIEW, ASSESSMENT AND LAND MANAGEMENT POLICIES

Policy 9-1: Environmental Review and Assessment Policy 287
Policy 9-2: Environmental Site Assessments 352
Policy 9-3: Environmental Requirements for Land Instruments 356

MONITORING AND ENFORCEMENT POLICIES

Policy 10-1 Monitoring 365
Policy 10-2 Enforcement Proceedings 377

LIST OF SCHEDULES

Schedule A: Lands Management Manual Forms 385
Schedule B _Residential Headlease Template 446
Schedule C: Sublease Template 498
Schedule D: Commercial Lease Template 539
Schedule E: Standard Form Licence Agreement 572
Schedule F: Standard Form Permit Agreement 588
Schedule G: Standard Form Easement Agreement 604
Schedule H: Standard Form Right-Of-Way Agreement 617
Schedule I: Lands Department Fee Schedule 635

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**USING THE ᑭᓱᓱᓱ LANDS
MANAGEMENT MANUAL
AND LAW MAKING
POLICIES**

Approved By Council On March 15, 2016

TABLE OF CONTENTS

POLICY 1-1: USING THE ʔAQAM LANDS MANAGEMENT MANUAL.....	9
Section 1 Purpose	9
Section 2 General	9
<i>Background – Legal Framework</i>	9
<i>Background – Manual Format</i>	10
<i>Policies</i>	10
<i>Sections</i>	11
<i>Subsections, Paragraphs And Subparagraphs</i>	11
<i>Schedules</i>	12
<i>Forms</i>	12
<i>Definitions</i>	12
Section 3 Authorities.....	14
Section 4 Policy	15
<i>Procedural Fairness</i>	15
<i>Timely, Well Considered And Transparent Decisions</i>	15
Section 5 Process.....	16
<i>How To Find General Information</i>	16
Section 6 References	16
Policy 1-2: Law Making Process	17
Section 1 Purpose	17
Section 2 General.....	17
<i>What Is Law-Making?</i>	17

Section 3	Authorities.....	17
Section 4	Policy	21
	<i>Role Of Council</i>	21
	<i>Role Of Lands Department</i>	21
	<i>Role Of Lands Committee</i>	21
	<i>Role Of ?AqAm’s Legal Counsel</i>	22
	<i>Summary Of Law-Making Process</i>	22
	<i>What Is A Community Land Code Meeting?</i>	24
	<i>Meetings Of Members</i>	24
	<i>Ratification Votes</i>	25
	<i>Use Of Voter’s List</i>	25
Section 5	Process For Drafting Laws.....	26
	<i>Council Resolution</i>	26
	<i>Drafting Instructions</i>	26
	<i>Research And Drafting</i>	27
	<i>First Reading</i>	28
	<i>Second Reading / Community Land Code Meeting</i>	28
	<i>Finalize The Draft Law</i>	29
	<i>Third Reading</i>	30
	<i>Process For Meeting Of Members</i>	31
	<i>Obtaining Copies Of The Final Draft Law</i>	33
	<i>Preliminary Procedures</i>	33
	<i>Distribution Of Mail In Ballot Packages</i>	34
	<i>Documentation Requirements</i>	35
	<i>Declaration Of Closed Meeting</i>	35
	<i>Conducting A Vote At A Meeting Of Members</i>	35
	<i>Voting By Mail-In Ballot</i>	36
	<i>In Person Voting Procedure At Meeting Of Members</i>	37
	<i>Special Assistance To Vote In-Person</i>	38
	<i>Voting Irregularities</i>	39

<i>Closing The Polls</i>	39
<i>Placing Of Mail-In Votes In The Ballot Box.....</i>	39
<i>Counting / Tally Of Votes</i>	39
<i>Certification By Voting Officer</i>	40
<i>Maintenance Of Ballots Post-Vote</i>	40
<i>Process For Ratification Vote.....</i>	41
<i>Band Council Resolution And Appointment Of ?AqAm Land Law Voting Officer</i>	41
<i>Appointment Of Assistant ?AqAm Land Law Voting Officer(S).....</i>	41
<i>Oath Of Office</i>	41
<i>Notice Of Vote.....</i>	42
<i>Third Party Notifications</i>	43
<i>Voter Registration.....</i>	43
<i>Maintenance Of Registered Voters List.....</i>	43
<i>Preliminary Procedures.....</i>	44
<i>Distribution Of Mail-In Ballot Packages</i>	44
<i>Voting By Mail-In Ballot.....</i>	45
<i>Conducting The Vote.....</i>	46
<i>Voting In Person.....</i>	46
<i>Special Assistance Voting.....</i>	47
<i>Spoiled Ballots</i>	48
<i>Closing Of Polls.....</i>	48
<i>Opening Mail-In Ballots</i>	48
<i>Counting Of Votes.....</i>	49
<i>Certification Of Vote Results</i>	50
<i>Enactment Of Laws.....</i>	50
<i>Registration And Notification Of New Law.....</i>	51
Section 6 References	51

POLICY 1-1: USING THE ᑭᐱᑭᐱᑭ LANDS MANAGEMENT MANUAL

Section 1 Purpose

- (1) The objectives of this policy are to:
 - (a) provide basic background information on the legislative framework under which ᑭᐱᑭᐱᑭ lands are managed;
 - (b) provide the reader with an overview of the content and layout of this Manual; and
 - (c) set out the definitions that apply within the Manual.
- (2) **This Manual is not intended to provide legal advice to any person.**

Section 2 General

Background – Legal Framework

- (3) The legal framework underlying the management of ᑭᐱᑭᐱᑭ lands is as follows:
 - (a) section 91(24) of the *Constitution Act* states that only the federal government can pass laws about "Indians and lands reserved for Indians;"
 - (b) in 1996, fourteen (14) First Nations and Canada signed the Framework Agreement on First Nation Land Management (the "Framework Agreement"), which established a process by which each of these communities could consider the option of assuming control over their reserve lands and resources by:
 - (i) developing a Land Code and a community approval process,
 - (ii) concluding an Individual Agreement with Canada, and
 - (iii) ratifying their Land Code and Individual Agreement through a vote of their eligible members;
 - (c) in 1999 Canada passed the *First Nations Land Management Act* (the "FNLMA") to ratify the Framework Agreement;
 - (d) in 2001 the fourteen (14) First Nations and Canada agreed to amend the Framework Agreement to make it possible for additional First Nations to become signatories to the Framework Agreement;
 - (e) on June 18, 2014, ᑭᐱᑭᐱᑭ entered into an Individual Agreement with Canada;
 - (f) at a ratification vote held on April 14-16, 2014, the ᑭᐱᑭᐱᑭᐱᑭ voted in favour of the *St. Mary's Indian Band Land Code* and on July 1, 2014, the *St. Mary's Indian Band Land Code* came into effect; and

(g) on February 26, 2016 the ?a?amnik voted in favour of amendments to the *St. Mary's Indian Band Land Code*, including an amendment to its name and on February 26, 2016 the *?a?am Amended Land Code* came into effect.

Background – Manual Format

(4) This Manual provides the basic technical information, procedures and policies that apply to the management of ?a?am lands and the development of laws under the *?a?am Amended Land Code*.

(5) This Manual is designed to assist three (3) user groups:

(a) Council;

(b) Lands Department employees; and

(c) persons who have, or wish to acquire, interests or licences in or to ?a?am lands.

Policies

(6) This Manual is divided into twenty-one (21) policies, which are grouped together based on broad topic areas.

(7) The following policies are contained in this Manual:

Policy 1-1	Using the ?a?am Lands Management Manual
Policy 1-2	Law making
Policy 2-1	Land Instruments
Policy 2-2	Land Instruments – Choosing Authorities
Policy 3-1	Registration
Policy 4-1	Creating Allotments
Policy 4-2	Transferring Allotments
Policy 4-3	Leases, Licences, Permits, Easements and Right-of-Ways over Land Held under an Allotment
Policy 5-1	Leases over ?a?am community lands
Policy 5-2	Drafting Leases and Mandatory and Optional Terms
Policy 5-3	Cancelling a Lease
Policy 6-1	Licences, Permits, Easements and Right-of-Ways over ?a?am community lands
Policy 6-2	Drafting Licences, Permits, Easements and Right-of-Ways Using Mandatory and Optional Provisions
Policy 6-3	Cancellation of a Licence, Permit or Right-of-Way at the Request of the Licensee, Permittee, or Grantee
Policy 7-1	Correcting and Cancelling Interests and Licences Granted in Error, by Mistake or by Fraud
Policy 8-1	Expropriations by ?a?am
Policy 9-1	Environmental Review and Assessment Policy

Policy 9-2	Environmental Site Assessments
Policy 9-3	Environmental Requirements for Land Instruments
Policy 10-1	Monitoring
Policy 10-2	Enforcement

Sections

(8) Each policy in this Manual is divided into sections as follows:

Section 1 Purpose

This section in each policy sets out the objectives of the policy and an overview of what will be covered in the policy.

Section 2 General

This section in each policy sets out specific definitions that are relevant to the policy. It also set out general statements regarding the policy topic and the roles and responsibilities of various stakeholders in the implementation of the policy.

Section 3 Authorities

This section in each policy sets out the relevant sections of the *Indian Act*, *First Nations Land Management Act*, *Framework Agreement*, *ᑭᓱᓱᓱᓱ Amended Land Code* and any other laws of Canada, or ᑭᓱᓱᓱᓱ laws, by-laws, policies or procedures, that apply to the specific policy.

Section 4 Policy

This section in each policy sets out policy statements that are specific to each type of land transaction or land management responsibility covered under the individual policy.

Section 5 Process

This section in each policy sets out the procedures that must be followed by Lands Department staff in carrying out their responsibilities under each policy and in responding to requests from individuals regarding ᑭᓱᓱᓱᓱ land issues.

Section 6 References

This section in each policy sets out resources that can be referred to for additional information on the specific land issue covered under each policy.

Subsections, Paragraphs and Subparagraphs

(9) Each section in each policy in this Manual has within it a number of subsections, paragraphs and subparagraphs, as follows:

- (1) Subsection
 - (a) Paragraph
 - (i) Subparagraph

(10) A reference in a policy to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph within that policy, unless otherwise clearly stated to the contrary.

Schedules

(11) This Manual has 9 Schedules, as follows:

Schedule A	Forms
Schedule B	?a?am Commercial Lease Template
Schedule C	?a?am Head Lease Template
Schedule D	?a?am Sub Lease Template
Schedule E	Standard Form Licence Agreement
Schedule F	Standard Form Permit Agreement
Schedule G	Standard Form Easement Agreement
Schedule H	Standard Form Right of Way Agreement

Forms

(12) A reference to a form in this Manual is a reference to a form located in **Schedule A: Forms**.

(13) Each form is numbered as follows:

Policy Number that the form is associated with – Form Sequence Number – Name of Form

Example: 3-1-01: Registration of Interest

Definitions

(14) The definitions in section 2.1 of the *?a?am Amended Land Code* apply to this Manual.

(15) In this Manual, the following definitions apply unless it is obvious that they do not apply in the circumstances:

“allotment” means lawful possession of a parcel of ?a?am lands granted either:

- (a) by Council with the approval of Canada before the coming into force of the *?a?am Amended Land Code*;
- (b) by Council to a member, under section 32.1(a) of the *?a?am Amended Land Code*; or

(c) by Council to a member under a law made pursuant to section 33.1 of the *ᑭᑭᑭᑭ Amended Land Code*;

“allotment holder” means a member who has lawful possession of ᑭᑭᑭᑭ lands as evidenced by a Certificate of Possession;

ᑭᑭᑭᑭ Amended Land Code” means the *ᑭᑭᑭᑭ Amended Land Code, 2016*;

ᑭᑭᑭᑭ lands” means those lands described in section 5.1 of the *ᑭᑭᑭᑭ Amended Land Code*;

“ᑭᑭᑭᑭᑭᑭ” means ᑭᑭᑭᑭᑭᑭ of ᑭᑭᑭᑭ, whose names appear on the ᑭᑭᑭᑭ membership list;

“authorized signatory” means a person who is authorized by Council, by Band Council Resolution, to sign the document he or she signs;

“Band Council Resolution” and “BCR” mean a written document that contains a Band Council Resolution and that has been discussed, voted on, and passed by a majority of a quorum of Council at a duly convened Council meeting;

“Certificate of Possession” means a document issued:

(a) by the Minister, pursuant to subsection 20(2) of the *Indian Act*, to a member who is lawfully in possession of ᑭᑭᑭᑭ lands as evidence of that members right to possession of the land described in the Certificate of Possession; or

(b) by Council, pursuant to the *ᑭᑭᑭᑭ Amended Land Code* or a law enacted under section 33.1 of the *ᑭᑭᑭᑭ Amended Land Code*, to a member who is lawfully in possession of ᑭᑭᑭᑭ lands as evidence of that members right to possession of the lands described in the Certificate of Possession;

“ᑭᑭᑭᑭ community lands” means any ᑭᑭᑭᑭ lands in which all members have a common interest;

“Council” means the Chief and Councillors of ᑭᑭᑭᑭ or any successor elected government of ᑭᑭᑭᑭ;

“cultural heritage site” means a cultural heritage site designated under an ᑭᑭᑭᑭ *Community Land Use Plan, 2016*;

“*First Nations Land Registry Regulations*” means the *First Nations Land Registry Regulations*, SOR/2007-231, made pursuant to subsection 25(3) of the *First Nations Land Management Act* on October 25, 2007 by Her Excellency the Governor General in Council, on the recommendation of the Minister;

“First Nations Land Register” means the First Nations Land Register established by the Minister pursuant to subsection 25(1) of the *First Nations Land Management Act* and which is governed by the *First Nations Land Registry Regulations*;

“Framework Agreement” means the Framework Agreement on First Nation Land Management entered into between Canada and the Chiefs of fourteen (14) First Nations on February 12, 1996, as amended;

“INAC” means the federal department of Indigenous and Aboriginal Affairs Canada, formerly known as “AANDC” or “Aboriginal Affairs and Northern Development Canada”;

“*Indian Act*” means the *Indian Act*, RSC 1985, c.I-5;

“Individual Agreement” means the Individual Agreement on First Nations Land Management entered into between ᑭᓄᓂ and Canada in accordance with clause 6.1 of the Framework Agreement and subsection 6(3) of the *First Nations Land Management Act*;

“land instrument” means a written document that creates, changes, transfers or terminates an interest in ᑭᓄᓂ land that may be:

(a) internal, involving only ᑭᓄᓂ and its members; or

(b) external, involving ᑭᓄᓂ and/or its members and third parties;

“Lands Committee” means the Lands Committee as set out in Part 6 of the *ᑭᓄᓂ Amended Land Code*;

“Lands Department” means the Lands Department as set out in Part 6 of the *ᑭᓄᓂ Amended Land Code*;

“Minister” means the Minister of the federal department of Indigenous and Aboriginal Affairs Canada; and

“original land instrument” means an originating land instrument that is granted by Council to a third party, or from an allotment holder to a third party, in its first instance.

Section 3 Authorities

(1) There are no specific authorities that apply to this policy.

Section 4 Policy

Procedural Fairness

(1) ᑭᓱᓱᓱᓱᓱ is committed to administering ᑭᓱᓱᓱᓱᓱ lands in a procedurally fair and consistent manner taking into consideration:

- (a) ᑭᓱᓱᓱᓱᓱ best interests;
- (b) ᑭᓱᓱᓱᓱᓱ short term and long term goals; and
- (c) ᑭᓱᓱᓱᓱᓱ needs and priorities.

(2) This Manual provides guidance to Council, the Lands Department and individuals with regard to the steps that must be taken where a person wants to grant or cancel a land instrument.

Timely, Well Considered and Transparent Decisions

(3) This Manual is intended to ensure that decisions regarding ᑭᓱᓱᓱᓱᓱ lands are made in a timely, well-considered and transparent manner.

(4) Decisions are timely when ᑭᓱᓱᓱᓱᓱ is diligent in following due process, within the limits of the resources available.

(5) Decisions are well considered when they are based on:

- (a) the best information available about the land and its resources;
- (b) the costs and benefits of a proposed use;
- (c) appropriate consultation with other departments within ᑭᓱᓱᓱᓱᓱ, the Lands Committee and interested third party stakeholders;
- (d) evaluation of risk;
- (e) ᑭᓱᓱᓱᓱᓱ laws and *ᑭᓱᓱᓱᓱᓱ Community Land Use Plan, 2016*; and
- (f) ᑭᓱᓱᓱᓱᓱ culture, traditions and customs.

(6) Decisions are transparent when the decision-making process and the reasons for decisions regarding ᑭᓱᓱᓱᓱᓱ lands are clear to those persons affected by the results of such decisions.

(7) ᑭᓱᓱᓱᓱᓱ recognizes the importance of, and is committed to, being accountable to members and making information regarding ᑭᓱᓱᓱᓱᓱ land transactions publicly available through the First Nations Land Registry.

Section 5 Process

How to Find General Information

- (1) Find specific topics using the table of contents for this Manual and the indexes located at the beginning of each policy within this Manual.
- (2) Start with Policies 2-1 and 2-2 which provide background information regarding land transactions and explain how the *ḡaḡam Amended Land Code* is intended to accomplish different types of land transactions.

Section 6 References

- (1) Besides this policy, consult the following resources:
 - (a) the "References" section in each policy lists other sources of information for you to consult;
 - (b) members may contact the Lands Department with questions about transactions, land instruments or the contents of this Manual.
 - (c) this Manual is available electronically to members and affected parties from the Lands Department and may be viewed, by appointment, at the Lands Department.

POLICY 1-2: LAW MAKING PROCESS

Section 1 Purpose

(1) The purpose of this policy is to set out the procedures by which ᑭᓱᓱᓱ must enact laws in accordance with the *ᑭᓱᓱᓱ Amended Land Code*.

Section 2 General

What is Law-Making?

(1) Law making involves the development and enactment of laws regarding the management, administration, use and protection of ᑭᓱᓱᓱ lands. Some laws are enacted by Council, and others are enacted by member approval at either a meeting of members or at a ratification vote. The *ᑭᓱᓱᓱ Amended Land Code* sets out the manner in which a law must be enacted.

Section 3 Authorities

(1) The relevant authorities are:

(a) sections 18.1 to 18.4 of the *Framework Agreement*;

(d) paragraph 6(1)(g) and section 20 of the *First Nations Land Management Act*, and

(e) Parts 2 and 3, and sections 14, 33, 37, 44.2 and 46.2 of the *ᑭᓱᓱᓱ Amended Land Code*.

(2) Sections 18.1 to 18.4 of the *Framework Agreement* state:

18.1 The council of a First Nation with a land code in effect must have the power to make laws, in accordance with its land code, respecting the development, conservation, protection, management, use and possession of First Nation land and interests or land rights and licences in relation to that land. This includes laws on any matter necessary or ancillary to the making of laws in relation to First Nation land.

18.2 The following examples illustrate some of the First Nation laws contemplated by the Parties:

(a) laws on the regulation, control and prohibition of zoning, land use, subdivision control and land development;

(b) laws on the creation, regulation and prohibition of interests or land rights and licences in relation to First Nation land;

(c) laws on environmental assessment and protection;

(d) laws on the provision of local services in relation to First Nation land and the imposition of equitable user charges; and

(e) laws on the provision of services for the resolution, outside the courts, of disputes in relation to First Nation land.

18.3 A land code must not address the taxation of real or personal property or of immovables or movables. Section 83 of the *Indian Act* must continue to apply.

18.4 In any proceeding, a copy of a First Nation law, appearing to be certified as a true copy by an officer of the First Nation is, without proof of the officer's signature or official character, evidence of its enactment on the date specified in the law.

(3) Paragraph 6(1)(g) and section 20 of the *First Nations Land Management Act* state:

6. (1) A First Nation that wishes to establish a land management regime in accordance with the Framework Agreement and this Act shall adopt a land code applicable to all land in a reserve of the First Nation, which land code must include the following matters:

...

(g) the rules that apply to the enactment and publication of First Nation laws;

20. (1) The council of a First Nation has, in accordance with its land code, the power to enact laws respecting:

(a) interests or rights in and licences in relation to First Nation land;

(b) the development, conservation, protection, management, use and possession of First Nation land; and

(c) any matter arising out of or ancillary to the exercise of that power.

(2) Without restricting the generality of subsection (1), First Nation laws may include laws respecting

(a) the regulation, control or prohibition of land use and development including zoning and subdivision control;

(b) subject to section 5, the creation, acquisition and granting of interests or rights in and licences in relation to First Nation land and prohibitions in relation thereto;

(c) environmental assessment and environmental protection;

(d) the provision of local services in relation to First Nation land and the imposition of equitable user charges for those services; and

(e) the provision of services for the resolution of disputes in relation to First Nation land.

(3) A First Nation law may provide for enforcement measures, consistent with federal laws, such as the power to inspect, search and seize and to order compulsory sampling, testing and the production of information.

(4) In the event of any inconsistency or conflict between the land code of a First Nation and the provisions of a First Nation law or of a by-law made by its council under section 81 of the *Indian Act*, the land code prevails to the extent of the inconsistency or conflict.

(4) Part 2 of the *ᑭᐱᐱᐱᐱ Amended Land Code* sets out the:

(a) law-making powers of Council and types of laws that Council may develop under the *ገላጻም ለተሻሻለ ስርዓተ ግዛድ* regarding the management, administration, use and protection of ገላጻም lands, which include the following subject areas:

(i) the development, conservation, protection, management, use and possession of ገላጻም lands,

(ii) interests in and licences to use ገላጻም lands,

(iii) any matter necessary to give effect to the *ገላጻም ለተሻሻለ ስርዓተ ግዛድ*, and

(iv) any matter necessary or ancillary to a law in relation to ገላጻም lands;

(b) mandatory procedures that must be complied with in the development of laws under the *ገላጻም ለተሻሻለ ስርዓተ ግዛድ*; and

(c) mandatory requirements that must be complied with in relation to the publication and registration of laws.

(5) Part 2 of the *ገላጻም ለተሻሻለ ስርዓተ ግዛድ* also sets out the following examples of laws that Council may make:

(a) zoning and *ገላጻም ህዝብ ስርዓተ ግዛድ ስራ ስራ ስራ*, 2016ning;

(b) the regulation, control, authorization and prohibition of the occupation and development of land;

(c) the creation, disposition, regulation and prohibition of interests and licences;

(d) environmental assessment and environmental protection;

(e) archaeological assessment and the protection of archaeological and cultural resources;

(f) the provision of local services and imposition of user charges;

(g) the enforcement of laws;

(h) the provision of services for the resolution, outside the courts, of disputes;

(i) the setting aside and regulation of parks, parklands and recreational lands;

(j) the setting aside and regulation of heritage lands;

(k) the rules and procedures for the receipt, management, expenditure, investment and borrowing of moneys, including the establishment of administrative structures to manage such moneys;

- (l) the creation of management and administrative bodies or agencies;
 - (m) the removal and punishment of persons trespassing upon Ṛaḳam lands or frequenting Ṛaḳam lands for prohibited purposes;
 - (n) public nuisance and private nuisance;
 - (o) the regulation of sanitary conditions and the provision of sanitary services in private premises and public places;
 - (p) construction and maintenance of boundary and internal fences;
 - (q) the construction, maintenance and management of roads, water courses, water diversions, storm drains, bridges, ditches and other local and public works; and
 - (r) the regulation of traffic and transportation.
- (6) Part 3 of the *Ṛaḳam Amended Land Code* sets out:
- (a) the mandatory requirements that must be complied with for Ṛaḳam community lands code meetings; and
 - (b) the circumstances under which a law must be approved, and the mandatory processes that must be complied with, at either a meeting of members or ratification vote.
- (7) Section 14 of the *Ṛaḳam Amended Land Code* sets out that Council must enact a law setting out the rights and procedures for expropriation. Section 14 also provides the mandatory requirements that must be included in an expropriation law.
- (8) Section 33 of the *Ṛaḳam Amended Land Code* sets out that Council may enact a law providing for the rules and procedures that apply to the granting of an allotment in Ṛaḳam lands and the rights and interests to which an allotment holder is entitled.
- (9) Section 37 of the *Ṛaḳam Amended Land Code* sets out that Council must enact a law providing for the rules and procedures that are applicable on the breakdown of a marriage of a member to the use, occupancy and possession of an interest in Ṛaḳam lands held by that member and the division of that member's interest in land. Council has enacted the *Ṛaḳam Matrimonial Real Property Law, 2015*.
- (10) Section 44.2 of the *Ṛaḳam Amended Land Code* sets out that Council may establish processes or laws in addition to the dispute resolution process set out in Part 8 of the *Ṛaḳam Amended Land Code* for resolving disputes, which processes may include facilitated discussion, mediation, administrative appeals or referrals to another forum.

(11) Section 46.2 of the *ᑲᓱᓴᓄᓐ ᐱᓄᓄᓄᓐ ᐱᓄᓄᓄᓐ ᐱᓄᓄᓄᓐ* sets out that Council may enact laws in relation to the appointment of justices of the peace for the enforcement of the *ᑲᓱᓴᓄᓐ ᐱᓄᓄᓄᓐ ᐱᓄᓄᓄᓐ* and laws.

Section 4 Policy

Role of Council

(1) Council is responsible for:

- (a) developing laws consistent with the *ᑲᓱᓴᓄᓐ ᐱᓄᓄᓄᓐ ᐱᓄᓄᓄᓐ* regarding the management, administration, use and protection of ᑲᓱᓴᓄᓐ lands;
- (b) complying with the mandatory law-making procedures set out in Parts 2 and 3 of the *ᑲᓱᓴᓄᓐ ᐱᓄᓄᓄᓐ ᐱᓄᓄᓄᓐ* in the development of laws; and
- (c) approving the enactment of laws by Band Council Resolution in all cases except when a meeting of members or ratification vote are required for the enactment of the law.

Role of Lands Department

(2) The Lands Department is responsible for:

- (a) making recommendations to the Lands Committee and Council on the development of laws, policies and procedures in relation to ᑲᓱᓴᓄᓐ lands;
- (b) overseeing and monitoring ᑲᓱᓴᓄᓐ community lands code meetings, meetings of members and meetings held regarding ratification votes;
- (c) assisting in the exchange of information between members and Council regarding the development of laws, including assisting the ᑲᓱᓴᓄᓐ Land Law Voting Officer in the preparation and distribution of notifications, draft laws and other communications relevant to the law-making process; and
- (d) ensuring the requirements of this policy are complied with.

Role of Lands Committee

(3) The Lands Committee is responsible for:

- (a) reviewing draft laws and providing comments to legal counsel;
- (b) recommending to Council laws, policies and procedures in relation to ᑲᓱᓴᓄᓐ lands;

- (c) consulting with ʔaǰamnik on laws relating to ʔaǰam lands; and
- (d) attending and participating in ʔaǰam community lands code meetings.

Role of ʔaǰam’s Legal Counsel

(4) Legal counsel is responsible for:

- (a) where instructed by the Lands Department, drafting clear, comprehensive and comprehensible laws;
- (b) where instructed by the Lands Department, identifying and resolving issues related to:
 - (i) jurisdiction and authority,
 - (ii) administrative law (such as the requirement for procedural fairness),
 - (iii) the *Canadian Charter of Rights and Freedoms*,
 - (iv) the *Canadian Human Rights Act*, and
 - (v) other federal or ʔaǰam laws; and
- (c) where instructed by the Lands Department, addressing financial, procedural and other practical implications of a proposed new law.

Summary of Law-Making Process

(5) The law making process involves six (6) and sometimes seven (7) steps, which are summarized as follows:

- (a) **Council Resolution:** First, Council must pass a Band Council Resolution setting out:
 - (i) that Council instructs the Lands Department to begin drafting a new law; and
 - (ii) the specific subject matter of the proposed new law, which must be within those areas of subject matter within Council’s authority under the *ʔaǰam Amended Land Code*.
- (b) **Research and Drafting:** The Lands Department is responsible for ensuring that research is conducted into the drafting of a law and that a draft law is developed by legal counsel with input from the Lands Committee.
- (c) **First Reading:** Council must table a draft law at a meeting of Council for consideration on whether to:

- (i) pass a Band Council Resolution to accept the draft law in principle,
 - (ii) pass a Band Council Resolution to reject the draft law, or
 - (iii) direct further work on the draft law and specify a return date to re-table the draft law at a future Council Meeting,
- (d) **Second Reading / Community Land Code Meeting:** If Council has accepted a draft law in principle, they must:
- (i) schedule and hold a ᑭᓱᓴᓄᓐ community lands code meeting to consult with ᑭᓱᓴᓄᓐ on the draft law, and
 - (ii) invite ᑭᓱᓴᓄᓐ to provide written comments to Council on the draft law;
- (e) **Final Draft Law:** Council must ensure that a final draft of a proposed law is prepared taking into consideration:
- (i) the comments received from ᑭᓱᓴᓄᓐ during the second reading / written comment period,
 - (ii) the needs of ᑭᓱᓴᓄᓐ, and
 - (iii) any other relevant matters;
- (f) **Third Reading:** Council must consider a final draft law and:
- (i) pass a Band Council Resolution to enact the final draft law,
 - (ii) pass a Band Council Resolution to reject the final draft law,
 - (iii) direct changes to the final draft law,
 - (iv) direct that a ᑭᓱᓴᓄᓐ community lands code meeting be scheduled for consideration of the final draft law by ᑭᓱᓴᓄᓐ (in which case Council must complete a second third reading of the final draft law following the ᑭᓱᓴᓄᓐ community lands code meeting and, if necessary, further edits to the final draft law), or
 - (v) if required by the *ᑭᓱᓴᓄᓐ Amended Land Code*, direct that a meeting of members or ratification vote be held to seek member's approval of the final draft law; and
- (g) **meeting of members / ratification vote (if required):** Council must hold a meeting of members or ratification vote.

What is a Community Land Code Meeting?

(6) A ᑲᓱᓴᓄᓐ community lands code meeting is a meeting held by and at the initiative of Council, the Lands Department, or the Lands Committee to consult with ᑲᓱᓴᓄᓐ on draft laws, additions to reserve lands and any other matter related to ᑲᓱᓴᓄᓐ lands that Council, the Lands Department or the Land Committee deems necessary. Section 10 of the *ᑲᓱᓴᓄᓐ Amended Land Code* sets out the mandatory procedures that must be complied with in the calling and holding of a ᑲᓱᓴᓄᓐ community lands code meeting.

(7) During the second reading in the law-making process, a ᑲᓱᓴᓄᓐ community lands code meeting is required to ensure Council considers ᑲᓱᓴᓄᓐ input into draft laws. At the ᑲᓱᓴᓄᓐ community lands code meeting the purpose and provisions of the draft law are explained to ᑲᓱᓴᓄᓐ by Council, the Lands Department, or its representatives and then ᑲᓱᓴᓄᓐ are invited to ask questions and provide comments on the draft law. In some circumstances, and at their own discretion, Council may decide to hold a second ᑲᓱᓴᓄᓐ community lands code meeting prior to their consideration of whether to approve a final draft of a law.

Meetings of Members

(8) A meeting of members is a meeting held by Council, the Lands Department, or its representatives. ᑲᓱᓴᓄᓐ who attend the meeting and are eligible voters may vote on the final draft law. If ᑲᓱᓴᓄᓐ vote in favour of the law, it is enacted on the date of its approval, and has the same force and effects as a law enacted by a Band Council Resolution.

(9) A meeting of members is required for the enactment of:

(a) a *ᑲᓱᓴᓄᓐ Community Land Use Plan, 2016* or substantive amendment to a *ᑲᓱᓴᓄᓐ Community Land Use Plan, 2016* that does not purport to develop or delete a cultural heritage site from the *ᑲᓱᓴᓄᓐ Community Land Use Plan, 2016* (such amendments require prior approval by ratification vote);

(b) a spousal property law;

(c) a substantive amendment to the *ᑲᓱᓴᓄᓐ Amended Land Code*; and

(d) any class of law that Council declares to be subject to a vote at a meeting of members by Band Council Resolution.

(10) If approval from ᑲᓱᓴᓄᓐ at a meeting of members is required to enact a law, Council may pass a Band Council Resolution allowing such approval to instead be obtained by:

(a) mail-in ballots and phone-in ballots, in which case the law must be considered approved only if:

- (i) at least ten percent (10%) of eligible voters cast a ballot, and
 - (ii) the majority of eligible voters who cast a ballot vote in favor of the law, or
- (b) a ratification vote.
- (11) For approval of a law at a meeting of members:
- (a) the quorum for the meeting of members must be ten percent (10%) of eligible voters;
 - (b) at least ten percent (10%) of eligible voters must cast a ballot, either in person at the meeting or by mail-in ballot or phone in ballot; and
 - (c) the majority of eligible voters who cast a ballot must vote in favour of the law.

Ratification Votes

- (12) A ratification vote is a process by which members vote to either approve or oppose the enactment of a law. Approval by a ratification vote must be obtained for:
- (a) developments on a cultural heritage site designated in an *ᑭᓄᓄᓄ Community Land Use Plan, 2016*;
 - (b) voluntary exchanges of lands as part of the addition to reserve process of *ᑭᓄᓄᓄ* lands;
 - (c) amendments to the Individual Agreement that reduce the amount of funding provided by Canada; and
 - (d) any law or class of law that Council, by resolution, declares to be subject to this section.

- (13) For approval of a law at a ratification vote:

- (a) at least a majority of eligible voters must participate in the vote; and
- (b) at least a majority of registered voters must vote to approve the law.

Use of Voter's List

- (14) A member's address and personal information that is on a Voter's List must only be used by the Lands Department, and any person appointed by Council to conduct a vote in relation to a law, for the purpose of providing notices, mail-in ballots or other voting documents. Any other use of a member's address and personal information requires the member's consent to first be obtained.

Section 5 Process for Drafting Laws

Council Resolution

(1) To initiate the law-making process, Council must pass a Band Council Resolution setting out:

(a) that Council instructs the Lands Department to begin drafting a new law; and

(b) the specific subject matter of the proposed new law, which must be within those areas of subject matter within Council's authority under the *ᑭᓄᓄᓄ Amended Land Code*.

(2) There are three things Council must consider before passing a Band Council Resolution to initiate the law-making process:

(a) **Authority:** Although Council may direct the drafting of a law on any matter, this does not mean that such laws will be recognized as enforceable by external law enforcement personnel, including the police and courts. For a law to be enforceable, Council must have authority to draft the law pursuant to the *ᑭᓄᓄᓄ Amended Land Code*;

(b) **Resources:** The development of a law is a long process requiring the time of Council, Lands Department staff and the Lands Committee, the organization and holding of *ᑭᓄᓄᓄ* community lands code meetings, the hiring of legal counsel, consultation with third party agencies such as the First Nation Land Registry, First Nation Land Advisory Board Resources Center and INAC, and in some cases the organization and holding of a meeting of members or ratification vote; and

(c) **Best Interests of ᑭᓄᓄᓄ:** The Council has a fiduciary duty to act in the best interests of *ᑭᓄᓄᓄ*.

Drafting Instructions

(3) In some cases, drafting instructions may be prepared by the Lands Department and provided to Council for approval. In other cases, Council must, at its own initiative, provide the Lands Department with drafting instructions. Regardless of how the drafting instructions are initially developed, they should contain a plain language summary of the following information:

(a) **Background Information:** This includes information on the problem or initiative that is to be addressed in the law and information on how that problem or initiative arose. References should be made to additional sources of information that are useful

to the Lands Department and legal counsel in understanding the problems or initiatives;

(b) **Objectives:** This is a description of the purpose of the law; and

(c) **How the Proposed Law Will Achieve the Objectives:** This includes a description of how the objectives of the law must be achieved and which ᑎᓐᓇᓇᓇ departments will be affected by the law. How must the law work? What powers and duties should be set out in the law? What processes should the law include? Are there relevant reports that should be considered in the drafting? Are there laws in other jurisdictions that Council wants to see elements of in the ᑎᓐᓇᓇᓇ law? What are the proposed timeframes for the development of the law?

(4) Drafting instructions are instructions only. The Lands Department must work with legal counsel to prepare a draft law based on those instructions. In doing so, the Lands Department and legal counsel should avoid attempting to keep specific language, words or expressions in the drafting process. Rather, the focus should be on putting the objectives of the law into action in a way that addresses the problem or promotes the initiative.

Research and Drafting

(5) In drafting a law, either the Lands Department or legal counsel must conduct research into and consider:

(a) the scope of ᑎᓐᓇᓇᓇ law-making jurisdiction, including the powers of ᑎᓐᓇᓇᓇ under the Framework Agreement, Individual Agreement, *First Nations Land Management Act*, *ᑎᓐᓇᓇᓇ Amended Land Code* and section 35 of the *Constitution Act, 1982*;

(b) similar laws and processes that are followed in other jurisdictions, including the provinces, the federal government, other nation-states and other First Nations (whether they are under treaty or the *Indian Act*);

(c) any transitional problems, such as the impact of a new law on any existing rights or expectations of members in relation to an interest they claim to have in or to ᑎᓐᓇᓇᓇ lands that will be affected by the new law;

(d) any administrative law requirements that must be considered in the drafting, such as the requirement for procedural fairness; and

(e) whether anything in the drafting instructions may involve issues related to the *Canadian Charter of Rights and Freedoms*, the *Canadian Human Rights Act* or any other relevant federal or ᑎᓐᓇᓇᓇ laws.

(6) Draft laws must be developed by the Lands Department, with input from the Lands Committee and at minimum a review by legal counsel.

First Reading

(7) Upon completion of a draft law, Council must table it at a regular meeting of Council and pass a Band Council Resolution to:

(a) accept the draft law in principle;

(b) reject the draft law; or

(c) direct that further work be completed on the draft law and set a date to re-table the draft law.

(8) If Council resolves to reject a draft law they must ensure that the Band Council Resolution regarding the rejection:

(a) sets out the reasons for the rejection;

(b) is clearly documented in the Council meeting minutes; and

(c) is available to members by request.

(9) If Council directs that further work be completed on a draft law and sets a date to re-table it, the Lands Department must ensure that such further work is completed and provide it to Council for reconsideration before the date on which Council decided to re-table it.

Second Reading / Community Land Code Meeting

(10) If Council accepts a draft law in principle, the Lands Department must schedule a ᑭᓄᓐ community lands code meeting for the purpose of consulting with ᑭᓄᓐ on the draft law.

(11) Council must provide written notice of a ᑭᓄᓐ community lands code meeting to all eligible voters at least ten (10) business days before the date of the meeting by:

(a) either:

(i) delivering or mailing the written notice to all eligible voters at their last known addresses, or

(ii) publicising the written notice in a ᑭᓄᓐ newsletter that is delivered or mailed to all eligible voters at their last known address; and

(b) posting the written notice in a public area of all ᑭᓄᓐ administration offices.

- (12) A written notice of a ᑭᓱᓱᓱ community lands code meeting must include:
- (a) the date, time and location of the ᑭᓱᓱᓱ community lands code meeting;
 - (b) a summary of the draft law;
 - (c) notification that a full copy of the draft law may be obtained by ᑭᓱᓱᓱᓱᓱ at the ᑭᓱᓱᓱ administration building or at the ᑭᓱᓱᓱ community lands code meeting;
 - (d) an invitation for ᑭᓱᓱᓱᓱ to provide written comments to Council on the draft law;
 - (e) the return date by which ᑭᓱᓱᓱᓱ shall provide written comments to Council, which date must be at least twenty (20) business days from the date of the ᑭᓱᓱᓱ community lands code meeting; and
 - (f) the ᑭᓱᓱᓱ community lands code meeting may be advertised or referred to in the written notice by the name of the draft law being discussed.

(13) At a ᑭᓱᓱᓱ community lands code meeting, either Council or the Lands Department must:

- (a) make copies of the draft law available to all ᑭᓱᓱᓱᓱᓱ who attend the meeting;
- (b) ensure that the purpose and provisions of the draft law are explained to all ᑭᓱᓱᓱᓱᓱ who attend the meeting;
- (c) invite questions and comments by ᑭᓱᓱᓱᓱᓱ who attend the meeting; and
- (d) ensure the questions and comments by ᑭᓱᓱᓱᓱᓱ are documented for Council to consider.

(14) As soon as practical before the Council meeting following the twentieth (20th) business day after a ᑭᓱᓱᓱ community lands code meeting in relation to a draft law, the Lands Department must compile all questions and written comments that have been provided by ᑭᓱᓱᓱᓱᓱ and provide each member of Council a copy of those comments.

Finalize The Draft Law

(15) At the Council meeting following the twentieth (20th) business day after a ᑭᓱᓱᓱ community lands code meeting in relation to a draft law, Council must:

- (a) consider any comments received from ᑭᓱᓱᓱᓱᓱ;
- (b) consider the needs of ᑭᓱᓱᓱᓱᓱ;

(c) consider any other relevant matters; and

(d) either:

(i) provide instructions to the Lands Department on changes to the draft law so that the Lands Department can prepare a final draft law, or

(ii) accept the draft law as the final draft law and move on to the third reading.

(16) If Council provides instructions to the Lands Department on changes to a draft law, the Lands Department must work with legal counsel to prepare a final draft law for Council consideration at a third reading.

Third Reading

(17) Council must consider a final draft law at a regular meeting of the Council and do one of the following:

(a) pass a Band Council Resolution to enact the final draft law;

(b) pass a Band Council Resolution to reject the final draft law;

(c) direct that further work be completed on the final draft law and set a date to re-table it;

(d) direct that a ᑭᐱᑦᐱᑦᐱᑦ community lands code meeting being scheduled for further consideration of the final draft law by ᑭᐱᑦᐱᑦᐱᑦ; or

(e) if required, direct that a meeting of members or ratification vote be arranged to seek ᑭᐱᑦᐱᑦᐱᑦ approval of the final draft law.

(18) If, at a third reading of a final draft law, Council:

(a) passes a Band Council Resolution to enact it, the final draft law is enacted and is enforceable on the date of that resolution;

(b) passes a Band Council Resolution to reject it, the final draft law is deemed not to have been enacted and must be initiated as a separate draft law to be considered again. In such circumstances, Council must ensure that the Band Council Resolution regarding the rejection:

(i) sets out the reasons for the rejection;

(ii) is clearly documented in the Council meeting minutes; and

(iii) is available to members by request;

(c) directs that further work be completed on the draft law and sets a date to re-table it, the Lands Department must ensure that such further work is completed and provide it to Council for reconsideration before the date on which Council decided to re-table it;

(d) directs that a ᐱᐱᐱ community lands code meeting be scheduled for consideration of the final draft law by ᐱᐱᐱ, the Lands Department must:

(i) in accordance with the processes for ᐱᐱᐱ community lands code meetings set out in this policy and the *ᐱᐱᐱ Amended Land Code*, provide written notice to ᐱᐱᐱ regarding the ᐱᐱᐱ community lands code meeting and conduct the ᐱᐱᐱ community lands code meeting, and

(ii) bring the final draft law back to Council for an additional third reading; or

(e) directs that a meeting of members or ratification vote be arranged to seek member's approval of the final draft law, such directions must either:

(i) instruct the Lands Department to call and hold a meeting of members to vote on the final draft law,

(ii) set out that instead of a meeting of members, the final draft law be voted on by:

(A) mail-in and phone-in ballots in accordance with the same standards of quorum and approval that apply at a meeting of members; or

(B) a ratification vote; or

(iii) instruct the Lands Department to call and hold a ratification vote for members to vote on the final draft law.

Process for Meeting of Members

Setting the Date for a Meeting of Members and Vote

(19) Where Council instructs the Lands Department to call and hold a meeting of members to vote on a final draft law, Council must set a date for the meeting of members and vote to take place.

Appointment of the ᐱᐱᐱ Land Law Voting Officer

(20) No less than thirty-five (35) days before a meeting of members and vote is scheduled to be held, Council must appoint an ᐱᐱᐱ Land Law Voting Officer by Band Council Resolution.

(21) A Band Council Resolution for the appointment of an ᐱᐱᐱ Land Law Voting Officer must contain:

- (a) the full name and address of the person being appointed;
- (b) whether the person being appointed has the power to appoint an Assistant Ṣaqam Land Law Voting Officer;
- (c) the name of the law that must be considered at the meeting of members and vote;
- (d) the date of the meeting of members and vote;
- (e) the methods of voting that must be used (in person at the meeting of members and vote, by mail-in ballot, and/or by phone ballot); and
- (f) any special instructions regarding the meeting of members and vote that Council deems necessary in the circumstances, which may include instructions for more than one meeting of members and vote to be scheduled.

(22) Any Ṣaqam Land Law Voting Officer and any Assistant Ṣaqam Land Law Voting Officer must be a person who:

- (a) is not a member;
- (b) is not a member of Council;
- (c) has no vested interest in the outcome of the meeting of members and vote; and
- (d) is at least 21 years of age.

Oath of Office

(23) An Ṣaqam Land Law Voting Officer must swear an oath of office in Form 1-2-01: Oath of Office.

(24) If an Ṣaqam Land Law Voting Officer is authorized by Council to appoint an assistant, that assistant is also required to swear an oath of office in Form 1-2-01: Oath of Office.

Voter's List

(25) At least thirty-five (35) days before a meeting of members and vote, the membership clerk must provide the Ṣaqam Land Law Voting Officer with the names, birth dates, addresses and membership numbers for all members who will have attained the age of eighteen (18) years on the date of the meeting of members and vote.

Written Notice of Meeting of Members and Vote

(26) At least twenty-eight (28) days before a meeting of members and vote on a final draft law is to be held, the ʔaḳam Land Law Voting Officer must complete and provide all eligible voters with Form 1-2-02: Notice of Meeting and Vote, by:

(a) either:

(i) delivering or mailing Form 1-2-02: Notice of Meeting and Vote to all eligible voters at their last known addresses, or

(ii) publicizing Form 1-2-02: Notice of Meeting and Vote in the ʔaḳam newsletter and delivering or mailing that newsletter to all eligible voters at their last known addresses; and

(b) posting the Form 1-2-02: Notice of Meeting and Vote in a public area of the ʔaḳam administration offices.

(27) A completed Form 1-2-02: Notice of Meeting and Vote must contain the following information:

(a) the date, place and time of the meeting of members and vote;

(b) a summary of the law to be discussed and voted on at the meeting of members and vote;

(c) the ballot question that must be voted on at the meeting of members and vote;

(d) instructions for obtaining a copy of the final draft law; and

(e) the name and contact information for the Lands Department personnel who may be contacted by ʔaḳamnik regarding questions that pertain to the final draft law.

Obtaining Copies of the Final Draft Law

(28) The Lands Department must ensure that sufficient copies of a final draft law are available at the ʔaḳam Administration Office for ʔaḳamnik.

(29) Upon request from ʔaḳamnik, the Lands Department must provide a copy of the final draft law free of charge.

Preliminary Procedures

(30) The ʔaḳam Land Law Voting Officer, in consultation with Council and the Lands Department, must:

(a) designate the place of each voting station and the number of designated voting compartments that must be present at each voting station;

- (b) prepare sufficient copies of the ballots, which must be:
 - (i) uniform in size, appearance, quality and weight,
 - (ii) folded in a manner that conceals the ballot question and answer boxes, and
 - (iii) initialled by the Ḥaqam Land Law Voting Officer;
- (c) prepare sufficient copies of the voter's list;
- (d) prepare sufficient copies of the voting instructions;
- (e) obtain a sufficient number of ballot boxes;
- (f) ensure each designated voting compartment at each voting station:
 - (i) is set up so the voter can mark the ballot free from observation,
 - (ii) is supplied with a sufficient number of pens and pencils for marking the ballots, and
 - (iii) has posted within it a sample of the ballot question for examination by voters.

Distribution of Mail In Ballot Packages

(31) At least twenty-one (21) days prior to the date on which a meeting members and vote is to be held, the Ḥaqam Land Law Voting Officer or the Lands Department must mail every eligible voter a ballot package which includes:

- (a) a ballot, initialled on the back by the Ḥaqam Land Law Voting Officer;
- (b) an inner postage-paid return envelope, pre-addressed to the Ḥaqam Land Law Voting Officer;
- (c) a second inner envelope marked "secrecy envelope" for insertion of the completed ballot;
- (d) an identification envelope for insertion of the secrecy envelope, which must set out the name of the eligible voter, their membership number and date of birth, and a declaration that the eligible voter confirms the enclosed ballot is theirs;
- (e) a letter of instruction setting out:
 - (i) a statement that advises eligible voters they may vote in person at the meeting of members on the day of the meeting of members and vote, by mail-in ballot, or by phone-in ballot;

- (ii) the process for voting by mail-in ballot;
 - (iii) the process for voting by phone-in ballot; and
 - (iv) referencing the attached Form 1-2-02: Notice of Meeting and Vote to which the voting package relates; and
- (f) a copy of Form 1-2-02: Notice of Meeting and Vote.

Documentation Requirements

(32) The ᑭᓱᓱᓱ Land Law Voting Officer or the Lands Department must document beside each eligible voter's name on the voter's list that a mail-in ballot has been sent to that eligible voter.

Declaration of Closed Meeting

(33) Council may declare, by Band Council Resolution, before the beginning of a meeting of members that the meeting of members is a closed meeting and that only ᑭᓱᓱᓱ and specified persons may attend.

(34) If Council declares a meeting of members to be a closed meeting:

- (a) Council must provide a copy of the Band Council Resolution to the ᑭᓱᓱᓱ Land Law Voting Officer; and
- (b) the ᑭᓱᓱᓱ Land Law Voting Officer must ensure that only ᑭᓱᓱᓱ and specified persons are allowed entry into the meeting location.

Conducting a Vote at a Meeting of Members

(35) The ᑭᓱᓱᓱ Land Law Voting Officer must conduct voting at a meeting of members by providing eligible voters the opportunity to cast votes:

- (a) in person at the meeting by secret ballot;
- (b) by phone-in ballot; and
- (c) by mail-in ballots.

(36) The polls must be kept open for a minimum of 8 (eight) hours on the date of a meeting of members.

(37) Voting in person must be by secret ballot.

(38) No eligible voter may vote by proxy or authorize another person to vote on his or her behalf.

(39) Immediately before a vote at a meeting of members commences, the ᑲᓱᓱᓱ Land Law Voting Officer must:

(a) open each ballot box and call such persons as may be present to:

(i) witness that the ballot box is empty,

(ii) witness the ᑲᓱᓱᓱ Land Law Voting Officer sealing the ballot box and placing his or her signature on the seal of the ballot box, and

(iii) complete Form 1-2-03: Statement of Witness;

(b) properly seal the ballot box and place his/her signature on the seal in front of the witness; and

(c) place the ballot box in public view for the reception of the ballots.

Voting by Mail-in Ballot

(40) An eligible voter must vote by mail-in ballot by:

(a) placing an "X" or other mark on their ballot that clearly indicates their choice but does not identify them;

(b) folding the ballot in a manner that conceals the mark but exposes the ᑲᓱᓱᓱ Land Law Voting Officer's initials;

(c) placing the ballot in the secrecy envelope and sealing the envelope;

(d) enclosing and sealing the secrecy envelope in the identification envelope;

(e) completing and signing the outside of the identification envelope;

(f) enclosing and sealing the identification envelope in the inner postage paid envelope; and

(g) delivering, mailing, or otherwise ensuring their ballot is received by the ᑲᓱᓱᓱ Land Law Voting Officer before the close of the polls on the day of the meeting of members.

Voting by Phone-in Ballot

(41) The ᑲᓱᓱᓱ Land Law Voting Officer, or their assistant, must be present at the ᑲᓱᓱᓱ Administration Office during polling hours on the day of a meeting of members to take votes by phone.

(42) The Lands Department is responsible for working with the Ḥaqām Land Law Voting Officer to ensure that appropriate telecommunications arrangements are made to enable phone-in voting.

(43) An eligible voter may vote by phone-in ballot by:

(a) calling the Ḥaqām Administration Office during polling hours on the day of a meeting of members and requesting to vote by phone;

(b) providing his or her name, membership number and date of birth to the Ḥaqām Land Law Voting Officer or the assistant at the Ḥaqām Administration Office; and

(c) telling the Ḥaqām Land Law Voting Officer the eligible voter's vote.

(44) Where an eligible voters votes by phone-in ballot, the Ḥaqām Land Law Voting Officer must:

(a) confirm eligible voter information;

(b) in confidence:

(i) mark a ballot according to the eligible voter's wishes;

(ii) ensure the ballot is initialled by the Ḥaqām Land Law Voting Officer, and

(iii) place the ballot in the ballot box; and

(c) highlight on the voter's list the name of every person who proceeds to place a vote by phone-in ballot procedures.

In Person Voting Procedure at Meeting of Members

(45) When a person at the poll requests to vote, the Ḥaqām Land Law Voting Officer must:

(a) ensure the person is an eligible voter;

(b) check the voters list to ensure that the person has not already voted;

(c) mark a ballot with his or her initials;

(d) provide the eligible voter with the ballot; and

(e) upon request, explain the method of voting.

(46) After receiving a ballot, an eligible voter must:

- (a) proceed immediately to the designated voting compartment;
- (b) place an “X” or other mark on the ballot that clearly indicates their choice;
- (c) fold the ballot in a manner that conceals the ᑭᓱᓴᓄᓄ Land Law Voting Officer’s initials;
- (d) proceed to the ballot box and, before depositing the ballot into the ballot box, allow the ᑭᓱᓴᓄᓄ Land Law Voting Officer to confirm his or her initials on the ballot.

(47) The ᑭᓱᓴᓄᓄ Land Law Voting Officer must:

- (a) verify his or her initials without unfolding the ballot;
- (b) request the voter to deposit the ballot in the ballot box; and
- (c) after the ballot is placed in the ballot box, highlight on the voter’s list the name of every person who proceeds to place a vote by in person voting procedures.

(48) If a voter is provided a ballot to vote in person but fails to return that ballot to be placed in the ballot box, the ᑭᓱᓴᓄᓄ Land Law Voting Officer must mark beside that voter’s name on the voter’s list that the person failed to return the ballot.

Special Assistance to Vote In-Person

(49) The ᑭᓱᓴᓄᓄ Land Law Voting Officer must, on request, provide special assistance to an eligible voter by:

- (a) confirming eligible voter information;
- (b) in confidence:
 - (i) marking a ballot according to the eligible voter’s wishes,
 - (ii) initialling the ballot, and
 - (iii) placing the ballot in the ballot box;
- (c) making an entry on the voters list adjacent to the name of the voter indicating that the ballot was marked by the ᑭᓱᓴᓄᓄ Land Law Voting Officer at the request of the voter and the reason for the request; and
- (d) highlight on the voter’s list the name of every eligible voter for whom the ᑭᓱᓴᓄᓄ Land Law Voting Officer enters a ballot in the ballot box.

Voting Irregularities

(50) A voter who receives a spoiled or improperly printed ballot, or who accidentally spoils his or her ballot when marking it, is entitled to receive another ballot from the Ḥaqām Land Law Voting Officer after returning the original ballot.

Closing the Polls

(51) At the time set for closing the polls, the Ḥaqām Land Law Voting Officer must declare the polls closed, and entry must be denied to the voting station.

(52) Every voter who is inside the polling station at the time set for closing the poll must be entitled to vote before the poll is closed.

Placing of Mail-In Votes in the Ballot Box

(53) The Ḥaqām Land Law Voting Officer shall, in the presence of a witness, open each envelope containing a mail-in ballot that was received before the close of the polls and, without unfolding the ballot:

(a) reject the ballot if:

(i) the identification envelope is not signed,

(ii) the name of the voter is not on the voter's list,

(iii) the voters list shows that the eligible voter has already voted, or

(iv) the ballot does not contain the Ḥaqām Land Law Voting Officer's initials, and

(b) in any other case:

(i) deposit the ballot in the ballot box, and

(ii) highlight on the voter's list the name of every eligible voter for whom the Ḥaqām Land Law Voting Officer enters a mail-in ballot in the ballot box.

Counting / Tally of Votes

(54) The Ḥaqām Land Law Voting Officer must supply all persons present, and who so request, with a tally sheet to keep their own tally of the votes.

(55) The Ḥaqām Land Law Voting Officer must:

(a) unseal the ballot box in the presence of a witness;

(b) take each ballot out of the ballot box one at a time;

(c) count out loud whether each ballot is:

(i) marked "YES",

(ii) marked "NO",

(iii) a spoiled ballot; or

(iv) a rejected ballot because it is:

(A) not marked as either "YES" or "NO",

(B) marked as both "YES" and "NO",

(C) not marked in the appropriate box marked "YES" or "NO",

(D) not initialled by the ᑭᓐᓇᓂᓄᓐ Land Law Voting Officer, or

(E) has any writing or mark which can identify the voter.

(56) The ᑭᓐᓇᓂᓄᓐ Land Law Voting Officer must ensure that the result of each ballot is marked on a tally sheet.

(57) After reading out the result of each ballot, the ᑭᓐᓇᓂᓄᓐ Land Law Voting Officer must count on the tally sheet the number of ballots that are:

(a) spoiled;

(b) rejected;

(c) marked "YES", and

(d) marked "No",

and announce the result of each such category out loud.

Certification by Voting Officer

(58) Following the counting of votes and announcement of the results from a vote, the ᑭᓐᓇᓂᓄᓐ Land Law Voting Officer must complete and sign Form 1-2-04: Certification of Meeting of Members Vote Results.

Maintenance of Ballots Post-Vote

(59) The ᑭᓱᓱᓱ Land Law Voting Officer must seal in separate envelopes the spoiled ballots, the rejected ballots, the ballots cast in favour and the ballots cast against.

(60) The ᑭᓱᓱᓱ Land Law Voting Officer must then affix his or her signature to the seals and must retain the ballots for at least forty-five (45) days from the date on which the meeting of members was held, after which time the ᑭᓱᓱᓱ Land Law Voting Officer may destroy the ballots.

Process for Ratification Vote

Band Council Resolution and Appointment of ᑭᓱᓱᓱ Land Law Voting Officer

(61) Where Council, instructs the Lands Department to arrange for a ratification vote to be held, Council must also pass a Band Council Resolution that contains:

- (a) the full name and address of the person being appointed as the ᑭᓱᓱᓱ Land Law Voting Officer;
- (b) the name of the law that must be considered at the ratification vote; and
- (c) the date of the ratification vote.

(62) The ᑭᓱᓱᓱ Land Law Voting Officer must be a person who:

- (a) is not a member;
- (b) has no vested interest in the outcome of the ratification vote; and
- (c) is at least twenty-one (21) years of age.

Appointment of Assistant ᑭᓱᓱᓱ Land Law Voting Officer(s)

(63) The ᑭᓱᓱᓱ Land Law Voting Officer may appoint one or more Assistant ᑭᓱᓱᓱ Land Law Voting Officers and may delegate any of the duties set out in the Ratification Process to such an Assistant, except:

- (a) the initialing of ballots;
- (b) the deposit of the mail-in ballots in the ballot box; and
- (c) the counting of ballots.

Oath of Office

(64) Upon the appointment of an Assistant ᑭᓱᓱᓱ Land Law Voting Officer, the ᑭᓱᓱᓱ Land Law Voting Officer and each such Assistant ᑭᓱᓱᓱ Land Law Voting Officer must execute a Form 1-2-01: Oath of Office.

Voter's List

(65) At least forty-five (45) days before a ratification vote, the membership clerk must provide the ᑭᓱᓱᓱ Land Law Voting Officer with a list of the names, birth dates, addresses and membership numbers for all members who must have attained the age of eighteen (18) years on the date of the ratification vote.

Notice of Vote

(66) At least forty (40) days prior to a ratification vote, the ᑭᓱᓱᓱ Land Law Voting Officer must:

- (a) post in a public place at the ᑭᓱᓱᓱ Administration Office a completed Form 1-2-05: Notice of Land Law Vote; and
- (b) send the following information to each member on the voter's list at the member's last known address:
 - (i) a completed Form 1-2-05: Notice of Land Law Vote,
 - (ii) Form 1-2-06: Voter Registration,
 - (iii) a prepaid return envelope,
 - (iv) a copy of the law that must be voted on for ratification, and
 - (v) a summary of the law that must be voted on for ratification.

(67) The Form 1-2-05: Notice of Land Law Vote must contain the following information:

- (a) the date, place and time of the vote on the final draft law;
- (b) the ballot question;
- (c) the procedure for registering as a registered voter;
- (d) the date by which an eligible voter must return their Form 1-2-06: Voter Registration to the ᑭᓱᓱᓱ Land Law Voting Officer if that person wishes to vote by mail-in ballot, which date must be at least twenty-one (21) days before the ratification vote;
- (e) instructions for obtaining a copy of the law, the Framework Agreement and the *First Nations Land Management Act*; and

- (f) the name, office address and telephone number of the ᑭᓱᓱᓱ Land Law Voting Officer.

Third Party Notifications

(68) At least forty (40) days prior to a ratification vote the Lands Department must provide the following information to each person who holds a registered interest in ᑭᓱᓱᓱ lands but is not ᑭᓱᓱᓱᓱᓱ:

- (a) the date of the ratification vote;
- (b) a notice from ᑭᓱᓱᓱ explaining the effect of the law on interests in ᑭᓱᓱᓱ lands that are held by third parties;
- (c) a summary of the law; and
- (d) the name, office address and telephone number of the person at the Lands Department who may be contacted to obtain either a copy of the law or further information about the management of ᑭᓱᓱᓱ lands.

Voter Registration

(69) An eligible voter who wishes to vote in the ratification vote must register with the ᑭᓱᓱᓱ Land Law Voting Officer by:

- (a) completing and signing Form 1-2-06: Voter Registration;
- (b) having a person witness the eligible voter's signature;
- (c) having the witness sign Form 1-2-06: Voter Registration; and
- (d) returning Form 1-2-06: Voter Registration to the ᑭᓱᓱᓱ Land Law Voting Officer by mail, courier, hand delivery or facsimile.

(70) An eligible voter's Form 1-2-06: Voter Registration must be received by the ᑭᓱᓱᓱ Land Law Voting Officer no later than the close of the polls on Voting Day for that eligible voter to be allowed to vote in person.

(71) Where a member wishes to vote by mail-in ballot, their Form 1-2-06: Voter Registration must be received by the ᑭᓱᓱᓱ Land Law Voting Officer no later than the deadline set out in the Form 1-2-05: Notice of Land Law Vote.

Maintenance of Registered Voters List

(72) The ᐱᐱᐱ Land Law Voting Officer must maintain an updated registered voters list setting out the names of all eligible voters who have returned a valid voter registration document in accordance with this policy.

Preliminary Procedures

(73) The ᐱᐱᐱ Land Law Voting Officer, in consultation with Council, must:

- (a) designate the polling places;
- (b) prepare sufficient copies of regular ballots and mail-in ballots, which must be uniform in size, appearance, quality and weight;
- (c) prepare sufficient copies of the secrecy envelopes, the identification envelopes, and the return envelopes;
- (d) prepare sufficient copies of the voting instructions;
- (e) obtain a sufficient number of ballot boxes;
- (f) provide for a designated voting area at the polls such that a registered voter can mark a ballot free from observation;
- (g) provide a sufficient number of lead pencils and blue or black ink pens for marking the ballot; and
- (h) ensure that samples of the Ballot Question are posted or available for examination at the polls.

Distribution of Mail-in Ballot Packages

(74) The ᐱᐱᐱ Land Law Voting Officer must, at least twenty-one (21) days prior to the date on which a ratification vote is to be held, mail every registered voter who indicates on their Form 1-2-06: Voter Registration that they wish to vote by mail-in vote, a ballot package that includes:

- (a) a ballot, initialled on the back by the ᐱᐱᐱ Land Law Voting Officer;
- (b) an inner postage-paid return envelope, pre-addressed to the ᐱᐱᐱ Land Law Voting Officer;
- (c) a second inner envelope marked “secrecy envelope” for insertion of the completed ballot;

(d) an identification envelope for the insertion of the secrecy envelope, which must set out the name of the registered voter, their membership number and date of birth, and a declaration that the registered voter confirms the enclosed ballot is theirs; and

(e) a letter of instruction setting out the process for voting by mail-in ballot and the process for voting in person on ratification day, should the registered voter decide to vote in person instead of by mail-in ballot.

(75) The Ḥaqām Land Law Voting Officer must make a mark on the registered voter’s list beside the name of each registered voter who is sent a ballot package, indicating that the registered voter was sent a ballot package.

Voting by Mail-in Ballot

(76) To cast a mail-in ballot, a registered voter must:

(a) mark the ballot by placing a cross (“X”) in the box marked “YES” or in the box marked “NO”;

(b) enclose and seal the ballot in the secrecy envelope;

(c) enclose and seal the secrecy envelope in the identification envelope;

(d) complete and sign the outside of the identification envelope;

(e) enclose and seal the identification envelope in the prepaid mailing envelope; and

(f) either:

(i) deliver the sealed mailing envelope to the Ḥaqām Land Law Voting Officer by mail, courier or hand delivery no later than the close of the polls on the date of the ratification vote, or

(ii) arrange to have the mail-in ballot picked up by an Assistant Ḥaqām Land Law Voting Officer on the date of the ratification vote to be delivered to the Ḥaqām Land Law Voting Officer.

(77) After the Ḥaqām Land Law Voting Officer has received a mail-in ballot, the Ḥaqām Land Law Voting Officer must:

(a) confirm that the sender of the mail-in ballot is a registered voter by checking if their name is on the registered voters list;

(b) record the date when the mail-in ballot package was received on the registered voter’s list next to the name of the registered voter;

(c) confirm that no other mail-in ballot package has been received from the registered voter; and

(d) store the mail-in ballot package in a secure location until the date of the ratification vote.

Conducting the Vote

(78) The polls must be open for a period of eight (8) consecutive hours between 9:00 a.m. and 9:00 p.m. on the date of the ratification vote.

(79) All voting at the polls must be by secret ballot.

(80) The Ḥaqām Land Law Voting Officer is responsible for determining whether a person is an eligible voter and a registered voter.

(81) At each poll, the Ḥaqām Land Law Voting Officer must:

(a) before the first vote is cast, open each ballot box and request a registered voter to witness that the ballot box is empty;

(b) thereupon seal each ballot box and place his or her signature on the seal in front of the witness, and ask the witness to place his or her signature on the seal;

(c) keep the ballot box in view for reception of ballots;

(d) execute a Form 1-2-07: Declaration of Ḥaqām Land Law Voting Officer; and

(e) ensure that each witness executes a Form 1-2-03: Statement of Witness.

(82) Where there is more than one poll, the Ḥaqām Land Law Voting Officer must establish a process of ongoing communication by telephone or other effective means between all of the polls so as to ensure that the registered voter's list located at each poll is updated and current throughout the day of the ratification vote.

Voting In Person

(83) When a person at a poll requests to vote, the Ḥaqām Land Law Voting Officer must:

(a) ensure that the person is a registered voter;

(b) check the registered voter's list to ensure that the person has not already voted by way of an in person ballot;

(c) provide the registered voter with a ballot, on the back of which is affixed the Ḥaqām Land Law Voting Officer's initials so that the initials can be seen when the ballot is folded; and

(d) place a mark on the registered voter's List beside the name of every registered voter receiving a ballot at a poll, indicating that the person received a ballot.

(84) Upon request, the Ḥaqām Land Law Voting Officer must explain the method of voting.

(85) Every registered voter receiving a ballot at a poll must:

(a) proceed immediately to a designated voting area;

(b) mark the ballot by placing his mark in the box marked "YES" or in the box marked "NO";

(c) fold the ballot so as to conceal the mark and expose the initials of the Ḥaqām Land Law Voting Officer; and

(d) immediately give the folded ballot to the Ḥaqām Land Law Voting Officer.

(86) Upon receiving a marked ballot, the Ḥaqām Land Law Voting Officer must, without unfolding it:

(a) verify his or her initials;

(b) deposit the ballot into the ballot box; and

(c) highlight on the registered voter's list the name of the registered voter indicating that the registered voter has voted.

Special Assistance Voting

(87) A registered voter may request special assistance from the Ḥaqām Land Law Voting Officer at the polls.

(88) The Ḥaqām Land Law Voting Officer must, on request and in the presence of a witness acceptable to the registered voter and the Ḥaqām Land Law Voting Officer, provide special assistance to a registered voter at the polls by marking a ballot in secret as directed by the registered voter and immediately folding and depositing the ballot into the ballot box.

(89) The Ḥaqām Land Law Voting Officer, after providing special assistance to a registered voter, must:

(a) highlight on the registered voter's list the name of the registered voter indicating that the registered voter has voted; and

(b) make an entry on the registered voter's list opposite the name of the registered voter indicating that:

(i) that the ballot was marked by the ᲡᲗᲗᲗ Land Law Voting Officer at the request of the registered voter,

(ii) the reason for the registered voter's request, and

(iii) the name of the witness.

Spoiled Ballots

(90) A registered voter at a poll who receives a spoiled or improperly printed ballot, or who accidentally spoils a ballot when marking it, is entitled to receive another ballot from the ᲡᲗᲗᲗ Land Law Voting Officer after returning the original ballot to the ᲡᲗᲗᲗ Land Law Voting Officer.

(91) The ᲡᲗᲗᲗ Land Law Voting Officer must record a ballot returned as spoiled.

(92) A registered voter at a poll who receives a ballot and does not return it to the ᲡᲗᲗᲗ Land Law Voting Officer must forfeit the right to vote and the ᲡᲗᲗᲗ Land Law Voting Officer must make an entry on the registered voter's list stating that the registered voter left the poll without delivering the ballot and must record the ballot as cancelled.

Closing of Polls

(93) At the time set for closing the polls, the ᲡᲗᲗᲗ Land Law Voting Officer must declare the polls closed, and deny all persons entry to the polls until all registered voters remaining in the polls at that time have voted.

(94) After the close of a poll other than the poll at which the ᲡᲗᲗᲗ Land Law Voting Officer is presiding, the Assistant ᲡᲗᲗᲗ Land Law Voting Officer presiding at that poll must:

(a) seal the ballot box at that poll such that no further ballots may be deposited in that ballot box;

(b) initial the seal; and

(c) forthwith transport the sealed ballot box to the ᲡᲗᲗᲗ Land Law Voting Officer at the poll at which he or she is presiding.

Opening Mail-in Ballots

(95) On Voting Day, the ᲡᲗᲗᲗ Land Law Voting Officer must, in the presence of a witness and any registered voter who is present:

- (a) prior to 5:00 pm check with Canada Post for any additional mail-in ballots and, if any, arrange for the ᑭᓱᓱᓱᓱ Land Law Voting Officer, or their assistant to pick them up prior to the close of the polls;
- (b) after the close of the polls, open the mail in ballot package that contains all of the mail-in ballots received; and
- (c) for each mail-in ballot envelope received, check the registered voters list to determine whether the registered voter named on the envelope has already voted in person and:
 - (i) if they have already voted in person, mark the ballot as spoiled, or
 - (ii) if they have not already voted in person:
 - (A) retrieve the ballot inside of the envelope and confirm the authenticity of the ballot by checking the affixed initials, and
 - (B) without opening or showing it to any person, deposit the ballot into a ballot box used at the polls.

Counting of Votes

(96) After all mail-in ballots have been deposited in a ballot box and after all ballot boxes have been received from the polls, the ᑭᓱᓱᓱ Land Law Voting Officer must, in the presence of a witness and any registered voter who is present:

- (a) count the number of spoiled ballots;
- (b) examine all ballots contained in the ballot boxes;
- (c) reject every ballot that:
 - (i) was not supplied by the ᑭᓱᓱᓱ Land Law Voting Officer,
 - (ii) was not marked as either “YES” or “NO”,
 - (iii) was marked as both “YES” and “NO”,
 - (iv) was marked outside a box marked “YES” or “NO” such that the ᑭᓱᓱᓱ Land Law Voting Officer cannot reasonably ascertain the intent of the registered voter, or
 - (v) has any writing or mark on it that can identify the registered voter; and
- (d) count the number of ballots marked “YES”, the number of ballots marked “NO” and the number of rejected ballots.

Certification of Vote Results

(97) When the results of a ratification vote have been determined, the ᐃᓄᓄᓄ Land Law Voting Officer must execute Form 1-2-08: Certification of Ratification Vote Results.

(98) The ᐃᓄᓄᓄ Land Law Voting Officer must seal in separate envelopes:

- (a) the spoiled ballots;
- (b) the rejected ballots;
- (c) the ballots cast in favour; and
- (d) the ballots cast against,

and thereupon sign the seals of each envelope.

(99) Where mail-in ballots are received after the closing of polls, the ᐃᓄᓄᓄ Land Law Voting Officer must:

- (a) not open the envelope;
- (b) make an entry on the registered voter's list opposite the name of the registered voter indicating that the mail-in ballot envelope was received after the closing of polls and setting out the date and time that it was received; and
- (c) make a note on the outside of the mail-in ballot envelope setting out the date and time that it was received and place his or her initials beside such note.

(100) The ᐃᓄᓄᓄ Land Law Voting Officer must retain the separate envelopes containing ballots, and all mail-in ballots received after the closing of polls, for at least 60 days in his or her secure possession, and may unless otherwise instructed by Council thereafter destroy the ballots cast, including the rejected ballots, and the spoiled ballots.

Enactment of Laws

(101) A law that does not require approval at a meeting of members or a ratification vote, and that is approved and adopted by a Band Council Resolution of Council, is deemed to be enacted and enforceable on either:

- (a) the date of the Band Council Resolution; or
- (b) the commencement date set out in the law.

(102) A final draft law that requires approval at a meeting of members is deemed to be enacted and enforceable on either:

- (a) the date of the meeting of members vote; or
- (b) the commencement date set out in the law.

(103) A law that requires approval in a ratification vote is enacted on either:

- (a) the date of the ratification vote; or
- (b) the commencement date set out in the law.

Registration and Notification of New Law

(104) Within seven (7) days of a law being enacted, Council must:

- (a) post a copy of the law in a public area of the ᑭᐱᑭᐱ Administration Offices; and
- (b) register an original copy of the law in the First Nations Land Register.

Section 6 References

(105) In addition to this policy, consult the following resources:

- (a) *ᑭᐱᑭᐱ Amended Land Code*;
- (b) *St. Mary's Indian Band Community Ratification Process*; and
- (c) *St. Mary's Indian Band Custom Election Regulation*.

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**LAND INSTRUMENTS AND
CHOOSING AUTHORITIES
POLICIES**

Approved By Council On March 15, 2016

TABLE OF CONTENTS

POLICY 2-1: PERSONS INVOLVED IN LAND INSTRUMENT TRANSACTIONS		55
Section 1	Purpose.....	55
Section 2	General	55
	<i>Persons and Organizations Involved in Land Instrument Transactions</i>	<i>55</i>
	<i>Role of Council in Managing ḡaḡam Lands</i>	<i>55</i>
	<i>Role of the Director of Lands and Natural Resources / Lands Department in Managing ḡaḡam Lands</i>	<i>56</i>
	<i>Role of the Lands Committee in Managing ḡaḡam Lands</i>	<i>56</i>
	<i>Role of Allotment Holders in Managing ḡaḡam Lands</i>	<i>57</i>
	<i>Role of Interest Holders in Managing ḡaḡam Lands</i>	<i>57</i>
	<i>Role of the Minister, Administrators and Executors in Management of ḡaḡam Lands ...</i>	<i>57</i>
Section 3	Authorities	57
Section 4	Policy	58
Section 5	Process	58
Section 6	References.....	58
POLICY 2-2: LAND INSTRUMENTS – CHOOSING AUTHORITIES		59
Section 1	Purpose.....	59
Section 2	General	59
Section 3	Policy	60
	<i>Takings for Community Purposes ("Expropriations")</i>	<i>61</i>
	<i>Allotments.....</i>	<i>63</i>
	<i>Leasing Community Land.....</i>	<i>64</i>
	<i>Licences, Permits, Easements and Right of Ways Over ḡaḡam community lands.....</i>	<i>66</i>
Section 4	Process: Choosing a Land instrument	69
Section 5	References.....	70

POLICY 2-1: PERSONS INVOLVED IN LAND INSTRUMENT TRANSACTIONS

Section 1 Purpose

- (1) This policy provides introductory information regarding the persons who are involved in the management of ᑭᓄᓐᓄᓐ land instruments.

Section 2 General

Persons and Organizations Involved in Land Instrument Transactions

- (1) The persons involved in a land instrument transaction will vary depending on the type of land instrument being used and whether the ᑭᓄᓐᓄᓐ lands to which the land instrument relates are ᑭᓄᓐᓄᓐ community lands or lands held by an allotment holder.
- (2) The persons involved in a land instrument transaction may include:
 - (a) Council;
 - (b) the Lands Department;
 - (c) the Lands Committee;
 - (d) allotment holders;
 - (e) interest holders;
 - (f) the Minister;
 - (g) an executor or administrator of a deceased member's will; or
 - (h) a person named as the power of attorney of a mentally incompetent interest holder.

Role of Council in Managing ᑭᓄᓐᓄᓐ Lands

- (3) It is the responsibility of Council to:
 - (a) enact laws relating to the management of ᑭᓄᓐᓄᓐ lands;
 - (b) grant interests in ᑭᓄᓐᓄᓐ community lands;
 - (c) grant licences and permits to take resources from ᑭᓄᓐᓄᓐ community lands;
 - (d) consent to the original grant of a lease, licence, easement or permit in ᑭᓄᓐᓄᓐ lands; and

(e) consent to a land instrument transferring a permanent interest in ᑭᓄᓂ lands to a member who purchases it under subsection 50(2) of the *Indian Act*, or authorize the Director of Lands and Natural Resources to act as a delegate of Council in providing such consent.

Role of the Lands Department in Managing ᑭᓄᓂ Lands

(4) It is the responsibility of the Lands Department to:

(a) perform such duties and responsibilities delegated or assigned to the Lands Department under the *ᑭᓄᓂ Amended Land Code* or any other applicable law;

(b) advise the Lands Committee and Council on matters related to the management of ᑭᓄᓂ lands;

(c) advise Council on the granting of interests, licences and permits in ᑭᓄᓂ community lands;

(d) make recommendations to the Lands Committee and Council on the development of laws, policies and procedures in relation to the management of ᑭᓄᓂ lands;

(e) hold regular and special meetings with “ᑭᓄᓂᓂᓂ to discuss issues related to land instruments, and make recommendations to the Lands Committee and Council on the resolution of such issues;

(f) assist in the exchange of information between “ᑭᓄᓂᓂᓂ and Council regarding land instruments; and

(g) perform such other duties and functions consistent with the *ᑭᓄᓂ Amended Land Code* as Council may direct.

(5) The Lands Department is not responsible for ensuring that a lease in ᑭᓄᓂ lands permits the leasehold to be mortgaged or charged, that the lease is in good standing, or that the leaseholder is in compliance with the terms of the lease.

Role of the Lands Committee in Managing ᑭᓄᓂ Lands

(6) It is the responsibility of the Lands Committee to:

(a) assist the Lands Department with administrative decisions in relation to land instruments;

(b) recommend to Council laws, policies and procedures in relation to land instruments;

(c) consult with “ᑭᓄᓂᓂᓂ on land instruments; and

(d) perform such other duties and functions as Council or the Lands Department may direct.

(7) The Lands Committee is not a decision-making body. However, the Lands Committee may make recommendations to the Lands Department and Council on matters related to the assessment of an application for or the granting of an allotment

Role of Allotment Holders in Managing ᑭᓄᓐᓄᓐ Lands

(8) An allotment holder is responsible for:

(a) insurance and maintenance of their allotment;

(b) insurance, maintenance and repairs for structures and residential homes on their allotment;

(c) managing and monitoring any interests, licences or permits granted over their allotment;

(d) where there are changes to ownership of their allotment, providing all relevant fees and information to the Lands Department so such changes may be registered with the First Nations Land Register; and

(e) ensuring all uses of their allotment comply with ᑭᓄᓐᓄᓐ laws and policies, and all applicable laws or regulations of Canada or the Province.

Role of Interest Holders in Managing ᑭᓄᓐᓄᓐ Lands

(9) The roles of interest holders will vary depending on the circumstances.

Role of the Minister, Administrators and Executors in Management of ᑭᓄᓐᓄᓐ Lands

(10) The Minister, an administrator, an executor, or all three, may be involved in a land instrument transaction where an interest in land is being transferred by testamentary disposition, succession or a declaration of mental incompetence.

Section 3 Authorities

(1) The relevant authorities are the:

(a) *First Nations Land Management Act*;

(b) Framework Agreement;

(c) Individual Agreement;

(d) *ᑭᓄᓐᓄᓐ Amended Land Code*;

- (e) any law enacted under section 33 of the *ᑭᓄᓐᓄᓐ ᐃᓄᓄᓄᓐ ᐃᓄ ᐃᓄ ᐃᓄ*; and
- (f) the *ᑭᓄᓐᓄᓐ ᐃᓄᓄᓄᓐ ᐃᓄ ᐃᓄ ᐃᓄ ᐃᓄ*.

Section 4 Policy

- (1) All land instruments dealing with ᑭᓄᓐᓄᓐ lands must be authorized by the *ᑭᓄᓐᓄᓐ ᐃᓄᓄᓄᓐ ᐃᓄ ᐃᓄ ᐃᓄ* or by a law enacted under the *ᑭᓄᓐᓄᓐ ᐃᓄᓄᓄᓐ ᐃᓄ ᐃᓄ ᐃᓄ*.
- (2) Pursuant to section 30.2 of the *ᑭᓄᓐᓄᓐ ᐃᓄᓄᓄᓐ ᐃᓄ ᐃᓄ ᐃᓄ*, no person can acquire an interest or licence in ᑭᓄᓐᓄᓐ land by use, occupation or by any other means that is not authorized under the *ᑭᓄᓐᓄᓐ ᐃᓄᓄᓄᓐ ᐃᓄ ᐃᓄ ᐃᓄ* or a law enacted under it.
- (3) Pursuant to section 30.3 of the *ᑭᓄᓐᓄᓐ ᐃᓄᓄᓄᓐ ᐃᓄ ᐃᓄ ᐃᓄ*, an interest or licence in ᑭᓄᓐᓄᓐ Lands may only be created, granted, disposed of, assigned or transferred by a land instrument in accordance with the *ᑭᓄᓐᓄᓐ ᐃᓄᓄᓄᓐ ᐃᓄ ᐃᓄ ᐃᓄ*.
- (4) The creation or expansion of a reserve is not a land instrument under the *ᑭᓄᓐᓄᓐ ᐃᓄᓄᓄᓐ ᐃᓄ ᐃᓄ ᐃᓄ*. Creations and additions to a reserve can only be carried out under Canada's Royal Prerogative.

Section 5 Process

- (1) There are different statutory and policy-based procedures for each type of land instrument.
- (2) The Policies in this Manual provide specific instructions on the processes that must be followed for each type of land instrument.

Section 6 References

- (1) Besides this policy, consult the following resources:
 - (a) Policy 2-2, which outlines the various types of land instruments and will help you to choose which one is appropriate to use.

POLICY 2-2: LAND INSTRUMENTS – CHOOSING AUTHORITIES

Section 1 Purpose

- (1) The objectives of this policy are to provide:
 - (a) readers with a summary of the various types of land instruments and what they may be used for; and
 - (b) Council and the Lands Department with guidance on determining the appropriate land instrument to use for a given purpose.

Section 2 General

- (1) An interest in ᑭᓄᓐ lands may be an allotment, or some other legal right to occupy, use or otherwise benefit from ᑭᓄᓐ lands, such as a lease, licence, permit, easement or right-of-way.
- (2) The *ᑭᓄᓐ Amended Land Code* provides Council the authority to grant different types of interests in ᑭᓄᓐ community lands. These are discussed below.
- (3) All land instruments affecting ᑭᓄᓐ lands require the approval of one or more of the following:
 - (a) Council;
 - (b) an allotment holder; or
 - (c) the membership.

Role of Council in Choosing Land Instrument for Disposition of ᑭᓄᓐ Community Lands

- (4) It is the responsibility of Council to:
 - (a) enact laws and approve policies that set out the rules and procedures for every disposition of ᑭᓄᓐ lands;
 - (b) grant interests in ᑭᓄᓐ community lands;
 - (c) grant licences and permits to take resources from ᑭᓄᓐ community lands;
 - (d) consent to the original grant of a lease, licence, easement or permit in ᑭᓄᓐ lands; and
 - (e) consent to a land instrument transferring a permanent interest in ᑭᓄᓐ lands to a member who purchases it under subsection 50(2) of the *Indian Act*, or authorize the

Director of Lands and Natural Resources to act as a delegate of Council in providing such consent.

Role of the Lands Department in Choosing Land Instrument for Disposition of ᑲᓱᓴᓄᓐ Community Lands

- (5) It is the responsibility of the Lands Department to:
- (a) make recommendations to the Lands Committee and Council on the type of land instrument to use for the disposition of ᑲᓱᓴᓄᓐ community lands;
 - (b) make recommendations to the Lands Committee and Council on the development of laws, policies and procedures in relation to the types of land instruments that should be used for the disposition of ᑲᓱᓴᓄᓐ community lands;
 - (c) perform such other duties and functions consistent with the *ᑲᓱᓴᓄᓐ Amended Land Code* as Council may direct.

Role of the Lands Committee in Choosing Land Instrument for Disposition of ᑲᓱᓴᓄᓐ Lands

- (6) It is the responsibility of the Lands Committee to:
- (a) assist the Lands Department with administrative decisions in relation to the types of land instruments that should be used for the disposition of ᑲᓱᓴᓄᓐ community lands;
 - (b) recommend to Council laws, policies and procedures in relation to the types of land instruments that should be used for the disposition of ᑲᓱᓴᓄᓐ community lands; and
 - (c) perform such other duties and functions as Council or the Lands Department may direct.

Section 3 Policy

- (1) Council, the Lands Department and Lands Committee must follow specific procedures and use proper documentation for each type of land instrument.
- (2) Requirements and instructions for the granting of leases can be found in Policies 5-1 and 5-2.
- (3) Requirements and instructions for the granting of licences, permits, easements and right-of-ways can be found in Policies 6-1 and 6-2.
- (4) All land instruments must comply with all applicable laws of Canada and ᑲᓱᓴᓄᓐ, including the:
 - (a) *ᑲᓱᓴᓄᓐ Amended Land Code*;

- (b) *Canadian Environmental Protection Act*;
- (c) *Fisheries Act*;
- (d) *Migratory Birds Convention Act*;
- (e) *Species at Risk Act*;
- (f) *Indian Oil and Gas Act*; and
- (g) case law.

(5) Land instruments must comply with all requirements set out in their relevant policies contained in this Manual.

(6) Land instruments that are unauthorized, or fail to comply with appropriate laws and policies and proper procedures, may be void or of no effect.

Takings for Community Purposes ("Expropriations")

Interest

(7) An interest taken or transferred under an expropriation may be an allotment held by a member or it may be something less than an allotment, such as a portion of the land held under an allotment or a land instrument that either Council or an allotment holder has granted to a third party in any building or other structure on their lands.

(8) Council has a fiduciary duty to ensure that an expropriation is only for the smallest interest necessary and for the shortest time necessary.

(9) Where less than a full interest is expropriated, a person whose interest is expropriated may continue to use and occupy the land for purposes that are not inconsistent with the expropriation.

Authorities

(10) The relevant authorities are:

- (a) section 17 of the *Framework Agreement*;
- (b) section 28 of the *First Nations Land Management Act*;
- (c) section 14 of the *ᐱᐱᐱᐱ Amended Land Code*; and
- (d) any law enacted pursuant to section 14.3 of the *ᐱᐱᐱᐱ Amended Land Code*.

Appropriate Uses

(11) An expropriation land instrument is appropriate for the taking of ᐱᐱᐱᐱ land from a member or a third party for a necessary community purpose or works of the ᐱᐱᐱᐱ.

(12) An expropriation land instrument must be authorized a law enacted pursuant to section 14.3 of the *ᐱᐱᐱᐱ Amended Land Code*

(13) Some community purposes that are considered necessary for the purposes of an expropriation include: a fire hall, sewage or water treatment facility, community center, public work, road, school, day-care facility, hospital, healthcare facility or retirement home.

Inappropriate Uses

(14) An expropriation land instrument is not the appropriate land instrument where the purpose of the taking is not authorized by a law enacted pursuant to section 14.3 of the *ᐱᐱᐱᐱ Amended Land Code* or where Council wishes to cancel a lease, licence, permit, easement or right-of-way over ᐱᐱᐱᐱ community lands.

Process

(15) All relevant processes required under section 14 of the *ᐱᐱᐱᐱ Amended Land Code* and a law enacted pursuant to section 14.3 of the *ᐱᐱᐱᐱ Amended Land Code* must be followed in an expropriation, including processes related to:

- (a) efforts to reach mutual agreement with the interest holder;
- (b) a public report of the proposed expropriation;
- (c) notice of expropriation to the interest holder;
- (d) service of notice of expropriation;
- (e) transfer of interest to ᐱᐱᐱᐱ;
- (f) a determination of compensation based on fair market value; and
- (g) the method of payment of compensation.

Documents

(16) A law enacted pursuant to section 14.3 of the *ᐱᐱᐱᐱ Amended Land Code* will set out the land instruments required for an expropriation to be completed.

(17) The documentation must be clear as to the exact interest being taken, the specific purpose for which the interest is taken and the length of time for which the land is required for the specific purpose.

Reference

(18) See Policy 8-1 for more detail on land instruments involving an expropriation of ʔaḡam lands.

Allotments

Interest

(19) Allotments in ʔaḡam land are created when a parcel or block of land is granted to a member by Council pursuant to a law enacted in accordance with section 33 .1 of the *ʔaḡam Amended Land Code*.

(20) A member receiving an allotment is called an “allotment holder.”

(21) Allotments may only be granted to “ʔaḡamnik and may only be transferred or assigned by the allotment holder to ʔaḡam or to a member.

(22) An allotment holder may transfer their allotment to himself or herself.

Authority

(23) The relevant authorities are:

(a) paragraph 12.2(b) of the *Framework Agreement*;

(b) paragraphs 6(1)(j) and 18(1)(b) of the *First Nations Land Management Act*;

(c) section 33 of the *ʔaḡam Amended Land Code*; and

(d) any law enacted in accordance with section 33 .1 of the *ʔaḡam Amended Land Code*.

Process

(24) All relevant processes under a law enacted in accordance with section 33.1 of the *ʔaḡam Amended Land Code* must be followed in the granting of an allotment to a member, including processes related to:

(a) applications for allotment;

(b) preliminary application reviews by the Lands Committee;

(c) reports to Council;

(d) preliminary decisions by Council;

- (e) restrictions on an allotment;
- (f) exchanges of allotted lands;
- (g) an allotment pursuant to agreement;
- (h) Band Council Resolutions;
- (i) notifications to persons applying for allotments; and
- (j) certificates of possession.

Documents

(25) Council shall prescribe the documentation that must be completed for this Land Instrument.

Reference

(26) See Policy 4-1 of this Manual for more information on the granting of allotments to “ᑖáqamnik.

Leasing Community Land

Interest

(27) A lease of ᑖáqam community lands is an agreement entered into by ᑖáqam and a third party that grants an interest in and exclusive use and possession of ᑖáqam community lands to either a person who is “ᑖáqamnik or not for a specific period of time, with a commencement and end date and for a specific purpose.

Authority

(28) The relevant authorities are:

- (a) paragraph 12.2(b) of the *Framework Agreement*;
- (b) paragraphs 6(1)(j) and 18(1)(b) of the *First Nations Land Management Act*; and
- (c) paragraph 32.1(a) of the *ᑖáqam Amended Land Code*.

Appropriate Uses

(29) A lease of ᑖáqam community lands is appropriately used to grant exclusive use and possession of land for commercial, residential, industrial, community, agricultural, transportation or communications purposes.

Inappropriate Uses

(30) A lease of ᑭᓄᓂ community lands is usually inappropriate where ᑭᓄᓂ wants to grant a third party non-exclusive access to ᑭᓄᓂ lands for agricultural or grazing purposes or for access to or through ᑭᓄᓂ lands. In such circumstances a licence, permit, easement or right-of-way is preferable over a lease.

(31) A lease of ᑭᓄᓂ land is inappropriate where the land being leased is held by a member under an allotment. In such circumstances, the party seeking the lease must deal directly with the allotment holder.

(32) If a lease is negotiated between an allotment holder and a third party who is not a member, and the lease is an original lease, Council approval is required to effect the lease.

Process

(33) A person wishing to obtain a lease over ᑭᓄᓂ community lands must submit an application to the Lands Department. The Lands Department will:

- (a) review the application;
- (b) conduct background checks on the applicant;
- (c) assess the status of the subject lands;
- (d) negotiate the lease;
- (e) obtain a legal opinion on the lease;
- (f) obtain the consent of Council to grant the lease;
- (g) draft the lease; and
- (h) take all necessary steps to execute the lease.

Documents

(34) This land instrument requires the following documentation to be completed:

- (a) Form 6-1-01: Application for Use of ᑭᓄᓂ Land;
- (b) a Band Council Resolution approving of the lease;
- (c) a lease agreement document that sets out the terms of the lease;
- (d) if applicable, a Band Council Resolution from Council approving of the reduced rent

- and stating the value of the fair market rent;
- (e) if applicable, a review by legal counsel;
- (f) if applicable, an appraisal report; and
- (g) if applicable, reports from the Lands Committee.

Reference

(35) Refer to Policies 5-1 and 5-2 for more information on the process of negotiating, drafting and executing a lease of ᑭᓄᓐ community lands.

(36) Refer to Policy 4-3 for more information on the process of negotiating, drafting and executing a lease of ᑭᓄᓐ lands by an allotment holder to a third party.

Licences, Permits, Easements and Right of Ways Over ᑭᓄᓐ community lands

Interest

(37) Licences grant a person a right to use, occupy or take resources from ᑭᓄᓐ community lands for a specified term which must be a minimum two years in duration.

(38) Permits grant a person a right to use, occupy or take resources from ᑭᓄᓐ community lands for a specified term which must be a maximum five years in duration, unless the permittee is a member in which case the term may be longer.

(39) Easements grant a person who owns property adjacent to, or close in proximity to, ᑭᓄᓐ community lands a permanent right to use and/or enter onto ᑭᓄᓐ community lands in a specified manner. Easements may also grant a person who owns property adjacent to, or close in proximity to, ᑭᓄᓐ community lands a permanent right not to have the use of their lands inhibited in some specified way by ᑭᓄᓐ's use of ᑭᓄᓐ community lands.

(40) A right-of-way grants a person with a right of access over ᑭᓄᓐ community lands for a specified purpose.

Authority

(41) The relevant authorities are:

- (a) paragraph 12.2(b) of the *Framework Agreement*;
- (b) paragraphs 6(1)(j) and 18(1)(b) of the *First Nations Land Management Act*; and
- (c) paragraph 32.1(b) of the *ᑭᓄᓐ Amended Land Code*.

Appropriate Uses

(42) It is appropriate for ᑭᓱᓱᓱ to grant a licence or permit for the following purposes:

- (a) the use, occupation and taking of resources from ᑭᓱᓱᓱ community lands;
- (b) the use and occupation of ᑭᓱᓱᓱ community lands for industrial purposes, including: general industrial, quarry, log handling, waterpower or wind power;
- (c) the use and occupation of ᑭᓱᓱᓱ community lands for commercial purposes, including: alpine skiing, golf course, film, recreational facilities, etc;
- (d) the use and occupation of ᑭᓱᓱᓱ community lands for transportation, communications and utilities, including airports, communication sites, public and private utilities, and roadways; and
- (e) the use and occupation of ᑭᓱᓱᓱ community lands by community organizations and institutions.

(43) It is appropriate to use an easement to grant an adjacent or proximally close land owner with a permanent right:

- (a) to cross over ᑭᓱᓱᓱ community lands at any time of day and in any way;
- (b) to cross over ᑭᓱᓱᓱ community lands in some restricted way, such as by foot, only during certain hours of the day or only on a specified road;
- (c) to natural lighting that restricts ᑭᓱᓱᓱ in some way, such as a restriction from building to a certain height, planting tall trees or erecting some structure in an area of ᑭᓱᓱᓱ community lands that will block light into certain parts of the adjacent or proximally close land owner's land;
- (d) to build a roof or other structure that is partially located over ᑭᓱᓱᓱ community lands;
- (e) to use a path or garden over ᑭᓱᓱᓱ community lands for leisure purposes; or
- (f) to park vehicles on ᑭᓱᓱᓱ community lands.

(44) It is appropriate to use a right-of-way to grant a person a right of access over ᑭᓱᓱᓱ community lands for the purpose of:

- (a) maintaining electrical transmission lines, oil and gas pipelines, or communication towers; or
- (b) use as a highway, public footpath, or railway line.

Inappropriate Uses

(45) Do not use a licence, permit, easement or right-of-way where exclusive use is contemplated. In these cases, the preferable procedure would be:

- (a) to grant exclusive use to a member, an allotment or lease of ᑭᓄᓂ community lands; or
- (b) to grant exclusive use to a non-member, a lease of ᑭᓄᓂ community lands.

Process

(46) A person wishing to obtain a licence, permit, easement or right-of-way over ᑭᓄᓂ community lands must submit an application to the Lands Department.

(47) The Lands Department will:

- (a) review the application;
- (b) assess the status of the subject lands;
- (c) negotiate the licence, permit, easement or right-of-way;
- (d) obtain the consent of Council to the licence, permit, easement or right-of-way;
- (e) draft the licence, permit, easement or right-of-way; and
- (f) take all necessary steps to execute the licence, permit, easement or right-of-way.

Documents

(48) The following documents are required to effect a licence, permit, easement or right-of-way:

- (a) Form 6-1-01: Application for Use of ᑭᓄᓂ Lands;
- (b) a Band Council Resolution approving of the licence, permit, easement or right-of-way;
- (c) if applicable, a review by legal counsel;
- (d) if applicable, reports from the Lands Committee; and
- (e) the standard form licence, permit, easement or right-of-way located in Schedule E, F, G or H, as applicable.

Reference

(49) Besides this policy, consult the following resources:

(a) Policies 6-1 and 6-2 for more information on the process of negotiating, drafting and executing a licence, permit, easement or right-of-way over ʔaᓄam lands from an allotment holder; and

(b) Schedules E, F, G and H.

Section 4 Process

Choosing a Land instrument

(1) It is sometimes difficult to choose between land instruments which seem to accomplish similar purposes. In choosing between land instruments you should choose the most certain land instrument and the one that has the least impact on other interests.

(2) The following table provides options for which authority you might use for your land instrument:

Type of Land Use	Permit**** Max 5 yrs duration unless permittee is a member	Licence Min 2yrs duration	Easement	Lease	Allotment	Expropriation
Agricultural - Grazing - Farming - Orchards, - Vineyards	X	X		X		
Industrial Use** - Oil and Gas - Quarry - Log Handling - Water/Wind Power - Forestry	X	X		X		
Commercial - Film - Golf course - Commercial recreation - Businesses	X	X		X		
Community / Institutional - Educational institutions	X	X		X		X*

- Art and cultural centers - Community organizations						
Transportation /Roadways	X	X	X			X*
Communication Sites	X	X	X			X*
Public and Private Utilities	X	X	X			X*
Residential Land				X	X	

* Only use if for necessary community purpose or works of ᑭᐱᑭᐱ as per *ᑭᐱᑭᐱ Expropriation Law, XXXX*

** “industrial use” includes the use of ᑭᐱᑭᐱ lands to conduct a business enterprise involving the storage, manufacture, assembly, testing, servicing, repairing, fabrication, wrecking, salvaging, processing or production of all goods or materials, including the selling of industrial equipment. Examples of industrial uses include: natural resource storage yards, truck terminals, parts assembly, work camps, machine shops, factories, plants and mills;

*** “permit” means a document granted by ᑭᐱᑭᐱ authorizing the use, occupation, taking of resources or any combination of those of ᑭᐱᑭᐱ community lands for a specified term that must be a maximum five years in duration, unless the permittee is a member in which case the term may be longer. A permit may be for investigative purposes where a proponent requires access to ᑭᐱᑭᐱ lands for appraisals, inspections, analyses, inventories, surveys or other investigations of ᑭᐱᑭᐱ lands or its natural resources, or where otherwise required.

Section 5 References

(1) Besides this policy, consult the following resources:

- (a) the *First Nations Land Management Act*;
- (b) the Framework Agreement;
- (c) the Individual Agreement;
- (d) the *ᑭᐱᑭᐱ Amended Land Code*;
- (e) the *ᑭᐱᑭᐱ Matrimonial Real Property Law*; and
- (f) any other laws enacted pursuant to the *ᑭᐱᑭᐱ Amended Land Code*

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REGISTRATION POLICY

Approved by Council on March 15, 2016

TABLE OF CONTENTS

Section 1 Purpose	75
Section 2 General	75
<i>Definitions</i>	75
<i>The First Nation Land Register</i>	75
<i>Benefits of Registration</i>	76
Section 3 Authorities	76
Section 4 Policy.....	80
<i>Role of Council</i>	80
<i>Role of the Lands Department</i>	80
<i>Role of the Director of Lands and Natural Resources</i>	Error! Bookmark not defined.
<i>Role of the Lands Committee</i>	80
<i>Enforceability of Registered Interests</i>	81
<i>Requirements For Documents That Are Submitted for Registration</i>	81
<i>Do Documents Being Submitted for Registration Have to be Original?</i>	82
<i>Original Allotment</i>	82
<i>Transfer of an Allotment</i>	82
<i>Lease, Permit, Licence, Easement or Other Interest in an Allotment</i>	83
<i>Lease, Permit, Licence, Easement or Other Interest in ᐱᐱᐱᐱ community lands</i>	84
<i>Cancelled Allotment, Lease, Licence, Permit or Other Int. in ᐱᐱᐱᐱ community lands</i>	84
<i>Expropriated Lands</i>	85
<i>Voluntary Land Exchange</i>	85
<i>Effect of Deposit</i>	85
<i>Effect of Registration – Creating Priority Interests</i>	85
<i>When Registration is Refused by the Registrar</i>	86
Section 5 Process	86

Who is Responsible for Submitting a Document for Registration? **86**
Assisting Members in the Registration of Interests or Licences **87**

Section 6 References **87**

POLICY 3-1: REGISTRATION POLICY

Section 1 Purpose

(1) The objectives of this policy are to:

- (a) provide general information about the policies and processes for the registration of land instruments that grant an interest or licence in ʔaᓄam lands;
- (b) describe the role of the Council, Lands Department, Lands Committee and individuals in the registration process;
- (c) prescribe the forms of land instruments that must be registered.

Section 2 General

Definitions

(1) In this policy “applicant” means a person who is applying to the Lands Department to register in the First Nation Land Register a land instrument that transfers an interest in ʔaᓄam lands.

The First Nation Land Register

(2) The First Nation Land Register:

- (a) is a federally regulated database of land instruments that grant interests and licences relating to First Nations reserve lands;
- (b) does not purport to guarantee the accuracy of documentation filed therein;
- (c) is maintained in an office known as the First Nation Land Registry, which is open to the public from Monday to Friday, except holidays, from 8:30 a.m. to 4:00p.m EST or EDST;
- (d) is maintained by a registrar who is an INAC officer responsible for managing the First Nation Land Registry.

(3) Electronic copies of interests and licences in the First Nation Land Register are available to the public and can be viewed and printed from the First Nation Land Registry’s online system. Any person may create an account for the online system and make enquiries or generate reports on the data in the system.

(4) Only a First Nation that is operational under a land code can create an account on the First Nation Land Registry’s online system that allows them to register an interest. Individuals cannot do this.

- (5) The information in the First Nation Land Register is used by ᑭᓄᓂᓂ to:
- (a) assess applications for allotment and for the use of ᑭᓄᓂᓂ lands;
 - (b) confirm a registered interest before issuing a certificates of possession; and
 - (c) assist members in determining whether an interest they purport to have is registered and what that interest includes.
- (6) There is no guarantee that a document that is registered in the First Nation Land Register is legally valid or effective, or that all documents affecting an interest in ᑭᓄᓂᓂ lands have been submitted for registration.
- (7) An interest or licence in ᑭᓄᓂᓂ lands created or granted after the *St. Mary's Indian Band Land Code* came into effect, is not enforceable unless it is registered or recorded in the First Nation Land Register, in accordance with the *First Nations Land Registry Regulations*.

Benefits of Registration

- (8) The benefits of registering an interest in ᑭᓄᓂᓂ lands in the First Nation Land Register include:
- (a) having a record of transactions and uses of ᑭᓄᓂᓂ lands to allow ᑭᓄᓂᓂ to track transactions;
 - (b) the documentation of priority of interests;
 - (c) providing a history of transactions and interests granted on a parcel of land;
 - (d) helping to secure and protect the legal rights of individuals who have, or may acquire, an interest or licence in or to ᑭᓄᓂᓂ lands; and
 - (e) providing timely and reliable information to the public on interests and licences in and to ᑭᓄᓂᓂ lands.

Section 3 Authorities

- (1) The relevant authorities are:
- (a) section 25 of the *First Nations Land Management Act*;
 - (b) sections 16.9, 26.2, 29.1 to 29.6, 35.9 and 36.1 to 36.4 of the *ᑭᓄᓂᓂ Amended Land Code*; and
 - (c) the *First Nations Land Registry Regulations*.

(2) Section 25 of the *First Nations Land Management Act* states that:

25. (1) The Minister shall establish a register to be known as the First Nation Land Register.

(2) The First Nation Land Register is to be administered, subject to this section, in the same manner as the Reserve Land Register established under the *Indian Act*.

(3) The Governor in Council may, on the recommendation of the Minister and in accordance with the Framework Agreement, make regulations respecting the administration of the First Nation Land Register, the registration of interests or rights in it and the recording of any other matter, including but not limited to regulations respecting

(a) the effects of registering interests or rights, including priorities;

(b) the payment of fees for the registration of interests or rights and for any other service in relation to the Register;

(c) the appointment, remuneration, powers, functions and duties of officers and employees who administer the Register; and

(d) the keeping, by officers and employees, of documents that are not registrable.

(3) Sections 16.9, 26.2, 29.1 to 29.6, 35.9 and 36.1 to 36.4 of the *ᑭᓄᓐᓄᓐ Amended Land Code* state:

16.9 A land exchange agreement shall provide that:

(a) the other party to the exchange shall transfer to Canada the title to the land that is to be set aside as a reserve;

(b) Council shall pass a Resolution authorizing Canada to transfer title to ᑭᓄᓐᓄᓐ Lands being exchanged, in accordance with the land exchange agreement; and

(c) a copy of the land instrument transferring title to the relevant parcels of land shall be registered in the First Nation Land Register.

26.2 Without limiting the generality of section 26.1, the Lands Department shall:

...

(b) develop forms for the purpose of registering or recording of land instruments in the First Nation Land Register;

(c) process applications for the registration or recording of land instruments by registering or recording the land instruments in the First Nation Land Register;

...

(e) maintain and protect records in relation to ᑭᓄᓐᓄᓐ Lands in the Lands Department using a secure and safe filing system; and

(f) perform such other duties and functions consistent with this Land Code as Council may direct.

Enforcement of Interests and Licences

29.1 An interest or licence in ᑭᓄᓐᓄᓐ Lands created or granted after this Land Code comes into effect, is not enforceable unless:

(a) it is registered in the First Nation Land Register; or

(b) it is a residential tenancy agreement.

Duty to Deposit

29.2 The ᑭᐱᑭᐱ Lands Department shall ensure that an original copy of the following land instruments are registered in the First Nation Land Register, in accordance with the *First Nations Land Registry Regulations*:

- (a) except residential tenancy agreements, any interest or licence in ᑭᐱᑭᐱ Lands that ᑭᐱᑭᐱ is a party to;
- (b) an interest or licence in ᑭᐱᑭᐱ community lands granted by ᑭᐱᑭᐱ;
- (c) the transfer or assignment of an interest or licence in ᑭᐱᑭᐱ community lands that Council consents to;
- (d) a completed application for registration of an interest or licence in ᑭᐱᑭᐱ Lands received by the Lands Department;
- (e) this Land Code and any amendment to this Land Code; and
- (f) any law made pursuant to this Land Code.

29.3 Every person who receives an interest or licence in ᑭᐱᑭᐱ Lands shall register an original copy of the relevant land instrument in the First Nation Land Register by way of application to the ᑭᐱᑭᐱ Lands Department in accordance with the *First Nations Land Registry Regulations*.

Registration of Consent or Approval

29.4 No land instrument that requires the consent of Council, approval of the ᑭᐱᑭᐱ Lands Department, or approval of Members at a Meeting of Members or in a Ratification Vote may be registered or recorded in the First Nation Land Register unless a certified copy of the document that records the consent or approval is attached to the land instrument.

Registration Fees

29.5 The ᑭᐱᑭᐱ Lands Department may establish and charge reasonable fees for services provided to the public including processing applications for the registration or recording of land instruments in the First Nation Land Register.

29.6 Section 29.5 does not preclude the ᑭᐱᑭᐱ Lands Department from providing services to Members without a fee.

35.9 In the event of default in the terms of a mortgage or charge of a leasehold interest in ᑭᐱᑭᐱ Lands, the leasehold interest is not subject to possession by the mortgagee or chargee, foreclosure, power of sale or any other form of execution or seizure, unless:

- (a) the mortgage or charge was registered in the First Nation Land Register;

36.1 A person who receives an interest in ᑭᐱᑭᐱ Lands from a Member by testamentary disposition is entitled to have that interest registered in the First Nation Land Register provided that:

- (a) where the deceased Member was ordinarily resident on ᑭᐱᑭᐱ Lands and the deceased Member's will is either approved in whole by the Minister, or the part of the deceased Member's will addressing the interest is approved by the Minister, under section 45 of the Indian Act, the land instrument transferring the interest is duly executed by either:

- (i) the executor who is approved by the Minister, or

- (ii) if no executor is named in the deceased Member's will, the administrator who is appointed by the

Minister; or

(b) where the deceased Member was not ordinarily resident on ?a?am Lands and:

(i) the deceased Member's will is approved by a court, the land instrument transferring the interest is duly executed by the person that is named in the court order as the executor or administrator of the deceased Member's estate; or

(ii) the Minister assumes jurisdiction under sections 4(3) and 43 of the Indian Act, the land instrument transferring the interest is duly executed by the person who is appointed by the Minister to be the administrator of the deceased Member's estate;

36.2 A person who receives an interest in ?a?am Lands from a Member by intestate succession is entitled to have that interest registered in the First Nation Land Register provided that:

(a) where the deceased Member was ordinarily resident on ?a?am Lands, the land instrument transferring the interest is duly executed by the person who is appointed by the Minister under section 43 of the Indian Act to be the administrator of that Member's estate; or

(b) where the deceased Member was not ordinarily resident on reserve and:

a court has made an order regarding the deceased Member's estate, the land instrument transferring the interest is duly executed by the person who is named in the court order as the administrator of estate; or

the Minister assumes jurisdiction under sections 4(3) and 43 of the Indian Act, the person who is appointed by the Minister to be the administrator of estate;

36.3 A person who receives an interest in ?a?am Lands from a Member who has been declared by a court or health authority to be mentally incompetent is entitled to have that interest registered in the First Nation Land Register provided that:

(a) where the Member who is declared mentally incompetent is ordinarily resident on ?a?am Lands, the land instrument transferring the interest is duly executed by either:

(i) the Minister, or

(ii) a person who is appointed by the Minister pursuant to section 51(2)(a) of the Indian Act to administer the estates of mentally incompetent Members; or

(b) where the Member who is declared mentally incompetent is not ordinarily resident on ?a?am Lands, the land instrument transferring the interest is duly executed by the person who is named in that person's power of attorney or in an order from the court to be that Member's committee.

36.4 A Member who purchases an interest in ?a?am Lands under subsection 50(2) of the Indian Act is entitled to have that interest registered in the First Nation Land Register provided that:

(a) the land instrument transferring the interest is duly executed by the person duly authorized under the Indian Act to transfer the interest; and

(b) Council has, by Resolution, consented to the land instrument transferring the interest to the purchasing Member.

(4) The *First Nations Land Registry Regulations* set out the form and content of the First Nation Land Register and the requirements for registration. The *First Nations Land Registry Regulations* are attached at Schedule I.

Section 4 Policy

Role of Council

(1) Council is responsible for:

- (a) developing laws regarding the management, administration, use and protection of ᑭᓄᓐ lands; and
- (b) approving forms of land instruments for use in registering or recording interests or licences in the First Nation Land Register
- (c) providing written consent, by Band Council Resolution, to the original grant of an allotment, lease, licence, permit or easement in ᑭᓄᓐ lands.

Role of the Lands Department

(2) The Lands Department is responsible for:

- (a) developing forms of land instruments for use in registering or recording interests or licences in the First Nation Land Register if it is deemed necessary and advisable by the Lands Department;
- (b) processing applications for the registration or recording of land instruments and documents that relate to interests or licences in ᑭᓄᓐ lands in the First Nation Land Register;
- (c) maintaining and protecting records in relation to ᑭᓄᓐ lands in the Lands Department files;
- (d) carrying out the duties and responsibilities delegated or assigned to it under the *ᑭᓄᓐ Amended Land Code*, or under any other applicable law; and
- (e) performing other duties and functions consistent with the *ᑭᓄᓐ Amended Land Code* as directed by Council.

Role of the Lands Committee

(3) The Lands Committee may perform duties and functions as directed by either the Council or the Lands Department.

(4) The Lands Committee is not a decision-making body. However, the Lands Committee may make recommendations to the Lands Department and Council on matters related to the process for the registration of interests in the First Nation Land Register.

Enforceability of Registered Interests

(5) An interest or licence in ᑭᓄᓂ lands that is granted after the *St. Mary's Indian Band Land Code* came into effect is not enforceable unless it is either:

- (a) registered or recorded in the First Nation Land Register; or
- (b) a residential tenancy agreement.

Requirements for Documents That Are Submitted for Registration

(6) A document that is submitted for registration must:

- (a) show the date it was executed;
- (b) be executed and be witnessed by at least one other person who has attained the age of majority;
- (c) identify each party to the transaction;
- (d) identify the nature of the right or interest to be registered;
- (e) provide the name of ᑭᓄᓂ, the name of the ᑭᓄᓂ lands and lot number if any associated with the transfer;
- (f) contain a legal land description that consists exclusively of a reference to one or more complete parcels on a registration plan or official plan, if it grants:
 - (i) an interest or licence in ᑭᓄᓂ lands to a person who is not a member of ᑭᓄᓂ for a term of ten (10) or more years;
 - (ii) a strata title, a condominium interest or any similar interest or right;
 - (iii) an allotment to a member;
 - (iv) a transfer of an allotment;
 - (v) the expropriation of an interest in ᑭᓄᓂ lands; or
 - (vi) an easement;
- (g) if the transaction to which the document relates is the original grant of a lease, licence, permit or easement, be accompanied by an original Band Council Resolution from Council consenting to the transaction; and

(h) be accompanied by a list of, and copies of, any supporting documents accompanying the document being submitted for registration or recording.

Do Documents Being Submitted for Registration Have to be Original?

(7) In general, documents that are submitted for registration must be originals. However, the following documents may be submitted instead of an original document:

(a) a copy of a judgement or court order, certified by the court;

(b) a copy of a document registered in a provincial registry or land titles system, certified by the appropriate provincial registrar;

(c) a copy of a death certificate, marriage certificate, name change certificate, power of attorney, will, approval or probate of will, or appointment of administrator, certified by the person who has custody of the original;

(d) a copy of a certificate of amalgamation or change of name of a corporation, certified by the agency responsible for recording the amalgamation or change of name;

(e) a copy of a document issued by ᑭᓄᓂ, that is certified by the person who has custody of the original.

(8) A copy of a document is considered certified when it is signed and dated along with a statement by the person signing it declaring that the document is a copy of the original document.

Allotment

(9) Where Council grants an allotment, the following documents must be registered in the First Nation Land Register:

(a) the Band Council Resolution that approves the allotment; and

(b) the Form 4-1-02: Allotment to Member.

Transfer of an Allotment

(10) Where an allotment of ᑭᓄᓂ lands is being transferred from one member to another, the following documents must be registered in the First Nation Land Register:

(a) if the transfer of the allotment is by an agreement between two (2) members who are both living at the time of the transfer:

(i) Form 4-2-02: Transfer of Interest in Allotment, with the consideration section of that form whited or blacked out; and

- (ii) if the transferor has a spouse or common-law partner, Form 4-2-03: Consent of Spouse;
- (b) if the transfer of the allotment is pursuant to a testamentary disposition or succession:
 - (i) Form 4-2-01: Transfer of Interest in Allotment;
 - (ii) a legal document or court order that proves the person executing the transfer is the person stated in section 36.1 or 36.2 of the *ᑭᓇᓱᑦᑭᓄᑦ ᐃᓄ ᐃᓄᑦ ᐅᐃᑦᐅᑦ ᐅᐃᑦᐅᑦ*, and
 - (iii) if the transferor (the deceased member) had a spouse or common-law partner, Form 4-2-03: Consent of Spouse;
- (c) if the transfer of allotment is executed by a personal representative of the transferor and the transferor is allegedly mentally incompetent:
 - (i) Form 4-2-01: Transfer of Interest in Allotment, with the consideration section of that form whited or blacked out; and
 - (ii) a legal document from the Minister, or a court order, that proves the person executing the document is the person stated in section 36.3 of the *ᑭᓇᓱᑦᑭᓄᑦ ᐃᓄ ᐃᓄᑦ ᐅᐃᑦᐅᑦ ᐅᐃᑦᐅᑦ*;
- (d) If the transfer of allotment is executed by a personal representative of the transferor and the transferor is not allegedly mentally incompetent:
 - (i) Form 4-2-01: Transfer of Interest in Allotment, with the consideration section of that form whited or blacked out, and
 - (ii) a legal document or court order that proves the person executing the document is the transferor's power of attorney;
- (e) if the transfer of the allotment is pursuant to either subsection 50(2) or 50(3) of the *Indian Act*.
 - (i) Form 4-2-01: Transfer of Interest in Allotment, with the consideration section of that form whited or blacked out; and
 - (ii) Form 4-2-02: Declaration of Superintendent, with the consideration section of that form whited or blacked out.

Lease, Permit, Licence, Easement or Right-of-way in an Allotment

(11) Where a member grants a lease, permit, licence, easement or right-of-way in their allotment, the following documents must be registered in the First Nation Land Register:

- (a) Form 3-1-01: Registration of Interest;

(b) if it is an original lease, permit, licence, easement, or right-of-way, the Band Council Resolution that approves of it;

(c) the original lease, permit, licence, easement or right-of-way; and

(d) where the lease, permit, licence, easement or right-of-way that is granted will involve the development on a cultural heritage site, an original, certified copy of the results from the ratification vote that approved of the lease, permit, licence, easement or right-of-way .

Lease, Permit, Licence, Easement or Right-of-way in ᑭᓄᓐᓄᓐ Community Lands

(12) Where Council has granted a lease, permit, licence, easement or right-of-way in ᑭᓄᓐᓄᓐ community lands, the following documents must be registered in the First Nation Land Register:

(a) the Band Council Resolution that approves the lease, permit, licence, easement or right-of-way;

(b) the lease, permit, licence, easement or right-of-way; and

(c) where the lease, permit, licence, easement or right-of-way that is granted will involve the development of a cultural heritage site, a certified copy of the results from the ratification vote that approved of the lease, permit, licence, easement or right-of-way.

Cancelled Allotment, Lease, Licence, Permit or Right-of-Way in ᑭᓄᓐᓄᓐ Community Lands

(13) Where Council cancels an allotment, lease, licence, permit or right-of-way in ᑭᓄᓐᓄᓐ community lands, the following documents must be registered in the First Nation Land Register:

(a) if the licence, permit or right-of-way is cancelled at the request of a licensee, permittee or grantee:

(i) the Band Council Resolution consenting to the cancellation; and

(ii) Form 6-3-02: Certificate of Cancellation of a Licence, Permit or Right-of-Way;

(b) if the lease, licence, permit or right-of-way is cancelled by Council because the interest holder failed to comply with the terms of their lease, licence, permit or right-of-way, the notice of cancellation;

(c) if an allotment is cancelled because Council has determined that it was issued in error, by mistake or by fraud:

(i) Form 7-1-02: Cancellation of Allotment; and

(ii) if a new allotment was granted to remedy the error or mistake:

(A) the Band Council Resolution granting the corrected allotment, and

(B) the newly issued Form 4-1-02: Allotment to Member;

(d) if a lease, licence, permit or right-of-way is amended because Council has determined that it was issued in error, or by mistake, the amended lease, licence, permit or right-of-way; and

(e) if the lease, licence, permit, easement or right-of-way in ʔaǰam community lands is cancelled because Council has determined that it was issued by fraud, Council will provide instructions on what to register.

Expropriated Lands

(14) Where Council expropriates ʔaǰam lands, the following documents must be registered in the First Nation Land Register:

- (a) the Band Council Resolution that approves of the expropriation document; and
- (b) the expropriation document.

Voluntary Land Exchange

(15) Where Council voluntarily exchanges ʔaǰam lands as part of an addition to reserve process, the following documents must be registered in the First Nation Land Register:

- (a) the land exchange agreement; and
- (b) a certified copy of the results from the ratification vote that approved of the land exchange agreement.

Laws

(16) Where a new or amended law is enacted, the new or amended law must be registered in the First Nation Land Register.

Effect of Submitting for Registration

(17) The submission of a land instrument for registration in the First Nation Land Register does not imply that the document is validly made or that it has been registered as opposed to having been recorded.

Effect of Registration – Creating Priority Interests

(18) A registered land instrument is entitled to priority over an unregistered land instrument affecting the same parcel.

(19) Land instruments registered in the First Nation Land Register that affect the same parcel of land have priority according to the time and date of the registration of the land instruments evidencing those interests or licences and not according to the time and date that the documents were executed.

When Registration is Refused by the Registrar

(20) Any land instrument that the registrar refuses to register or record should be corrected and re-submitted for registration as quickly as possible.

Section 5 Process

(1) In general, the processes for the registration of land instruments that grant interests and licences relating to ʔaḡam lands are set out in the *First Nations Land Registry Regulations*.

Who is Responsible for Submitting a Document for Registration?

(2) The Lands Department is responsible for ensuring that the following documents are submitted for registration in the First Nation Land Register, in accordance with the *First Nations Land Registry Regulations*:

- (a) Except residential tenancy agreements, any interest or licence in ʔaḡam lands that ʔaḡam is a party to;
- (b) an interest or licence in ʔaḡam community lands granted by ʔaḡam;
- (c) the transfer or assignment of an interest or licence in ʔaḡam community lands that Council consents to;
- (d) a completed application for registration of an interest or licence in ʔaḡam lands received by the Lands Department;
- (e) a copy of the *ʔaḡam Amended Land Code* and any amendments to the *ʔaḡam Amended Land Code*; and
- (f) any law made pursuant to the *ʔaḡam Amended Land Code*.

(3) Where a member decides to transfer their allotment, or grant a lease, licence, permit, easement or right-of-way in or to their allotment, it is the responsibility of the parties to that transaction to provide the Lands Department with all forms that are required to be registered under this policy and the application fee, and then the Lands Department is responsible for registering that land instrument in the First Nation Land Register, in accordance with the *First Nations Land Registry Regulations*.

Arranging with the Lands Department to Register an Interest or Licence

(4) The Lands Department will make itself available, by appointment and between the hours of 8:30am and 4:30pm on regular business days, to receive applications for the registration of a land instrument in the First Nation Land Register.

(5) Where a person asks the Lands Department, without an appointment, to register a land instrument that relates to an allotment, the Lands Department must:

(a) provide that member with:

(i) if the person wants to register the transfer of an allotment:

(A) a copy of this policy;

(B) a copy of Policy 4-2: Transferring Allotments; and

(C) any forms required for the registration of their specific allotment transfer;

(ii) if the person wants to register a lease, licence, permit, easement or other interest in an allotment:

(A) a copy of this policy;

(B) a copy of Policy 4-3: Leases, Licences, Permits and Easements Over Land Held Under an Allotment; and

(C) Form 3-1-01: Registration of Interest; and

(b) set a time to meet with that member to receive all relevant documents and register their land instrument.

(6) Where the Lands Department receives all relevant documentation required for the registration of a land instrument related to allotted lands, the Lands Department must as soon as practical:

(a) register the land instrument in the First Nation Land Register in accordance with the First Nation Lands Registry Regulations; and

(b) send the interest holder a copy of the registration confirmation.

Section 6 References

(1) Besides this policy, consult the following resources:

(a) the *First Nations Lands Management Act*;

(b) the *ᑭᓱᓱᓱᓱᓱ Amended Land Code*;

(c) the *First Nation Lands Registry Regulations*;

(d) Schedule A: Forms;

(e) the Deputy Registrar at the First Nations Land Registry, who at the time of the writing of this Manual is:

Loretta Roy
Phone: 1-819-953-0614
Email: Loretta.Roy@aandc.gc.ca

(f) the First Nations Land Management Resource Center's Developmental & Operational Support Technician, who at the time of the writing of this Manual is:

Angie Derrickson
Phone: 250-469-1675
Email: ADerrickson@labrc.com

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ALLOTMENT AND LAWFUL POSSESSION POLICY

Approved by Council on March 15, 2016

Revision History

Date	Version	Changes	Author

TABLE OF CONTENTS

POLICY 4-1: CREATING ALLOTMENTS	95
Section 1 Purpose	95
Section 2 General	95
<i>Definitions</i>	95
<i>Role Of Council</i>	97
<i>Role Of The Lands Department</i>	97
<i>Role Of The Lands Committee</i>	98
<i>Characteristics Of An Allotment</i>	98
<i>Allotments Granted Prior To Enactment Of The St. Mary's Indian Band Land Code</i>	99
Section 3 Authorities	99
Section 4 Policy	102
<i>Land Instrument Required</i>	102
<i>Eligibility To Be An Allotment Holder</i>	102
<i>Allotments Must Be Consistent With The Best Interests Of ?AqAm</i>	102
<i>Legal Description Required At Cost Of Applicant / Allotment Holder</i>	102
<i>Allotment Must Be Consistent With Other Interests In The Land</i>	102
<i>Allotment Must Be Consistent With ?AqAm Laws, Regulations And By-Laws</i>	102
<i>Allotments May Only Be Granted Over ?aqam community lands</i>	102
<i>Access Requirement</i>	102
<i>Environmental Assessment Requirement</i>	103
<i>Consistency With Development Plans</i>	103
<i>Must Be In Good Standing</i>	103
<i>Requirement For Mortgage Pre-Approval</i>	103
<i>Requirement For Building Plans</i>	103
<i>Requirements Of Band Council Resolution: Preliminary Allotment Decision</i>	103
<i>Responsibilities Of Allotment Holder</i>	105

<i>Allotments Are Final</i>	105
<i>Documentation Requirements</i>	106
<i>Conflicts Of Interest</i>	106
<i>Certificates Of Possession</i>	106
Section 5 <i>Process</i>	106
<i>Application For Allotment</i>	106
<i>Receiving An Application For Allotment</i>	107
<i>Creation Of Lands Department File</i>	108
<i>Preliminary Application Review</i>	108
<i>Lands Committee Review And Recommendation</i>	110
<i>Report To Council</i>	110
<i>Council Preliminary Decision On Allotment</i>	110
<i>Council Decision</i>	111
<i>Notice To Applicant</i>	112
<i>Obtaining An Official Plan Or Registration Plan To Complete Legal Description</i>	
<i>Requirements</i>	112
<i>Monitoring Completion Of Conditions For Allotment</i>	114
<i>Report To Council On Completion Of Conditions For Allotment</i>	114
<i>Council Final Allotment Decision</i>	115
<i>Letter To Applicant</i>	115
<i>Execution Of Allotment To Member By The Applicant</i>	116
<i>Registering The Allotment</i>	116
<i>Completing And Issuing The Certificate of Possession</i>	116
<i>Documentation Requirement</i>	116
Section 6 <i>References</i>	117
POLICY 4-2: TRANSFERRING ALLOTMENTS	118
Section 1 <i>Purpose</i>	118
Section 2 <i>General</i>	118

<i>Definitions</i>	118
<i>Role Of Council</i>	118
<i>Role Of The Lands Department</i>	119
<i>Role Of The Lands Committee</i>	119
<i>Role Of The Minister</i>	119
Section 3 Authorities	119
Section 4 Policy	123
<i>What Is Transferred?</i>	123
<i>Registration</i>	123
<i>Council Consent</i>	123
<i>Environmental Assessment</i>	123
<i>Transfers To Persons Under Nineteen (19) Years Of Age</i>	123
<i>Transfers On Death</i>	124
<i>Transfer Where Allotment Holder Is Declared Mentally Incompetent</i>	124
<i>Disputes Regarding A Transfer Of Allotment</i>	125
Section 5 Process	125
<i>Process For The General Transfer Of Allotments</i>	125
<i>Process For Transfer Of Allotment To A Purchaser Under Subsection 50(2) Of The Indian Act</i>	127
<i>Process For Reversion Of An Allotment To ᐱᐱᐱ Under An Estate Transfer Pursuant To Section 50(3) Of The Indian Act</i>	128
Section 6 References	129
POLICY 4-3: LEASES, LICENCES, PERMITS, EASEMENTS AND OTHER INTERESTS IN AN ALLOTMENT	130
Section 1 Purpose	130
Section 2 General	130
<i>Role Of Council</i>	130

<i>Role Of The Lands Department</i>	130
<i>Role Of The Lands Committee</i>	131
<i>Role Of The Allotment Holder</i>	131
<i>Characteristics Of A Lease Of An Allotment</i>	131
<i>Characteristics Of A Licence Over An Allotment</i>	132
<i>Characteristics Of A Permit Over An Allotment</i>	132
<i>Characteristics Of An Easement Over An Allotment</i>	132
Section 3 Authorities.....	133
Section 4 Policy	135
<i>Granting Interests And Licences To Non-Members</i>	135
<i>What Type Of Lease, Licence, Permit, Easement Or Other Land Instrument May Be Used?</i>	135
Section 5 Process.....	136
<i>Negotiation, Drafting And Executing</i>	136
<i>Registration Of A Lease, Licence, Permit, Easement Or Other Land Instrument Over Allotted Lands</i>	136
Section 6 References	137

POLICY 4-1: CREATING ALLOTMENTS

Section 1 Purpose

(1) The objectives of this policy are to:

- (a) provide readers with information on the granting of allotments by INAC and Council prior to the enactment of the *St. Mary's Indian Band Land Code*;
- (b) introduce the powers of Council to grant allotments under the *ᑭᓱᓱᓱᓱᓱ Amended Land Code* and *ᑭᓱᓱᓱᓱ Allotment Law*;
- (c) provide standardized processes that must be followed by Council, the Lands Department and the Lands Committee in the granting of new allotments.

Section 2 General

Definitions

(1) In this policy:

“allot” means the act of Council granting to a member the lawful possession of ᑭᓱᓱᓱᓱ lands;

“allotment” means those ᑭᓱᓱᓱᓱ lands that have been lawfully granted to a member and in which that member has lawful possession;

“allotment holder” means a person who has been granted an allotment pursuant to:

- (a) subsection 20(1) of the *Indian Act*;
- (b) section 32.1 of the *ᑭᓱᓱᓱᓱ Amended Land Code*; or
- (c) the *ᑭᓱᓱᓱᓱ Allotment Law*,

and who is entitled to a Certificate of Possession under the *ᑭᓱᓱᓱᓱ Allotment Law*;

“applicant” means a person who makes an application for an allotment of ᑭᓱᓱᓱᓱ community lands under the *ᑭᓱᓱᓱᓱ Allotment Law*;

“application” means an application for an allotment of ᑭᓱᓱᓱᓱ community lands made under the *ᑭᓱᓱᓱᓱ Allotment Law* and this policy;

“arrears” means a sum of money that is owed by a member to ᑭᓱᓱᓱᓱ and consists of one (1) or more of the following types of payments:

- (a) unpaid rent payments;

(b) unpaid mortgage payments; or

(c) unpaid payments for services in relation to an ᑭᓄᓂ-owned rental property;

“bad debt” means any sum of money that is owed by a member to ᑭᓄᓂ through either lending or revenue receivable by ᑭᓄᓂ and is one (1) or more days overdue to be paid to ᑭᓄᓂ;

“authorized signatory” means a person who is authorized by Council, by Band Council Resolution, to sign the document he or she signs;

“Certificate of Possession” means a Certificate of Possession issued by:

(a) the Minister, pursuant to subsection 20(2) of the *Indian Act*, to a member who is lawfully in possession of ᑭᓄᓂ lands as evidence of that members right to possession of the land described in the Certificate of Possession; or

(b) Council, pursuant to section 12 of the *ᑭᓄᓂ Allotment Law*, to a member who is lawfully in possession of ᑭᓄᓂ lands as evidence of that members right to possession of the lands described in the Certificate of Possession;

“ᑭᓄᓂ community lands” means ᑭᓄᓂ lands in which all members have a common interest and in which no person holds an allotment;

“embossment stamp” means the ᑭᓄᓂ embossment stamp that is under the care and control of the Lands Department;

“environmental assessment” means:

(a) if ᑭᓄᓂ has enacted its own environmental assessment law, an environmental assessment that is conducted in accordance with that environmental assessment law; or

(b) if ᑭᓄᓂ has not enacted its own environmental assessment law, an environmental assessment that is conducted either:

(i) by Canada, or

(ii) by ᑭᓄᓂ in accordance with an environmental review policy that is passed by Council;

“in good standing” means that a person does not owe any arrears or bad debt to ᑭᓄᓂ;

“member” means a person whose name appears or whose name is entitled to appear on the ᑭᓄᓂ membership list;

“official plan” means a graphical description of boundaries of land prepared from the field notes of a survey confirmed under section 29 of the *Canada Lands Surveys Act*;

“registration plan” means a graphical description of the boundaries of land shown on the plan made by the Surveyor General under section 31 of the *Canada Lands Surveys Act*; and

“sketch” means a scaled drawing that shows:

- (a) a proposed allotment lot, including the distance of the lot in width, length and area;
- (b) the location of any existing and proposed residential homes, including the distance between residential homes and the distance from lot lines;
- (c) proposed and existing landscaping and fencing;
- (d) the location of any watercourses and the distance between watercourses and any existing or proposed residential home; and
- (e) existing and proposed parking areas, loading spaces and driveways.

Role of Council

(2) Council is responsible for:

- (a) developing laws and approving policies regarding the management, administration, use and protection of *ᑭᓱᓴᓄᓄ* lands; and
- (b) consenting, by Band Council Resolution, to the grant of an allotment to a member.

Role of the Lands Department

(3) The Lands Department is responsible for:

- (a) ensuring the requirements in this policy and the *ᑭᓱᓴᓄᓄ Allotment Law* are complied with in the granting of allotments;
- (b) ensuring all land instruments granting an allotment are in accordance with the *ᑭᓱᓴᓄᓄ Amended Land Code*, *ᑭᓱᓴᓄᓄ* laws and by-laws, and any applicable provincial or federal laws;
- (c) issuing certificates of possession;
- (d) maintaining a file in the Lands Department for all allotments; and
- (e) in accordance with Policy 3-1, registering all allotments in the First Nation Land

Register.

Role of the Lands Committee

(4) The Lands Committee may assist the Lands Department with any matter related to the assessment of an application or the granting of an allotment and may perform duties and functions as directed by either Council or the Lands Department.

(5) It is the responsibility of the Lands Committee to respond to allotment-related requests from the Lands Department or Council, and where necessary to consult with members on allotment-related issues.

(6) The Lands Committee is not a decision-making body. However, the Lands Committee may make recommendations to the Lands Department and Council on matters related to the assessment of an application or the granting of an allotment

Characteristics of an Allotment

(7) Although ᑭᓱᓱᓱ lands are for the use and benefit of ᑭᓱᓱᓱ as a whole, individual members may acquire lawful possession of a parcel of ᑭᓱᓱᓱ lands, called an allotment.

(8) Subject to ᑭᓱᓱᓱ laws, by-laws, regulations and policies, the characteristics of an allotment are as follows:

(a) it is granted, in writing, by Council pursuant to either section 32.1(a) of the *ᑭᓱᓱᓱ Amended Land Code* or the *ᑭᓱᓱᓱ Allotment Law*;

(b) it can only be granted to, or held by, a member;

(c) it permanently grants a member lawful possession of, and a right to use and occupy, a parcel of ᑭᓱᓱᓱ lands, on the condition that the allotment holder builds a residential home on that parcel of ᑭᓱᓱᓱ lands. If there are no improvements on the parcel of ᑭᓱᓱᓱ lands that are part of a residential home at the time of the allotment holder's death:

(i) the parcel of ᑭᓱᓱᓱ lands reverts back to ᑭᓱᓱᓱ, and

(ii) all the rights and obligations related to interests and licences in or to that parcel of ᑭᓱᓱᓱ lands are transferred to ᑭᓱᓱᓱ;

(d) its legal title remains with Canada;

(e) it may be transferred by the allotment holder without the consent of Council, or to ᑭᓱᓱᓱ with the consent of Council;

(f) subject to ᑭᓱᓱᓱ laws and policies, it provides an allotment holder a right to

benefit from the resources in and of the ᑭᓱᓴᓄᓐ lands to which it applies;

(g) subject to ᑭᓱᓴᓄᓐ laws and policies, it provides an allotment holder with the ability to grant subsidiary interests, licences and permits in the ᑭᓱᓴᓄᓐ lands to which it applies, provided that any original grant of a subsidiary interest, licence or permit is approved by Council;

(h) subject to ᑭᓱᓴᓄᓐ laws, by-laws and policies, it provides the allotment holder with the ability to transfer, devise or otherwise dispose of the ᑭᓱᓴᓄᓐ lands to which it applies to another member; and

(i) it provides the allotment holder with any other rights, consistent with the *ᑭᓱᓴᓄᓐ Amended Land Code* that are attached to Certificates of Possession under the *Indian Act*.

Allotments Granted Prior to Enactment of the St. Mary's Indian Band Land Code

(9) Prior to the enactment of the *St. Mary's Indian Band Land Code*, an allotment in ᑭᓱᓴᓄᓐ lands may have been granted by:

(a) Council, with approval from the Minister under section 20(1) of the *Indian Act*, called a cardex holding. The land for a cardex holding is not surveyed and no evidence of title is issued (known as NETI's) for the cardex holding until the land is surveyed, meaning no Certificate of Possession could be issued under the *Indian Act* without a survey become completed first;

(b) Council, with approval from the Minister under section 20(1) of the *Indian Act*, called a Notice of Entitlement. The land for a Notice of Entitlement is not surveyed and until the land is surveyed no Certificate of Possession could be issued under the *Indian Act* without a survey become completed first; or

(c) Council, with the approval of the Minister, under section 20(1) of the *Indian Act*, where a survey had been completed and the allotment holder was granted a Certificate of Possession.

(10) An allotment in ᑭᓱᓴᓄᓐ lands that was created prior to the enactment of the *St. Mary's Indian Band Land Code* and that was in effect on the date the *ᑭᓱᓴᓄᓐ Amended Land Code* came into force:

(a) continues in force in accordance with the terms and conditions of that allotment;

(b) is considered an allotment under this policy; and

(c) must be in compliance with all ᑭᓱᓴᓄᓐ laws and by-laws.

Section 3 Authorities

(1) The relevant authorities are:

- (a) paragraphs 12.1, 12.2(b), 16.1 and 16.2 of the *Framework Agreement*;
- (b) paragraphs 6(1)(j) and 18(1)(b) of the *First Nations Land Management Act*;
- (c) sections 32.1, 32.1(a), 32.2, 32.3, 33.1 and 33.2 of the *ᑭᓄᓂᓄ ᓄᓂᓄᓄ ᓄᓂᓄᓄ ᓄᓂᓄᓄ*; and
- (d) the *ᑭᓄᓂᓄ ᓄᓂᓄᓄ ᓄᓂᓄᓄ*.

(2) Paragraphs 12.1, 12.2(b), 16.1 and 16.2 of the *Framework Agreement* state:

12.1 A First Nation with a land code in effect will, subject to clause 13, have the power to manage its First Nation land and exercise its powers under this Agreement.

12.2 This power includes:

(b) the authority to grant interests or land rights and licences in relation to its First Nation land and to manage its natural resources, subject to clauses 3, 18.5 and 23.6.

16.1 Interests or land rights or licences held by third parties or Canada in First Nation land, that exist at the time the land code takes effect, continue in force according to their terms and conditions.

16.2 Any rights of locatees in possession of First Nation land, either by custom or by allotment under the *Indian Act*, to transfer, lease and share in natural resource revenues will be defined in the land code.

(3) Paragraphs 6(1)(j) and 18(1)(b) and section 16(1),(2) and (3) of the *First Nations Land Management Act* state:

6. (1) A First Nation that wishes to establish a land management regime in accordance with the Framework Agreement and this Act shall adopt a land code applicable to all land in a reserve of the First Nation, which land code must include the following matters:

(j) the general rules and procedures that apply in respect of the granting or expropriation by the First Nation of interests or rights in First Nation land;

18. (1) A First Nation has, after the coming into force of its land code and subject to the Framework Agreement and this Act, the power to manage First Nation land and, in particular, may

(b) grant interests or rights in and licences in relation to that land;

16. (1) After the coming into force of a land code, no interest or right in or licence in relation to First Nation land may be acquired or granted except in accordance with the land code of the First Nation.

(2) Subject to subsections (3) and (4), interests or rights in and licences in relation to First Nation land that exist on the coming into force of a land code continue in accordance with their terms and conditions.

(3) On the coming into force of the land code of a First Nation, the rights and obligations of Her Majesty as grantor in respect of the interests or rights and the licences described in the First Nation's individual agreement are transferred to the First Nation in accordance with that agreement.

(4) Sections 31.1, 32.1(a), 32.2, 32.3, 33.1 and 33.2 of the *ᑭᓱᓱᓱᓱ ᓱᓱᓱᓱᓱ ᓱᓱᓱᓱᓱ ᓱᓱᓱᓱᓱ* set out the allotment granting and allotment law-making powers of Council. They state:

31.1 An interest or licence in ᑭᓱᓱᓱᓱ lands, whether held by a Member or a person other than a Member, that is in effect on the date this Land Code comes into force shall, subject to this Land Code, continue in force in accordance with the terms and conditions of that interest or licence.

32.1 Subject to this Land Code, Council may grant:

(a) interests in ᑭᓱᓱᓱᓱ community lands;

33.2 The grant of an interest, licence or permit in ᑭᓱᓱᓱᓱ community lands may be made subject to conditions.

32.3 The Director of Lands and Natural Resources may advise Council on the granting of interests, licences and permits in ᑭᓱᓱᓱᓱ community lands and may be authorized to act as a delegate of Council under this Part.

33.1 Council may enact laws providing for Council to grant a Member an allotment in ᑭᓱᓱᓱᓱ lands that entitles that Member to:

(a) permanent possession of the land;

(b) benefit from the resources in and of the land;

(c) grant subsidiary interests, licences and permits in the land;

(d) transfer, devise or otherwise dispose of the land to another Member; and

(e) any other rights, consistent with this Land Code, that are attached to Certificates of Possession under the Indian Act.

33.2 For greater certainty, no allotment granted by Council may be granted to or held by a person who is not a Member.

33.3 A Member may transfer or assign an allotment that is granted by Council:

(a) to ᑭᓱᓱᓱᓱ, with the consent of Council, or

(b) to a Member without the consent of Council or approval of Members.

(5) The *ᑭᓱᓱᓱᓱ Allotment Law* sets out rules and procedures for the:

(a) creation, granting and registration of an allotment;

(b) disposal, assignment, and transfer of allotments;

(c) entitlements of an allotment holder;

(d) responsibilities of an allotment holder;

(e) acquisition of a Certificate of Possession; and

(f) powers of Council to cancel an allotment.

Section 4 Policy

Land Instrument Required

(1) An allotment may only be created, granted, disposed of, assigned or transferred by a land instrument in accordance with the *ᑭᐱᑭᐱᐱ Amended Land Code* or *ᑭᐱᑭᐱᐱ Allotment Law* and this policy.

Eligibility to be an Allotment Holder

(2) A person who is not a member may not apply for or hold an allotment in ᑭᐱᑭᐱᐱ lands.

(3) An allotment to a person who is not a member is invalid.

Allotments Must be Consistent with the Best Interests of ᑭᐱᑭᐱᐱ

(4) All allotments must be consistent with the best interests of ᑭᐱᑭᐱᐱ.

Legal Description Required At Cost of Applicant / Allotment Holder

(5) The applicant is responsible for the costs of obtaining a legal description that refers to an official plan or registration plan to support their application.

(6) Where an allotment holder wishes to obtain a Certificate of Possession over their allotment, they are responsible for the costs of obtaining a legal description of their allotment that refers to an official plan or registration plan.

Allotment must be Consistent with Other Interests in the Land

(7) An allotment must be consistent with previously registered interests in the same parcel of land.

Allotment Must be Consistent with ᑭᐱᑭᐱᐱ Laws, Regulations and By-laws

(8) The granting of an allotment must be consistent with all ᑭᐱᑭᐱᐱ laws and policies. Some examples of laws to consider are the strategic plan, *ᑭᐱᑭᐱᐱ Community Land Use Plan, 2016* and zoning laws.

Allotments May Only Be Granted Over ᑭᐱᑭᐱᐱ Community Lands

(9) Council may only grant an allotment over ᑭᐱᑭᐱᐱ community lands.

Access Requirement

(10) In general, Council must not grant an allotment unless there is legal access to that allotment and the allotment does not impair the only access route to another allotment holder's lands. However, in exceptional circumstances Council may make exceptions to this rule.

Environmental Assessment Requirement

(11) Before granting an allotment, all environmental requirements set out in Policy 9-1 must be complied with.

Consistency with Development Plans

(12) Council must not grant an allotment if making such a grant will adversely impact on development plans that Council has already approved.

Must Be In Good Standing

(13) A person must be in good standing with ᐃᓄᓄᓄ to be granted an allotment.

Requirement for Mortgage Pre-Approval or Proof of Adequate Income

(14) Council must not grant an allotment to a member unless that person has produced proof of adequate income for the building of a residential home on the proposed allotment, or evidence of a mortgage pre-approval that was obtained within the three (3) months preceding the date of that member's application.

Requirement for Building Plans

(15) Council must not grant an allotment to a member unless:

(a) that person has provided plans for the construction of a residential home on the lands requested for allotment; and

(b) if that person is not building the residential home themselves, the name and contact information of a licensed residential builder who will be responsible for constructing the residential home and a written authorization for ᐃᓄᓄᓄ to confirm that the applicant has made arrangements for the licensed residential builder to manage such construction.

Requirements of Band Council Resolution: Preliminary Allotment Decision

(16) A Band Council Resolution by which Council makes a preliminary decision on an allotment must contain the following information:

(a) the full legal name and membership number of the applicant;

(b) the section of the *ᐃᓄᓄᓄ Amended Land Code* or *ᐃᓄᓄᓄ Allotment Law* under

which the allotment will be made if the applicant meets the conditions set out in the preliminary decision;

(c) a description, and attached sketch, of the ᑭᓱᓱᓱ lands that will be granted to the applicant if the applicant meets the conditions set out in the preliminary decision; and

(d) a statement setting out that a preliminary decision has been made to grant an allotment to the applicant conditional on:

(i) the applicant, at their own expense and within one (1) year from the date of the preliminary decision, providing Council with:

(A) a legal description of the requested allotment that refers to a registered plan or official plan and that shows there are no overlapping or inconsistent encumbrances on the requested allotment,

(B) plans for the construction of a residential home on the requested allotment,

(C) the name and contact information of the person who will be responsible for constructing the residential home on the requested allotment; and

(D) an undertaking in a form approved by Council, setting out that the applicant will construct a residential home on the requested allotment within five (5) years of the date the final allotment is granted;

(ii) Council approving the plans for construction of the residential home on the requested allotment;

(iii) the applicant, at their own expense and within two (2) years from the date of the preliminary decision, obtaining all relevant building and other permits for the construction of the residential home on the requested allotment,

(iv) the applicant obtaining either from Council or INAC a written decision setting out that the construction of the proposed residential home:

(A) is not likely to cause significant adverse environmental effects as defined in the *Canadian Environmental Assessment Act*, or

(B) is likely to cause significant adverse environmental effects, as defined in the *Canadian Environmental Assessment Act*, which are justified in the circumstances, and

(e) the applicant being in good standing at the time Council grants a final allotment;

(f) a statement setting out that until such time as one (1) or more of the timeframes relating to conditions set out in the Band Council Resolution expire, ᑭᓱᓱᓱ will not grant any interests or licences in or to the ᑭᓱᓱᓱ lands to which the application relates to another person without the written consent of the applicant; and

(g) a statement setting out that if any one or more of the conditions set out in the Band Council Resolution are not met within the required timeframes:

(A) the preliminary decision of Council to grant the allotment to that member will expire,

(B) the applicant will be required to make a new application to pursue an allotment,

(C) ?aqam will not be responsible to the applicant or any third party for losses, damages, liabilities or costs in relation to the applicant's failure to comply with the conditions in the Band Council Resolution, and

(D) ?aqam will be free to grant interests or licences in or to the ?aqam lands to which the application relates without the written consent of, and without providing notice to, the applicant.

Responsibilities of Allotment Holder

(17) An allotment holder is responsible for:

(a) insurance and maintenance of their allotment;

(b) insurance, maintenance and repairs for structures and residential homes on their allotment;

(c) managing and monitoring any interests, licences or permits granted over their allotment;

(d) where there are changes to ownership of their allotment, providing all relevant fees and information to the Lands Department so such changes may be registered in the First Nation Land Register; and

(e) ensuring all uses of their allotment comply with ?aqam laws and policies, and all applicable laws or regulations of Canada or the Province.

Allotments are Final

(18) Once an allotment is approved by Council, it cannot be cancelled unless:

(a) it was granted in error, by mistake or by fraud, in which case it may only be cancelled in accordance with Policy 7-1; or

(b) the cancellation is by agreement between the allotment holder and Council.

(19) In certain circumstances an allotment may revert to ?aqam. These circumstances are discussed in Policy 4-2.

(20) In certain circumstances ᑭᓱᓄᓐ may expropriate an allotment. These circumstances are discussed in Policy 8-1.

Documentation Requirements

(21) For every application made under this policy, the Lands Department must maintain in the Lands Department file to which that application is connected:

- (a) the original, completed Form 4-1-01: Application for Allotment, and all supporting documentation;
- (b) all original Band Council Resolutions related to the application;
- (c) copies of all correspondence with the applicant related to the application, including letters, emails and notes from telephone conversations; and
- (d) all documentation gathered by the Lands Department in processing the application.

Conflicts of Interest

(22) Where an application is made by a council member or their immediate family, Council must follow the conflicts of interest procedures set out in the *St. Mary's Indian Band Financial Administration Law 2013, Schedule – Avoiding and Mitigating Conflicts of Interest* during their consideration of all decisions related to that application.

Certificates of Possession

(23) All Certificate of Possession must be:

- (a) in Form 4-2-04: Certificate of Possession;
- (b) printed two-sided and in color;
- (c) signed by a witness and either a quorum of Council or an authorized signatory in blue ink; and
- (d) stamped with the embossment stamp.

Section 5 Process

Application for Allotment

(1) **A member who does not owe arrears or bad debt to ʔaḡam** may apply for an allotment in a parcel of land that is ʔaḡam community lands by completing Form 4-1-01: Application for Allotment, and submitting the completed application to the Lands Department, with all supporting documentation.

(2) The following information must be included in an application:

(a) the full legal name, membership number and mailing address of the applicant;

(b) a description and sketch of the requested allotment;

(c) information on any known interests or rights held by third parties in the requested allotment;

(d) a description of all structures and residential homes the applicant proposes to construct on the requested allotment and a cost estimate for such construction;

(e) either:

(i) evidence in a form approved by Council that shows the applicant has sufficient funds to construct the proposed structures and residential homes, or

(ii) evidence of a mortgage pre-approval that:

(A) covers the estimated costs of construction for the proposed structures and residential homes,

(B) is in the applicant's name,

(C) was obtained within the three (3) month period preceding the date of the application, and

(D) is accompanied by a written authorization granting the entity that provided the applicant's mortgage pre-approval permission to confirm the authenticity of that mortgage pre-approval with ʔaḡam; and

(f) a statement setting out:

(i) whether the applicant is the owner of an existing allotment, and

(ii) if the applicant owns an existing allotment, details of whether there is an occupied residential home constructed on that allotment.

Receiving an Application for Allotment

(3) The person at the Lands Department who receives an application must document the following in Part 2 of Form 4-1-01: Application for Allotment:

(a) date and time that the application was received; and

(b) the name of the person at the Lands Department who received the application.

(4) If the applicant is not known personally to the person at the Lands Department who receives the application, the person receiving the application must either have an employee or Council member of ʔaḡam verify that applicant's identity or:

(a) obtain two pieces of government issued identification from that applicant;

(b) compare the two pieces of government issued identification to that applicant and the application and assess whether that applicant is the same person as the person in the identification and the person named in the application;

(c) photocopy the two pieces of government issued identification that are provided and attach them to the application; and

(d) document on Part 2 of Form 4-1-01: Application for Allotment whether the identification provided shows a likely representation of the applicant.

Creation of Lands Department File

(5) The person at the Lands Department who receives an application must ensure that a Lands Department file is created for that application.

Preliminary Application Review

(6) Within thirty (30) days of receiving an application, the Lands Department must complete the following steps in the following order:

(a) verify the applicant's identity and whether the applicant is a member and if the applicant is not a member:

(i) prepare a letter to the applicant setting out that they are not eligible to apply for an allotment because they are not a member,

(ii) sign and photocopy the letter,

(iii) deliver one (1) copy of the letter to the applicant, and

(iv) place one (1) copy of the letter in the applicant's file with a notation on it stating the date that the letter was delivered to the applicant and the name of the person who delivered it to the applicant;

(b) determine whether the applicant has provided authorization in the application for the Finance Department to disclose to the Lands Department information relating to arrears or bad debt in the applicant's name. If the applicant has not provided this authorization, advise the applicant that their application cannot proceed until such

authorization is provided in writing. If the applicant has provided this authorization, check with the finance department to determine whether the applicant is in good standing with ᑭᓄᓂᓂ. If the applicant is not in good standing with ᑭᓄᓂᓂ:

(i) prepare a letter to the applicant setting out:

(A) that they are not eligible to apply for an allotment because they are not in good standing with ᑭᓄᓂᓂ,

(B) the specific details of all arrears and bad debts owed by the applicant to ᑭᓄᓂᓂ,

(C) the name and contact information for the person in the finance department who the applicant may contact to obtain further information regarding their arrears or bad debt and to make arrangements to repay to ᑭᓄᓂᓂ their arrears or bad debt, and

(D) an invitation for the applicant to re-apply for an allotment once they are in good standing with ᑭᓄᓂᓂ with regard to their arrears or bad debt;

(ii) sign and photocopy the letter,

(iii) deliver one (1) copy of the letter to the applicant, and

(iv) place one (1) copy of the letter in the applicant's file with a notation on it stating the date that the letter was delivered to the applicant and the name of the person who delivered it to the applicant;

(c) determine whether the requested allotment is ᑭᓄᓂᓂ community lands;

(d) determine whether the requested allotment is surveyed. This can be done by conducting a search of the Indian Lands Registry System, First Nation Land Register, ᑭᓄᓂᓂ Lands Department files, and Natural Resources of Canada website;

(e) if there is a survey of the requested allotment, obtain a copy of the survey and conduct an encumbrance check on the requested allotment. This can be done by printing the survey from the Indian Lands Registry System, First Nation Land Registry and searching the First Nation Land Register for other interests;

(f) complete a parcel abstract report to determine whether there are any known encumbrances and obtain copies of all land instruments that are encumbrances on the requested allotment and add them to the Lands Department file to which the application relates;

(g) assess whether the requested allotment and the proposed uses are in compliance with ᑭᓄᓂᓂ Laws and policies that apply to the application, including any zoning laws, *ᑭᓄᓂᓂ Community Land Use Plan, 2016* and environmental management plans;

(h) determine whether allotting the requested allotment may impact on any development plans which have already been approved by Council or are expected to be approved by Council in the near future. To determine this, contact the director of community and economic development;

(i) determine whether the requested allotment has within it a cultural heritage site identified in the *ᑲᓱᓂᓄᓄ ᑲᓄᓄᓄᓄ ᑲᓄᓄᓄᓄ ᑲᓄᓄᓄᓄ*, 2016 by checking the *ᑲᓱᓂᓄᓄ ᑲᓄᓄᓄᓄ ᑲᓄᓄᓄᓄ*, 2016;

(j) confirm the authenticity of the applicant's mortgage pre-approval, or the applicant's capacity to otherwise fund the construction of the proposed structures and residential homes;

(k) if the applicant is already the owner of an allotment, confirm that the existing allotment has an occupied residential home on it;

(l) conduct a site visit to the requested allotment; and

(m) complete Part 2 of Form 4-1-01: Application for Allotment.

Lands Committee Review and Recommendation

(7) Within thirty (30) days from the time the Lands Department receives an application, the Lands Department must:

(a) ensure Parts 1 and 2 of Form 4-1-01: Application for Allotment are completed;

(b) send the completed Parts 1 and 2 of Form 4-1-01: Application for Allotment, and all supporting documentation, to the Lands Committee; and

(c) obtain from the Lands Committee a recommendation for Council on whether Council should pursue granting of the requested allotment. Such recommendation must be documented in Part 3 of Form 4-1-01: Application for Allotment.

Report to Council

(8) Within forty-five (45) days of receiving an application, the Lands Department must:

(a) ensure Parts 1, 2 and 3 of Form 4-1-01: Application for Allotment are completed; and

(b) provide the completed Form 4-1-01: Application for Allotment to Council, along with all supporting documentation.

Council Preliminary Decision on Allotment

(9) Council must ensure the following conditions are met before making a preliminary decision on whether to grant a requested allotment to an applicant:

- (a) an applicant must be a member;
- (b) the requested allotment must be consistent with the best interests of ᑭᓄᓂ;
- (c) the requested allotment must be within ᑭᓄᓂ community lands;
- (d) there must be a survey or sketch of the requested allotment;
- (e) the applicant must have either provided evidence in a form approved by Council that shows they have sufficient funds to construct the proposed structure and residential homes, or provided evidence of a mortgage pre-approval that was checked for authentication by the Lands Department and that meets the requirements of this policy;
- (f) there must be legal access to the requested allotment, unless exceptional circumstances exist and Council grants an exception;
- (g) the requested allotment must not be inconsistent with known encumbrances, unless the interest holder for the known encumbrance has provided a written letter setting out that they agree to the allotment;
- (h) the requested allotment must not adversely impact on development plans which have already been approved by Council;
- (i) if the applicant is the owner of an existing allotment, there must be an occupied residential home on that allotment;
- (j) the requested allotment must be in compliance with ᑭᓄᓂ laws and policies that apply to the application, including any zoning laws, *ᑭᓄᓂ Community Land Use Plan, 2016*, environmental management plans and environmental assessment requirements; and
- (k) if ᑭᓄᓂ has provided a guarantee for a mortgage relating to a residential home on the requested allotment:
 - (i) that mortgage must be discharged, and
 - (ii) the allotment must be consistent with ᑭᓄᓂ housing policies.

Council Decision

(10) At the next duly convened meeting of Council following their receipt of a Form 4-1-01: Application for Allotment from the Lands Department, Council must:

- (a) pass a Band Council Resolution that sets out Council's decision to:

(i) preliminarily approve the allotment and the conditions required under subsection 18(2) of the *ᑭᓱᓱᓱᓱ Allotment Law* (and this policy) that must be complied with before Council will grant a final allotment, or

(ii) deny the application and Council's reasons for such denial;

(b) complete Part 4 of Form 4-1-01: Application for Allotment; and

(c) return Form 4-1-01: Application for Allotment to the Lands Department along with the executed Band Council Resolution.

Notice to Applicant

(11) As soon as practical after receiving a preliminary decision on an allotment from Council, the Lands Department must complete Part 5 of Form 4-1-01: Application for Allotment and send to the applicant:

(a) a copy of the completed Form 4-1-01: Application for Allotment;

(b) a copy of the Band Council Resolution; and

(c) a letter setting out:

(i) whether the application has been preliminarily approved, or rejected;

(ii) if the application has been rejected, a summary of the reasons for that rejection; and

(iii) if the application has been preliminarily approved, clear statements that:

(A) until the required conditions are met, the ᑭᓱᓱᓱ lands to which the application is connected will remain ᑭᓱᓱᓱ community lands under the management and control of ᑭᓱᓱᓱ,

(B) the required conditions, deadlines and documentation requirements that must be met by the applicant before a final allotment will be granted are set out in Part 5 of Form 4-1-01: Application for Allotment, and

(C) ᑭᓱᓱᓱ will not consider allotting the ᑭᓱᓱᓱ lands to which the application is connected to any other person until after the deadlines set out in Part 5 of Form 4-1-01: Application for Allotment have passed and only if the applicant fails to meet the required conditions by the specified deadlines.

Obtaining an Official Plan or Registration Plan to Complete Legal Description Requirements

(12) To obtain an official plan or registration plan, the applicant must contact a Canada Land Surveyor. Contact information for Canada Land Surveyors can be found on the Association of Canada Lands Surveyors Website.

(13) The surveyor will initiate the survey process and will seek to obtain permission from ᑭᐱᓄᐱ to enter ᑭᐱᓄᐱ lands to commence the survey. ᑭᐱᓄᐱ will need to provide a permission letter to the surveyor.

(14) A permission letter must not be provided until after Council has made a preliminary decision on the proposed allotment and it must include:

- (a) a statement of permission for the surveyor to enter ᑭᐱᓄᐱ lands;
- (b) information on the work that will be carried out by the surveyor, including a copy of a preliminary sketch plan that sets out the area Council is approving to be surveyed;
- (c) the name of the surveyor(s) to whom the permission applies; and
- (d) the signature and title of the authorized signatory.

(15) After the surveyor has permission to enter ᑭᐱᓄᐱ lands, the surveyor will contact the applicant and enter into a contract for services with him or her.

(16) After the surveyor and applicant have entered into a contract for services, the surveyor will send a request for survey to the Surveyor General of Canada with the contract for services and the letter of permission attached.

(17) The Surveyor General of Canada must authorize the survey before the surveyor can begin the work.

(18) After the surveyor has acquired authorization from the Surveyor General of Canada to conduct the survey, he or she will conduct all the work and review the preliminary survey plan with the applicant.

(19) Next, the surveyor will provide ᑭᐱᓄᐱ with a request for their review and approval of the preliminary survey plan.

(20) ᑭᐱᓄᐱ must ensure the preliminary survey plan complies with the scope of work that was approved by ᑭᐱᓄᐱ to be conducted by the surveyor and with all ᑭᐱᓄᐱ laws and by-laws.

(21) ᑭᐱᓄᐱ must then approve of the preliminary survey plan in writing by providing the surveyor with either a Band Council Resolution or a letter signed by an authorized signatory.

(22) After ᑭᐱᓄᐱ approves of preliminary survey plan, the surveyor will:

- (a) finalize the survey and send the Mylar to Natural Resources Canada in Edmonton

for review and completion;

(b) provide a copy of the official plan or registration plan to the applicant and to ᑭᓱᓴᓴᓴ.

(23) Where ᑭᓱᓴᓴᓴ does not approve of the preliminary survey plan, the Lands Department must work with the applicant and the surveyor to have the plan amended to a form that ᑭᓱᓴᓴᓴ will approve.

Monitoring Completion of Conditions for Allotment

(24) As soon as practical after providing an applicant with Council's preliminary decision on their application, the Lands Department must set review dates for monitoring whether the applicant has completed the required conditions.

(25) The Lands Department is responsible for:

(a) monitoring the progress of the applicant in completion of the conditions, in accordance with the plan set out in Part 5 of Form 4-1-01: Application for Allotment;

(b) receiving and maintaining in the Lands Department file all documentation from the applicant that is required by the preliminary decision of the Council; and

(c) marking down in Part 5 of Form 4-1-01: Application for Allotment whether that documentation is received, by whom it is received and the date on which it is received.

Report to Council on Completion of Conditions for Allotment

(26) Where Council preliminarily approves the granting of an allotment the Lands Department must, at the next duly convened Council meeting following the completion deadlines, provide Council with the completed Form 4-1-01: Application for Allotment, and copies of all documentation received in support of completing the conditions in the preliminary approval.

(27) If the Lands Department has received all required documentation in relation to the conditions set out in Council's preliminary approval of an allotment, the Lands Department must also prepare the following documents and provide them to Council for consideration:

(a) two (2) original copies of a Band Council Resolution approving of the allotment and setting out:

(i) the section of the *ᑭᓱᓴᓴᓴ Amended Land Code* or *ᑭᓱᓴᓴᓴ Allotment Law* under which the allotment is being made,

- (ii) the full legal name and membership number of the person to whom the allotment is made,
 - (iii) a legal description of the allotment that refers to a registered plan or official plan,
 - (iv) a list of all encumbrances on the allotment,
 - (v) the number forming a quorum of Council,
 - (vi) signature lines for the Chief and all councillors in favor of the Band Council Resolution, and
 - (vii) the date of the Council meeting;
- (b) two (2) copies of a completed Form 4-1-02: Allotment to a Member; and
- (c) two (2) copies of a confirmation letter to the applicant setting out that Council has approved of the final allotment and invites the applicant in to execute Form 4-1-02: Allotment to a Member.

Council Final Allotment Decision

- (28) Where Council decides to allot a parcel of land to an applicant, Council must:
- (a) pass and sign two (2) copies of a Band Council Resolution, which must meet the requirements of this policy and the *?a?am Allotment Law*;
 - (b) sign two (2) copies of the completed Form 4-1-02: Allotment to a Member;
 - (c) forward the signed documents to the Lands Department, along with all documents provided to Council for consideration.
- (29) Where Council decides not to allot a parcel of land to an applicant, Council must:
- (a) provide the Lands Department with their written reasons for not allotting the requested allotment; and
 - (b) return to the Lands Department all documents provided to Council for consideration.

Letter to Applicant

- (30) Where Council has made a final decision on an application, the Lands Department must provide the applicant with a letter:
- (a) confirming whether the allotment has been approved;

(b) if the allotment has not been approved, setting out the reasons it was not approved; and

(c) if the allotment has been approved, setting out that the allotment has been approved by Council and inviting the applicant to contact the Lands Department so arrangements can be made for the applicant to execute Form 4-1-02: Allotment to a Member.

Execution of Allotment to Member by the Applicant

(31) The Lands Department must ensure that the Form 4-1-02: Allotment to a Member is executed by the applicant and by an authorized signatory for ᑭᓱᓴᓄᓐ.

Registering the Allotment

(32) After the applicant and an authorized signatory for ᑭᓱᓴᓄᓐ execute Form 4-1-02: Allotment to a Member, the Lands Department must ensure the allotment is registered in accordance with Policy 3-1 in the First Nation Land Register.

Completing and Issuing the Certificate of Possession

(33) After the allotment is registered, the Lands Department must:

(a) complete and have an authorized signatory sign one (1) Form 4-2-04: Certificate of Possession for each new allotment holder; and

(b) provide each new allotment holder with:

(i) the names of all ᑭᓱᓴᓄᓐ laws, by-laws and *ᑭᓱᓴᓄᓐ Community Land Use Plan, 2016* which are in effect and the locations where the new allotment holder may access such laws, by-laws and *ᑭᓱᓴᓄᓐ Community Land Use Plan, 2016*,

(ii) one (1) original, signed copy of the Band Council Resolution granting the final allotment,

(iii) one (1) original, signed copy of Form 4-1-02: Allotment to a Member,

(iv) one (1) original, signed copy of Form 4-2-04: Certificate of Possession, and

(v) the updated Parcel Abstract Report; and

(c) send the new allotment holder's information to the ᑭᓱᓴᓄᓐ Finance Department to update the taxation and assessment rolls.

Documentation Requirement

(34) The Lands Department must complete Part 6 of Form 4-1-01: Application for Allotment.

Section 6 References

(1) Besides this policy, consult the following resources:

(a) the *ᑭᓱᓱᓱᓱ Amended Land Code*;

(b) the *ᑭᓱᓱᓱᓱ Allotment Law*;

(c) the *ᑭᓱᓱᓱᓱ Community Land Use Plan, 2016*;

(d) the Deputy Registrar at the First Nations Land Registry, who at the time of the writing of this Manual is:

Loretta Roy
Phone: 1-819-953-0614
Email: Loretta.Roy@INAC.gc.ca

(e) the First Nations Land Management Resource Center's Developmental and Operational Support Technician, who at the time of the writing of this Manual is:

Angie Derrickson
Phone: 250-469-1675
Email: ADerrickson@labrc.com

POLICY 4-2: TRANSFERRING ALLOTMENTS

Section 1 Purpose

(1) This objectives of this policy are to:

(a) provide the procedures that must be followed when an allotment holder, or their personal representative, transfers their allotment in ᑭᓱᓱᓱ lands to another member or to ᑭᓱᓱᓱ; and

(b) clarify the roles and responsibilities of the Lands Department in relation to the transfer of an allotment.

(2) This policy does not address matters relating to a person's right to the use, occupancy and possession of an allotment and the division of interests in an allotment on the breakdown of a marriage or the death of a spouse or common-law partner. The rules regarding such matters are addressed in the *ᑭᓱᓱᓱ Matrimonial Real Property Law*, which is administered by the courts, not by ᑭᓱᓱᓱ. The role of ᑭᓱᓱᓱ is limited to assisting with the registration of a transfer of such interests once a determination has been made with regard to that transfer.

Section 2 General

Definitions

(1) In this policy:

"transferor" means the person transferring the allotment; and

"transferee" means the person receiving the allotment.

Role of Council

(2) Council is responsible for:

(a) developing laws regarding the management, administration, use and protection of ᑭᓱᓱᓱ land;

(b) enacting laws pursuant to section 33.1 of the *ᑭᓱᓱᓱ Amended Land Code* providing for the transfer, devise or otherwise disposal of land held under an allotment from one member to another;

(c) cancelling or correcting any allotment over ᑭᓱᓱᓱ lands that was issued in error, by mistake or fraud;

(d) cancelling or correcting any allotment by agreement between ᑭᓱᓱᓱ and the allotment holder; and

(e) consenting to the transfer of an allotment to another member where the transfer

is the result of a sale by the superintendent under section 50(2) of the *Indian Act*.

Role of the Lands Department

(3) The Lands Department is responsible for:

- (a) providing members with the forms that are relevant to the registration of a transfer of an allotment;
- (b) providing members with information regarding the process for registering the transfer of an allotment;
- (c) registering transfers of allotments in the First Nations Land Registry; and
- (d) maintaining a copy of all land instruments related to allotments in the ʔaǰam Lands Department file to which a transfer of an allotment relates.

(4) The Lands Department is not responsible for, and must not provide advice to members on:

- (a) the negotiation, drafting or execution of a land instrument that transfers an interest in an allotment;
- (b) whether a transfer of an allotment is valid or enforceable; or
- (c) any matter in relation to a dispute over the division of property on-reserve.

Role of the Lands Committee

(5) The Lands Committee has no role in the transfer of allotments from one member to another.

Role of the Minister

(6) The Minister is responsible for:

- (a) under section 51 of the *Indian Act*, managing the assets of a Member who is deemed mentally incompetent; and
- (b) under section 52 of the *Indian Act*, at his or her sole discretion, managing the assets of a member who is under the age of nineteen (19) years.

Section 3 Authorities

(1) Relevant statutory authorities include:

- (a) sections 50(1) to 50(3), 51 and 52 of the *Indian Act* ;
- (b) section 16(4) of the *First Nations Lands Management Act*;

(c) sections 30.3, 31.1, 33.1 to 33.4 and 36.1 to 36.6 of the *ᑭᓄᓄᓄ Amended Land Code*; and

(d) the *ᑭᓄᓄᓄ Allotment Law*.

(2) Sections 50(1) to 50(3), 51 and 52 of the *Indian Act* state:

50. (1) A person who is not entitled to reside on a reserve does not by devise or descent acquire a right to possession or occupation of land in that reserve.

(2) Where a right to possession or occupation of land in a reserve passes by devise or descent to a person who is not entitled to reside on a reserve, that right shall be offered for sale by the superintendent to the highest bidder among persons who are entitled to reside on the reserve and the proceeds of the sale shall be paid to the devisee or descendant, as the case may be.

(3) Where no tender is received within six months or such further period as the Minister may direct after the date when the right to possession or occupation of land is offered for sale under subsection (2), the right shall revert to the band free from any claim on the part of the devisee or descendant, subject to the payment, at the discretion of the Minister, to the devisee or descendant, from the funds of the band, of such compensation for permanent improvements as the Minister may determine.

51. (1) Subject to this section, all jurisdiction and authority in relation to the property of mentally incompetent Indians is vested exclusively in the Minister.

(2) Without restricting the generality of subsection (1), the Minister may

(a) appoint persons to administer the estates of mentally incompetent Indians;

(b) order that any property of a mentally incompetent Indian shall be sold, leased, alienated, mortgaged, disposed of or otherwise dealt with for the purpose of:

(i) paying his debts or engagements,

(ii) discharging encumbrances on his property,

(iii) paying debts or expenses incurred for his maintenance or otherwise for his benefit, or

(iv) paying or providing for the expenses of future maintenance; and

(c) make such orders and give such directions as he considers necessary to secure the satisfactory management of the estates of mentally incompetent Indians.

(3) The Minister may order that any property situated off a reserve and belonging to a mentally incompetent Indian shall be dealt with under the laws of the province in which the property is situated.

52. The Minister may administer or provide for the administration of any property to which infant children of Indians are entitled, and may appoint guardians for that purpose.

(3) Section 16(4) of the *First Nations Lands Management Act* states:

16. (4) Interests or rights in First Nation land held on the coming into force of a land code by First Nation members pursuant to allotments under subsection 20(1) of the *Indian Act* or pursuant to the custom of the First Nation are subject to the provisions of the land code governing the transfer and

lease of interests or rights in First Nation land and sharing in natural resource revenues.

(4) Sections 30.3, 31.1, 33.1 to 33.4 and 36.1 to 36.6 of the *ᑭᐱᑭᐱᐱ ᐱᐱᐱᐱᐱ ᐱᐱᐱᐱᐱ ᐱᐱᐱᐱᐱ* state:

30.3 An interest or licence in ᑭᐱᑭᐱᐱ lands may only be created, granted, disposed of, assigned or transferred by a written instrument issued in accordance with this Land Code.

31.1 An interest or licence in ᑭᐱᑭᐱᐱ lands, whether held by a Member or a person other than a Member, that is in effect on the date this Land Code comes into force shall, subject to this Land Code, continue in force in accordance with the terms and conditions of that interest or licence.

33.1 Council may enact laws providing for Council to grant a Member an allotment in ᑭᐱᑭᐱᐱ Lands that entitles that Member to:

(a) permanent possession of the land;

(b) benefit from the resources in and of the land;

(c) grant subsidiary interests, licences and permits in the land;

(d) transfer, devise or otherwise dispose of the land to another Member; and

(e) any other rights, consistent with this Land Code, that are attached to Certificates of Possession under the *Indian Act*.

33.2 For greater certainty, no interest under section 33.1 may be granted to or held by a person who is not a Member.

33.3 A Member may transfer or assign an allotment that is granted by Council:

(a) to ᑭᐱᑭᐱᐱ, with the consent of Council; or

(b) to a Member without the consent of Council or approval of Members.

33.4 For greater certainty, a Member may transfer their allotment to themselves.

36.1 A person who receives an interest in ᑭᐱᑭᐱᐱ Lands from a Member by testamentary disposition is entitled to have that interest registered in the First Nation Land Register provided that:

(a) where the deceased Member was ordinarily resident on ᑭᐱᑭᐱᐱ Lands and the deceased Member's will is either approved in whole by the Minister, or the part of the deceased Member's will addressing the interest is approved by the Minister, under section 45 of the *Indian Act*, the land instrument transferring the interest is duly executed by either:

(i) the executor who is approved by the Minister, or

(ii) if no executor is named in the deceased Member's will, the administrator who is appointed by the Minister; or

(b) where the deceased Member was not ordinarily resident on ᑭᐱᑭᐱᐱ Lands and:

(i) the deceased Member's will is approved by a court, the land instrument transferring the interest is duly executed by the person that is named in the court order as the executor or administrator of the deceased Member's estate; or

(ii) the Minister assumes jurisdiction under sections 4(3) and 43 of the *Indian Act*, the land

instrument transferring the interest is duly executed by the person who is appointed by the Minister to be the administrator of the deceased Member's estate;

36.2 A person who receives an interest in ᑭᓄᓄᓄ Lands from a Member by intestate succession is entitled to have that interest registered in the First Nation Land Register provided that:

(a) where the deceased Member was ordinarily resident on ᑭᓄᓄᓄ Lands, the land instrument transferring the interest is duly executed by the person who is appointed by the Minister under section 43 of the *Indian Act* to be the administrator of that Member's estate; or

(b) where the deceased Member was not ordinarily resident on reserve and:

(i) a court has made an order regarding the deceased Member's estate, the land instrument transferring the interest is duly executed by the person who is named in the court order as the administrator of estate; or

(ii) the Minister assumes jurisdiction under sections 4(3) and 43 of the *Indian Act*, the land instrument transferring the interest is duly executed by the person who is appointed by the Minister to be the administrator of estate;

36.3 A person who receives an interest in ᑭᓄᓄᓄ Lands from a Member who has been declared by a court or health authority to be mentally incompetent is entitled to have that interest registered in the First Nation Land Register provided that:

(a) where the Member who is declared mentally incompetent is ordinarily resident on ᑭᓄᓄᓄ Lands, the land instrument transferring the interest is duly executed by either:

(i) the Minister, or

(ii) a person who is appointed by the Minister pursuant to section 51(2)(a) of the *Indian Act* to administer the estates of mentally incompetent Members; or

(b) where the Member who is declared mentally incompetent is not ordinarily resident on ᑭᓄᓄᓄ Lands, the land instrument transferring the interest is duly executed by the person who is named in that person's power of attorney or in an order from the court to be that Member's committee.

36.4 A Member who purchases an interest in ᑭᓄᓄᓄ Lands under subsection 50(2) of the *Indian Act* is entitled to have that interest registered in the First Nation Land Register provided that:

(a) the land instrument transferring the interest is duly executed by the person duly authorized under the *Indian Act* to transfer the interest; and

(b) Council has, by Resolution, consented to the land instrument transferring the interest to the purchasing Member.

36.5 Council may, by Resolution, authorize the Director of Lands and Natural Resources to act as a delegate of Council under subsection 36.4(b).

37.6 An interest in ᑭᓄᓄᓄ Lands that reverts to ᑭᓄᓄᓄ under subsection 50(3) of the *Indian Act* shall become ᑭᓄᓄᓄ community lands on the date of reversion or on such other date that the Minister or the Minister's duly authorized delegate may specify.

(5) The *ᑭᓄᓄᓄ Allotment Law* sets out rules and procedures for the:

(a) role of Council and the Lands Department in the management of allotments;

(b) procedures to be followed for the creation, granting and registration of an allotment;

- (c) rules around the disposal, assignment, and transfer of allotments;
- (d) entitlements of an allotment holder;
- (e) responsibilities of an allotment holder;
- (f) acquisition of a Certificate of Possession; and
- (g) power of Council to cancel an allotment and the cancellation procedure.

Section 4 Policy

What is Transferred?

(1) When an allotment holder transfers their allotment to another member or to ᐱᐱᐱ, legal title to the requested allotment remains with Canada but all the allotment holder's rights and obligations in relation to that allotment are transferred.

Registration

(2) A document that registers the transfer of an allotment must be in Form 4-2-01: Transfer of Interest in Allotment.

(3) The registration of a Form 4-2-01: Transfer of Interest in Allotment is not proof that a transfer of an allotment was validly made. Both the transferor and transferee are responsible for ensuring their interests in the transfer of an allotment are protected. They may do so by consulting with their own independent legal counsel. ᐱᐱᐱ has no role in ensuring that the transfer of an allotment is validly made.

Council Consent

(4) The *ᐱᐱᐱ Amended Land Code* does not require the approval of Council for a transfer of an allotment to another member except where the transfer is the result of a sale by the superintendent under section 50(2) of the *Indian Act*.

Environmental Assessment

(5) Although it is uncommon, the transfer of an allotment may be subject to an environmental assessment. Details on environmental assessment are found under Policy 9-1.

Transfers to Persons under Nineteen (19) years of Age

(6) Although an allotment holder may transfer lawful possession to a person under nineteen (19) years of age, the Minister may, at his or her sole discretion, take over the management and control of that allotment on behalf of the person under nineteen (19) years of age.

Transfers on Death

(7) ᑭᓱᓱᓱᓱ has no authority to decide who will inherit a deceased member's allotment. A member who believes they are entitled to an allotment by testamentary disposition or succession must contact INAC's Wills and Estates personnel to determine whether they are entitled to that allotment and the process that must be followed to give effect to the transfer of that allotment into their name.

(8) ᑭᓱᓱᓱᓱ has no authority to determine whether the transfer of a deceased member's allotment is valid. The role of ᑭᓱᓱᓱᓱ in the transfer of an allotment belonging to a deceased member is limited to:

(a) providing Form 4-2-01: Transfer of Interest in Allotment to members and their representatives; and

(b) at the request of a transferor or transferee, registering their completed Form 4-2-01: Transfer of Interest in Allotment in the First Nation Land Register.

Transfer Where Allotment Holder is Declared Mentally Incompetent

(9) It is ᑭᓱᓱᓱᓱ policy to presume that an allotment holder who is transferring their allotment to another member is mentally competent to do so.

(10) ᑭᓱᓱᓱᓱ has no authority to determine whether a member is mentally incompetent. Such determinations can only be made by a health authority or a court.

(11) ᑭᓱᓱᓱᓱ has no authority to make decisions regarding the transfer of assets belonging to a member who has been declared mentally incompetent by a health authority or a court, regardless of whether or not that member normally resides on ᑭᓱᓱᓱᓱ lands. Such decisions can only be made by:

(a) either the Minister or a person appointed by the Minister if that member is ordinarily resident on ᑭᓱᓱᓱᓱ lands; or

(b) a person named in the member's power of attorney or in a court order, if that member is not ordinarily resident on ᑭᓱᓱᓱᓱ lands.

(12) The role of ᑭᓱᓱᓱᓱ in the transfer of a mentally incompetent member's allotment is limited to:

(a) providing Form 4-2-01: Transfer of Interest in Allotment to members and their representatives; and

(b) at the request of a transferor or transferee, registering their completed Form 4-2-01: Transfer of Interest in Allotment in the First Nation Land Register.

(13) A member who receives an allotment from an allotment holder who normally resides on ᑭᓱᓴᓄᓐ lands, and knows that the allotment holder was declared mentally incompetent prior to the transfer, must contact INAC personnel to determine the appropriate process for the transfer of that allotment.

(14) A member who receives an allotment from an allotment holder who normally does not reside on ᑭᓱᓴᓄᓐ lands, and knows that the allotment holder was declared mentally incompetent prior to the transfer is encouraged to consult with their own legal counsel. The transferee must ascertain whether the person who is signing for the transfer of that allotment has a legal power of attorney or an order from the court allowing them to execute that transfer of allotment on behalf of the allotment holder.

Disputes Regarding a Transfer of Allotment

(15) Where a person has a dispute with another person or with ᑭᓱᓴᓄᓐ in relation to the possession, use or occupation of ᑭᓱᓴᓄᓐ lands, they may request that the dispute be resolved in accordance with Part 8 of the *ᑭᓱᓴᓄᓐ Amended Land Code*. They may also access the courts to ascertain their rights.

Section 5 Process

Process for the General Transfer of Allotments

(1) Where the Lands Department receives a request from a person for assistance in, or information with regard to, transferring an allotment, the Lands Department must:

- (a) provide that person with the following documents:
 - (i) two (2) copies of Form 4-2-01: Transfer of an Interest in Allotment,
 - (ii) one (1) copy of this policy,
 - (iii) one (1) copy of Policy 3-1, and
 - (iv) if the transferor is not deceased and has a spouse or common-law partner, two (2) copies of Form 4-2-03: Consent of Spouse or Common-Law Partner; and
- (b) advise that person that:
 - (i) the transfer of an allotment is a private matter between the transferor and transferee;
 - (ii) ᑭᓱᓴᓄᓐ plays no role in the negotiation, drafting or execution of a transfer of an allotment;
 - (iii) ᑭᓱᓴᓄᓐ does provide Form 4-1-01: Transfer of Interest in Allotment to members for their use in registering a transfer but:

(A) ᑭᓱᓱᓱᓱᓱ does not guarantee the condition of the land being transferred using the form, or that the transfer will be valid and enforceable; and

(B) ᑭᓱᓱᓱᓱᓱ will not assume any liability for any claims, losses, or damages arising out of the use of Form 4-1-01: Transfer of Interest in Allotment;

(iv) before signing Form 4-1-01: Transfer of Interest in Allotment, the transferee and transferor are strongly encouraged to seek independent legal advice regarding the transfer to ensure that the deal being entered into is legally enforceable and that it involves what the parties entering into it think it involves (for example, no hidden secrets about the land being transferred or the ability of each party to make the promises being made in the land instrument);

(v) the transfer of an allotment will not be enforceable if it is not registered in the First Nation Land Register; and

(vi) the role of ᑭᓱᓱᓱᓱᓱ in the transfer of an allotment is limited to:

(A) providing Form 4-2-01: Transfer of Interest in Allotment;

(B) at the request of a transferor or transferee, and in accordance with Policy 3-1, registering their completed Form 4-2-01: Transfer of Interest in Allotment in the First Nation Land Register and

(C) issuing Form 4-2-04: Certificate of Possession to the new allotment holder.

(2) The Lands Department must receive and register all transfers of an allotment in accordance with Policy 3-1 in the First Nation Land Register.

(3) Once registration is completed, the Lands Department must:

(a) prepare and have Council sign Form 4-2-04: Certificate of Possession;

(b) make a copy of the signed Form 4-2-04: Certificate of Possession and place it in the Lands Department file;

(c) provide the new allotment holder with:

(i) the original, signed Form 4-2-04: Certificate of Possession;

(ii) updated Parcel Abstract Report; and

(iii) the names of all ᑭᓱᓱᓱᓱᓱ laws, by-laws and *ᑭᓱᓱᓱᓱᓱ Community Land Use Plan, 2016* which are in effect and the locations where the new allotment holder may access such laws, by-laws and *ᑭᓱᓱᓱᓱᓱ Community Land Use Plan, 2016*,

(d) document in the Lands Department file that steps 18(a) through (c) have been completed; and

- (e) send the new allotment holder's information to the ʔaąam Finance Department to update the taxation and assessment rolls.

Process for Transfer of Allotment to a Purchaser under Subsection 50(2) of the Indian Act

(4) Where a member or the superintendent requests assistance in transferring an allotment under subsection 50(2) of the *Indian Act* to a purchaser, the Lands Department must provide that person with:

- (a) two (2) copies of Form 4-2-01: Transfer of Interest in Allotment Lands; and
- (b) two (2) copies of Form 4-2-02: Declaration of Superintendent.

(5) The purchaser must:

- (a) complete and sign two (2) copies of Form 4-2-01: Transfer of Interest in Allotment, attaching all required documentation to it; and
- (b) provide the completed Form 4-2-01: Transfer of Interest in Allotment to the Lands Department.

(6) The Lands Department must provide the Form 4-2-01: Transfer of Interest in an Allotment completed by the purchaser to the Superintendent, along with two (2) copies of Form 4-2-02: Declaration of Superintendent.

(7) The Superintendent must:

- (a) sign Form 4-2-01: Transfer of Interest in an Allotment on behalf of the deceased Transferee;
- (b) complete and sign two (2) copies of Form 4-2-02: Declaration of Superintendent; and
- (c) return the completed forms to the Lands Department.

(8) Council must approve of the transfer, in writing by signing two (2) copies of a Band Council Resolution and the Lands Department must place one (1) copy in the Lands Department file, and the other copy in the Executive Assistant's files.

(9) The Lands Department must register the transfer in accordance with Policy 3-1 in the First Nation Land Register.

(10) Once registration is completed, the Lands Department must:

- (a) prepare and have Council sign Form 4-2-04: Certificate of Possession;

(b) make a copy of the signed Form 4-2-04: Certificate of Possession and place it in the Lands Department file; and

(c) provide the new allotment holder with:

(i) the original, signed Form 4-2-04: Certificate of Possession;

(ii) updated Parcel Abstract Report; and

(iii) the names of all *ᑭᓱᓱᓱ* laws and *ᑭᓱᓱᓱ Community Land Use Plan, 2016* which are in effect and the locations where the new allotment holder may access such laws and *ᑭᓱᓱᓱ Community Land Use Plan, 2016*,

and document in the Lands Department file that this has been completed,

(d) send allotment holder's information to the *ᑭᓱᓱᓱ* Finance Department to update the taxation and assessment rolls.

Process for Reversion of an Allotment to ᑭᓱᓱᓱ Under an Estate Transfer Pursuant to Section 50(3) of the Indian Act

(11) Where no tender is received within six (6) months (or period directed by the Minister) from the date when an allotment is offered for sale by the Superintendent under subsection 50(2) of the *Indian Act*, the land automatically reverts to *ᑭᓱᓱᓱ*, subject to any payment as is directed by the Minister to be paid to the devisee or descendent from the funds of *ᑭᓱᓱᓱ* as compensation for permanent improvements to the allotment.

(12) The Lands Department must ensure:

(a) any payments directed by the Minister to a devisee or descendent are approved by Council and paid out to the devisee or descendent by the Minister;

(b) one (1) copy of Form 4-2-01: Transfer of Interest in Allotment is completed by the Superintendent and returned to the Lands Department;

(c) one (1) copy of Form 4-2-02: Declaration of Superintendent is completed by the Superintendent and returned to the Lands Department; and

(d) the reversion of the interest to *ᑭᓱᓱᓱ* registered in accordance with Policy 3-1 in the First Nation Land Register.

(13) Once the reversion of the interest to *ᑭᓱᓱᓱ* is registered, the Lands Department must ensure that the following documents are in the Lands Department file:

(a) the copy of the completed Form 4-1-01: Transfer of Interest in Allotment;

- (b) the copy of the completed Form 4-2-02: Declaration of Superintendent;
- (c) a copy of the completed registration; and
- (d) the new Parcel Abstract Report.

Section 6 References

(1) Besides this policy, consult the following resources:

(a) the *ᑭᓱᓱᓱᓱ Amended Land Code*;

(b) the *ᑭᓱᓱᓱᓱ Allotment Law*;

(c) the *First Nations Land Registry Regulations*;

(d) the Deputy Registrar at the First Nations Land Registry, who at the time of the writing of this Manual is:

Loretta Roy
Phone: 1-819-953-0614
Email: Loretta.Roy@INAC.gc.ca

(e) the First Nations Land Management Resource Center, Developmental & Operational Support Technician who at the time of the writing of this Manual is:

Angie Derrickson
Phone: 250-469-1675
Email: ADerrickson@labrc.com

POLICY 4-3: LEASES, LICENCES, PERMITS, EASEMENTS AND OTHER INTERESTS IN AN ALLOTMENT

Section 1 Purpose

(1) This Policy provides information to the Lands Department regarding allotment holders who choose to grant interests in their allotments to third parties.

Section 2 General

Role of Council

(1) Council is responsible for:

(a) developing laws regarding the management, administration, use and protection of ᑭᓱᓱᓱᓱ land; and

(b) consenting to the original grant of a lease, licence, permit or easement in ᑭᓱᓱᓱ lands, which consent must not be unreasonably withheld.

NOTE: The purpose of Council providing consent is to ensure that all uses of ᑭᓱᓱᓱ lands are consistent with ᑭᓱᓱᓱ laws, by-laws and policies.

Role of the Lands Department

(2) The Lands Department is not responsible for ensuring that a lease in ᑭᓱᓱᓱ land permits the leasehold to be mortgaged or charged, that the lease is in good standing, or that the leaseholder is in compliance with the terms of the lease.

(3) The Lands Department must not provide any advice to an allotment holder regarding the negotiation, drafting or execution of a lease, licence, permit or easement over land held under an allotment.

(4) **When asked for advice on the negotiation, drafting or execution of a lease, licence, permit or easement over land held under an allotment, the Lands Department must encourage the person asking for advice to seek independent legal advice.**

(5) It is not the responsibility of the Lands Department to ensure that a lease, licence, permit or easement over land held under an allotment is valid, or to monitor or enforce the terms of a lease, licence, permit or easement over land held under an allotment.

(6) It is the responsibility of the Lands Department to ensure that an original copy of all leases, licences, permits and easements over land held under an allotment that are received by the Lands Department from the allotment holder or interest holder, are registered in the First Nation Land Register.

(7) The Lands Department is responsible for maintaining a copy of all leases, licences, permits and easements relating to ḡaḡam land in the appropriate Lands Department files.

Role of the Lands Committee

(8) The Lands Committee may perform duties and functions as directed by either the Council or the Lands Department.

Role of the Allotment Holder

(9) The allotment holder is responsible for:

(a) overseeing the negotiations, drafting and execution of a lease, licence, permit, easement or other subsidiary interest over land held under an allotment in his or her name;

(b) obtaining the consent of Council to every lease, licence, permit, easement and other subsidiary interest over land held under their allotment;

(c) ensuring that any lease, licence, permit, easement or other subsidiary interest over land held under an allotment that he or she grants is in accordance with the *ḡaḡam Amended Land Code*, ḡaḡam laws and any applicable provincial or federal legislation;

(d) ensuring that any lease, licence, permit, easement or other interest over land held under an allotment that he or she grants is submitted to the Lands Department for registration; and

(e) monitoring and compliance of any lease, licence, permit, easement or other interest that he or she grants over land held under his or her allotment.

Characteristics of a Lease of an Allotment

(10) A lease of lands held under an allotment includes the following characteristics:

(a) is a private contract between the lessor and the lessee;

(b) ḡaḡam is never the lessor but may be the lessee;

(c) the original lessor is always the allotment holder;

(d) the lessee may be any person, whether they are a member or not;

(e) it provides the lessee a right of access to ḡaḡam lands;

(f) if specified in the lease, it may provide the lessee with the ability to reside on ḡaḡam lands;

(g) its terms and conditions are determined between the lessor and lessee;

(h) unless ṭaqam is the lessee, ṭaqam does not participate in its negotiation, drafting or execution; and

(i) if it is an original lease, it must be consented to by Council.

Characteristics of a Licence over an Allotment

(11) A licence over lands held under an allotment includes the following characteristics:

(a) it is a private contract between the licensor and licensee;

(b) ṭaqam is never the licensor but may be the licensee;

(c) the original licensor is always the allotment holder;

(d) the licensee may be any person, whether they are a member or not;

(e) its terms and conditions are determined between the licensor and licensee;

(f) unless ṭaqam is the licensee, ṭaqam does not participate in its negotiation, drafting or execution; and

(g) if it is an original licence, it must be consented to by Council.

Characteristics of a Permit over an Allotment

(12) A permit over lands held under an allotment includes the following characteristics:

(a) it is a private contract between the permittor and permittee;

(b) ṭaqam is never the permittor but may be the permittee;

(c) the permittor is always the allotment holder;

(d) the permittee may be any person, whether they are a member or not;

(e) if specified in the permit, it may provide the permittee with the ability to reside on ṭaqam lands; and

(f) its terms and conditions are determined between the permittor and permittee;

(g) unless ṭaqam is the permittee, ṭaqam does not participate in its negotiation, drafting or execution; and

(h) if it is an original permit, it must be consented to by Council.

Characteristics of an Easement over an Allotment

- (13) An easement over an allotment includes the following characteristics:
- (a) it is a private contract between the grantor and grantee;
 - (b) Ḥaqām is never the grantor but may be the grantee;
 - (c) the grantor is always the allotment holder;
 - (d) the grantee may be any person, whether they are a member or not; and
 - (e) its terms and conditions are determined between the grantor and grantee;
 - (f) unless Ḥaqām is the grantee, Ḥaqām does not participate in its negotiation, drafting or execution; and
 - (g) if it is an original easement, it must be consented to by Council.

Section 3 Authorities

(1) The relevant authorities are:

- (a) sections 30.2 – 30.6, 31.1, 33.1 and 36.1 to 36.3 of the *Ḥaqām Amended Land Code*; and
- (b) sections 34, 36 and 37 of the *Ḥaqām Allotment Law*.

(2) Sections 30.2 – 30.6, 31.1, 33.1 and 36.1 to 36.3 of the *Ḥaqām Amended Land Code* state that:

30.2 No person may acquire an interest or license in Ḥaqām lands by use, occupation or by any other means that is not authorized under this Land Code or a Law enacted under it.

30.3 An interest or licence in Ḥaqām lands may only be created, granted, disposed of, assigned or transferred by a land instrument issued in accordance with this Land Code.

30.4 A person who is not a Member may hold a lease, license, easement, mortgage or permit in Ḥaqām lands.

30.5 The written consent of Council shall be obtained for the original grant of a lease, licence, easement or permit in Ḥaqām lands.

30.6 Notwithstanding section 30.5, if Council has consented to the original grant of a lease in Ḥaqām lands to a person who is not a Member, that leasehold interest may be subsequently mortgaged, transferred or assigned without the consent of Council or approval of Members.

31.1 An interest or licence in Ḥaqām lands, whether held by a Member or a person other than a Member, that is in effect on the date this Land Code comes into force shall, subject to this Land Code, continue in force in accordance with the terms and conditions of that interest or licence.

33.1 Council may enact laws providing for Council to grant a Member an allotment in ?a?am Lands that entitles that Member to:

- (a) permanent possession of the land;
- (b) benefit from the resources in and of the land;
- (c) grant subsidiary interests, licences and permits in the land;
- (d) transfer, devise or otherwise dispose of the land to another Member; and
- (e) any other rights, consistent with this Land Code, that are attached to Certificates of Possession under the *Indian Act*.

36.1 A person who receives an interest in ?a?am Lands from a Member by testamentary disposition is entitled to have that interest registered in the First Nation Land Register provided that:

(a) where the deceased Member was ordinarily resident on ?a?am Lands and the deceased Member's will is either approved in whole by the Minister, or the part of the deceased Member's will addressing the interest is approved by the Minister, under section 45 of the *Indian Act*, the land instrument transferring the interest is duly executed by either:

(iii) the executor who is approved by the Minister, or

(iv) if no executor is named in the deceased Member's will, the administrator who is appointed by the Minister; or

(b) where the deceased Member was not ordinarily resident on ?a?am Lands and:

(iii) the deceased Member's will is approved by a court, the land instrument transferring the interest is duly executed by the person that is named in the court order as the executor or administrator of the deceased Member's estate; or

(iv) the Minister assumes jurisdiction under sections 4(3) and 43 of the *Indian Act*, the land instrument transferring the interest is duly executed by the person who is appointed by the Minister to be the administrator of the deceased Member's estate;

36.2 A person who receives an interest in ?a?am Lands from a Member by intestate succession is entitled to have that interest registered in the First Nation Land Register provided that:

(a) where the deceased Member was ordinarily resident on ?a?am Lands, the land instrument transferring the interest is duly executed by the person who is appointed by the Minister under section 43 of the *Indian Act* to be the administrator of that Member's estate; or

(b) where the deceased Member was not ordinarily resident on reserve and:

(iii) a court has made an order regarding the deceased Member's estate, the land instrument transferring the interest is duly executed by the person who is named in the court order as the administrator of estate; or

(iv) the Minister assumes jurisdiction under sections 4(3) and 43 of the *Indian Act*, the land instrument transferring the interest is duly executed by the person who is appointed by the Minister to be the administrator of estate;

36.3 A person who receives an interest in ?a?am Lands from a Member who has been declared by a court or health authority to be mentally incompetent is entitled to have that interest registered in the First Nation Land Register provided that:

(a) where the Member who is declared mentally incompetent is ordinarily resident on ᑭᓱᓴᓄᓄ Lands, the land instrument transferring the interest is duly executed by either:

(iii) the Minister, or

(iv) a person who is appointed by the Minister pursuant to section 51(2)(a) of the *Indian Act* to administer the estates of mentally incompetent Members; or

(b) where the Member who is declared mentally incompetent is not ordinarily resident on ᑭᓱᓴᓄᓄ Lands, the land instrument transferring the interest is duly executed by the person who is named in that person's power of attorney or in an order from the court to be that Member's committee.

(3) Sections 34, 36 and 37 of the *ᑭᓱᓴᓄᓄ Allotment Law* state that:

34. Every transfer of an allotment and every grant of an interest or licence in or to an allotment must:

(a) comply with ᑭᓱᓴᓄᓄ laws and policies, including any zoning laws, *ᑭᓱᓴᓄᓄ Community Land Use Plan, 2016*, environmental management plans and environmental assessment requirements; and

(b) be registered in the First Nation Land Register.

36. Council consent must be obtained by an allotment holder for the original grant of an interest or licence in or to their allotment.

37. ᑭᓱᓴᓄᓄ must not be responsible or liable for ensuring a land instrument that transfers an allotment or grants an interest or licence in or to an allotment:

(a) is validly made;

(b) is enforceable; or

(c) will be accepted by the First Nation Land Register.

Section 4 Policy

Granting Interests and Licences to Non-members

(1) A person who is not a member may hold a lease, licence, permit, easement or other interest over ᑭᓱᓴᓄᓄ lands, except for an allotment.

(2) The Council must provide written consent for all original grants of interests and licences in ᑭᓱᓴᓄᓄ lands.

(3) Once Council consent has been provided on an original lease, it may be subsequently mortgaged, transferred or assigned without the consent of the Council or approval of the members of the ᑭᓱᓴᓄᓄ, so long as such transaction is allowed under the lease.

What Type of Lease, Licence, Permit, Easement or Other Land Instrument May be Used?

(4) ᑭᓄᓂ does not prescribe the types or forms of leases, licences, permits, easements or other land instruments that may be used to grant interests in ᑭᓄᓂ lands held under an allotment.

(5) It is entirely in the power of the allotment holder to determine what type and form of lease, licence, permit, easement or other land instrument to use, so long as it is in accordance with the *ᑭᓄᓂ Amended Land Code*, ᑭᓄᓂ laws and by-laws and any applicable provincial or federal legislation.

(6) ᑭᓄᓂ encourages allotment holders who wish to lease, licence, permit or grant easements or other interests in their lands not to do so without discussing their proposed transaction with their own legal counsel. ᑭᓄᓂ also strongly suggests that allotment holders ensure their legal counsel are experienced in reserve land transactions and aboriginal law.

Section 5 Process

Negotiation, Drafting and Executing

(1) ᑭᓄᓂ does not require allotment holders to follow any specific process when negotiating, drafting or executing a lease, licence, permit, easement or other land instrument pertaining to their allotment.

(2) ᑭᓄᓂ strongly recommends that allotment holders who wish to grant interests in their lands to others to seek independent legal advice on their proposed transactions from a lawyer who is experienced in reserve land transactions and aboriginal law.

Registration of a Lease, Licence, Permit, Easement or other Land Instrument over Allotted Lands

(3) Where the Lands Department receives a request from an allotment holder or interest holder to register a lease, licence, permit, easement or other land instrument over allotted lands, the Lands Department must provide that person with Form 3-1-01: Registration of Interest and direct that person to complete the form and return it to the Lands Department.

(4) Where the Lands Department receives a completed Form 3-1-01: Registration of Interest along with the required documentation for registration, the Lands Department must register the land instrument in accordance with Policy 3-1 in the First Nation Land Register.

(5) Once the land instrument is registered, the Lands Department must:

(a) provide the new interest holder with the names of all ᑭᓄᓂ laws and *ᑭᓄᓂ Community Land Use Plan, 2016* which are in effect and the locations where the new interest holder may access such laws and *ᑭᓄᓂ Community Land Use Plan, 2016*;

(b) send the new interest holder's information to the ᑭᓄᓂ Finance Department to update the taxation and assessment rolls, and

- (c) document in the Lands Department file that the requirements under paragraphs (a) and (b) have been completed.

Section 6 References

(1) Besides this policy, consult the following resources:

- (a) the *First Nations Land Management Act*;

- (b) the *ᑭᓱᓱᓱᓱ Amended Land Code*;

- (c) the Framework Agreement on First Nation Land Management;

- (d) the *First Nations Land Registry Regulations*;

- (e) Policy 7 -1;

- (f) Policy 9-1 for more information on Environmental considerations;

- (g) the Deputy Registrar at the First Nations Land Registry, who at the time of the writing of this Manual is:

Loretta Roy
Phone: 1-819-953-0614
Email: Loretta.Roy@INAC.gc.ca

- (h) the First Nations Land Management Resource Center, Developmental & Operational Support Technician, who at the time of the writing of this Manual is:

Angie Derrickson
Phone: 250-469-1675
Email: ADerrickson@labrc.com

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LEASE POLICIES

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TABLE OF CONTENTS

POLICY 5-1: LEASES OVER ᐱᐱᐱᐱ COMMUNITY LANDS.....	146
Section 1 Purpose	146
Section 2 General.....	146
<i>Definitions</i>	146
<i>Role Of Council</i>	148
<i>Role Of The Lands Department</i>	148
<i>Role Of The Lands Committee</i>	149
<i>Characteristics Of A Lease</i>	149
<i>Specific Types Of Leases</i>	150
Section 3 Authorities.....	150
Section 4 Policy	150
<i>Written Land Instrument Required</i>	150
<i>Applicant Eligibility</i>	150
<i>Leases Over Lands Held Under An Allotment</i>	151
<i>Granting Leases To Non-Members</i>	151
<i>Rent – General</i>	151
<i>Rent – Charged To ᐱᐱᐱᐱ Corporations</i>	152
<i>Rent – Charged To A ᐱᐱᐱᐱ Member</i>	152
<i>Rent – Where Lease Is Serving Community Purpose</i>	152
<i>Registration Of Leases</i>	152
<i>Cancellation Of A Lease</i>	152
<i>Monitoring And Enforcement</i>	153
Section 5 Process.....	153
<i>Application For A Lease Over ᐱᐱᐱᐱ Lands</i>	153
<i>Receiving An Application For Use Of ᐱᐱᐱᐱ Lands</i>	153

<i>Creation Of Lands Department File</i>	154
<i>Preliminary Steps</i>	154
<i>Initial Letter To Applicant</i>	154
<i>Lands Committee Preliminary Review</i>	157
<i>Verify The Identity And Legal Status Of The Applicant</i>	155
<i>Assess Lands Proposed For Use</i>	156
<i>Site Visit</i>	157
<i>Lands Committee Review (Optional)</i>	Error! Bookmark not defined.
<i>Cultural Heritage Sites</i>	157
<i>Negotiations</i>	158
<i>Drafting</i>	159
<i>Assess The Draft Lease</i>	159
<i>Legal Counsel Review</i>	160
<i>Address Identified Problems</i>	160
<i>Report To Council</i>	160
<i>If Bcr Requires Conditions To Be Met Before Lease Is Granted</i>	162
<i>If Environmental Assessment Is A Condition Precedent</i>	163
<i>If Legal Description Is A Condition Precedent</i>	163
<i>Report To Council And New Band Council Resolution</i>	165
<i>Letter To Applicant</i>	165
<i>Executing The Lease</i>	166
<i>Signature Requirements</i>	166
<i>Registration</i>	167
<i>Final Steps</i>	167
<i>Site Inspection Report</i>	167
<i>Documentation</i>	168
<i>Follow-Up And Monitoring Plan</i>	168
Section 6 <i>References</i>	168
POLICY 5-2: DRAFTING LEASES, MANDATORY AND OPTIONAL TERMS.....	169

Section 1	Purpose	169
Section 2	General	169
	<i>Role Of Council</i>	169
	<i>Role Of The Lands Department</i>	169
	<i>Role Of The Lands Committee</i>	170
Section 3	Authorities	170
Section 4	Policy – Approved Standard Lease Templates	171
Section 5	Policy – Mandatory Terms	171
	<i>The Parties</i>	171
	<i>Recitals</i>	172
	<i>Intent And Interpretation</i>	173
	<i>Change In Control Of Lessee</i>	173
	<i>Land Description, Status And Warranties</i>	174
	<i>Maintenance Of Property</i>	174
	<i>Term</i>	174
	<i>Rent</i>	174
	<i>Access</i>	175
	<i>Allowable Use</i>	175
	<i>Insurance</i>	176
	<i>Indemnification</i>	176
	<i>Taxes</i>	176
	<i>Historical, Anthropological And Cultural Artifacts</i>	176
	<i>Environment Related Terms And Conditions</i>	176
	<i>Assignments</i>	177
	<i>Subleases</i>	177
	<i>Mortgages</i>	177
	<i>Addresses For Notices And Delivery</i>	178

<i>Default</i>	.....	178
Section 6	Policy – Optional Terms For All Leases	178
<i>Standards</i>	.....	178
<i>Insolvency</i>	.....	178
<i>Fencing</i>	.....	179
<i>Improvements</i>	.....	179
<i>Dispute Resolution</i>	.....	179
<i>Right To Renew / Right Of First Refusal</i>	.....	179
<i>Encumbrances</i>	.....	179
Section 7	References	181
POLICY 5-3: CANCELLING A LEASE		181
Section 1	Purpose	181
Section 2	General.....	181
<i>Role Of Council</i>	.....	182
<i>Role Of The Lands Department</i>	.....	182
<i>Role Of The Lands Committee</i>	.....	182
Section 3	Authorities.....	182
Section 4	Policy	182
<i>Consulting Legal Counsel</i>	.....	183
<i>When Cancellation May Be Triggered</i>	.....	183
<i>Alternatives To Cancellation</i>	.....	183
<i>Cancelling A Lease That Has Been Mortgaged</i>	.....	183
Section 5	Process.....	184
<i>Initiate Contact With Lessee</i>	.....	184

<i>Report To Council</i>	184
<i>Council Consideration Of The Alleged Default</i>	185
<i>Notice Of Default</i>	185
<i>Notice To Mortgagee</i>	186
<i>Verify Whether Default Cured</i>	186
<i>Send Cancellation Notice</i>	186
<i>Follow Up</i>	187
<i>Register Notice Of Cancellation</i>	187
Section 6 <i>References</i>	187
POLICY 5-4: SUB-LEASES, MORTGAGES AND ASSIGNMENTS.....	189
Section 1 <i>Purpose</i>	189
Section 2 <i>General</i>	189
<i>Before Reading This Policy</i>	189
<i>Role Of Council</i>	189
<i>Role Of The Lands Department</i>	189
<i>Role Of The Lands Committee</i>	189
Section 3 <i>Authorities</i>	189
Section 4 <i>Policy</i>	191
<i>Transferring Interests In Leases</i>	191
<i>Assignment</i>	192
<i>Headleases And Subleases</i>	192
<i>Mortgage</i>	193
<i>Consent Of Council Generally Not Required</i>	193
<i>Registration</i>	193
Section 5 <i>Process</i>	193

Process Set Out In Lease **193**

Section 6 *References* **193**

POLICY 5-1: LEASES OVER ʔAQAM COMMUNITY LANDS

Section 1 Purpose

(1) The objectives of this policy are to

- (a) provide general information, and the policies and processes that apply to obtaining a lease over ʔaqam community lands;
- (b) provide information on the types of leases that may be used to lease ʔaqam community lands; and
- (c) outline the roles and responsibilities of Council, the Lands Department, and the Lands Committee in the leasing of ʔaqam community lands.

Section 2 General

Definitions

(1) For the purpose of Policies 5-1 to 5-4:

“applicant” means a person who submits an application to the Lands Department;

“application” means a completed **Form 6-1-01: Application for Use of ʔaqam Lands**, which must be used by an applicant to make an application for a lease over ʔaqam community lands;

“attachment” means a proceeding in law by which a defendant's property is seized and held in legal custody on application by the plaintiff, to be applied against a claim on which the plaintiff seeks a judgment against the defendant;

“charge” means an encumbrance, lien or claim;

“deliver” means in person or by registered mail;

“distress” means the seizure of another’s property to secure the performance of a duty, such as the payment of rent, and the legal remedy authorizing such a seizure;

“execution” means the enforcement of a court’s judgment, including an order for sale of land under the *Court Order Enforcement Act* RSBC 1996, c. 78;

“headlease” means a lease which permits the lessee to sublet or issue licences to third parties;

“joint tenancy” means all lessees hold an equal, undivided, interest in the whole of a lease, and in case of the death of a lessee, the remaining lessees automatically receive the deceased lessee’s interest”;

“lease” means a land instrument signed by Council or an authorized representative of Council, in a form approved by Council, that grants a leasehold interest, including any supporting documents, and any related agreements;

“leasehold” means an interest in ʔaḡam lands that allows the holder of a leasehold an exclusive right of use and occupation to a parcel of land for a specified period of time;

“lessee” means a person who has entered into a lease and who has acquired, through a lease, possessory interest in the land under a lease;

“lessor” means the person who conveys the land to the lessee under a lease, generally ʔaḡam;

“levy” means the execution of legislative power which charges on a person the obligation of or liability for a tax;

“mortgage”, means a conveyance of title to property that is given as security for the payment of a debt or the performance of a duty and that must become void upon payment or performance according to the terms of the mortgage;

“original lease” means an original lease over ʔaḡam community lands that is granted by Council and does not include a sublease or the assignment of a lease or sublease;

“person” includes, any of the following persons:

(a) a Canadian citizen or permanent resident who is 19 years of age or older;

(b) a corporation which is incorporated or registered in British Columbia;

(c) a registered partnership, cooperative, or non-profit society formed under British Columbia laws; or

(d) a First Nation or Band or Tribal Council (with a valid Band Council Resolution authorizing the Council to enter into the specific lease agreement);

“pledge” means a formal promise or undertaking, or the act of providing something as security for a debt or obligation;

“seizure” means the act or an instance of taking possession of property by legal right or process;

“sublease” means a lease by a lessee to a third party, conveying some or all of a leasehold interest to the third party for a shorter term than that of the lessee, who retains a reversion of the leasehold interest; and

“tenancy in common” means there are two or more lessees, but each lessee may hold a different share of the leasehold interest, and on the death of one lessee their portion of the share in the leasehold interest passes to their estate, rather than automatically passing to the other lessee.

Role of Council

(2) Council is responsible for:

- (a) developing laws regarding the management, administration, use and protection of ᑭᓱᓱᓱᓱ land;
- (b) consenting to the original grant of a lease;
- (c) cancelling or correcting any lease over ᑭᓱᓱᓱᓱ lands that was issued in error, by mistake or by fraud;
- (d) issuing a replacement lease; and
- (e) authorizing a member of Council or the Lands Department to execute leases on behalf of Council.

Role of the Lands Department

(3) The Lands Department is responsible for:

- (a) ensuring that ᑭᓱᓱᓱᓱ policy requirements for assessing applications and for negotiating, drafting and executing leases of ᑭᓱᓱᓱᓱ community lands are complied with;
- (b) ensuring that all leases of ᑭᓱᓱᓱᓱ community lands are in accordance with the *ᑭᓱᓱᓱᓱ Amended Land Code*, ᑭᓱᓱᓱᓱ laws, by-laws and any applicable provincial or federal laws;
- (c) monitoring and compliance actions related to a lease over ᑭᓱᓱᓱᓱ community lands; and
- (d) maintaining a copy of all leases relating to ᑭᓱᓱᓱᓱ lands in the Lands Department files.

(4) The Lands Department is not responsible for ensuring that a lease in Ḥaqām lands permits a leasehold to be mortgaged or charged, that a lease is in good standing, or that a leaseholder is in compliance with the terms of a lease.

Role of the Lands Committee

(5) The Lands Committee may assist the Lands Department with any matter related to a lease over Ḥaqām community lands.

(6) It is the responsibility of the Lands Committee to respond to lease over Ḥaqām community lands-related requests from the Lands Department or the Council, and where necessary to consult with members on issues related to a lease over Ḥaqām community lands.

(7) The Lands Committee may perform duties and functions as directed by either the Council or the Lands Department.

Characteristics of a Lease

(8) A lease over Ḥaqām community lands has the following characteristics:

(a) the lessor is Ḥaqām;

(b) the lessee may be any eligible person, whether or not they are a member;

(c) it grants exclusive possession of land to the lessee during the term of the lease, meaning the lessee will have a right to occupy and control the use of the property, subject to the terms of the lease or other legal interests registered on the property;

(d) the term may be for up to ninety-nine (99) years;

(e) the term has a specified commencement and end date;

(f) it is granted for a specific purpose;

(g) it grants the lessee and their invitees a right of access to Ḥaqām land, as per the terms of a lease;

(h) Ḥaqām retains the powers and rights of an owner in the land being leased;

(i) the land remains part of Ḥaqām reserve land during the term of a lease;

(j) the land remains subject to Ḥaqām laws and by-laws during the term of a lease;

(k) if it is held by a person who is not a member it is subject to a charge, pledge, mortgage, attachment, levy, seizure, distress or execution without the consent of Council or approval of Members;

(l) if the lessee is a non member and the term is for ten (10) or more years, a legal description is required; and

(m) it is subject to a charge, pledge, mortgage, attachment, levy, seizure, distress and execution by a mortgagee.

(9) A lease over ᑭᓄᓐ community lands may only be created, granted, disposed of, assigned or transferred by a written instrument issued in accordance with the *ᑭᓄᓐ Amended Land Code* and this policy.

Specific Types of Leases

(10) Types of leases and subleases that Council may grant include:

(a) commercial;

(b) residential;

(c) agricultural; and

(d) recreational.

Section 3 Authorities

(1) The relevant authority is paragraph 32.1(a) of the *ᑭᓄᓐ Amended Land Code* which authorizes Council to grant interests in ᑭᓄᓐ community lands. A leasehold over ᑭᓄᓐ community lands is an interest in ᑭᓄᓐ community lands.

(2) Paragraph 32.1(a) of the *ᑭᓄᓐ Amended Land Code* states that:

32.1 (a) Subject to this Land Code, Council may grant interests in ᑭᓄᓐ community lands

Section 4 Policy

Written Land Instrument Required

(1) A lease over ᑭᓄᓐ community lands may only be created, granted, disposed of, assigned or transferred by a written land instrument in accordance with the *ᑭᓄᓐ Amended Land Code* and this Manual.

Applicant Eligibility

(2) An applicant must fall within one of the following categories of persons to be eligible for a lease:

(a) Canadian citizen or permanent resident 19 years of age or older;

- (b) corporations which are incorporated or registered in British Columbia;
- (c) registered partnership, cooperative, or non-profit society formed under British Columbia laws;
- (d) First Nation or Band or Tribal Council (with a valid Band Council Resolution authorizing the Council to enter into the specific agreement for a licence, permit or easement); or
- (e) the Government of a municipality, regional district, Province or of Canada.

Leases over Lands Held under an Allotment

- (3) This Policy does not apply to the granting of a lease over lands that are held by a member under an allotment.
- (4) Refer to Policy 4-3 in this Manual and the *ᑭᓄᓐᓄᓐ Allotment Law, 2015* for information on all transactions related to lands held under an allotment.

Granting Leases to Non-Members

- (5) A person who is not a member may hold a lease over ᑭᓄᓐᓄᓐ lands.
- (6) Council must provide their written consent for all original leases in ᑭᓄᓐᓄᓐ lands.
- (7) A person who is not a member includes a corporation owned and beneficially controlled by ᑭᓄᓐᓄᓐ, Council or a member, even if all of the corporation's shareholders are members of ᑭᓄᓐᓄᓐ.
- (8) Once Council consent has been provided on an original lease, it may subsequently be mortgaged, transferred or assigned without the consent of the Council.

Rent – General

- (9) A lease is intended to produce a fair economic return to ᑭᓄᓐᓄᓐ.
- (10) Unless otherwise stated in this policy, every lease requires a fair market rent be obtained from the lessee.
- (11) Every lease that is not a fully pre-paid lease must include a provision for review of the rent at least every five (5) years.

Rent – Charged to ᑭᓱᓱᓱ Corporations

(12) At the discretion of Council, an ᑭᓱᓱᓱ corporation may be charged at a reduced rent under a lease over ᑭᓱᓱᓱ community lands as part of an overall economic strategy that benefits ᑭᓱᓱᓱ.

Rent – Charged to a ᑭᓱᓱᓱ Member

(13) At the discretion of Council, an ᑭᓱᓱᓱ member may be charged at a reduced rent under a lease over ᑭᓱᓱᓱ community lands if that member is leasing land for a residential purpose and the reduced rent is part of an approved ᑭᓱᓱᓱ Housing Strategy.

Rent – Where Lease is Serving Community Purpose

(14) At the discretion of Council, a non-profit organization may be charged at a reduced rent under a lease over ᑭᓱᓱᓱ community lands if the purpose of the lease is to provide for some community purpose which Council deems to be of significant benefit to ᑭᓱᓱᓱ.

Registration of Leases

(15) All leases must be registered in the First Nations Land Register in accordance with Policy 3-1 of this Manual.

Cancellation of a Lease

(16) If Council determines that a lease was granted in error, by fraud or by mistake, they may cancel the lease pursuant to paragraph 31.2(a) of the *ᑭᓱᓱᓱ Amended Land Code* and Policy 7-1 of this Manual.

(17) All leases must contain terms for cancellation.

(18) Subject to any specific terms in a lease, cancellation may be appropriate when:

(a) the lessee has failed to pay required fees or other monies due under a lease;

(b) the lessee has failed to observe terms set out in lease;

(c) the lessee has changed and there is no provision for assignment in a lease;
or,

(d) the lessee has died and there is no provision for assignment in a lease.

(19) The cancellation procedure for a lease is set out in Policy 5-3.

(20) The Lands Department must not cancel a lease without first obtaining consent to do so from Council.

Monitoring and Enforcement

(21) The Lands Department is responsible for the monitoring and enforcement of leases over ᑭᓱᓂᓴᓂ community lands.

(22) Refer to Policies 10-1 and 10-2 for information on monitoring and enforcement procedures.

Section 5 Process

(1) This section sets out the process for applying for, negotiating, drafting and executing a lease.

Application for a Lease over ᑭᓱᓂᓴᓂ Lands

(2) The applicant must:

- (a) fully complete Part 1 of Form 6-1-01: Application for Use of ᑭᓱᓂᓴᓂ Lands;
- (b) submit the completed application to the Lands Department along with any required documentation; and
- (c) if the applicant is not a member or a representative of a government agency or agency, present copies of two pieces of government-issued identification to the Lands Department or proof of corporate or government status.

Receiving an Application for Use of ᑭᓱᓂᓴᓂ Lands

(3) The person at the Lands Department who receives an application must document the following in Part 2 of Form 6-1-01: Application for Use of ᑭᓱᓂᓴᓂ Lands:

- (a) date and time that the application was received; and
- (b) the name of the person at the Lands Department who received the application.

(4) If the applicant is not a member or a government representative, the person at the Lands Department who receives the application must:

- (a) obtain copies of two pieces of government issued identification from the applicant;
- (b) compare the two pieces of government issued identification to the applicant and the application and assess whether the applicant is the same person as the person

in the identification and the person named in the application;

(c) photocopy the two pieces of government issued identification that are provided and attach them to the application.

If the person is not making their application in person, make a note on the application setting out that identification verification cannot be completed.

(5) If the applicant is a government representative the Lands Department must:

(a) confirm the legal status of the government agency by searching online to determine whether the government agency exists as an entity; and

(b) confirm with the government agency by telephone that the applicant is the person they allege to be.

(6) The Lands Department must complete Part 2 of Form 6-1-01: Application for Use of ?aqam Lands.

Creation of Lands Department File

(7) The person at the Lands Department who receives an application must ensure that a Lands Department file is created for the application and that the Form 6-1-01: Application for Use of ?aqam Lands, along with any supporting documentation, is placed in that file.

Preliminary Steps

(8) As early as possible after receiving an application, the Lands Department must brief Council on the scope of the proposed lease and the mandatory terms associated with the type of lease being applied for.

Initial Letter to Applicant

(9) As soon as practical after receiving an application, the Lands Department must:

(a) complete and sign Form 6-1-02: Letter to Applicant;

(b) take a photocopy of the completed Form 6-1-02: Letter to Applicant and place it in the Lands Department file for the application; and

(c) provide to the applicant:

(i) the original, signed copy of Form 6-1-02: Letter to Applicant; and

(ii) a copy of the standard lease document that is relevant to the application.

Verify the Identity and Legal Status of the Applicant

(10) Where the applicant is an **individual**, the Lands Department must review the copies of the applicant's government issued identification on file and determine whether the applicant is a Canadian citizen or permanent resident of Canada. If there is any doubt as to the applicant's citizenship or residency status, the Lands Department should consult legal counsel.

(11) Where the applicant, or the general partner in a limited partnership, is a **corporation**, the Lands Department must, at the applicant's expense:

- (a) confirm that the corporation is in good standing by searching the British Columbia Registry Services website; and
- (b) confirm that the applicant is designated as a signing officer for the corporation by requesting a copy of the Director's resolution appointing the signing officer.

(12) Where the applicant is a **partnership**, the Lands Department must, at the applicant's expense:

- (a) confirm the legal status of the partnership and the names of its current signing officers by:
 - (i) obtaining a certified copy of the partnership agreement from the applicant; and
 - (ii) if the partnership is a limited partnership, searching the British Columbia Registry Services website for the Certificate of Limited Partnership;
- (b) confirm that the partnership is in good standing by searching the British Columbia Registry Services website for the Certificate of Good Standing;
- (c) confirm that the applicant is designated as a signing officer for the partnership by finding this information in the partnership agreement and comparing it to the copies of the applicant's identification in the Lands Department file.

(13) Where the applicant is a **society**, the Lands Department must, at the applicant's expense:

- (a) confirm the legal status of the society by searching the British Columbia Registry Services website for the Certificate of Incorporation;
- (b) confirm that the society is in good standing by searching the British Columbia

Registry Services website;

(c) confirm that the applicant is designated as a signing officer for the society by requesting a copy of the motion granting signing authority and comparing it to the copies of the applicant's identification in the Lands Department file.

(14) Where the applicant is a **First Nation, Band or Tribal Council**, the Lands Department must, at the applicant's expense:

(a) confirm the legal status of the First Nation, Band or Tribal Council and the names of the current Chief and Councillors by searching online on the First Nations Profiles website;

(b) confirm that the applicant is designated as a signing officer for the First Nation, Band or Tribal Council by obtaining from the applicant an original Band Council Resolution to that effect and comparing it to the copies of the applicant's identification in the Lands Department file.

(15) Where the applicant is a **government agency**, the Lands Department must, at the applicant's expense:

(a) confirm the legal status of the government agency by searching online to determine whether the government agency exists as an entity; and

(b) confirm with the government agency by telephone that the applicant is the person they allege to be.

Assess Lands Proposed for Use

(16) The Lands Department must complete the following steps and document their results in Part 2 of Form 6-1-01: Application for Use of ?aqam Lands:

(a) determine whether the lands being proposed for use are ?aqam community lands;

(b) determine whether a legal description will be required and if a legal description already exists for the lands being proposed for use. A legal description will be required for all land instruments being granted to a person who is not a member of ?aqam that have a term exceeding ten (10) years. To determine whether a legal description already exists the Lands Department must conduct a search of the Indian Lands Registry System, First Nation Land Register, and Natural Resources of Canada website;

(c) complete a parcel abstract report to determine whether there are any known encumbrances and obtain copies of all land instruments that are encumbrances on

the parcel of land and add them to the Lands Department file to which the application relates;

(d) determine whether the proposed use is consistent with ᐃᓄᓐ zoning laws, *ᐃᓄᓐ Community Land Use Plan, 2016* and any other ᐃᓄᓐ laws or by-laws that may restrict the use of ᐃᓄᓐ lands and document all relevant ᐃᓄᓐ laws, by-laws and policies;

(e) determine whether an environmental assessment will be required by the applicant pursuant to Policy 9-1 or an environmental site assessment pursuant to Policy 9-2;

(f) determine whether any known environmental or contamination concerns exist with regard to granting the requested use;

(g) determine whether the parcel of land has within it a cultural heritage site as identified in an *ᐃᓄᓐ Community Land Use Plan, 2016* (in which case any development on the land requires approval of members by ratification vote); and

(h) enquire into whether granting a lease over the parcel of land may impact on any development plans which have already been approved by Council or are expected to be approved by Council in the near future. To determine this, contact the director of community and economic development.

Site Visit

(17) The Lands Department must complete a site visit to inspect the land and report the results of that inspection in Part 2 of Form 6-1-01: Application for Use of ᐃᓄᓐ Lands.

(18) The inspection must include an assessment of:

(a) access to the land by road or other means;

(b) a description of the site;

(d) whether services are available on the land (eg. water, sewer, power, etc);

(e) whether the proposed land will accommodate the proposed use;

(f) any encumbrances on the land; and

(g) any other important observations that must be documented (ex – possible environmental contamination observed?).

Cultural Heritage Sites

(19) If the proposed lease is located on a cultural heritage site, the Lands Department must obtain approval of the members at a ratification vote prior to executing the lease.

Lands Committee Preliminary Review

(20) As early as practical after the Lands Department completes a site visit and an assessment of the proposed use of ʔaǰam lands, the Lands Department must:

- (a) brief the Lands Committee on the scope of the proposed use of ʔaǰam lands;
- (b) provide the Lands Committee with a copy of the standard lease that is relevant to the application and any other information required by the Lands Committee; and
- (c) obtain a recommendation from the Lands Committee that the Lands Department negotiate, draft and arrange the execution of the lease on behalf of ʔaǰam.

(21) The Lands Committee must complete Part 3 of Form 6-1-01: Application for Use of ʔaǰam Lands.

Council Preliminary Review

(22) As early as practical after the Lands Department obtains a recommendation from the Lands Committee regarding a proposed lease, the Lands Department must:

- (a) brief Council on the scope of the proposed use of ʔaǰam lands;
- (b) provide Council with a copy of the standard lease that is relevant to the application and any other information required by Council; and
- (c) obtain instructions from Council to negotiate, draft and arrange the execution of the lease on behalf of ʔaǰam.

Negotiations

(23) After the Lands Department obtains instructions from Council to negotiate, draft and arrange the execution of a lease on behalf of ʔaǰam, the Lands Department must negotiate the mandatory terms of that lease with the applicant in accordance with Policy 5-2.

(24) If any substantial changes are proposed to the language in an approved lease template, the Lands Department must provide the proposed language changes to Council for review by submitting a draft of the approved lease template with the proposed changes “track changed” to Council for consideration.

(25) The Lands Department must obtain direction from Council on all proposed changes to the language in an approved lease template.

(26) Where the granting of a lease is inconsistent with another interest holder's rights under a land instrument, the Lands Department must attempt to obtain consent from those interest holders prior to executing the lease.

(27) In negotiating a lease, the Lands Department must confirm the adequacy of the compensation and where the compensation is valued at more than \$20,000, the Lands Department must require the applicant, at the applicant's sole expense, to provide Council with an appraisal report that confirms the draft lease compensation is, at a minimum, fair market value.

(28) In negotiating a lease, the Lands Department must obtain a credit report on the applicant from the applicant. The information contained in a credit report will enable the Lands Department to assess the applicant's payment habits and capacity to fulfill the payment terms of the lease. Credit checks may be obtained through the local Credit Bureau by providing the lessee's name, address, and other available information to the credit agency.

(29) The Lands Department must provide the applicant with a reasonable opportunity to inspect the requested ʔaᓄam lands as to:

(a) the suitability of the requested ʔaᓄam lands for any particular use, including the use permitted by the proposed lease;

(b) the condition of the requested ʔaᓄam lands (including surface and groundwater), environmental or otherwise;

(c) the general condition and state of utilities or other systems on or under the requested ʔaᓄam lands; and

(d) the application of any laws or regulations of Canada or the Province that apply to the requested ʔaᓄam lands.

Drafting

(30) The Lands Department is responsible for retaining legal counsel to prepare or review all leases and to modify existing templates as appropriate.

(31) If the Lands Department has negotiated terms or conditions in a lease that vary from the standard lease templates in Schedules B, C and D, such changes must be presented to Council.

Assess the Draft Lease

(32) The Lands Department must assess the draft lease to confirm:

- (a) that all mandatory terms are included in the lease;
- (b) that the term of the lease is appropriate and consistent with this policy; and
- (c) the suitability of all optional terms appearing in the lease.

Legal Counsel Review

(33) When requesting a legal review of a proposed lease, or assistance from legal counsel in the drafting of a proposed lease, the Lands Department must provide legal counsel with the following documents:

- (a) a copy of the Land Code;
- (b) a copy of this policy;
- (c) the appropriate template lease;
- (d) a completed Form 6-1-01: Application for Use of ᑭᓱᓱᓱᓱ Lands and any supporting documentation received with the application or obtained by the Lands Department in completing Part 2 of the application;
- (e) copies of any documents obtained by the Lands Department from the Indian Lands Registry System and First Nation Lands Register in relation to the application;
- (f) corporate records search results;
- (g) any other documents in the ᑭᓱᓱᓱᓱ Lands Department file; and
- (h) any other documents requested by legal counsel.

Address Identified Problems

(34) The Lands Department must promptly address any problems or shortcomings identified during the assessment or legal review of a proposed lease.

Report to Council

(35) The Lands Department must provide the following documents to Council for their consideration:

- (a) one copy of the final draft lease;

- (b) the completed Form 6-1-01 Application for Use of ᑭᓄᓐ Lands;
- (c) any relevant reports from the Lands Committee or opinions from legal counsel;
- (d) any other relevant documents in the Lands Department file for the application;
and
- (e) two (2) copies of a Band Council Resolution that sets out the following:

**ᑭᓄᓐ BAND COUNCIL RESOLUTION
CONSENT TO LEASE AGREEMENT**

WHEREAS in 1996 fourteen First Nations and Canada signed the *Framework Agreement on First Nation Land Management (Framework Agreement)*, which established a process by which each of these communities could consider the option of assuming control over their reserve lands and resources by developing a Land Code and a community approval process, concluding an Individual Agreement with Canada, and ratifying the Land Code and Individual Agreement through a vote of the eligible members;

AND WHEREAS in 1999 Canada passed the *First Nations Land Management Act* to ratify the *Framework Agreement*;

AND WHEREAS in 2001 the fourteen First Nations and Canada agreed to amend the *Framework Agreement* to make it possible for additional First Nations to become signatories of the *Framework Agreement*;

AND WHEREAS ᑭᓄᓐ signed an Individual Agreement with Canada on June 18, 2014;

AND WHEREAS the members of ᑭᓄᓐ voted in favour of the *St. Mary's Indian Band Land Code* at a ratification vote held on April 14-16, 2014 and the *St. Mary's Indian Band Land Code* came into effect on July 1, 2014;

AND WHEREAS the members of ᑭᓄᓐ voted in favour of amendments to the *St. Mary's Indian Band Land Code* at a Meeting of Members vote held in accordance with section 48.1 and 13.1 to 13.9 of the *St. Mary's Indian Band Land Code* on January 7, 2016, which has become the *ᑭᓄᓐ Amended Land Code, 2016*;

AND WHEREAS the Council of ᑭᓄᓐ has authority pursuant to section 32.1 of the *ᑭᓄᓐ Amended Land Code* to grant interests in ᑭᓄᓐ community lands;

THEREFORE BE IT RESOLVED THAT the Council of ᑭᓄᓐ (***choose from one of the following options***)

A. consents to the attached Lease Agreement that grants to [Lessee's Name], a right to exclusive possession over the Lease Area subject to the terms of the lease, for the purpose of [enter details regarding the purpose of the lease]

FURTHER IT BE RESOLVED THAT the Council of ᑭᓄᓐ authorizes [Name of Lands Department personnel] to execute the attached Lease Agreement on behalf of ᑭᓄᓐ.

OR

B. conditional on [name of applicant]:

- [enter condition]
- [enter condition]; and
- providing to the ᑭᓱᓴᓄᓄ Lands Department the following documentary proof that such conditions have been complied with by the following dates:
 - [Documentary Proof] by [date];
 - [Documentary Proof] by [date];
 - [Documentary Proof] by [date];

consents to the attached Lease Agreement that grants to [Lessee's Name], a right to exclusive possession over the Lease Area subject to the terms of the lease, for the purpose of [enter details regarding the purpose of the lease]

FURTHER IT BE RESOLVED THAT the Council of ᑭᓱᓴᓄᓄ authorizes [Name of Lands Department personnel] to execute the attached Lease Agreement on behalf of ᑭᓱᓴᓄᓄ after

- [name of applicant] has complied with the conditions set out in this Band Council Resolution;

AND / OR

- the conditions set out in this Band Council Resolution have been added as conditions within the [Licence / Permit]

OR

C. does not consent to the attached Lease Agreement that grants to [Applicant's Name], a right to exclusive possession over the Lease Area subject to the terms of the lease, for the purpose of [enter details regarding the purpose of the lease]

If BCR Requires Conditions to be Met before Lease is Granted

(36) If Council determines that conditions must be completed before the issuance of a lease, the Lands Department must:

- (a) if necessary, complete the relevant parts of Part 5 of Form 6-1-01: Application for Use of ᑭᓱᓴᓄᓄ Lands, indicating:
 - (i) the conditions precedent that must be met,
 - (ii) the documentary evidence that must be provided by the applicant to the Lands Department as proof of the conditions precedent being met,
 - (iii) the person responsible for monitoring the conditions precedent, and
 - (iv) the dates by which the documentary evidence must be received by the Lands Department;

(b) provide a copy of Form 6-1-01: Application for Use of ᑭᓄᓐ Lands, along with the Band Council Resolution, to the applicant;

(c) follow up in person with the applicant to confirm whether the applicant wishes to pursue the lease with the conditions as either conditions precedent or terms in the lease, as the case may be,

(d) if the applicant wishes to pursue the lease and the Band Council Resolution requires conditions precedent be met:

(i) obtain documentary proof from the applicant of the completion of all conditions precedent required by the Band Council Resolution, and

(ii) complete the relevant parts of Part 5 of Form 6-1-01: Application for Use of ᑭᓄᓐ Lands, indicating whether or not the applicant has provided documentary proof regarding their completion of all conditions precedent required by the Band Council Resolution, and sign the declaration in Part 5 of Form 6-1-01: Application for Use of ᑭᓄᓐ Lands; and

(e) if the applicant wishes to pursue the lease and the Band Council Resolution requires that the land instrument have conditions added to it, ensure those conditions are drafted into the lease.

If Environmental Assessment is a Condition Precedent

(37) If an environmental assessment or environmental site assessment is a condition precedent to the issuance of a lease, the Lands Department must ensure that:

(a) Policies 9-1 and 9-2 are complied with;

(b) any mitigating measures resulting from the environmental assessment are either completed or added to the lease as mandatory terms (see Policy 9-3);

(c) the lease also has a term stating that a breach of the mitigating measures will result in ᑭᓄᓐ having a right to cancel the lease without notice; and

(d) a legal review of the lease is conducted.

If Legal Description is a Condition Precedent

(38) If a legal description is a condition precedent to Council approving a lease, the applicant must obtain an official plan or registration plan and provide the Lands Department with a legal description that refers to that plan.

(39) An official plan or registration plan may be obtained by contacting a Canada Land Surveyor. Contact information for Canada Land Surveyors can be found on the Association of Canada Lands Surveyors website.

(40) The surveyor will initiate the survey process and will seek to obtain permission from ᑭᐱᑭᐱ to enter ᑭᐱᑭᐱ lands to commence the survey. ᑭᐱᑭᐱ will need to provide a permission letter to the surveyor.

(41) A permission letter must not be provided until after Council has made a preliminary decision on the proposed lease.

(42) A permission letter must include:

(a) a statement of permission for the surveyor to enter ᑭᐱᑭᐱ lands;

(b) information on the work that will be carried out by the surveyor;

(c) the name of the surveyor(s) to whom the permission applies; and

(d) the signature and title of the authorized signatory.

(43) After the surveyor has permission to enter ᑭᐱᑭᐱ lands, the surveyor will contact the applicant and enter into a contract for services with him or her.

(44) After the surveyor and applicant have entered into a contract for services, the surveyor will send a request for survey to the Surveyor General of Canada with the contract for services and the letter of permission attached.

(45) The Surveyor General of Canada must authorize the survey before the surveyor can begin the work.

(46) After the surveyor has acquired authorization from the Surveyor General of Canada to conduct the survey, he or she will conduct all the work and review the preliminary official plan or registration plan with the applicant.

(47) Next, the surveyor will provide ᑭᐱᑭᐱ with a request for their review and approval of the preliminary official plan or registration plan.

(48) ᑭᐱᑭᐱ must ensure the preliminary official plan or registration plan complies with the scope of work that was approved by ᑭᐱᑭᐱ to be conducted by the surveyor and with all ᑭᐱᑭᐱ laws and by-laws.

(49) ᑭᐱᑭᐱ must then approve of the preliminary official plan or registration plan in writing by providing the surveyor with either a Band Council Resolution or a letter signed by an authorized signatory.

(50) After ?a?am approves of a preliminary official plan or registration plan, the surveyor will:

(a) record the official plan or registration plan in the Canada Land Survey Records, which is a public registry; and

(b) provide a copy of the official plan or registration plan to the applicant and to ?a?am.

(51) Where ?a?am does not approve of the official plan or registration plan, the Lands Department must work with, the applicant and the surveyor to have the survey amended to a form that ?a?am will approve.

(52) Once an official plan or registration plan is obtained a legal description must be added to the lease.

Report to Council and New Band Council Resolution

(53) If all conditions precedent are satisfactorily complied with, and all other conditions are drafted into the lease, the Lands Department must:

(a) provide Council with:

(i) if necessary:

(A) the completed Form 6-1-01: Application for Use of ?a?am Lands, and

(B) all documentary proof from the applicant of the completion of all conditions precedent required by the Band Council Resolution,

(ii) the newly drafted lease, and

(iii) two (2) original copies of a Band Council Resolution approving of the execution of the lease; and

(b) obtain a second Band Council Resolution from Council, approving the lease, without conditions.

Letter to Applicant

(54) Where Council has made a final decision on an application, the Lands Department must provide the applicant with a letter:

(a) confirming whether the lease has been approved;

(b) if the lease has not been approved, setting out the reasons it was not approved; and

(c) if the lease has been approved:

(i) setting out that the lease has been approved by Council; and

(ii) inviting the applicant to contact the Lands Department so arrangements can be made for the completion of a joint site inspection and the applicant to execute the lease.

Executing the Lease

(55) Once the Lands Department has obtained a Band Council Resolution that approves a lease without conditions, the Lands Department must ensure that the following steps are completed to execute the land instrument:

(a) two copies of the lease are printed off;

(b) informing the applicant that he or she is responsible for obtaining his or her own independent legal advice on the terms of the lease;

(c) ensure the applicant, in the presence of a witness, executes all copies of the lease by:

(i) if the lease is more than one page in length, initialling the bottom left corner of each page; and

(ii) signing and dating the lease, and

(d) ensure the person named in the BCR from Council as the authorized signatory's witness signs and dates the lease.

Signature Requirements

(56) All signatures must be in permanent ink and do not need to include the full name of the person signing.

(57) If the person signing cannot sign with his or her signature, he or she may sign with an "X". If a person signs with an "X" his or her signature must be witnessed by another person who signs beside the person signing and makes a note confirming that:

(a) the full text of the lease has been verbally read to the person signing;

(b) that the person signing has indicated to the witness that the person signing understands the contents of the lease; and

(c) that the person signing has indicated to the witness that the person signing understands that by signing, the person signing is bound by the lease.

(58) When a lease is signed on behalf of a corporation, it must be signed by a person who is authorized to sign on behalf of the corporation and documentation must be attached confirming that person's authorization to sign on behalf of the corporation.

(59) When a lease is signed on behalf of a partnership it is ideal to have all partners sign. However, the signature of one partner is binding on all partners in the partnership.

(60) A guardian, trustee or the administrator of an estate must sign a lease using his or her normal signature and must identify the capacity in which he or she is signing and provide proof of such capacity to ᑭᓄᓂ.

Registration

(61) The Lands Department must register the lease in the First Nation Land Register in accordance with Policy 3-1.

Final Steps

(62) After registration is completed, the Lands Department must:

(a) provide each new lessee with:

(i) the names of all ᑭᓄᓂ laws, by-laws and *ᑭᓄᓂ Community Land Use Plan, 2016* which are in effect and the locations where the new interest holder may access such laws, by-laws and *ᑭᓄᓂ Community Land Use Plan, 2016*,

(ii) one (1) original, signed copy of the Band Council Resolution granting the final lease, and

(iii) one (1) original, signed copy of the lease, and

(b) send the new lessee's information to the ᑭᓄᓂ Finance Department to determine whether they need to update the taxation and assessment rolls.

Site Inspection Report

(63) The Lands Department must as soon as practical after executing and registering a new lease:

(a) invite the new lessee to attend a joint site inspection (and document this invitation in the Lands Department file);

(b) attend at the site over which the lease relates, preferably with the new lessee) and complete Form 10-1-02: Site Inspection Report; and

(c) place a copy of the completed Form 10-1-02: Site Inspection Report in the Lands Department file.

Documentation

(64) The Lands Department must ensure that the Lands Department file contains:

(a) the original Form 6-1-01: Application for Use of ᐱᐱᐱ Lands;

(b) original copies of all Band Council Resolutions related to the application;

(c) all documentation received from the applicant in relation to conditions precedent to the approval of the application;

(d) an original, signed copy of the lease; and

(e) a copy of the completed Form 10-1-02: Site Inspection Report.

Follow-Up and Monitoring Plan

(65) The Lands Department must complete a follow-up plan for monitoring and enforcement of every lease in accordance with Policy 10-1.

Section 6 References

(66) In addition to this policy, consult the following resources:

(a) the *ᐱᐱᐱ Amended Land Code*;

(b) the *First Nations Land Management Act*;

(c) the Framework Agreement; and

(d) the Individual Agreement.

POLICY 5-2: DRAFTING LEASES, MANDATORY AND OPTIONAL TERMS

Section 1 Purpose

- (1) The objectives of this policy are to:
 - (a) provide the mandatory and optional terms that must be included in all leases over ᑭᓱᓴᓄᓐ community lands; and
 - (b) introduce the standard lease templates that may be used for a lease over ᑭᓱᓴᓄᓐ community lands.

Section 2 General

- (1) In addition to this policy, Policy 5-1 applies to all leases.
- (2) All leases must contain the mandatory terms set out in this policy.

Role of Council

- (3) Council is responsible for:
 - (a) developing laws regarding the management, administration, use and protection of ᑭᓱᓴᓄᓐ land;
 - (b) approving the final terms of a lease;
 - (c) authorizing a member of Council or the Lands Department to execute leases on behalf of Council.

Role of the Lands Department

- (4) The Lands Department is responsible for:
 - (a) ensuring all mandatory terms for leases over ᑭᓱᓴᓄᓐ community lands are drafted into all leases over ᑭᓱᓴᓄᓐ community lands;
 - (b) ensuring the terms in all leases over ᑭᓱᓴᓄᓐ community lands are in accordance with the *ᑭᓱᓴᓄᓐ Amended Land Code*, ᑭᓱᓴᓄᓐ laws and by-laws;
 - (c) where possible, using the standard lease templates provided in this Manual for all leases over ᑭᓱᓴᓄᓐ community lands; and
 - (d) seeking Council approval for the final terms in a lease over ᑭᓱᓴᓄᓐ community lands.

Role of the Lands Committee

(5) The Lands Committee may assist the Lands Department with any matter related to the drafting of a lease over ᑭᓄᓂ community lands.

(6) It is the responsibility of the Lands Committee to respond to requests from the Lands Department or the Council regarding the mandatory terms in a lease, and where necessary to consult with members on issues related to a the mandatory terms in a lease over ᑭᓄᓂ community lands.

(7) The Lands Committee may perform duties and functions as directed by either the Council or the Lands Department.

Section 3 Authorities

(1) There is no specific section of the *ᑭᓄᓂ Amended Land Code* that authorises ᑭᓄᓂ to set out mandatory terms or to approve standard form documents. However, the Individual Agreement transfers from Canada to ᑭᓄᓂ the power to manage ᑭᓄᓂ lands in accordance with section 18 of the *First Nations Land Management Act* and clause 12 of the Framework Agreement.

(2) Section 18 of the *First Nations Land Management Act* states:

18. (1) A First Nation has, after the coming into force of its land code and subject to the Framework Agreement and this Act, the power to manage First Nation land and, in particular, may

- (a) exercise the powers, rights and privileges of an owner in relation to that land;
- (b) grant interests or rights in and licences in relation to that land;
- (c) manage the natural resources of that land; and
- (d) receive and use all moneys acquired by or on behalf of the First Nation under its land code.

(3) Section 12 of the *Framework Agreement* states:

12.1 A First Nation with a land code in effect will, subject to clause 13, have the power to manage its First Nation land and exercise its powers under this Agreement.

12.2 This power includes

- (a) all the rights, powers and privileges of an owner, in relation to its First Nation land; and
- (b) the authority to grant interests or land rights and licences in relation to its First Nation land and to manage its natural resources, subject to clauses 3, 18.5 and 23.6.

12.3 In any province or territory other than Quebec, an interest or licence granted in relation to First Nation land is subject to any exception, reservation, condition or limitation established by the First Nation in its land code.

Section 4 Policy

Approved Standard Lease Templates

(1) Wherever possible, the following approved standard lease templates must be used in the drafting of a lease:

- (a) Schedule B: Headlease Template;
- (b) Schedule C: Residential Sublease Template; and
- (c) Schedule D: Commercial Lease Template.

Mandatory Terms

(2) The following mandatory terms must be included in all leases over ʔaᓄam community lands.

The Parties

(3) A lease must name ʔaᓄam as the lessor, as follows:

ʔaᓄam with an office at
7470 Mission Road
Cranbrook, BC V1C 7E5

(4) A lease must name a lessee that has a legal entity, such as a natural person, corporation, partnership or society, as follows:

[Full Legal Name]
[Mailing Address]
[City, Province Postal Code]

OR

[Company Name] a company
duly incorporated under the laws of the
Province of British Columbia and having its registered office at
[Mailing Address]
[City, Province Postal Code]

OR

[Partnership Name] a partnership [“registered in” or “doing business in”]
the Province of British Columbia and having its registered office at
[Mailing Address]
[City, Province Postal Code]

OR

[Society Name] a society
duly incorporated under the laws of the
Province of British Columbia and having its registered office at
[Mailing Address]
[City, Province Postal Code]

Recitals

(5) The recitals in a lease must state:

- (a) that the lands subject to a lease are a part of ʔaᓄam lands, referring specifically to the reserve parcel to which a lease is a part and specifying that such lands are held for the use and benefit of ʔaᓄam;
- (b) background information relating to those ʔaᓄam lands to which the lease is a part;
- (c) that ʔaᓄam assumed jurisdiction over the management of ʔaᓄam lands under the *First Nations Land Management Act* on July 1, 2014 when the *St. Mary’s Indian Band Land Code* and the Individual Agreement on First Nations Land Management came into force;
- (d) The members of ʔaᓄam voted in favour of amendments to the *St. Mary’s Indian Band Land Code* at a Meeting of Members vote held in accordance with section 48.1 and 13.1 to 13.9 of the *St. Mary’s Indian Band Land Code* on January 7, 2016, and the *St. Mary’s Indian Band Land Code* has now become the *ʔaᓄam Amended Land Code, 2016*;
- (e) that the lessor is authorized to grant a lease pursuant to the *ʔaᓄam Amended Land Code*, with reference to the statutory provision under which a lease is issued;
- (f) that ʔaᓄam Council has acknowledged and declared that it has consented to the terms of the lease as evidenced by a Band Council Resolution, with reference to the Band Council Resolution as an attachment to a lease; and
- (g) that the Council of ʔaᓄam, on behalf of ʔaᓄam, has declared that it has

consented to the terms of a lease, as evidence by the signatures of the authorised signatories of ʔaqam on the lease.

Intent and Interpretation

(6) A lease must set out the rules of interpretation with regard to:

- (a) definitions;
- (b) reference to sections;
- (c) headings;
- (d) plurality and general;
- (e) joint and several; and
- (f) the binding effect of a term or condition.

(7) A lease must include a term setting out that the lessee agrees to comply with all applicable laws, bylaws and regulations.

(8) A lease must include a term setting out that a lease constitutes the entire agreement between the parties with respect to the subject matter of a lease and that it supersedes and revokes all previous negotiations, arrangements, letters of intent, offers to lease and representations.

(9) A lease must include a term setting out that no modifications of a lease are effective unless made in writing, and executed by both parties in the same manner as a lease was executed.

(10) A lease must include a term setting out that “Time is of the essence in this Lease.”

(11) A lease must include a term on severability setting out that if any part of a lease is declared or held invalid for any reason, the invalidity of that part will not affect the validity of the remainder which will continue in full force and effect and be construed as if a lease had been executed without the invalid portion.

Change in Control of Lessee

(12) If the lessee is a corporation, partnership or society, a term must be added to a lease to address whether a change in ownership or beneficial control without the lessor’s consent will be deemed to be a default under a lease.

(13) A lease must set out that the lease will be for the benefit of and be binding upon heirs, executors, administrators, successors, assigns and other legal representatives, as the case may be, of each of the parties to the lease during the term of the lease.

Land Description, Status and Warranties

(14) A lease must set out a full, identifiable description of the lands over which a lease will operate and if the term of the lease exceeds ten (10) years such description must conform to the requirements of the *First Nation Land Register Regulations*.

(15) A lease must set out any warranties regarding the status of the leased lands on the commencement date of the lease.

(16) The parcel of land in the land description must be ᑭᓱᓱᓱ community lands over which ᑭᓱᓱᓱ has authority to grant a lease.

Maintenance of Property

(17) A lease must identify the party responsible for maintenance and the standards of maintenance.

Term

(18) A lease must set out the commencement date, length of time and cancellation date of a lease.

(19) A lease must set out specific details regarding the responsibilities of the lessee at the cancellation of the lease.

Rent

(20) A lease must set out the:

(a) rent amount;

(b) timing of rent payments (e.g. weekly, monthly, annually, etc.);

(c) method of rent payments (eg. by cheque made out to ᑭᓱᓱᓱ lands Office and delivered to ᑭᓱᓱᓱ lands Office on the first day of every month);

(d) consequences of a failure to make a rent payment, including the interest rate for rent that is in arrears; and

(e) the responsibilities of the parties if there is a failure to make a rent payment.

(21) Where the rent depends on a calculation, a lease must include specific instructions defining the method of calculation and addressing any disputes with regard to calculation.

(22) A lease must specify whether there will be compensation review periods, and when such reviews must be completed.

(23) At a minimum, compensation agreed to in a lease must reflect fair market value.

(24) Where reduced rent is to be charged under a lease to an ᑎᓱᓱᓱᓱ corporation, a lease must include a Band Council Resolution from Council approving of the reduced rent.

(25) Where reduced rent is to be charged under a lease to a member, a lease must include the following:

(a) a Band Council Resolution from Council approving of the reduced rent;;

(b) a statement setting out that member is leasing land for a residential purpose and that the reduced rent is part of a specified ᑎᓱᓱᓱᓱ Housing Strategy.

Access

(26) A lease must set out the access rights of the lessee to and from leased lands.

(27) A lease must set out the terms under which the lessor has a right to access the land over which a lease operates to inspect the leased lands for monitoring and enforcement purposes.

Allowable Use

(28) A lease must clearly define the allowable use of a lease area and must clearly define any prohibited uses.

(29) A lease must clearly identify whether the licensee or permittee may take any resource from a lease area and the quantity of such resource that may be taken by the licensee or permittee.

(30) If a lease allows for the licensee or permittee to take any resource from a lease area, it must set out any conditions or restrictions on the taking of that resource. For example, there may be restrictions or conditions on the method or manner of taking or on the tools allowed to be used in the taking.

(31) A lease must set out that ᑎᓱᓱᓱᓱ reserves the right to further charge a leased lands, or any part of them, by way of easement, right of way, or restrictive covenant in favor of any Authority and that the lessee agrees, at the request of the lessor, to expeditiously execute and deliver to the lessor such instrument as may be necessary to subordinate the lessee's right and interest in the land under a lease to such charge.

(32) A lease must set out the specific utilities that the lessor will provide to the lessee under a lease and the types of utilities the lessee may provide and maintain on leased lands.

Insurance

(33) A lease must include a term setting out that the lessee will:

(a) take out and maintain during the term of a lease liability insurance in an amount of not less than an amount determined by Council with respect to any bodily injury, death, or third party property damage occurring upon ᑭᓄᓄᓄ community lands;

(b) deliver a certificate of insurance to ᑭᓄᓄᓄ at any time or times upon request by ᑭᓄᓄᓄ and that such certificates of insurance shall include ᑭᓄᓄᓄ as an additional insured and shall contain a cross-liability and severability of interest clauses as well as a waiver of subrogation in favour of ᑭᓄᓄᓄ.

Indemnification

(34) A lease must include terms setting out that the lessee will indemnify and hold harmless ᑭᓄᓄᓄ against and from all claims, demands, actions, suits or other proceedings, judgments, damages, penalties, fines, costs, liabilities, losses, and sums paid in settlement of claims, howsoever arising out of or related to any breach of a lessee's terms under a lease.

Taxes

(35) A lease must include a term setting out that the lessee agrees to pay all taxes, levies, etc. payable to any authority because of their use and occupation of ᑭᓄᓄᓄ lands and will pay such taxes, levies, etc. on or before the dates which they become due in each and every year during the term of a lease.

(36) A lease must include a term setting out that at the request of the lessor, the lessee will provide the lessor with evidence that all taxes, levies, etc. are paid. Furthermore, it must set out the form of request and timeframe for when such evidence must be provided.

Historical, Anthropological and Cultural Artifacts

(37) A lease must include a term setting out that the lessee agrees to report finds of a historical, anthropological or cultural nature to Council and to cease all activities on the lease area in which the articles are discovered until further notice from Council.

Environment Related Terms and Conditions

(38) A lease must include terms setting out the rights and responsibilities of the lessee with regard to:

- (a) compliance with environmental laws;
- (b) the generation, manufacturing, refining, treating, transporting, storing, handling, disposal of, transferring, production, or processing of hazardous substances;
- (c) environmental site assessments;
- (d) environmental audits; and
- (e) indemnifying the lessor against actions, etc related to the presence, suspected presence or release of hazardous substances in or under a leased lands.

(39) A lease must include terms setting out the rights and responsibilities of the lessor with regard to:

- (a) monitoring and enforcement of the lessee's compliance with environmental responsibilities under a lease; and
- (b) termination of a lease related to a breach of environmental laws.

Assignments

(40) A lease must have a term setting out whether a lease may be assigned, and if a lease may be assigned, setting out the conditions which must be met for an assignment of a lease to be valid.

Subleases

(41) A lease must have a term setting out whether leased lands may be subleased, and, if leased lands may be subleased, setting out the conditions which must be met for a sublease to be valid, including conditions regarding the indemnification of ʔaḳam and conditions pertaining to environmental standards and assessments.

Mortgages

(42) A lease must have terms setting out:

- (a) the lessors rights of re-entry, distress and cancellation in a situation where a mortgagee takes possession of a leased lands;
- (b) that a mortgagee who takes possession of a leased lands will perform and observe all of the lessee's responsibilities under a lease;

- (c) the rights of the parties and the processes to be followed where a mortgagee takes enforcement proceedings on their mortgage;
- (d) insurance requirements that must be undertaken by a mortgagee; and
- (e) a requirement that the lessee register all mortgages against a leasehold.

Addresses for Notices and Delivery

(43) A lease must identify:

- (a) addresses for the giving of notice to each of the parties;
- (b) the methods of delivery that parties must use in serving notices; and
- (c) when a notice is deemed effective.

Default

(44) A lease must set out the circumstances that will be deemed a default under the lease and the rights and responsibilities of the lessor and lessee should a default occur, including the right and form of waiver that may be taken by the lessor to a default by the lessee.

(45) A lease must also set out the process that the lessor must follow if the lessor declares a default has occurred and such process must include a:

- (a) notice of default;
- (b) reasonable opportunity for the lessee to cure the default;
- (c) description of the rights and role of any mortgagee or sublessee in default proceedings; and
- (d) description of the options available to the lessor if a default is not cured.

Optional Terms for All Leases

(46) The Lands Department must consider the following optional terms during negotiation of the draft lease.

Standards

(47) A lease must identify any relevant standards governing construction, health and remedies for failure to meet standards.

Insolvency

(48) A term may be added to a lease to address the payment of rent in the event that a lessee becomes insolvent or bankrupt, or if it is a corporation and proceedings are initiated to wind up or a receiver, receiver-manager or trustee is appointed.

Fencing

(49) In some circumstances, fences and locks may be acceptable on an area of leased land. For example, fences and locks may be necessary for safety and security reasons or for agricultural grazing purposes. In such circumstances a term may be added to a lease requiring the lessee to be responsible for the maintenance of that fence or locked off area and to provide ᐱᓱᓐᓐ with a key to any lock.

Improvements

(50) A lease may identify a process that must be followed by a lessee before the development of improvements on leased lands and may identify who owns any improvements made to the land after the cancellation of a lease.

Dispute Resolution

(51) A lease may specify a dispute resolution mechanism to resolve disagreements between the parties regarding the application of the terms contained within it.

Right to Renew / Right of First Refusal

(52) A lease may set out the terms under which the lessee will have the first right to renew the lease of the leased land and the process the lessee must follow to exercise such right.

Encumbrances

(53) A lease may set out that it is subject to encumbrances with reference to specific encumbrances.

Band Council Resolution

(54) A lease must attach and reference the Band Council Resolution approving of the lease.

(55) A Band Council Resolution approving of a lease must contain the following wording:

**ᐱᓱᓐᓐ BAND COUNCIL RESOLUTION
CONSENT TO LEASE AGREEMENT**

WHEREAS in 1996 fourteen First Nations and Canada signed the *Framework Agreement on First Nation Land Management (Framework Agreement)*, which established a process by which each of these communities could consider the option of assuming control over their reserve lands and resources by developing a Land Code and a community approval process, concluding an Individual Agreement with Canada, and ratifying the Land Code and Individual Agreement through a vote of the eligible members;

AND WHEREAS in 1999 Canada passed the *First Nations Land Management Act* to ratify the *Framework Agreement*;

AND WHEREAS in 2001 the fourteen First Nations and Canada agreed to amend the *Framework Agreement* to make it possible for additional First Nations to become signatories of the *Framework Agreement*;

AND WHEREAS ʔaǰam signed an Individual Agreement with Canada on June 18, 2014;

AND WHEREAS the members of ʔaǰam voted in favour of the *St. Mary's Indian Band Land Code* at a ratification vote held on April 14-16, 2014 and the *St. Mary's Indian Band Land Code* came into effect on July 1, 2014;

AND WHEREAS the members of ʔaǰam voted in favour of amendments to the *St. Mary's Indian Band Land Code* at a Meeting of Members vote held in accordance with section 48.1 and 13.1 to 13.9 of the *St. Mary's Indian Band Land Code* on January 7, 2016, which has become the *ʔaǰam Amended Land Code, 2016*;

AND WHEREAS the Council of ʔaǰam has authority pursuant to section 32.1 of the *ʔaǰam Amended Land Code* to grant interests in ʔaǰam community lands;

THEREFORE BE IT RESOLVED THAT the Council of ʔaǰam (***choose from one of the following options***)

A. consents to the attached Lease Agreement that grants to [Lessee's Name], a right to exclusive possession over the Lease Area subject to the terms of the lease, for the purpose of [enter details regarding the purpose of the lease]

FURTHER IT BE RESOLVED THAT the Council of ʔaǰam authorizes [Name of Lands Department personnel] to execute the attached Lease Agreement on behalf of ʔaǰam.

OR

B. conditional on [name of applicant]:

- [enter condition]
- [enter condition]; and
- providing to the ʔaǰam Lands Department the following documentary proof that such conditions have been complied with by the following dates:
 - [Documentary Proof] by [date];
 - [Documentary Proof] by [date];
 - [Documentary Proof] by [date];

consents to the attached Lease Agreement that grants to [Lessee's Name], a right to exclusive possession over the Lease Area subject to the terms of the lease, for the purpose of [enter details regarding the purpose of the lease]

FURTHER IT BE RESOLVED THAT the Council of ᑭᓄᓂᓂ authorizes [Name of Lands Department personnel] to execute the attached Lease Agreement on behalf of ᑭᓄᓂᓂ after

- [name of applicant] has complied with the conditions set out in this Band Council Resolution;

AND / OR

- the conditions set out in this Band Council Resolution have been added as conditions within the [Licence / Permit]

OR

C. does not consent to the attached Lease Agreement that grants to [Applicant's Name], a right to exclusive possession over the Lease Area subject to the terms of the lease, for the purpose of [enter details regarding the purpose of the lease]

Section 5 References

(56) In addition to this policy, consult the following resources:

- (a) the *ᑭᓄᓂᓂ Amended Land Code*;
- (b) the *First Nations Land Management Act*;
- (c) the Framework Agreement; and
- (d) the Individual Agreement.

POLICY 5-3: CANCELLING A LEASE

Section 1 Purpose

(1) The objectives of this Policy are:

- (a) to provide a standardized process for the cancellation of a lease over ᑭᓄᓂᓂ community lands; and
- (b) to outline the circumstances which trigger the review of an existing lease.

(2) This policy does not address situations where ᑭᓄᓂᓂ wishes to cancel a lease over ᑭᓄᓂᓂ community lands because it was issued in error, by mistake or by fraud. In such circumstances, please refer to Policy 7-1.

Section 2 General

Role of Council

- (1) Council is responsible for:
 - (a) developing laws regarding the management, administration, use and protection of ᑭᓱᓴᓄᓐ land;
 - (b) consenting to the cancellation of a lease;
 - (c) authorizing a member of Council or the Lands Department to execute all documentation related to the cancellation leases on behalf of Council.

Role of the Lands Department

- (2) The Lands Department is responsible for:
 - (a) ensuring that ᑭᓱᓴᓄᓐ policy requirements for the cancellation of leases of ᑭᓱᓴᓄᓐ community lands are complied with;
 - (b) ensuring that all leases of ᑭᓱᓴᓄᓐ community lands are monitored and enforced in accordance with Policies 10-1 and 10-2; and
 - (c) at the direction of Council, executing all documentation required for the cancellation of a lease.

Role of the Lands Committee

- (3) The Lands Committee may assist the Lands Department with any matter related to the cancellation of a lease over ᑭᓱᓴᓄᓐ community lands.
- (4) It is the responsibility of the Lands Committee to respond to requests from the Lands Department or the Council regarding the cancellation of a lease over ᑭᓱᓴᓄᓐ community lands, and where necessary to consult with members on issues related to a lease over ᑭᓱᓴᓄᓐ community lands.
- (5) The Lands Committee may perform duties and functions as directed by either the Council or the Lands Department.

Section 3 Authorities

- (1) The *ᑭᓱᓴᓄᓐ Amended Land Code* contains no specific provision to cancel leases. The framework for cancelling leases is included as part of the mandatory terms contained in every lease agreement

Section 4 Policy

Consulting Legal Counsel

(1) Cancelling a lease is a significant step, with important legal consequences. The cancellation must be managed very carefully, and, where there is any uncertainty, the Lands Department must consult legal counsel on every step to be taken.

When Cancellation May be Triggered

(2) Each lease must set out the circumstances which will trigger Ḥaqam's right to cancel it. For example, several circumstances that may be in a lease include:

- (a) failure to pay rent or other sums due under a lease;
- (b) failure to perform or observe any covenants set out in a lease; or
- (c) change in corporate control of the Lessee without Ḥaqam consent.

Alternatives to Cancellation

(3) Cancellation is not automatically the appropriate response to a lessee's failure to perform their obligations under a lease. Council should determine the appropriate course of action, and alternative remedies should always be considered. For example, depending on the circumstances, the department may elect to re-let the land as agent for the lessee, or to perform covenants for, and at the expense of, the lessee.

Cancelling a Lease that has been Mortgaged

(4) If the lessee has mortgaged his or her interest in a lease and Council is considering cancellation of the lease, the Lands Department and Council must ensure that they take all steps required under the lease to properly effect the cancellation in a manner that respects the lessee's and mortgagee's rights under the lease.

(5) For example, many leases will state that if the lessee has mortgaged his or her interest in a lease, Council must notify the mortgagee before the proposed cancellation of a lease, and give the mortgagee sixty (60) days to assume or sell the leasehold interest, subject to the Council's consent, or to cure the lessee's default.

(6) Many leases will also state that if a mortgagee, after receiving notice of the lessee's default, cures the default within the required time frame, that curing will be interpreted as a curing of the default by the lessee. Then, the cancellation of a lease will not continue, and a lease will again be in good standing. If the mortgagee does not take this action, the lease could be cancelled at the will of Council.

(7) It is important to read the terms of a lease with regard to cancellation and mortgagee interests prior to taking any steps to cancel the lease. Where there are questions, consult with legal counsel.

Section 5 Process

Initiate Contact with Lessee

(1) If the Lands Department determines that a lessee has failed to perform their obligations under a lease, the Lands Department must initiate contact with the lessee by:

(a) if the Lands Department has a telephone number for the lessee:

(i) phoning the lessee and discussing the alleged default with the lessee to determine whether the lessee has the capacity to cure the default, and

(ii) advising the lessee that a report will be made to Council regarding the default;
or

(b) if the Lands Department does not have a telephone number for the lessee, delivering a letter to the lessee advising the lessee that the Lands Department has determined the lessee has failed to perform their obligations under a lease, specifying the obligation that has not been performed, and setting out that a report will be made to Council regarding the default. The letter must invite and encourage the lessee to contact the Lands Department to discuss the lessee's capacity to cure the default.

(2) The Lands Department must document all contact they have with a lessee who is allegedly in default of their lease.

Report to Council

(3) If the Lands Department considers it necessary to initiate cancellation proceedings, they must provide Council with a report setting out the circumstances surrounding the lessee's failure to perform their obligations and attach to the report all documentation relevant to the failure to perform, including a copy of:

(a) the executed lease with the provision setting out the obligation that the lessee has failed to perform, and any other provision relevant to cancellation of a lease, highlighted;

(b) any mortgages on the leasehold interest that are registered in the First Nation Land Register;

- (c) any bank statements, building inspection reports or other documents related to the lessee's failure to perform their obligations;
- (d) any notes documenting communications between the Lands Department and the lessee in regard to the lessee's failure to perform their obligations; and
- (e) any written correspondence between the Lands Department and the lessee regarding the lessee's failure to perform their obligations.

Council Consideration of the Alleged Default

- (4) Council must review the Lands Department's report and determine:
 - (a) whether the act or omission of the lessee is in fact a failure to perform an obligation under their lease; and
 - (b) whether to initiate cancellation proceedings under either this policy or a default provision in their lease.
- (5) If the lessee has failed to pay rent as required by a lease, or if the default is one which Council considers the lessee can otherwise remedy easily, and a lease does not have a provision setting out the process for addressing defaults, Council should consider giving the lessee a reasonable time, being sixty (60) days, or such other period of time as permitted under any Law, to remedy the problem.
- (6) If the nature of the default is such that Council considers the lessee cannot cure it within sixty (60) days, and a lease does not have a provision setting out the process for addressing defaults, Council should consider cancellation of a lease to remedy the problem.

Notice of Default

- (7) If Council determines a lessee is in default of their lease, and a lease has a provision setting out the process for issuing a notice of default, the Lands Department must ensure a notice of default is executed and delivered to the lessee following the process set out in a lease.
- (8) If Council determines a lessee is in default of their lease, and a lease does not have a provision setting out the process for issuing a notice of default, the Lands Department must:
 - (a) prepare or cause to be prepared a notice of default;

(b) ensure the notice of default is executed by either Council, or an authorized signatory; and

(c) ensure the notice of default is delivered to the lessee.

(9) A notice of default must set out:

(a) the section of a lease under which the lessee is in default;

(b) the circumstances surrounding the default and the supporting evidence of the default; and

(c) notice of the timeframe Council considers reasonable (or in the case that a timeframe is set out in the lease, that timeframe) to allow the lessee to correct the default before Council cancels the lease.

Notice to Mortgagee

(10) If Council determines a lessee is in default of their lease and issues a notice of default, and the lease has a provision setting out a process for giving notice to a mortgagee of default, the Lands Department must provide the mortgagee with the notice of default following the process set out in the lease.

(11) If Council determines a lessee is in default of their lease, issues a notice of default and the lease does not have a provision setting out the process for giving notice to a mortgagee of default, the Lands Department must deliver to the mortgagee:

(a) a copy of the notice of default; and

(b) a letter setting out that the mortgagee may remedy the lessee's breach prior to cancellation of the lease, or may assume or sell the leasehold interest, subject to the Council's consent and any restrictions set out in the lease.

Verify Whether Default Cured

(12) The Lands Department must verify whether the lessee, or the mortgagee (if applicable), cures the default by the given deadline.

Send Cancellation Notice

(13) If the lessee's default has not been corrected within the time limit required by Council, or by the terms of a lease, the Lands Department must deliver a notice of cancellation to the lessee. The notice should be drafted in close consultation with legal counsel and must:

(a) include the particulars of a lease being cancelled;

- (b) provide the reason for the cancellation and set out the terms of the lease that have been breached;
- (c) advise the lessee that all outstanding financial obligations due under the lease are still payable, and that the lessee is obligated to pay all outstanding amounts;
- (d) advise the lessee that the cancellation does not prejudice ?a?am's rights under the lease; and
- (e) be executed by Council, or an authorized signatory.

Follow Up

(14) After a cancellation notice has been delivered to a lessee, the Lands Department must ensure that the lessee has vacated the land in accordance with the cancellation notice and that the lessee has completed all of their responsibilities under the lease with regard to vacating and remediating, or cleaning the property.

(15) If a lease is a headlease, the Lands Department must contact each sublessee and advise them that the lease has been cancelled and that ?a?am has acquired all rights and obligations of the lessee under the lease. The Lands Department must instruct each sublessee to make payments to ?a?am and to treat ?a?am as the lessee.

(16) If rent is in default, the Lands Department must, in consultation with Council and legal counsel, determine whether to initiate steps to collect the unpaid rent for ?a?am.

Register Notice of Cancellation

(17) The Lands Department must register all notices of cancellation of a lease in the First Nation Land Register in accordance with Policy 3-1.

Section 6 References

- (1) In addition to this policy, consult the following resources:
 - (a) the lease and the Lands Department file for the lease;
 - (b) any subleases registered in the First Nation Land Register;
 - (c) any mortgages registered in the First Nation Land Register;
 - (d) the *?a?am Amended Land Code*;
 - (e) the *First Nations Land Management Act*;

- (f) the Framework Agreement; and
- (g) the Individual Agreement.

POLICY 5-4: SUB-LEASES, MORTGAGES AND ASSIGNMENTS

Section 1 Purpose

(1) The objectives of this policy are to provide information with regard to the assigning, subleasing and mortgaging of leasehold interests.

Section 2 General

Before Reading This Policy

(1) Before reading this policy, review Policies 5-1 and 5-2.

Role of Council

(2) Council is responsible for:

- (a) developing laws regarding the management, administration, use and protection of ʔaǰam land; and
- (b) consenting to the terms of a lease with regard to subletting, mortgaging and assigning interests in a leasehold.

Role of the Lands Department

(3) The Lands Department is responsible for ensuring all terms of a lease with regard to subletting, mortgaging and assigning interests in a leasehold are approved by Council prior to the lease being executed.

Role of the Lands Committee

(4) The Lands Committee has no role in relation to assignments, subleases and mortgages.

Section 3 Authorities

(1) The relevant authorities:

- (a) subsections 89(1) and (1.1) of the *Indian Act*;
- (b) subsections 38(2) and (3) of the *First Nations Land Management Act*; and
- (c) sections 29.2, 30.3 to 30.6, 34.2 to 34.10, 35.3 and 40.2 of the *ʔaǰam Amended Land Code*.

(2) Subsections 89(1) and (1.1) of the *Indian Act* state:

89. (1) Subject to this Act, the real and personal property of an Indian or a band situated on a reserve is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the instance of any person other than an Indian or a band.

(1.1) Notwithstanding subsection (1), a leasehold interest in designated lands is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution.

(3) Subsections 38(2) and (3) of the *First Nations Land Management Act* state:

38. (2) Subsection 89(1.1) of the *Indian Act* continues to apply to leasehold interests or leases in any First Nation land that was designated land on the coming into force of a First Nation's land code.

(3) A land code may extend the application of subsection 89(1.1) of the *Indian Act*, or any portion of it, to other leasehold interests or leases in First Nation land.

(4) Sections 29.2, 30.3 to 30.6, 34.2 to 34.10, 35.3 and 40.2 of the *ᑭᓄᓄᓄ Amended Land Code* state:

29.2 The ᑭᓄᓄᓄ Lands Department shall ensure that an original copy of the following land instruments are registered in the First Nation Land Register, in accordance with the *First Nations Land Registry Regulations*:

(c) the transfer or assignment of an interest or licence in ᑭᓄᓄᓄ community lands that Council consents to;

30.3 An interest or licence in ᑭᓄᓄᓄ Lands may only be created, granted, disposed of, assigned or transferred by a land instrument issued in accordance with this Land Code.

30.4 A person who is not a Member may hold a lease, licence, easement, mortgage or permit in ᑭᓄᓄᓄ Lands.

30.5 The written consent of Council shall be obtained for the original grant of a lease, licence, easement or permit in ᑭᓄᓄᓄ Lands.

30.6 Notwithstanding section 30.5, if Council has consented to the original grant of a lease in ᑭᓄᓄᓄ Lands to a person who is not a Member, that leasehold interest may be subsequently mortgaged, transferred or assigned without the consent of Council or approval of Members.

34.2 The ᑭᓄᓄᓄ Lands Department and the Director of Lands and Natural Resources shall not be responsible or liable for ensuring that a lease in ᑭᓄᓄᓄ Lands permits the leasehold interest to be mortgaged or charged, that the lease is in good standing or that the leaseholder is in compliance with the terms of the lease.

34.3 Disputes in relation to mortgages of leases shall be determined as follows:

(a) the parties to the dispute may agree that the dispute may be determined by mediation, arbitration or other dispute resolution mechanism agreed to by the parties; or

(b) if the parties to the dispute do not agree on a dispute resolution mechanism, the dispute shall be determined by a court of competent jurisdiction.

34.4 A leasehold interest in ᑭᓄᓄᓄ Lands held by a person who is not a Member is subject to

charge, pledge, mortgage, attachment, levy, seizure, distress and execution without the consent of Council or approval of Members.

34.5 An interest of a Member in ᑭᓄᓐ Lands which is not a leasehold interest may be subject to a mortgage or charge only to ᑭᓄᓐ or a Member.

34.6 An Indian, as that term is defined in the *Indian Act*, including a Member, may grant a lease to him or herself in the same manner as to another person.

34.7 A leasehold interest in ᑭᓄᓐ Lands that is held by an Indian, as that term is defined in the *Indian Act*, including a Member, may be subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution without the consent of Council or approval of Members, and the mortgagee has the same legal and equitable rights it would have if the leasehold interest was held by a non-Indian.

34.8 A leasehold interest in ᑭᓄᓐ community lands is subject to charge, pledge, mortgage, attachment, levy, seizure, distress and execution by the mortgagee.

34.9 In the event of default in the terms of a mortgage or charge of a leasehold interest in ᑭᓄᓐ Lands, the leasehold interest is not subject to possession by the mortgagee or chargee, foreclosure, power of sale or any other form of execution or seizure, unless:

- (a) the mortgage or charge was registered in the First Nation Land Register; and
- (b) reasonable notice of the foreclosure was provided to Council, giving Council an option to redeem the leasehold interest.

34.10 If Council exercises an option to redeem with respect to a leasehold interest under subsection 34.9(b), ᑭᓄᓐ becomes the lessee of the leasehold lands and, with the consent of the lender, takes the position of the mortgagor or chargor for all purposes after the date of redemption.

35.3 Subject to a law of ᑭᓄᓐ that states otherwise, the following persons have a right of access to ᑭᓄᓐ Lands:

- (a) a lessee or mortgagee of ᑭᓄᓐ Lands; and

shall not be set aside if the mortgagee acquired it for value and acted in good faith; and

40.2 Dispute resolution processes under this Land Code are not available under this part for disputes in relation to:

- (a) mortgages of lease;

Section 4 Policy

Transferring Interests in Leases

(1) Assignments, mortgages and subleases involve the transfer of all or part of a lessee's interest in a lease.

Assignment

- (2) An assignment entails the full transfer of a lessee's interest in a lease to a third party, known as the assignee.
- (3) The assignee in effect "steps into the shoes" of the lessee, and agrees to perform the lessee's responsibilities under the lease.
- (4) The assignee pays rent directly to ḥāqām.
- (5) An assignment generally does not relieve the original lessee from his or her obligations under a lease.

Headleases and Subleases

- (6) A headlease is a lease between ḥāqām and the lessee, and it creates a leasehold interest that a lessee can then sublet. A sublease must therefore always be subordinate to the headlease. Every headlease will contain specific requirements governing the sublease, and set out contingencies if the headlease is terminated.
- (7) In a sublease, the sublessee becomes the lessee's tenant and makes rental payments to the lessee.
- (8) The lessee continues to perform the obligations imposed by the headlease.
- (9) Several special terms must appear in every sublease, and the headlease binds the lessee to include them when negotiating with sublessees. These terms include:
 - (a) **Term of Sub-lease:** While a sublease can be for any shorter period, its term must expire at least one day before the headlease ends;
 - (b) **Land to be leased:** A sublease may be for the entire area covered by the headlease, but it usually covers only part of that land. If this is the case, a proper legal description of the sublease area is required, ie. a Registration Plan or CLSR survey. The sublease must convey something less than the headlease conveys: either a shorter term, a smaller portion of land, or both;
 - (c) **Dependency on Headlease:** The sublease must clearly state that it is subordinate to the headlease, and that the sublease will automatically terminate if the headlease is terminated or otherwise terminated; and
 - (d) **Headlease Terms are Binding:** The sublease will bind the sublessee to all the terms of the headlease.

Mortgage

(10) A mortgage involves pledging either the lessee or sublessee's interest in the land as security for the repayment of a loan made to the lessee or the sublessee by the mortgagee.

(11) Should the lessee or sublessee fail to repay the loan as required, the mortgagee is generally entitled to sell or assume the lessee or sublessee's interest to satisfy the debt.

(12) Because a mortgagee's security is tied to the value of a leasehold interest, a mortgagee is acknowledged to have a special role in the cancellation and amendment of a lease.

(13) It must be noted that if the designation stipulates a specific lessee, that lessee may have difficulty in obtaining a mortgage as the mortgagee may not then have the ability to assume the lessee's interests in the event of a default.

Consent of Council Generally Not Required

(14) All leases over ʔaḡam community lands may be assigned, subleased or mortgaged in accordance with the terms of the lease, which must be approved by council at the time the lease is granted.

Registration

(15) Every assignment, sublease or mortgage must be registered in the First Nation Land Register. The assignment, sublease or mortgage must be drafted in a form suitable for registration.

Section 5 Process

Process Set out in Lease

(1) The processes relevant to the assignment, sublease or mortgage of a lease must be those processes set out in the lease document itself.

Section 6 References

(1) In addition to this policy, consult the following resources:

- (a) the lease and the Lands Department file for the lease;
- (b) any subleases registered in the First Nation Land Register;
- (c) any mortgages registered in the First Nation Land Register;

- (d) the *ᑭᐱᑦᐱᐱ* Amended Land Code;
- (e) the *First Nations Land Management Act*;
- (f) the Framework Agreement; and
- (g) the Individual Agreement.

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**LICENCES, PERMITS,
EASEMENTS AND RIGHT-
OF-WAYS**

Approved by Council on March 15, 2016

TABLE OF CONTENTS

POLICY 6-1: LICENCES, PERMITS, EASEMENTS AND RIGHT-OF-WAYS OVER	
ʔAQAM COMMUNITY LANDS	201
Section 1 Purpose	201
Section 2 General	201
Definitions	201
Role of Council	202
Role of The Lands Department	202
Role of The Lands Committee.....	203
Approved Template Land Instruments.....	203
Characteristics of a Licence.....	203
Characteristics of a Permit.....	204
Types of Licences and Permits.....	205
Characteristics of an Easement.....	206
Examples of Types of Easements.....	207
Characteristics of a Right Of Way.....	207
Section 3 Authorities.....	208
Section 4 Policy	209
Land Instrument Required.....	209
Applicant Eligibility	209
Licences, Permits, Easements and Rights of Way Over Lands Held Under an Allotment	209
Granting A Licence, Permit, Easement or Right of Way to A Non-Member	209
Must Be In The Best Interests of ʔaqam	210
Legal Description Required at Cost of Applicant.....	210
Terms	210
Registration or Recording of A Licence, Permit, Easement or Right Of Way	210

Council Cancellation of A Licence, Permit, Easement or Right Of Way – Where Granted In Error, by Fraud or by Mistake.....	210
Council Cancellation of A Licence, Permit or Right Of Way for Default of Terms	211
 Cancellation of a Licence, Permit or Right Of Way at the Request of a Licensee, Permittee or Grantee.....	211
 Cancellation of an Easement Granted in Error, by Fraud, or by Mistake	212
 Cancellation of an Easement - Other	212
Monitoring and Enforcement.....	212
Section 5 Process.....	212
 Application for Use of ᐃᓱᓱᓱᓱ Lands	212
 Receiving an Application for Use of ᐃᓱᓱᓱᓱ Lands	212
 Creation of Lands Department File.....	213
 Initial Letter to Applicant	213
 Lands Committee Preliminary Review	213
 Verify the Identity and Legal Status of the Applicant.....	214
 Assess Whether Lands Proposed for Use are ᐃᓱᓱᓱᓱ community lands	215
 Site Visit	216
 Lands Committee Review (Optional).....	Error! Bookmark not defined.
 Cultural Heritage Sites.....	217
 Negotiations	
 Drafting	218
 Assess the Draft Licence, Permit, Easement or Right Of Way.....	219
 Legal Counsel Review	219
 Address Identified Problems	220
 Report to Council	220
 If Bcr Requires Conditions to be Met Before Land Instrument is Granted	222
 If an Environmental Assessment is a Condition Precedent.....	223
 If Legal Description is a Condition Precedent	223
 Report to Council and New Band Council Resolution	225
 Letter to Applicant.....	225

Executing the Licence, Permit, Easement or Right Of Way	226
Signature Requirements	227
Registration	227
Final Steps	228
Site Inspection Report	228
Documentation	228
Follow-Up and Monitoring Plan.....	229

Section 6 References	229
------------------------------	-----

POLICY 6-2: DRAFTING LICENCES, PERMITS, EASEMENTS AND RIGHT-OF-WAYS USING THE MANDATORY AND OPTIONAL TERMS 230

Section 1 Purpose	230
---------------------------	-----

Section 2 General	230
---------------------------	-----

Section 3 Authorities.....	231
------------------------------	-----

Section 4 Policy.....	232
-------------------------	-----

Approved Standard Forms	232
-------------------------------	-----

Mandatory Terms	232
-----------------------	-----

The Parties	232
-------------------	-----

Recitals	233
----------------	-----

Band Council Resolution.....	Error! Bookmark not defined.
------------------------------	------------------------------

Land Description, Status and Warranties	236
---	-----

Maintenance	
-------------------	--

236

Term	236
------------	-----

Compensation	237
--------------------	-----

Access	237
--------------	-----

Allowable Use.....	237
--------------------	-----

Insurance	238
-----------------	-----

Indemnification.....	238
Taxes	239
Agreement to Comply With Laws	239
Historical, Anthropological, Archeological or Cultural Materials	239
Notice	239
Cancellation of Licences, Permits and Rights of Way.....	240
Default	240
Dispute Resolution.....	240
Optional Terms.....	241
Standards	241
Fencing	241
Damages	241
Improvements.....	241
Fisheries Protection.....	241
Assignment	242
Section 5 Process.....	242
Section 6 References	242
POLICY 6-3: CANCELLATION OF A LICENCE, PERMIT OR RIGHT-OF-WAY AT THE REQUEST OF THE LICENSEE, PERMITTEE OR GRANTEE.....	243
Section 1 Purpose	243
Section 2 General	243
Role of Council.....	243
Role of the Lands Department	243
Role of the Lands Committee.....	244
Section 3 Authorities.....	244

Section 4	Policy	244
	Consulting Legal Counsel	244
	Council Consent Required	244
	Restrictions on Cancellation	245
	No Release of Liability / Obligations	245
Section 5	Process	245
	Request to Cancel Licence, Permit or Right Of Way.....	245
	Receiving Request to Cancel Licence or Permit	246
	Lands Department Review and Assessment of Request.....	246
	Report to Council	247
	Council Decision on Cancellation.....	249
	Cancellation of Licence, Permit or Right of Way Agreement Approved by Council.....	249
	Documentation	250
	Cancellation of Licence or Permit Approved by Council Conditional on Certain	
	Terms Being Complied with by the Licensee, Permittee or Grantee	250
	Monitoring Conditions	250
	Execute Certificate of Cancellation	251
	Register the Cancellation	251
	Notice to Applicant.....	251
	Request to Cancel Licence or Permit Denied	251
	Documentation	252
Section 6	References	252

POLICY 6-1: LICENCES, PERMITS, EASEMENTS AND RIGHT-OF-WAYS OVER ᑲAQAM COMMUNITY LANDS

Section 1 Purpose

(1) The objectives of this policy are:

(a) to set out a standardized set of rules and processes that apply to obtaining a licence, permit, easement or right-of-way over ᑲaqam community lands; and

(b) to clearly define the roles and responsibilities of Council, the Lands Department, the Lands Committee and applicants during the application process.

(2) Policies 6-1, 6-2 and 6-3 do not apply to allotted lands. For information on the policies and procedures that apply to obtaining a licence, permit, easement or right-of-way over allotted lands, please refer to Policy 4-3.

Section 2 General

Definitions

(1) For the purposes of Policies 6-1, 6-2 and 6-3:

“applicant” means a person who is eligible to be an applicant under this policy and submits a completed Form 6-1-01: Application for Use of ᑲaqam Lands to the Lands Department, along with all required supporting documentation;

“application” means an application made pursuant to this policy using Form 6-1-01: Application for Use of ᑲaqam Lands, and all supporting documentation required under this policy;

“grantee” means a person to whom an easement or right-of-way is granted by ᑲaqam;

“grantor” in relation to an easement or right-of-way, means ᑲaqam as represented by Council;

“industrial use” means the use of ᑲaqam lands to conduct a business enterprise involving the storage, manufacture, assembly, testing, servicing, repairing, fabrication, wrecking, salvaging, processing or production of all goods or materials, including the selling of industrial equipment. Examples of industrial uses include: natural resource storage yards, truck terminals, parts assembly, work camps, machine shops, factories, plants and mills;

“licencee” means a person to whom a licence is granted by ᑲaqam;

“licensor” means in relation to a licence, ᑲaqam as represented by Council;

“permittee” means a person to whom a permit has been granted;

“permitter” means ᑲᓱᓄᓐ as represented by Council;

“private road” means a road that provides private access to a person and that is not fit for public use for physical reasons such as: physical hazards due to industrial traffic, the presence of dangerous livestock, danger from explosives, sour gas, etc;

“public road” means a road that provides access to the public;

“roadways” means a public or private road; and

“take” means physically remove from ᑲᓱᓄᓐ lands.

Role of Council

(2) Council is responsible for:

- (a) consenting, by Band Council Resolution, to the original grant of, and any assignment or transfer of, a licence, permit, easement or right-of-way; and
- (b) authorizing, by Band Council Resolution, a member of Council or the Lands Department to sign licences, permits, easements and right-of-ways on behalf of Council.

Role of the Lands Department

(3) The Lands Department is responsible for:

- (a) ensuring all requirements under this policy and Policy 6-2 are complied with during the assessment of applications and the negotiation, drafting and execution of a licence, permit, easement or right-of-way;
- (b) ensuring all land instruments granting a licence, permit, easement or right-of-way over ᑲᓱᓄᓐ community lands are in accordance with the *ᑲᓱᓄᓐ Amended Land Code*, ᑲᓱᓄᓐ laws, by-laws and any applicable provincial or federal laws;
- (c) in accordance with Policies 10-1 and 10-2, the monitoring and enforcement of all licences, permits, easements and right-of-ways over ᑲᓱᓄᓐ community lands; and
- (d) maintaining a file in the Lands Department for all licences, permits, easements and right-of-ways over ᑲᓱᓄᓐ community lands.

Role of the Lands Committee

(4) The Lands Committee may assist the Lands Department and Council with any matter related to the granting of a licence, permit, easement or right-of-way and may perform duties and functions as directed by either Council or the Lands Department.

(5) It is the responsibility of the Lands Committee to respond to all licence, permit, easement and right-of-way related requests from the Lands Department or Council, and where necessary to consult with members on licence, permit, easement and right-of-way related issues.

(6) The Lands Committee is not a decision-making body. However, the Lands Committee may make recommendations to the Lands Department and Council on matters related to the issuance of a licence, permit, easement or right-of-way over Ṣaqam community lands.

Approved Template Land Instruments

(7) The following schedules set out the approved standard forms for a licence, permit, easement or right-of-way over Ṣaqam community lands:

- (a) Schedule E: Standard Form Licence Agreement;
- (b) Schedule F: Standard Form Permit Agreement;
- (c) Schedule G: Standard Form Easement Agreement; and
- (d) Schedule H: Standard Form Right-of-Way Agreement.

Characteristics of a Licence

(8) A licence has the following characteristics:

- (a) the licensor is Ṣaqam and the licensee may be any person, whether or not they are a member;
- (b) it grants the licensee with a personal privilege or permission to use, occupy or take from Ṣaqam community lands;
- (c) it does not grant exclusive possession or occupation of Ṣaqam community lands to the licensee;
- (d) it does not grant the licensee a right to curtail public access over the licence area, except where it would impact on the licensee's right to use the land as per the licence;

- (e) it does not require a legal land description, unless it is for a term of ten (10) years or more and is granted to a person who is not a member of ḥaqam;
- (f) its term is certain and limited in duration but must be for a minimum of two (2) years;
- (g) it is granted for a specific purpose;
- (h) it is granted for a specific parcel of ḥaqam community lands;
- (i) more than one licence, permit, easement or right-of-way may be granted over the same parcel of ḥaqam community lands provided the uses are compatible;
- (j) it may be cancelled by the licensor or at the request of the licensee, within the terms of the licence;
- (k) compensation for licences is based at a minimum on fair market value; and
- (f) it is generally not assignable or transferrable without the written consent of ḥaqam and it generally cannot be mortgaged.

Characteristics of a Permit

- (9) A permit has the following characteristics:
 - (a) the permittor is ḥaqam and the permittee may be any eligible person, whether or not they are a member;
 - (b) it grants the permittee with a personal privilege or permission to use, occupy or take from ḥaqam community lands;
 - (c) it does not require a legal land description, unless it is for a term of ten (10) years or more;
 - (d) it must not exceed a term of five (5) years unless the permittee is a member, and if it's granted to a person who is not a member of ḥaqam and the term exceeds ten (10) years a legal land description must be obtained;
 - (e) it is granted for a specific purpose and may be granted for investigative purposes;
 - (f) it is granted for a specific parcel of ḥaqam community lands;
 - (g) it does not grant exclusive possession of ḥaqam community lands to the

permittee;

- (h) it does not create a leasehold or easement;
- (i) it may grant a permittee a right to reside on ᑭᓱᓴᓄᓐ lands;
- (j) it grants the permittee, and others named in the permit, with a right of access to ᑭᓱᓴᓄᓐ community lands as per the terms of the permit;
- (i) more than one licence, permit, easement or right-of-way may be granted over the same parcel of ᑭᓱᓴᓄᓐ community lands provided the uses are compatible;
- (k) the permittee must allow public access to the permit area without interference, and must recognize and respect the overlapping and layering of interests that may be authorized by ᑭᓱᓴᓄᓐ over the permit area;
- (l) compensation for permits is based at a minimum on fair market value;
- (m) it may be cancelled by the permittor or at the request of the permittee, within the terms of the permit;
- (n) it is generally not assignable or transferrable without the written consent of ᑭᓱᓴᓄᓐ.

Types of Licences and Permits

- (10) It is appropriate for ᑭᓱᓴᓄᓐ to grant a licence or permit for the following purposes:
 - (a) the use or occupation of ᑭᓱᓴᓄᓐ community lands for agricultural or grazing purposes;
 - (b) the use, occupation and/or taking of resources from ᑭᓱᓴᓄᓐ community lands;
 - (c) the use or occupation of ᑭᓱᓴᓄᓐ community lands for industrial purposes, including: general industrial, quarry, mining, oil and gas, log handling, waterpower or wind power;
 - (d) the use or occupation of ᑭᓱᓴᓄᓐ community lands for commercial purposes, including: residential developments, alpine skiing, golf course, film, or recreational facilities;
 - (e) the use or occupation of ᑭᓱᓴᓄᓐ community lands for transportation, communications or utilities, including: airports, communication sites, public and private utilities, or roadways;

(f) the use or occupation of ḥaqām community lands by community organizations and institutions; or

(g) the use or occupation of ḥaqām community lands for residential purposes.

Characteristics of an Easement

(11) An easement has the following characteristics:

(a) it is permanent and “runs with the land,” which means that it passes with the ownership of the land;

(b) there must be a land owner who benefits from the easement (the “third party owner”), and a land owner who is burdened by the easement (ḥaqām”);

(c) ḥaqām, having all the rights of an owner of ḥaqām community lands will be the grantor, in an easement granted under this policy;

(d) a third party will be the grantee in an easement granted under this policy;

(e) it provides a right to the third party owner to compel ḥaqām to do or refrain from doing something in respect of ḥaqām community lands in a way that impacts on the third party owner’s use of their own land;

(f) it provides a benefit to the third party owner, making their land better and more convenient, and providing them fuller use of their land;

(g) although it is not necessary that the third party’s lands and ḥaqām lands be adjacent to one another, there must be reasonable proximity between them;

(h) common ownership of two parcels of land does not prevent a grant of an easement nor does it extinguish an easement previously granted. This means that ḥaqām may grant an easement to itself and where an easement exists and ḥaqām acquires the third party owner’s land, the easement continues to exist despite the fact that ḥaqām owns both parcels of land;

(i) the easement must be defined and certain, for example:

(i) it must be capable of reasonably exact definition and must not be too vague. A third party owner’s right to a view is not sufficiently precise. However, a third party owner’s right to light through a particular window in their home may be the subject matter of an easement,

(ii) an easement must not leave ḥaqām without any reasonable use of their land. It must not be so restrictive that ḥaqām cannot use the ḥaqām community lands at all,

(iii) the third party owner who benefits from an easement must be a specified individual or individual(s) and cannot be an indefinite class of persons such as “the public”;

(j) at the time an easement is granted, the interest in land held by the third party owner must be at least equal in size and value to the interest granted by the easement.

Examples of Types of Easements

(12) It is appropriate for Ḥaqām to use an easement to grant a third party owner with a permanent, non-exclusive right to:

(a) cross over specified Ḥaqām community lands at any time of day and in any way;

(b) cross over specified Ḥaqām community lands in some restricted way, such as by foot, only during certain hours of the day or only on a specified road;

(c) natural lighting that restricts Ḥaqām’s use of Ḥaqām community lands in some way, such as a restriction from building to a certain height in a specified location, or planting tall trees or erecting some structure in an area that will block light into certain parts of the third party owner’s land;

(d) build a roof or other structure that is partially located over Ḥaqām community lands;

(e) use a path or garden over Ḥaqām community lands for leisure purposes; or

(f) park vehicles on Ḥaqām community lands in a specific spot.

Characteristics of a Right of way

(13) A right-of-way has the following characteristics:

(a) Ḥaqām, having all the rights of an owner of Ḥaqām community lands will be the grantor, in a right-of-way granted under this policy;

(b) a third party will be the grantee in a right-of-way granted under this policy and will usually be a government, public utility, pipeline or railroad company;

(c) it provides a right to the third party owner to access Ḥaqām community lands in order to maintain services to other parcels of land;

(d) it may provide a right to a third party in relation to Improvements or Works.

Section 3 Authorities

(1) The relevant authorities are:

- (a) section 12.1 and paragraph 12.2(b) of the Framework Agreement;
- (b) paragraphs 6(1)(j) and 18(1)(b) of the *First Nations Land Management Act*; and
- (c) section 32 of the *ᑭᓱᓴᓄᓐ ᐱᓄᓄᓈᓂᓄᓐ ᐱᓄᓄᓈᓂᓄᓐ ᐱᓄᓄᓈᓂᓄᓐ*.

(2) Section 12.1 and paragraph 12.2(b) of the Framework Agreement state:

12.1 A First Nation with a land code in effect will, subject to clause 13, have the power to manage its First Nation land and exercise its powers under this Agreement.

12.2 This power includes

...

(b) the authority to grant interests or land rights and licences in relation to its First Nation land and to manage its natural resources, subject to clauses 3, 18.5 and 23.6.

...

(3) Paragraphs 6(1)(j) and 18(1)(b) of the *First Nations Land Management Act* state:

6 (1) A First Nation that wishes to establish a land management regime in accordance with the Framework Agreement and this Act shall adopt a land code applicable to all land in a reserve of the First Nation, which land code must include the following matters:

(j) the general rules and procedures that apply in respect of the granting or expropriation by the First Nation of interest or rights in First Nation Land

18(1) A First Nation has, after the coming into force of its land code and subject to the Framework Agreement and this Act, the power to manage First Nation land and, in particular may

(b) grant interests or rights in and licences in relation to that land...

(4) Section 32 of *ᑭᓱᓴᓄᓐ ᐱᓄᓄᓈᓂᓄᓐ ᐱᓄᓄᓈᓂᓄᓐ ᐱᓄᓄᓈᓂᓄᓐ* states that:

32. New Interests and Licences

32.1 Subject to this Land Code, Council may grant:

- (a) interests in ᑭᓱᓴᓄᓐ community lands; and
- (b) licences and permits to take resources from ᑭᓱᓴᓄᓐ community lands.

32.2 The grant of an interest, licence or permit in ᑭᓱᓴᓄᓐ community lands may be made subject

to conditions.

32.3 The Director of Lands and Natural Resources may advise Council on the granting of interests, licences and permits in ʔaḡam community lands and may be authorized to act as a delegate of Council under this part.

Section 4 Policy

Land Instrument Required

(1) A licence, permit, easement or right-of-way may only be created, granted, disposed of, assigned or transferred by a land instrument in accordance with the *ʔaḡam Amended Land Code* and this policy.

Applicant Eligibility

(2) An applicant must fall within one of the following categories of persons to be eligible for a licence, permit, easement or right-of-way in ʔaḡam community lands:

- (a) a Canadian citizen or permanent resident who is 19 years of age or older;
- (b) a corporation that is incorporated or registered in British Columbia;
- (c) a registered partnership, cooperative, or non-profit society formed under British Columbia laws;
- (d) a local government including a municipality or a regional district;
- (e) a First Nation or Band or Tribal Council (with a valid Band Council Resolution authorizing the specific agreement for a licence, permit, easement or right-of-way);
or
- (f) the Government of a Province or Canada.

Licences, Permits, Easements and Rights of way over Lands Held under an Allotment

(3) This Policy does not apply to the granting of licences, permits, easements or right-of-ways over lands that are held under an allotment.

(4) Refer to Policy 4-3 and any law made pursuant to section 33 of the *ʔaḡam Amended Land Code* for information on licences, permits, easements or right-of-ways related to lands held under an allotment.

Granting a Licence, Permit, Easement or Right of way to a Non-Member

(5) A person who is not a member may hold a licence, permit, easement or right-of-way as long as they are eligible to do so under this policy.

(6) Council must provide written consent in the form of a Band Council Resolution for all original licences, permits, easements or right-of-ways to a person whether or not they are a member.

Must Be in the Best Interests of ᑭᓄᓐ

(7) All licences, permits, easements and right-of-ways must be consistent with the best interests of ᑭᓄᓐ.

Legal Description Required At Cost of Applicant

(8) A registered plan or official plan must be obtained by an applicant who is not a member and at the applicant's expense for any licence, permit, easement or right-of-way with a term longer than 10 years, and must be provided to the Lands Department before Council may consider consenting to that licence, permit, easement or right-of-way.

Terms

(9) Many of the terms in a licence, permit, easement or right-of-way are mandatory and contain wording which is non-negotiable. Other terms may be open to negotiation. Optional terms may also be included to fit a particular situation.

(10) Policy 6-2 contains a description of the various terms used in a licence, permit, easement or right-of-way.

(11) The standard form agreements in Schedules E, F, G and H are drafted based on the mandatory terms required under Policy 6-2.

Registration or Recording of a Licence, Permit, Easement or Right of way

(12) Where a person is granted a licence, permit, easement or right-of-way, the Lands Department must ensure that it is registered in the First Nations Land Register in accordance with Policy 3-1.

Council Cancellation of a Licence, Permit, Easement or Right of way – Where Granted in Error, by Fraud or by Mistake

(13) Pursuant to section 31.2 of the *ᑭᓄᓐ Amended Land Code* and Policy 7-1, if Council determines that a licence, permit, easement or right-of-way was granted in error, by fraud or by mistake, they may cancel or correct the licence, permit, easement or right-of-way and issue a replacement land instrument if required.

Council Cancellation of a Licence, Permit or Right of way for Default of Terms

(14) Where a licensee, permittee or grantee in relation to a right-of-way defaults on the terms of their licence, permit, or right-of-way, Council may cancel it by following the same procedures that are set out for the cancellation of leases in Policy 5-3. In such circumstances:

- (a) all references to the lessee will be references to the permittee, licensee or grantee; and
- (b) all references to the lessor will be references to the permittor, licensor or grantor, being ᐃᓄᓂᓄᓄ.

(15) The steps to cancel a licence, permit or right-of-way pursuant to Policy 5-3 are summarized as follows:

- (a) initiate contact with licensee, permittee or grantee;
- (b) report to Council;
- (c) Council decision on proposed cancellation;
- (d) deliver the licensee, permittee or grantee a notice of the default, setting out specific details of the default and give the licensee, permittee or grantee a deadline within which to remedy the situation;
- (e) confirm whether the licensee, permittee or grantee has cured the default before the deadline given;
- (f) if the default has not been cured, deliver the licensee, permittee or grantee a cancellation notice, setting out specific details on the grounds for cancellation;
- (g) confirm the licensee, permittee or grantee has vacated the land and complied with any outstanding licence, permit or right-of-way obligations, such as any environmental site assessment requirements identified in the licence, permit or right-of-way; and
- (h) register the cancellation in the First Nation Land Register in accordance with Policy 3-1.

(16) The Lands Department must not cancel a licence, permit or right-of-way without the consent of Council in the form of a Band Council Resolution.

Cancellation of a Licence, Permit or Right of way at the Request of a Licensee, Permittee or Grantee

(17) A licence, permit or right-of-way may only be cancelled at the request of a licensee, permittee or grantee with the consent of Council and in accordance with Policy 6-3.

Cancellation of an Easement Granted in Error, by Fraud, or by Mistake

(18) If Council determines that an easement was granted in error, by fraud or by mistake, they may cancel it pursuant to section 31.2 of *ᑲᓱᓴᓄᓄ ᓄᓄᓄᓄ ᓄᓄ ᓄᓄ* and Policy 7-1.

Cancellation of an Easement - Other

(19) Other than pursuant to section 31.2 of *ᑲᓱᓴᓄᓄ ᓄᓄᓄᓄ ᓄᓄ ᓄᓄ* and Policy 7-1, an easement may only be cancelled by a written agreement between the third party owner who benefits from the easement and *ᑲᓱᓴᓄᓄ*.

Monitoring and Enforcement

(20) The Lands Department is responsible for the monitoring and enforcement of licences, permits, easements and right-of-ways over *ᑲᓱᓴᓄᓄ* community lands.

(21) Refer to Policies 10-1 and 10-2 for more information on the monitoring and enforcement of licences, permits, easements and right-of-ways over *ᑲᓱᓴᓄᓄ* community lands.

Section 5 Process

Application for Use of ᑲᓱᓴᓄᓄ Lands

(1) The applicant must:

- (a) fully complete Part 1 of Form 6-1-01: Application for Use of *ᑲᓱᓴᓄᓄ* Lands;
- (b) submit the completed application to the Lands Department along with any required documentation; and
- (c) if the applicant is not a member, present two pieces of government-issued identification to the Lands Department.

Receiving an Application for Use of ᑲᓱᓴᓄᓄ Lands

(2) The person at the Lands Department who receives an application must document the following in Part 2 of Form 6-1-01: Application for Use of ᑭᓱᓱᓱᓱ Lands:

(a) date and time that the application was received; and

(b) the name of the person at the Lands Department who received the application.

(3) If the applicant is not a member or a representative of a government agency, the person at the Lands Department who receives the application must:

(a) obtain two pieces of government issued identification from the applicant;

(b) compare the two pieces of government issued identification to the applicant and the application and assess whether the applicant is the same person as the person in the identification and the person named in the application;

(c) photocopy the two pieces of government issued identification that are provided and attach them to the application.

(4) The Lands Department must complete Part 2 of Form 6-1-01: Application for Use of ᑭᓱᓱᓱ Lands.

Creation of Lands Department File

(5) The person at the Lands Department who receives the application must ensure that a Lands Department file is created for the application and that the Form 6-1-01: Application for Use of ᑭᓱᓱᓱ Lands, along with any supporting documentation, is placed in that file.

Initial Letter to Applicant

(6) As soon as practical after receiving an application, the Lands Department must:

(a) complete and sign Form 6-1-02: Letter to Applicant;

(b) take a photocopy of the completed Form 6-1-02: Letter to Applicant and place it in the Lands Department file for the application; and

(c) provide to the applicant:

(i) the original, signed copy of Form 6-1-02: Letter to Applicant; and

(ii) a copy of the standard licence, permit, easement or right-of-way document that is relevant to the application.

Lands Committee Preliminary Review

(7) As early as practical after receiving an application, the Lands Department must:

(a) brief the Lands Committee on the scope of the proposed use of ʔaḡam lands;

(b) provide the Lands Committee with a copy of the standard licence, permit, easement or right-of-way that is relevant to the application and any other information required by the Lands Committee; and

(c) obtain a recommendation from the Lands Committee that the Lands Department negotiate, draft and arrange the execution of the licence, permit, easement or right-of-way on behalf of ʔaḡam.

(8) The Lands Committee must complete Part 3 of Form 6-1-01: Application for Use of ʔaḡam Lands.

Verify the Identity and Legal Status of the Applicant

(9) Where the applicant is an **individual**, the Lands Department must review the copies of the applicant's government issued identification on file and determine whether the applicant is a Canadian citizen or permanent resident of Canada. If there is any doubt as to the applicant's citizenship or residency status, the Lands Department should consult legal counsel.

(10) Where the applicant, or the general partner in a limited partnership, is a **corporation**, the Lands Department must, at the applicant's expense:

(a) confirm that the corporation is in good standing by searching the British Columbia Registry Services website; and

(b) confirm that the applicant is designated as a signing officer for the corporation by requesting a copy of the Director's resolution appointing the signing officer.

(11) Where the applicant is a **partnership**, the Lands Department must, at the applicant's expense:

(a) confirm the legal status of the partnership and the names of its current signing officers by:

(i) obtaining a certified copy of the partnership agreement from the applicant; and

(ii) if the partnership is a limited partnership, searching the British Columbia Registry Services website for the Certificate of Limited Partnership;

(b) confirm that the partnership is in good standing by searching the British Columbia Registry Services website for the Certificate of Good Standing;

(c) confirm that the applicant is designated as a signing officer for the partnership by finding this information in the partnership agreement and comparing it to the copies of the applicant's identification in the Lands Department file.

(12) Where the applicant is a **society**, the Lands Department must, at the applicant's expense:

(a) confirm the legal status of the society by searching the British Columbia Registry Services website for the Certificate of Incorporation;

(b) confirm that the society is in good standing by searching the British Columbia Registry Services website;

(c) confirm that the applicant is designated as a signing officer for the society by requesting a copy of the motion granting signing authority and comparing it to the copies of the applicant's identification in the Lands Department file.

(13) Where the applicant is a **First Nation, Band or Tribal Council**, the Lands Department must, at the applicant's expense:

(a) confirm the legal status of the First Nation, Band or Tribal Council and the names of the current Chief and Councillors by searching online on the First Nations Profiles website;

(b) confirm that the applicant is designated as a signing officer for the First Nation, Band or Tribal Council by obtaining from the applicant an original Band Council Resolution to that effect and comparing it to the copies of the applicant's identification in the Lands Department file.

(14) Where the applicant is a **government agency**, the Lands Department must, at the applicant's expense:

(a) confirm the legal status of the government agency by searching online to determine whether the government agency exists as an entity; and

(b) confirm with the government agency by telephone that the applicant is the person they allege to be.

Assess Whether Lands Proposed for Use are ᑭᐱᑭᐱ community lands

(15) The Lands Department must complete the following steps and document their results in Part 2 of Form 6-1-01: Application for Use of ᑭᐱᑭᐱ Lands:

(a) determine whether the lands being proposed for use are ᑭᐱᑭᐱ community lands;

(b) determine whether a legal description will be required or whether a legal description already exists for the lands being proposed for use. A legal description will be required for all easements and for any other land instrument that has a term exceeding ten (10) years and is granted to a person who is not a member of ᑭᓄᓂᓂ. To determine whether a legal description already exists, the Lands Department must conduct a search of the Indian Lands Registry System, First Nation Land Register, and Natural Resources of Canada website;

(c) complete a parcel abstract report to determine whether there are any known encumbrances and obtain copies of all land instruments that are encumbrances on the parcel of land and add them to the Lands Department file to which the application relates;

(d) determine whether the proposed use is consistent with ᑭᓄᓂᓂ zoning laws, *ᑭᓄᓂᓂ Community Land Use Plan, 2016* and any other ᑭᓄᓂᓂ laws or by-laws that may restrict the use of ᑭᓄᓂᓂ lands and document all relevant ᑭᓄᓂᓂ laws, by-laws and policies;

(e) determine whether an environmental assessment will be required by the applicant pursuant to Policy 9-1 or an environmental site assessment pursuant to Policy 9-2;

(f) determine whether any known environmental or contamination concerns exist with regard to granting the requested use;

(g) determine whether the parcel of land has within it a cultural heritage site identified in an *ᑭᓄᓂᓂ Community Land Use Plan, 2016*; and

(h) enquire into whether granting a licence, permit, easement or right-of-way over the parcel of land may impact on any development plans which have already been approved by Council or are expected to be approved by Council in the near future. To determine this, contact the director of community and economic development.

Site Visit

(16) The Lands Department must complete a site visit to inspect the land and report the results of that inspection in Part 2 of Form 6-1-01: Application for Use of ᑭᓄᓂᓂ Lands.

(17) The inspection must include an assessment of:

(a) access to the land by road or other means;

(b) a description of the site;

- (c) whether services are available on the land (eg. water, sewer, power, etc);
- (d) whether the proposed land will accommodate the proposed use;
- (e) any encumbrances on the land; and
- (f) any other important observations that must be documented (ex – possible environmental contamination observed?).

Cultural Heritage Sites

(18) If a proposed licence, permit, easement or right-of-way is located on a cultural heritage site, the Lands Department must obtain approval from members at a ratification vote prior to executing the licence, permit, easement or right-of-way.

Lands Committee Preliminary Review

(22) As early as practical after the Lands Department completes a site visit and an assessment of the proposed use of ʔaḡam lands, the Lands Department must:

- (a) brief the Lands Committee on the scope of the proposed licence, permit, easement or right-of-way;
- (b) provide the Lands Committee with a copy of the standard land instrument that is relevant to the application and any other information required by the Lands Committee; and
- (c) obtain a recommendation from the Lands Committee that the Lands Department negotiate, draft and arrange the execution of the proposed land instrument on behalf of ʔaḡam.

(23) The Lands Committee must complete Part 3 of Form 6-1-01: Application for Use of ʔaḡam Lands.

Council Preliminary Review

(24) As early as practical after the Lands Department obtains a recommendation from the Lands Committee regarding a proposed licence, permit, easement or right-of-way, the Lands Department must:

- (a) brief Council on the scope of the proposed licence, permit, easement or right-of-way;
- (b) provide Council with a copy of the standard land instrument that is relevant to the application and any other information required by Council; and

(c) obtain instructions from Council to negotiate, draft and arrange the execution of the land instrument on behalf of ᐱᓄᓐᓄ.

Negotiations

(19) The Lands Department must negotiate the mandatory terms of all licences, permits, easements and right-of-ways with the applicant in accordance with Policy 6-2.

(20) Where the granting of a licence, permit, easement or right-of-way is inconsistent with another interest holder's rights under a land instrument, the Lands Department must attempt to obtain consent from those interest holders prior to executing the licence, permit, easement or right-of-way.

(21) In negotiating a licence, permit, easement or right-of-way, the Lands Department must confirm the adequacy of the compensation and where the compensation is valued at more than \$20,000, the Lands Department must obtain an appraisal report and confirm that the draft licence, permit, easement or right-of-way compensation is, at a minimum, fair market value.

(22) In negotiating a licence, permit, easement or right-of-way with any person except a government agency, the Lands Department must obtain a credit report on the applicant from the applicant. The information contained in a credit report will enable the Lands Department to assess the applicant's payment habits and capacity to fulfill the payment terms of the permit, licence, easement or right-of-way.

(23) The Lands Department must provide the applicant with a reasonable opportunity to inspect the requested ᐱᓄᓐᓄ lands as to:

(a) the suitability of the requested ᐱᓄᓐᓄ lands for any particular use, including the use permitted by the proposed land instrument;

(b) the condition of the requested ᐱᓄᓐᓄ lands (including surface and groundwater), environmental or otherwise;

(c) the general condition and state of utilities or other systems on or under the requested ᐱᓄᓐᓄ lands; and

(d) the application of any laws or regulations of Canada or the Province that apply to the requested ᐱᓄᓐᓄ lands.

Drafting

(24) The Lands Department is responsible for drafting licences, permits, easements and right-of-ways using the approved standard documents and mandatory terms.

(25) If any substantial changes are proposed to the language in an approved standard licence, permit, easement or right-of-way, the Lands Department must provide the proposed language changes to Council for review by submitting a draft of the approved standard document with the proposed changes “track changed” to Council for consideration.

(26) The Lands Department must obtain direction from Council on all proposed changes to the language in an approved standard licence, permit, easement or right-of-way.

(27) If the Lands Department has negotiated terms or conditions in a licence, permit, easement or right-of-way that vary from the approved standard documents, they must adopt the directions from Council when drafting the varied terms into the licence, permit, easement or right-of-way.

Assess the Draft Licence, Permit, Easement or Right of way

(28) The Lands Department must assess the draft licence, permit, easement or right-of-way:

- (a) to confirm that approved standard documents have been used and that all mandatory terms are included in the licence, permit, easement or right-of-way;
- (b) to confirm that the term of the licence, permit, easement or right-of-way is appropriate and consistent with this policy; and
- (c) to confirm the suitability of all optional terms appearing in the licence, permit, easement or right-of-way.

Legal Counsel Review

(29) The Lands Department must have a proposed easement reviewed by ᑭᓱᓱᓱ’ legal counsel and must consider whether to have a proposed licence, permit or right-of-way reviewed by ᑭᓱᓱᓱ’ legal counsel.

(30) When requesting a legal review of a proposed licence, permit, easement or right-of-way, the Lands Department must provide legal counsel with the following documents:

- (a) a final draft of the licence, permit, easement or right-of-way;
- (b) a completed Form 6-1-01: Application for Use of ᑭᓱᓱᓱ Lands and any supporting documentation received with the application or obtained by the Lands Department in completing Part 2 of the application;

- (c) copies of any documents obtained by the Lands Department from the Indian Lands Registry System and First Nation Lands Register in relation to the application;
- (d) corporate records search results;
- (e) any other documents in the ᐱᐱᐱ'ᐱ Lands Department file; and
- (f) any other documents requested by legal counsel.

Address Identified Problems

(31) The Lands Department must promptly address any problems or shortcomings identified during the assessment or legal review of the licence, permit, easement or right-of-way and draft a final licence, permit, easement or right-of-way.

Report to Council

(32) The Lands Department must provide the following documents to Council for their consideration:

- (a) one copy of the final draft licence, permit, easement or right-of-way;
- (b) the completed Form 6-1-01 Application for Use of ᐱᐱᐱ Lands;
- (c) any relevant reports from the Lands Committee or opinions from legal counsel;
- (d) any other relevant documents in the Lands Department file for the application; and
- (e) two (2) copies of a Band Council Resolution that sets out the following:

**ᐱᐱᐱ BAND COUNCIL RESOLUTION
CONSENT TO [LICENCE / PERMIT / EASEMENT/RIGHT-OF-WAY] AGREEMENT**

WHEREAS in 1996 fourteen First Nations and Canada signed the *Framework Agreement on First Nation Land Management (Framework Agreement)*, which established a process by which each of these communities could consider the option of assuming control over their reserve lands and resources by developing a Land Code and a community approval process, concluding an Individual Agreement with Canada, and ratifying the Land Code and Individual Agreement through a vote of the eligible members;

AND WHEREAS in 1999 Canada passed the *First Nations Land Management Act* to ratify the *Framework Agreement*;

AND WHEREAS in 2001 the fourteen First Nations and Canada agreed to amend the *Framework Agreement* to make it possible for additional First Nations to become signatories of the *Framework Agreement*;

AND WHEREAS ᐱᐱᐱ signed an Individual Agreement with Canada on June 18, 2014;

AND WHEREAS the members of ᑭᓄᓂᓂ voted in favour of the St. Mary's Indian Band Land Code at a ratification vote held on April 14-16, 2014 and the St. Mary's Indian Band Land Code came into effect on July 1, 2014;

AND WHEREAS the members of ᑭᓄᓂᓂ voted in favour of amendments to the St. Mary's Indian Band Land Code at a Meeting of Members vote held in accordance with section 48.1 and 13.1 to 13.9 of the St. Mary's Indian Band Land Code on January 7, 2016, which has become the ᑭᓄᓂᓂ Amended Land Code, 2016;

AND WHEREAS the Council of ᑭᓄᓂᓂ has authority pursuant to section 32.1 of the *ᑭᓄᓂᓂ Amended Land Code* to grant interests in ᑭᓄᓂᓂ community lands and to grant licences and permits to take resources from ᑭᓄᓂᓂ community lands;

THEREFORE BE IT RESOLVED THAT the Council of ᑭᓄᓂᓂ (***choose from one of the following options***)

If the Band Council Resolution is for a Licence or Permit:

A. consents to the attached [Licence / Permit] Agreement that grants to [Licensee / Permittee], a right to [use / occupy / take resources from] the [Licence / Permit] Area, for the purpose of [enter details regarding the purpose of the Licence / Permit]

FURTHER IT BE RESOLVED THAT the Council of ᑭᓄᓂᓂ authorizes [Name of Lands Department personnel] to execute the attached [Licence / Permit] Agreement on behalf of ᑭᓄᓂᓂ.

OR

B. conditional on [name of applicant]:

- [enter condition]
- [enter condition]; and
- providing to the ᑭᓄᓂᓂ Lands Department the following documentary proof that such conditions have been complied with by the following dates:
 - [Documentary Proof] by [date];
 - [Documentary Proof] by [date];
 - [Documentary Proof] by [date];

consents to the attached [Licence / Permit] Agreement that grants to [Licensee / Permittee], a right to [use / occupy / take resources from] the [Licence / Permit] Area, for the purpose of [enter details regarding the purpose of the Licence / Permit].

FURTHER IT BE RESOLVED THAT the Council of ᑭᓄᓂᓂ authorizes [Name of Lands Department personnel] to execute the attached [Licence / Permit] Agreement on behalf of ᑭᓄᓂᓂ after

- [name of applicant] has complied with the conditions set out in this Band Council Resolution;

AND / OR

- the conditions set out in this Band Council Resolution have been added as conditions within the [Licence / Permit]

OR

C. does not consent to the attached [Licence / Permit] Agreement that grants to [Licencee / Permittee], a right to [use / occupy / take resources from] those ?a?am lands described in the [Licence / Permit] Agreement as the [Licence / Permit] Area, for the purpose of [enter details regarding the purpose of the Licence / Permit].

If the Band Council Resolution is for an Easement or Right of way:

A. consents to the attached [Easement / Right-of-way] Agreement that grants to [Grantee] a right to use the [Easement/Right-of-way] Area, for the purpose of [enter details regarding the purpose of the Easement/Right-of-way].

FURTHER IT BE RESOLVED THAT the Council of ?a?am authorizes [Name of Lands Department personnel] to execute the attached [Easement/Right-of-way] Agreement on behalf of ?a?am.

OR

B. does not consent to the attached [Easement/Right-of-way] Agreement that grants to [Grantee] a right to use the [Easement/Right-of-way] Area, for the purpose of [enter details regarding the purpose of the Easement/Right-of-way].

If BCR Requires Conditions to be met before Land Instrument is Granted

(33) If Council determines that conditions must be completed before the issuance of a licence, permit, easement or right-of-way, the Lands Department must:

(a) if necessary, complete the relevant parts of Part 5 of Form 6-1-01: Application for Use of ?a?am Lands, indicating:

(i) the conditions precedent that must be met,

(ii) the documentary evidence that must be provided as proof of the conditions precedent being met,

(iii) the person responsible for monitoring the conditions precedent, and

(iv) the dates by which the documentary evidence must be received by the Lands Department;

(b) provide a copy of Form 6-1-01: Application for Use of ?a?am Lands, along with the Band Council Resolution, to the applicant;

(c) follow up in person with the applicant to confirm whether the applicant wishes to pursue the licence, permit, easement or right-of-way with the conditions as either conditions precedent or terms in the licence, permit, easement or right-of-way, as the case may be,

(d) if the applicant wishes to pursue the licence, permit, easement or right-of-way and the Band Council Resolution requires conditions precedent be met, the person responsible for monitoring whether those conditions precedent have been met must:

(i) obtain documentary proof from the applicant of the completion of all conditions precedent required by the Band Council Resolution, and

(ii) complete the relevant parts of Part 5 of Form 6-1-01: Application for Use of ?aqam Lands, indicating whether or not the applicant has provided documentary proof regarding their completion of all conditions precedent required by the Band Council Resolution, and sign the declaration in Part 5 of Form 6-1-01: Application for Use of ?aqam Lands; and

(e) if the applicant wishes to pursue the licence, permit, easement or right-of-way and the Band Council Resolution requires that the land instrument have conditions added to it, ensure those conditions are drafted into the licence, permit, easement or right-of-way.

If an Environmental Assessment is a Condition Precedent

(34) If an environmental assessment or environmental site assessment is a condition precedent to the issuance of a licence, permit, easement or right-of-way, the Lands Department must ensure that:

(a) Policies 9-1, 9-2 and 9-3 are complied with;

(b) the licence, permit, easement or right-of-way has a term stating that a breach of the mitigating measures will result in ?aqam having a right to cancel the licence, permit, easement or right-of-way without notice; and

(c) a legal counsel review of the licence, permit, easement or right-of-way is considered and if deemed necessary by the Lands Department, conducted.

If Legal Description is a Condition Precedent

(36) If a legal description is a condition precedent to Council approving a licence, permit, easement or right-of-way, the applicant must obtain an official plan or registration plan and provide the Lands Department with a legal description that refers to that plan.

(37) An official plan or registration plan may be obtained by contacting a Canada Land Surveyor. Contact information for Canada Land Surveyors can be found on the Association of Canada Lands Surveyors Website.

(38) The surveyor will initiate the survey process and will seek to obtain permission from ᑭᓄᓂ to enter ᑭᓄᓂ lands to commence the survey. ᑭᓄᓂ will need to provide a permission letter to the surveyor.

(39) A permission letter must not be provided until after Council has made a preliminary decision on the proposed land instrument and it must include:

- (a) a statement of permission for the surveyor to enter ᑭᓄᓂ lands;
- (b) information on the work that will be carried out by the surveyor;
- (c) the name of the surveyor(s) to whom the permission applies; and
- (d) the signature and title of the authorized signatory.

(40) After the surveyor has permission to enter ᑭᓄᓂ lands, the surveyor will contact the applicant and enter into a contract for services with him or her.

(41) After the surveyor and applicant have entered into a contract for services, the surveyor will send a request for survey to the Surveyor General of Canada with the contract for services and the letter of permission attached.

(42) The Surveyor General of Canada must authorize the survey before the surveyor can begin the work.

(43) After the surveyor has acquired authorization from the Surveyor General of Canada to conduct the survey, he or she will conduct all the work and review the preliminary official plan or registration plan with the applicant.

(44) Next, the surveyor will provide ᑭᓄᓂ with a request for their review and approval of the preliminary official plan or registration plan.

(45) ᑭᓄᓂ must ensure the preliminary official plan or registration plan complies with the scope of work that was approved by ᑭᓄᓂ to be conducted by the surveyor and with all ᑭᓄᓂ laws and by-laws.

(46) ᑭᓄᓂ must then approve of the preliminary official plan or registration plan in writing by providing the surveyor with either a Band Council Resolution or a letter signed by an authorized signatory.

(47) After ᑭᓄᓂ approves of a preliminary official plan or registration plan, the surveyor will:

- (a) record the official plan or registration plan in the Canada Land Survey Records, which is a public registry; and

(b) provide a copy of the official plan or registration plan to the applicant and to ?aqam.

(48) Where ?aqam does not approve of the official plan or registration plan, the Lands Department must work with, the applicant and the surveyor to have the survey amended to a form that ?aqam will approve.

(49) Once an official plan or registration plan is obtained a legal description must be added to the licence, permit, easement or right-of-way.

Report to Council and New Band Council Resolution

(50) If all conditions precedent are satisfactorily complied with, and all other conditions are drafted into the licence, permit, easement or right-of-way, the Lands Department must:

(a) provide Council with:

(i) if necessary:

(A) the completed Form 6-1-01: Application for Use of ?aqam Lands,

(B) all documentary proof from the applicant of the completion of all conditions precedent required by the Band Council Resolution,

(ii) the newly drafted licence, permit, easement or right-of-way, and

(iii) two (2) original copies of a Band Council Resolution approving of the execution of the licence, permit, easement or right-of-way, without conditions; and

(b) obtain a second Band Council Resolution from Council, approving the licence, permit, easement or right-of-way, without conditions.

Letter to Applicant

(51) Where Council has made a final decision on an application, the Lands Department must provide the applicant with a letter:

(a) confirming whether the licence, permit, easement or right-of-way has been approved;

(b) if the licence, permit, easement or right-of-way has not been approved, setting out the reasons it was not approved; and

(c) if the licence, permit, easement or right-of-way has been approved:

(i) setting out that the licence, permit, easement or right-of-way has been approved by Council; and

(ii) inviting the applicant to contact the Lands Department so arrangements can be made for the completion of a joint site inspection and the applicant to execute the licence, permit, easement or right-of-way.

Executing the Licence, Permit, Easement or Right of way

(52) Once the Lands Department has obtained a Band Council Resolution that approves the licence, permit, easement or right-of-way without conditions, the person at the Lands Department who is the authorized signatory must ensure that the following steps are completed to execute the land instrument:

(a) two (2) copies of the licence, permit, easement or right-of-way are printed off;

(b) depending on the circumstances, the authorized signatory may wish to speak directly with the applicant and review each term in the licence, permit, easement or right-of-way, emphasizing:

(i) the applicant's responsibilities under the licence, permit, easement or right-of-way,

(ii) ?aqam's responsibilities under the licence, permit, easement or right-of-way,

(iii) terms relating to monitoring and enforcement of the licence, permit, easement or right-of-way,

(iv) sanctions that will come into effect if the applicant breaches the terms of the licence, permit, easement or right-of-way, and

(v) if applicable, the expiry date of the licence, permit, easement or right-of-way.

(c) ensure the applicant, in the presence of a witness, executes all copies of the licence, permit, easement or right-of-way by:

(i) if the licence, permit, easement or right-of-way is more than one (1) page in length, initialling the bottom left corner of each page; and

(ii) signing and dating the licence, permit, easement or right-of-way,

(d) ensure the applicant's witness signs and dates the licence permit or easement;

(e) ensure that the authorized signatory, in the presence of a witness, executes all copies of the licence, permit, easement or right-of-way by:

(i) if the licence, permit, easement or right-of-way is more than one (1) page in length, initialling the bottom left corner of each page; and

(ii) signing and dating the licence, permit, easement or right-of-way, and

(f) ensure the authorized signatory's witness signs and dates the licence, permit, easement or right-of-way.

Signature Requirements

(53) All signatures must be in permanent ink and do not need to include the full name of the person signing.

(54) If the person signing cannot sign with his or her signature, he or she may sign with an "X". If a person signs with an "X" his or her signature must be witnessed by another person who signs beside the person signing and makes a note confirming that:

(a) the full text of the licence, permit, easement or right-of-way has been verbally read to the person signing;

(b) the person signing has indicated to the witness that the person signing understands the contents of the licence, permit, easement or right-of-way; and

(c) the person signing has indicated to the witness that the person signing understands that by signing, the person signing is bound by the licence, permit, easement or right-of-way.

(55) When a licence, permit, easement or right-of-way is signed on behalf of a corporation, it must be signed by a person who is authorized to sign on behalf of the corporation and documentation must be attached confirming that person's authorization to sign on behalf of the corporation.

(56) When a licence, permit, easement or right-of-way is signed on behalf of a partnership it is ideal to have all partners sign. However, the signature of one partner must be binding on all partners in the partnership.

(57) A guardian, trustee or the administrator of an estate must sign a licence, permit, easement or right-of-way using his or her normal signature and must identify the capacity in which he or she is signing and provide proof of such capacity to ᑭᓐᓇᓂᓄᓐ.

Registration

(58) The Lands Department must register the licence, permit, easement or right-of-way in the First Nation Land Register in accordance with Policy 3-1.

Final Steps

- (59) After registration is completed, the Lands Department must:
- (a) provide each new interest holder with:
 - (i) the names of all ᐱᐱᐱ laws, by-laws and *ᐱᐱᐱ Community Land Use Plan, 2016* which are in effect and the locations where the new interest holder may access such laws, by-laws and *ᐱᐱᐱ Community Land Use Plan, 2016*,
 - (ii) one (1) original, signed copy of the Band Council Resolution granting the final land instrument, and
 - (iii) one (1) original, signed copy of the land instrument; and
 - (b) send the new interest holder's information to the ᐱᐱᐱ Finance Department to determine whether they need to update the taxation and assessment rolls.

Site Inspection Report

- (52) The Lands Department must as soon as practical after executing and registering a new licence, permit, easement or right-of-way:
- (a) invite the applicant to attend a joint site inspection (and document this invitation in the Lands Department file);
 - (b) attend at the site over which the licence, permit, easement or right-of-way relates and complete Form 10-1-02: Site Inspection Report; and
 - (c) place a copy of the completed Form 10-1-02: Site Inspection Report in the Lands Department file.

Documentation

- (60) The Lands Department must ensure that the Lands Department file contains:
- (a) the original Form 6-1-01: Application for Use of ᐱᐱᐱ Lands;
 - (b) original copies of all Band Council Resolutions related to the application;
 - (c) all documentation received from the applicant in relation to conditions precedent to the approval of the application;
 - (d) an original, signed copy of the licence, permit, easement or right-of-way; and

- (e) a copy of the completed Form 10-1-02: Site Inspection Report.

Follow-Up and Monitoring Plan

(61) The Lands Department must complete a follow-up plan for monitoring and enforcement of every licence, permit, easement or right-of-way in accordance with Policy 10-1.

Section 6 References

(1) Besides this policy consult the following resources:

- (a) Policy 6-2: Drafting Licences, Permits, Easements and Right-of-ways Using the Mandatory and Optional Terms
- (b) Policy 6-3: Cancellation of a Licence, Permit or Right-of-way at the Request of a Licensee, Permittee or Grantee;
- (c) Policy 5-3: Cancelling a Lease, which applies where ᑭᓱᓱᓱᓱ desires to cancel a licence, permit or right-of-way due to a failure of the licensee, permittee grantee to comply with its terms;
- (d) Policy 7-1: Correcting and Cancelling Interests and Licences Granted in Error, by Mistake or by Fraud;
- (e) Policy 3-1: Registration;
- (f) the *ᑭᓱᓱᓱᓱ Amended Land Code*;
- (g) the Lands Committee's Terms of Reference;
- (h) the *First Nations Lands Management Act*;
- (i) the *First Nations Land Registry Regulations*; and
- (j) the *Canadian Environmental Assessment Act* and its associated regulations.

POLICY 6-2: DRAFTING LICENCES, PERMITS, EASEMENTS AND RIGHT-OF-WAYS USING THE MANDATORY AND OPTIONAL TERMS

Section 1 Purpose

(1) This policy describes the mandatory and optional terms for, licences, permits, easements and right-of-ways

Section 2 General

(1) This policy applies to all licences, permits, easements and right-of-ways.

(2) All licences, permits, easements and right-of-ways over ᑲᓱᓴᓄᓐ community lands must contain the mandatory terms set out in this policy.

Role of Council

(3) Council is responsible for:

- (a) developing laws regarding the management, administration, use and protection of ᑲᓱᓴᓄᓐ land;
- (b) approving the final terms of all licences, permits, easements and right-of-ways;
- (c) authorizing a member of Council or the Lands Department to execute all licences, permits, easements and right-of-ways on behalf of Council.

Role of the Lands Department

(4) The Lands Department is responsible for:

- (a) ensuring all mandatory terms for all licences, permits, easements and right-of-ways over ᑲᓱᓴᓄᓐ community lands are drafted into all all licences, permits, easements and right-of-ways over ᑲᓱᓴᓄᓐ community lands;
- (b) ensuring the terms in all licences, permits, easements and right-of-ways over ᑲᓱᓴᓄᓐ community lands are in accordance with the *ᑲᓱᓴᓄᓐ Amended Land Code*, ᑲᓱᓴᓄᓐ laws and by-laws;
- (c) where possible, using the standard templates provided in this Manual for all licences, permits, easements and right-of-ways over ᑲᓱᓴᓄᓐ community lands; and
- (d) seeking Council approval for the final terms in all licences, permits, easements and right-of-ways over ᑲᓱᓴᓄᓐ community lands.

Role of the Lands Committee

(5) The Lands Committee may assist the Lands Department with any matter related to the drafting of a licence, permit, easement or right-of-way over ?a?am community lands.

(6) It is the responsibility of the Lands Committee to respond to requests from the Lands Department or the Council regarding the mandatory terms in a licence, permit, easement or right-of-way, and where necessary to consult with members on issues related to a the mandatory terms in a licence, permit, easement or right-of-way over ?a?am community lands.

(7) The Lands Committee may perform duties and functions as directed by either the Council or the Lands Department.

Section 3 Authorities

(1) The relevant authorities are:

(a) section 18 of the *First Nations Land Management Act*;

(b) section 12 of the Framework Agreement; and

(c) section 33.2 of the *?a?am Amended Land Code*.

(2) Section 18 of the *First Nations Land Management Act* states:

18. (1) A First Nation has, after the coming into force of its land code and subject to the Framework Agreement and this Act, the power to manage First Nation land and, in particular, may

(a) exercise the powers, rights and privileges of an owner in relation to that land;

(b) grant interests or rights in and licences in relation to that land;

(c) manage the natural resources of that land; and

(d) receive and use all moneys acquired by or on behalf of the First Nation under its land code.

(3) Section 12 of the *Framework Agreement* states:

12.1 A First Nation with a land code in effect will, subject to clause 13, have the power to manage its First Nation land and exercise its powers under this Agreement.

12.2 This power includes

(a) all the rights, powers and privileges of an owner, in relation to its First Nation land; and

(b) the authority to grant interests or land rights and licences in relation to its First Nation land and to manage its natural resources, subject to clauses 3, 18.5 and 23.6.

12.3 In any province or territory other than Quebec, an interest or licence granted in relation to First Nation land is subject to any exception, reservation, condition or limitation established by the First Nation in its land code.

(4) Section 32.2 of the *ᑭᐱᑭᐱᐱ ᐱᐱᐱᐱᐱ ᐱᐱᐱᐱᐱ ᐱᐱᐱᐱᐱ* states:

32.2 The grant of an interest, licence or permit in ᑭᐱᑭᐱᐱ community lands may be made subject to conditions.

Section 4 Policy

Approved Standard Forms

(1) The approved standard forms in Schedules E, F, G and H must be used in the drafting of a licence, permit, easement or right-of-way.

Mandatory Terms

(2) The following mandatory terms must be included in a licence, permit, easement or right-of-way, as specified.

The Parties

(3) A licence, permit, easement or right-of-way must name ᑭᐱᑭᐱᐱ as the licensor, permittor or grantor, as follows:

ᑭᐱᑭᐱᐱ with an office at
7470 Mission Road
Cranbrook, BC V1C 7E5

(4) A licence, permit, easement or right-of-way must name a licensee, permittee or grantee that has a legal entity, such as a natural person, corporation, partnership or society, as follows:

[Full Legal Name],
[Mailing Address]
[City, Province Postal Code]

OR

[Company Name] a company
duly incorporated under the laws of the
Province of British Columbia and having its registered office at
[Mailing Address]
[City, Province Postal Code]

OR

[Partnership Name] a partnership ["registered in" or "doing business in"]
the Province of British Columbia and having its registered office at
[Mailing Address]
[City, Province Postal Code]

OR

[Society Name] a society
duly incorporated under the laws of the
Province of British Columbia and having its registered office at
[Mailing Address]
[City, Province Postal Code]

OR

[Name of Government Department] a department of the [Name of Government Ministry] with
power to contract pursuant to the [Name of Legislation Granting Power to Contract] and having its
office at
[Mailing Address]
[City, Province Postal Code]

OR

[Legal Name of First Nation, Band or Tribal Council], with an office at
[Mailing Address]
[City, Province Postal Code]

Recitals

(5) The recitals in a licence, permit, easement or right-of-way must state:

WHEREAS:

- A. the legal title to ʔaąam lands remains vested in Her Majesty the Queen in Right of Canada;
- B. Sections 18(1)(b), 18(2)(b) and 18(3) of the First Nation Land Management Act provide that a First Nation that has entered into an individual agreement with Canada and adopted a land code has the power to grant interests or right in and licences in relation to their land in accordance with their land code and the legal capacity necessary to enter into contracts to exercise this power, and that the Council of the First Nation has the power to exercise these powers for the use and benefit of the First Nation;
- C. ʔaąam signed an Individual Agreement with Canada on June 18, 2014;
- D. The members of ʔaąam voted in favour of the *St. Mary's Indian Band Land Code* at a ratification vote held on April 14-16, 2014 and the *St. Mary's Indian Band Land Code* came into effect on July 1, 2014;
- E. In 2016, the *St. Mary's Indian Band Land Code* was amended when the members of ʔaąam voted in favour of the *ʔaąam Amended Land Code* at a Meeting of Members;
- F. the Council of ʔaąam may grant interests in ʔaąam lands pursuant to section 32.1 of the *ʔaąam Amended Land Code*;
- G. the [Licensee/Permittee/Grantee] made an application to the ʔaąam Lands Department on [date] requesting to [use / occupation / taking of resources from] ʔaąam lands for the purpose of [enter purpose];

H. the Council of ᑭᓄᓂ, by Band Council Resolution that is attached to this Agreement and entitled "Schedule B: ᑭᓄᓂ Band Council Resolution Consent to [Licence/Permit/Easement/Right-of-way]", consents to this Agreement and authorizes [enter name] to execute this Agreement on behalf of ᑭᓄᓂ; and

I. the Parties wish to set out their respective rights and obligations with respect to the [Licensee/Permittee/Grantee]'s use of ᑭᓄᓂ lands,

NOW, THEREFORE, in consideration of the terms, conditions and agreements contained herein, the Parties hereby acknowledge, covenant and agree as follows:

Band Council Resolution

(6) A licence, permit, easement or right-of-way must attach and reference the Band Council Resolution approving of the licence, permit, easement or right-of-way.

(7) A Band Council Resolution approving of a licence, permit, easement or right-of-way must contain the following wording:

ᑭᓄᓂ BAND COUNCIL RESOLUTION CONSENT TO [LICENCE / PERMIT / EASEMENT/RIGHT-OF-WAY] AGREEMENT

WHEREAS in 1996 fourteen First Nations and Canada signed the *Framework Agreement on First Nation Land Management (Framework Agreement)*, which established a process by which each of these communities could consider the option of assuming control over their reserve lands and resources by developing a Land Code and a community approval process, concluding an Individual Agreement with Canada, and ratifying the Land Code and Individual Agreement through a vote of the eligible members;

AND WHEREAS in 1999 Canada passed the *First Nations Land Management Act* to ratify the *Framework Agreement*;

AND WHEREAS in 2001 the fourteen First Nations and Canada agreed to amend the *Framework Agreement* to make it possible for additional First Nations to become signatories of the *Framework Agreement*;

AND WHEREAS ᑭᓄᓂ signed an Individual Agreement with Canada on June 18, 2014;

AND WHEREAS the members of ᑭᓄᓂ voted in favour of the *St. Mary's Indian Band Land Code* at a ratification vote held on April 14-16, 2014 and the *St. Mary's Indian Band Land Code* came into effect on July 1, 2014;

AND WHEREAS the members of ᑭᓄᓂ voted in favour of amendments to the *St. Mary's Indian Band Land Code* at a Meeting of Members vote held in accordance with section 48.1 and 13.1 to 13.9 of the *St. Mary's Indian Band Land Code* on January 7, 2016, which has become the *ᑭᓄᓂ Amended Land Code, 2016*;

AND WHEREAS the Council of ᑭᓄᓂ has authority pursuant to section 32.1 of the *ᑭᓄᓂ Amended Land Code* to grant interests in ᑭᓄᓂ community lands and to grant licences and permits to take resources from ᑭᓄᓂ community lands;

THEREFORE BE IT RESOLVED THAT the Council of ᑭᓄᓂ (***choose from one of the following options***)

If the Band Council Resolution is for a Licence or Permit:

A. consents to the attached [Licence / Permit] Agreement that grants to [Licensee / Permittee], a right to [use / occupy / take resources from] the [Licence / Permit] Area, for the purpose of [enter details regarding the purpose of the Licence / Permit]

FURTHER IT BE RESOLVED THAT the Council of ?aqam authorizes [Name of Lands Department personnel] to execute the attached [Licence / Permit] Agreement on behalf of ?aqam.

OR

B. conditional on [name of applicant]:

- [enter condition]
- [enter condition]; and
- providing to the ?aqam Lands Department the following documentary proof that such conditions have been complied with by the following dates:
 - [Documentary Proof] by [date];
 - [Documentary Proof] by [date];
 - [Documentary Proof] by [date];

consents to the attached [Licence / Permit] Agreement that grants to [Licensee / Permittee], a right to [use / occupy / take resources from] the [Licence / Permit] Area, for the purpose of [enter details regarding the purpose of the Licence / Permit].

FURTHER IT BE RESOLVED THAT the Council of ?aqam authorizes [Name of Lands Department personnel] to execute the attached [Licence / Permit] Agreement on behalf of ?aqam after

- [name of applicant] has complied with the conditions set out in this Band Council Resolution;

AND / OR

- the conditions set out in this Band Council Resolution have been added as conditions within the [Licence / Permit]

OR

C. does not consent to the attached [Licence / Permit] Agreement that grants to [Licensee / Permittee], a right to [use / occupy / take resources from] those ?aqam lands described in the [Licence / Permit] Agreement as the [Licence / Permit] Area, for the purpose of [enter details regarding the purpose of the Licence / Permit].

If the Band Council Resolution is for an Easement or Right of way:

A. consents to the attached [Easement / Right-of-way] Agreement that grants to [Grantee] a right to use the [Easement/Right-of-way] Area, for the purpose of [enter details regarding the purpose of the Easement/Right-of-way].

FURTHER IT BE RESOLVED THAT the Council of ?aqam authorizes [Name of Lands Department personnel] to execute the attached [Easement/Right-of-way] Agreement on behalf of ?aqam.

OR

B. does not consent to the attached [Easement/Right-of-way] Agreement that grants to [Grantee] a right to use the [Easement/Right-of-way] Area, for the purpose of [enter details regarding the purpose of the Easement/Right-of-way].

Land Description, Status and Warranties

(8) A licence, permit, easement or right-of-way must set out a full, identifiable description of the lands over which the licence, permit, easement or right-of-way will operate and:

(a) if the land instrument is for a term of less than the (10) years, the land description must be clear and unambiguous; and

(b) if the land instrument is for a term of ten (10) years or more, the land description must set out a description of the lands that refers to one or more complete parcels on a registration plan or official plan. Such description must be clear and unambiguously identify the land subject to the land instrument. If the land instrument is for the whole of, or a portion of a lot shown on an existing plan then the description must refer to the lot and plan.

(9) The parcel of land in the land description must be ᐱᐱᐱ community lands over which ᐱᐱᐱ has authority to grant licences, permits, easements or right-of-ways.

(10) A licence, permit, easement or right-of-way must set out any representations and warranties regarding the status of the lands to which the licence, permit, easement or right-of-way apply on the commencement date of the licence, permit, easement or right-of-way.

Maintenance

(11) A licence, permit, easement or right-of-way must identify the party responsible for maintenance and the standards of maintenance.

Term

(12) A licence or permit or right-of-way must set out the commencement date of the licence, permit or right-of way, the length of time and the cancellation date.

(13) An easement must set out the commencement date of the easement and may set out the length of time and the cancellation date or may state that the easement is permanent.

Compensation

- (14) A licence, permit, easement or right-of-way must set out:
- (a) the compensation amount;
 - (b) timing of compensation payments (e.g. specific dates, weekly, monthly, annually);
 - (c) method of compensation payments (eg. by cheque made out to the Lands Department and delivered to the Lands Department);
 - (d) consequences of a failure to make a compensation payment, including the interest rate for compensation that is in arrears; and
 - (e) the responsibilities of the parties if there is a failure to make a compensation payment.
- (15) Where the compensation depends on a calculation, the licence, permit, easement or right-of-way must include specific instructions defining the method of calculation.
- (16) A licence, permit, easement or right-of-way must specify whether there will be compensation review periods, and when such reviews must be completed.
- (17) At a minimum, compensation agreed to in a licence, permit, easement or right-of-way must reflect fair market value.

Access

- (18) A licence, permit, easement or right-of-way must set out the terms under which the Lands Department, or any person duly authorized by the Lands Department, has a right to access the land over which the licence, permit, easement or right-of-way operates to examine the operations on the premises and for monitoring and enforcement purposes.

Allowable Use

- (19) A licence, permit, easement or right-of-way must clearly define the allowable use of the licence, permit, easement or right-of-way area and must clearly define any prohibited uses.
- (20) A licence or permit must clearly identify whether the licensee or permittee may take any resource from the licence or permit area and the quantity of such resource that may be taken by the licensee or permittee.
- (21) If a licence or permit allows for the licensee or permittee to take any resource from the licence or permit area, it must set out any conditions or restrictions on the

taking of that resource. For example, there may be restrictions or conditions on the method or manner of taking or on the tools allowed to be used in the taking.

Insurance

(22) A licence, permit, easement or right-of-way must include a term stating that the licensee, permittee or grantee will:

(a) take out and maintain during the term of the licence, permit, easement or right-of-way Commercial General Liability Insurance in an amount not less than [\$2,000,000.00 or some other amount deemed necessary by Council], inclusive per occurrence, insuring against liability for personal injury, bodily injury (including death) and property damage, including coverage for all accidents or occurrences on the licence, permit, easement or right-of-way area or any improvements. Such insurance policy must include a cross liability clause, provision to provide ʔaąam with thirty (30) days written notice of any material change or cancellation of the policy, and name ʔaąam as an additional insured;

(b) ensure that all insurance required under paragraph (a) that is maintained by the licensee, permittee or grantee is primary insurance and does not require the sharing of any loss by any of ʔaąam’s insurers;

(c) within ten (10) business days of the Commencement Date, provide ʔaąam evidence of the insurance required under paragraph (a) in the form of a completed “Province of British Columbia Certificate of Insurance”;

(d) within ten (10) business days before the date that the insurance policy required under paragraph (a) is set to expire or is cancelled, provide ʔaąam evidence of a new policy or a renewal of the policy that meets the insurance requirements under paragraph (a) in the form of a completed “Province of British Columbia Certificate of Insurance”;

(e) at ʔaąam’s request, provide ʔaąam with a certified copy of the insurance policy required under paragraph (a); and

(f) maintain and pay for any additional insurance that the licensee, permittee or grantee is required by law to carry.

Indemnification

(23) A licence, permit, easement or right-of-way must include terms stating that the licensee, permittee or grantee will indemnify and save harmless ʔaąam and ʔaąam’s servants, employees, representatives and agents from and against all claims, causes of action, liabilities, demands, losses, damages, costs and expenses including fees of solicitors and other professional advisors, made against or incurred, suffered or

sustained by ᑭᓱᓱᓱ where the same or any of them are based upon the actions or omissions of the [licensee / permittee / grantee].

Taxes

(24) A licence, permit, easement or right-of-way must include a term stating that the licensee, permittee or grantee agrees to

- (a) pay, when due, all taxes to ᑭᓱᓱᓱ;
- (b) pay, when due, all charges for electricity, gas, water and other utilities supplied to the [Licence / Permit / Easement / Right-of-Way] Area for use by the licensee, permittee or grantee;
- (c) deliver to ᑭᓱᓱᓱ, immediately and upon demand, receipts or other evidence of the payment of charges required to be paid under the [Licence / Permit / Easement / Right-of-Way] Agreement.

Agreement to Comply with Laws

(25) A licence, permit, easement or right-of-way must include a term stating that the licensee, permittee or grantee agrees to observe, abide by, and comply with all applicable laws, by-laws and regulations of Canada, the Province or ᑭᓱᓱᓱ in relation to the licensee, permittee or grantee's use of ᑭᓱᓱᓱ lands, including laws, by-laws and regulations of Canada, the Province or ᑭᓱᓱᓱ relating in any way to Hazardous Substances, Environmental Laws, and human health and safety.

Historical, Anthropological, Archeological or Cultural Materials

(26) A licence, permit, easement or right-of-way must include a term stating that upon discovering any historical, anthropological, archeological or cultural material on or under the Right-of-way Area, the Grantee must immediately stop all actions related to their operations that may disturb the historical, anthropological, archeological or cultural material; and notify ᑭᓱᓱᓱ. Furthermore, that they must not resume their operations until provided consent to do so by ᑭᓱᓱᓱ.

Notice

(27) A licence, permit, easement or right-of-way must identify:

- (a) addresses for the giving of notice to each of the parties;
- (b) the form of notice that must be given;
- (c) the methods of delivery that parties must use in serving notices; and

(d) when notice is deemed effective.

Cancellation of Licences, Permits and Rights of Way

(28) All licences, permits and right-of-ways must contain terms for cancellation, including terms that state as follows:

Council may unilaterally cancel or correct this [licence / permit / right-of-way] in accordance with section 31.2 of the *Ḥaqām Amended Land Code* if Council determines this [licence / permit / right-of-way] has been issued in error, by fraud or by mistake.

If Council unilaterally cancels or corrects this [licence / permit / right-of-way] in accordance with section 31.2 of the *Ḥaqām Amended Land Code* because Council has determined that this [licence / permit / right-of-way] has been issued in error, by fraud or by mistake, Ḥaqām will not be liable to any third party to whom the [licensee / permittee / grantee] has granted a subsidiary interest in this [licence / permit / right-of-way].

(29) Other appropriate terms for cancellation of a licence, permit or right-of-way may include:

(a) the licensee, permittee or grantee has failed to pay required fees or other monies due under the licence, permit or right-of-way ;

(b) the licensee, permittee or grantee has failed to observe terms set out in the licence, permit or right-of-way;

(c) the licensee, permittee or grantee has changed and there is no provision for assignment in the licence, permit or right-of-way; or

(d) the licensee, permittee or grantee has died and there is no provision for assignment in the licence, permit or right-of-way .

Default

(30) A licence, permit or right-of way must set out that, upon default, compensation due and payable are collectable and Ḥaqām has an option to cancel the licence, permit or right-of-way and it must set out the requirements for such cancellation.

Dispute Resolution

(31) A licence, permit, easement or right-of-way must set out that if a dispute arises under the Licence, Permit, Easement or Right-of-way Agreement, the Parties will make all reasonable efforts to resolve the dispute through informal discussions, mediation or negotiation within thirty (30) days of the dispute arising, and that the Parties will provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.

(32) A licence, permit, easement or right-of-way must further set out that if a dispute under the Licence, Permit, Easement or Right-of-way Agreement cannot be resolved, either Party may refer the dispute for resolution to the Office of the Adjudicator in accordance with Part 8 of the *ᑲᓄᓐᓄ ᐱᓄᓇᓂᓄᓇᓂᓄ ᐱᓄᓇᓂᓄ ᐱᓄᓇᓂᓄ*.

Optional Terms

(33) The following optional terms may be included in a licence, permit, easement or right-of-way.

(34) The Lands Department must consider the optional terms during negotiation of the draft licence, permit, easement or right-of-way.

Standards

(35) A licence, permit, easement or right-of-way may identify any relevant standards governing construction, health and remedies for failure to meet standards.

Fencing

(36) Fences and locks are only acceptable on a licence, permit, easement or right-of-way area if necessary for safety and security reasons or for agricultural grazing purposes.

(37) Where a licence, permit, easement or right-of-way provides for the licensee, permittee or grantee to erect a fence around an area or lock an area off from the public, it must set out that the licensee, permittee or grantee will be responsible for the maintenance of that fence or locked off area and will provide ᑲᓄᓐᓄ with a key to any lock.

Damages

(38) A licence, permit, easement or right-of-way may set out a remedy for damage caused to ᑲᓄᓐᓄ lands by the licensee, permittee or grantee.

Improvements

(39) A licence, permit, easement or right-of-way may identify who owns any improvements made to the land after the cancellation of the licence, permit, easement or right-of-way.

Fisheries Protection

(40) If the operations of the licensee, permittee or grantee may affect a fish bearing stream or water body on or passing through Aqam lands, the licensee, permittee or grantee may be required to undertake specific protective measures or obtain a permit or prior approval from relevant federal government agencies to undertake their operations.

Assignment

(41) If a licence or permit provides the licensee or permittee an option for the assignment of the licence or permit, it must set out the mechanism for such assignment.

Section 5 Process

(1) The procedural steps set out in Policy 6-1 apply to all licences, permits, easements and right-of-ways

Section 6 References

(1) Besides this policy, consult the following resources:

- (a) Policy 9-1: Environmental Assessments;
- (b) Policy 9-4: Mandatory Environmental Requirements for Land Instruments;
- (c) the *First Nations Land Management Act*;
- (d) the *Aqam Amended Land Code*;
- (e) the *First Nations Land Registry Regulations*.

POLICY 6-3: CANCELLATION OF A LICENCE, PERMIT OR RIGHT-OF-WAY AT THE REQUEST OF THE LICENSEE, PERMITTEE OR GRANTEE

Section 1 Purpose

(1) This policy explains when and how a licensee, permittee, or grantee of a right-of-way may cancel their licence, permit or right-of-way over ᑎᓐᓐᓐ community lands.

(2) This policy does not address situations where ᑎᓐᓐᓐ wishes to cancel a licence, permit or right-of-way over ᑎᓐᓐᓐ community lands because it was issued in error, by mistake or by fraud. In such circumstances, please refer to Policy 7-1.

(3) This policy does not address situations where ᑎᓐᓐᓐ wishes to cancel a licence, permit or right-of-way over ᑎᓐᓐᓐ community lands because the licensee, permittee, or grantee of a right-of-way has failed to comply with the terms of the licence, permit or right-of-way. In such circumstances, please refer to Policy 5-3.

Section 2 General

(1) A licensee, permittee, or grantee of a right-of-way may only cancel their licence, permit or right-of-way agreement over ᑎᓐᓐᓐ community lands in accordance with this policy.

Role of Council

(2) Council is responsible for:

(a) consenting, by Band Council Resolution, to the cancellation of a licence, permit or right-of-way agreement at the request of a licensee, permittee or grantee of a right-of-way; and

(b) authorizing, by Band Council Resolution, a member of Council or an authorized signatory to sign Form 6-3-02: Certificate of Cancellation of Licence, Permit or Right-of-way, in relation to the cancellation of a licence, permit or right-of-way agreement, on behalf of Council.

Role of the Lands Department

(3) The Lands Department is responsible for:

(a) ensuring all requirements under this policy are complied with during the assessment of a request to cancel a licence, permit or right-of-way agreement;

(b) ensuring all documentation relating to a request to cancel a licence, permit or right-of-way agreement is maintained in the Lands Department file that the request

relates to;

(c) liaising with Council in relation to requests for the cancellation of a licence, permit or right-of-way agreement; and

(d) if a request to cancel a licence, permit or right-of-way agreement is approved by Council, ensuring that Form 6-3-02: Certificate of Cancellation of Licence, Permit or Right-of-way is executed, provided to the person making the request, and registered in the First Nation Land Register in accordance with Policy 3-1.

Role of the Lands Committee

(4) The Lands Committee may assist the Lands Department and Council with any matter related to the cancellation of a licence, permit or right-of-way agreement and may perform duties and functions as directed by either Council or the Lands Department.

(5) It is the responsibility of the Lands Committee to respond to all requests from the Lands Department or Council, and where necessary to consult with members on the cancellation of a licence, permit or right-of-way agreement.

(6) The Lands Committee is not a decision-making body. However, the Lands Committee may make recommendations to Council on matters related to the cancellation of a licence, permit or right-of-way agreement.

Section 3 Authorities

(1) The *ᑭᓱᓱᓱᓱ Amended Land Code* contains no specific provision in relation to the cancellation of a licence, permit or right-of-way by a licensee, permittee or grantee. In most cases, the licence, permit or right-of-way agreement should contain terms for cancellation.

Section 4 Policy

Consulting Legal Counsel

(1) The cancellation of a licence, permit or right-of-way agreement is a significant step that may have important legal consequences. The cancellation must be managed very carefully, and, where there is any uncertainty, the Lands Department must consider consulting legal counsel on every step to be taken.

Council Consent Required

(2) The cancellation of a licence, permit or right-of-way agreement requires the consent of Council.

(3) Council must not unreasonably withhold their consent to the cancellation of a licence, permit or right-of-way agreement.

Restrictions on Cancellation

(4) Council must not consent to the cancellation of a licence, permit or right-of-way agreement in ᑭᓄᓂ community lands if:

(a) such cancellation will adversely affect an interest in ᑭᓄᓂ community lands held by a third party;

(b) such cancellation will adversely affect a claim against, or interest in, ᑭᓄᓂ community lands held by ᑭᓄᓂ;

(c) the licensee, permittee or grantee owes ᑭᓄᓂ money in relation to the licence, permit or right-of-way agreement; or

(d) the licensee, permittee or grantee has not complied with a requirement under their licence, permit or right-of-way agreement in relation to environmental requirements.

No Release of Liability / Obligations

(5) A release of liability or obligations is a written agreement that acts to cancel the legal liabilities or obligations that exist between two (2) parties, either under an agreement or otherwise. A release is signed by one (1) party to the benefit of the other party as evidence that the party signing the release:

(a) gives up their right to enforce a term in their contract or agreement with the other party, or their right to enforce other legal rights against the other party; and

(b) releases the other party from having to fulfill the terms of the contract or agreement, or from having to uphold some other legal obligation towards the party signing the release.

(6) In cancelling a licence, permit or right-of-way agreement, ᑭᓄᓂ must **not** provide a release of liability or obligations to the licensee, permittee or grantee.

Section 5 Process

Request to Cancel Licence, Permit or Right of way

(1) If a licensee, permittee, or grantee in relation to a right-of-way wishes to cancel their licence, permit or right-of-way agreement they must:

(a) complete two (2) copies of Part 1 of Form 6-3-01: Request to Cancel Licence,

Permit or Right-of-way and submit it, along with any required additional documents, to the Lands Department; and

(b) if the licensee, permittee or grantee is not a member or a representative of a government agency, present two pieces of government issued identification to the Lands Department.

Receiving Request to Cancel Licence or Permit

(2) The person at the Lands Department who receives a request must document the following in Part 2 of Form 6-3-01: Request to Cancel Licence, Permit or Right-of-way:

(a) date and time that the request was received; and

(b) the name of the person at the Lands Department who received the request.

(3) If the person making the request is not a member or a representative from a government agency, the person at the Lands Department who receives the request must:

(a) obtain two pieces of government issued identification from the person making the request;

(c) compare the two pieces of government issued identification to the person who is making the request and assess whether the person making the request is the same person as the person whose identification is being provided;

(d) photocopy the two pieces of government issued identification that are provided and attach them to Form 6-3-01: Request to Cancel Licence, Permit or Right-of-way; and

(e) document on Part 2 of Form 6-3-01: Request to Cancel Licence, Permit or Right-of-way whether the identification provided shows a likely representation of the person who is making the request.

Lands Department Review and Assessment of Request

(4) The Lands Department must review the information provided in Part 1 of Form 6-3-01: Request to Cancel Licence, Permit or Right-of-way, and the information in the Lands Department file for the licence, permit or right-of-way agreement to which the request relates, and confirm that the person making the request is authorized to submit the request:

(a) if the request is on behalf of an individual, the person making the request must be the same person who is named in the licence, permit or right-of-way;

(b) if the request is on behalf of a corporation, the Notice of Articles for that corporation must provide that the person making the request is a signing officer for the corporation;

(c) if the request is on behalf of a partnership, the partnership agreement must provide that the person making the request is a signing officer for the partnership;

(d) if the request is on behalf of a society, the society's by-laws must provide that the person making the request is a signing officer;

(e) if the request is on behalf of a First Nation, Band or Tribal Council, the person making the request must be a person designated to be a signing officer of that First Nation, Band or Tribal Council; and

(f) if the request is on behalf of a government agency, the person making the request must be a person with power to sign for that government agency.

(5) The Lands Department must determine whether the licensee, permittee or grantee has fully paid to ʔaąam all payments that are due to ʔaąam under the licence, permit or right-of-way agreement. This can be done by consulting with the finance department.

(6) The Lands Department must review the terms of the licence, permit or right-of-way agreement that pertain to its cancellation and ensure that the person making the request has provided documentary proof to ʔaąam that such terms have been complied with.

(7) The Lands Department must refer to Policy 9-2 and ensure the applicant complies with all environmental site assessment requirements under that policy.

(8) The Lands Department must review the Lands Department file for the licence, permit or right-of-way agreement to which the request relates and complete a search of the Indian Lands Registry System and First Nations Land Registry to determine whether the cancellation of the licence, permit or right-of-way will adversely affect:

(a) an interest in ʔaąam community lands held by a third party; or

(b) a claim against or interest in ʔaąam community lands held by ʔaąam.

(9) The Lands Department must complete Part 2 of Form 6-3-01: Request to Cancel Licence, Permit or Right-of-way.

Report to Council

(10) The Lands Department must provide Council with the following documents:

(a) completed Form 6-3-01: Request to Cancel Licence, Permit or Right-of-way;

- (b) ʔaǰam Lands Department file for the licence, permit or right-of-way; and
- (c) two (2) copies of a Band Council Resolution as follows:

**ʔAǰAM BAND COUNCIL RESOLUTION CONSENTING TO
THE CANCELLATION OF A [PERMIT / LICENCE / RIGHT-OF-WAY] AGREEMENT**

WHEREAS in 1996 fourteen First Nations and Canada signed the *Framework Agreement on First Nation Land Management (Framework Agreement)*, which established a process by which each of these communities could consider the option of assuming control over their reserve lands and resources by developing a Land Code and a community approval process, concluding an Individual Agreement with Canada, and ratifying the Land Code and Individual Agreement through a vote of the eligible members;

AND WHEREAS in 1999 Canada passed the *First Nations Land Management Act* to ratify the *Framework Agreement*;

AND WHEREAS in 2001 the fourteen First Nations and Canada agreed to amend the *Framework Agreement* to make it possible for additional First Nations to become signatories of the *Framework Agreement*;

AND WHEREAS ʔaǰam signed an Individual Agreement with Canada on June 18, 2014;

AND WHEREAS the members of ʔaǰam voted in favour of the *St. Mary's Indian Band Land Code* at a ratification vote held on April 14-16, 2014 and the *St. Mary's Indian Band Land Code* came into effect on July 1, 2014;

AND WHEREAS the members of ʔaǰam voted in favour of amendments to the *St. Mary's Indian Band Land Code* at a Meeting of Members vote held in accordance with section 48.1 and 13.1 to 13.9 of the *St. Mary's Indian Band Land Code* on January 7, 2016, which has become the *ʔaǰam Amended Land Code, 2016*;

AND WHEREAS in [year] the Council of ʔaǰam consented to the attached [licence / permit / right-of-way] Agreement that grants to [name of licensee / permittee / grantee], a right to use or occupy [enter description of licence or permit /right-of-way area] for the purpose of [enter details regarding the purpose of the licence or permit or right-of-way];

AND WHEREAS the Council of ʔaǰam has authority to cancel a licence, permit or right-of-way over ʔaǰam lands and [enter name of licensee / permittee/grantee] has requested that ʔaǰam cancel the [licence / permit right-of-way] Agreement described above;

THEREFORE BE IT RESOLVED THAT the Council of ʔaǰam:

A. consents to the cancellation of the above mentioned [licence, permit or right-of-way agreement] and that such cancellation is effective on the date that ʔaǰam registers the Certificate of Cancellation of Licence, Permit or Right-of-way and this BCR in the First Nations Lands Register.

FURTHER IT BE RESOLVED THAT the Council of ʔaǰam authorizes [Name of Lands Department personnel] to execute the attached Form 6-3-02: Certificate of Cancellation of Licence, Permit or Right-of-way on behalf of ʔaǰam

OR

B. consents to the cancellation of the above mentioned [licence, permit or right-of-way agreement] conditional on the [licensee, permittee or grantee] completing the following:

- [enter conditions]; and
- presenting documentary proof of compliance with the above conditions to the Lands Department,

at which time the cancellation will be effective.

FURTHER IT BE RESOLVED THAT the Council of ᑭᓄᓂᓂ authorizes [Name of Lands Department personnel] to execute the attached Form 6-3-02: Certificate of Cancellation of Licence, Permit or Right-of-way on behalf of ᑭᓄᓂᓂ after [name of applicant] has complied with the conditions set out in this Band Council Resolution;

OR

C. denies the cancellation of the above mentioned [licence, permit or right-of-way agreement] because [enter the reasons for such denial].

Council Decision on Cancellation

(11) Council must review the documents provided by the Lands Department then pass, and sign three (3) copies of, a Band Council Resolution either consenting to (with or without conditions) or denying (with reasons) the cancellation of the licence, permit or right-of-way agreement.

(12) Once Council passes a Band Council Resolution concerning the cancellation of a licence, permit or right-of-way agreement, Council must provide the Lands Department with three (3) signed copies of that Band Council Resolution and return to the Lands Department all documents provided to Council.

Cancellation of Licence, Permit or Right of way Agreement Approved by Council

(13) If Council consents to the cancellation of a licence, permit or right-of-way agreement, the Lands Department must:

- (a) ensure the person who is an authorized signatory completes and signs two (2) copies of Form 6-3-02: Certificate of Cancellation of Licence, Permit or Right-of-way;
- (b) register the Form 6-3-02: Certificate of Cancellation of Licence, Permit or Right-of-way in the First Nation Land Register along with the Band Council Resolution consenting to the cancellation of the licence, permit or right-of-way agreement;
- (c) provide to the licensee, permittee or grantee one (1) original signed copy of Form 6-3-02: Certificate of Cancellation of Licence, Permit or Right-of-way and one (1) original, signed copy of the Band Council Resolution consenting to the cancellation of the licence, permit or right-of-way agreement.

Documentation

- (14) The Lands Department must ensure the Lands Department file contains:
- (a) the completed Form 6-3-01: Request to Cancel Licence, Permit or Right-of-way;
 - (b) one (1) original signed copy of Form 6-3-02: Certificate of Cancellation of Licence, Permit or Right-of-way;
 - (c) one (1) original, signed copy of the Band Council Resolution consenting to the cancellation of the licence, permit or right-of-way agreement; and
 - (d) copies of all correspondence with the licensee or permittee regarding the cancellation of the licence, permit or right-of-way agreement.

Cancellation of Licence or Permit Approved by Council Conditional on Certain Terms Being Complied With by the Licensee, Permittee or Grantee

- (15) If Council consents to the cancellation of a licence, permit or right-of-way agreement but provides conditions that must be complied with by the licensee, permittee or grantee before the cancellation will be effective, the Lands Department must provide the licensee, permittee or grantee with a written notice setting out:
- (a) the date that Council considered the licensee, permittee or grantee's request to cancel the licence, permit or right-of-way agreement;
 - (b) details of the licence, permit or right-of-way agreement to which the request related;
 - (c) the conditions that must be complied with before ᑭᓄᓐ will cancel the licence, permit or right-of-way agreement and the date for when those conditions must be completed; and
 - (d) details of the documentary evidence that the licensee, permittee or grantee must provide to ᑭᓄᓐ to prove that the conditions have been complied with before ᑭᓄᓐ will cancel the licence, permit or right-of-way agreement,

and must attach to the written notice an original copy of the Band Council Resolution.

Monitoring Conditions

- (16) If Council consents to the cancellation of a licence, permit or right-of-way agreement subject to conditions, the Lands Department must complete Part 3 of Form

6-3-01: Request to Cancel Licence, Permit or Right-of-way and monitor the completion of those conditions before executing form 6-3-01: Certificate of Cancellation of Licence, Permit or Right-of-way.

Execute Certificate of Cancellation

(17) Where:

- (a) Council consents to the cancellation of a licence, permit or right away agreement without conditions; or
- (b) Council consents to the cancellation of a licence, permit or right away agreement with conditions and the Lands Department receives the documentary evidence required by a Band Council Resolution in relation the completion of those conditions,

the Lands Department must ensure the person who is an authorized signatory completes and signs two (2) copies of Form 6-3-02: Certificate of Cancellation of Licence, Permit or Right-of-way.

Register the Cancellation

(18) The Lands Department must register the cancellation of the licence, permit or right-of-way in accordance with Policy 3-1.

Notice to Applicant

(19) After registering the cancellation of the licence, permit or right-of-way agreement, the Lands Department must send to the applicant an original, signed copy of Form 6-3-02: Certificate of Cancellation of Licence, Permit or Right-of-way.

Request to Cancel Licence or Permit Denied

(20) If Council denies the cancellation of a licence or permit, the Lands Department must provide the licensee or permittee with a written notice setting out:

- (a) the date that Council considered the licensee, permittee or grantee's request to cancel the licence, permit or right-of-way agreement;
- (b) details of the licence, permit or right-of-way agreement to which the request related;

(c) that Council has denied the licensee, permittee or grantee's request to cancel the licence, permit or right-of-way agreement; and

(d) the reasons for why Council denied the request,

and must attach to the written notice an original copy of the Band Council Resolution.

Documentation

(21) The Lands Department must ensure the following documents are in the Lands Department file to which the cancellation of the licence, permit or easement agreement relates:

(a) the completed Form 6-3-01: Request to Cancel Licence, Permit or Right-of-way;

(b) copies of all documentation and communications between the Lands Department and the licensee, permittee or grantee related to the cancellation of the licence, permit or right-of-way agreement;

(c) one original, signed copy of the Band Council Resolution consenting to or denying the cancellation of the license, permit or easement agreement;

(d) any documents that relate to the completion of conditions as set out in the Band Council Resolution; and

(e) if applicable, the completed and signed Form 6-3-02: Certificate of Cancellation of Licence, Permit or Right-of-way.

Section 6 References

(1) Besides this policy, consult the following resources:

(a) Policy 9-1: Environmental Assessments;

(b) Policy 9-4: Mandatory Environmental Requirements for Land Instruments;

(c) the *First Nations Land Management Act*;

(d) the *First Nations Land Registry Regulations*;

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**CORRECTING AND
CANCELLING INTERESTS
AND LICENCES GRANTED
IN ERROR, BY MISTAKE
OR BY FRAUD**

Approved by Council on March 15, 2016

TABLE OF CONTENTS

POLICY 7-1: CORRECTING AND CANCELLING INTERESTS AND LICENCES	
GRANTED IN ERROR, BY MISTAKE OR BY FRAUD	257
Section 1 Purpose	257
Section 2 General	257
<i>Definitions</i>	257
<i>Role of Council</i>	257
<i>Role of the Lands Department</i>	258
<i>Role of the Lands Committee</i>	258
Section 3 Authorities.....	259
Section 4 Policy	259
<i>Cancelling and Correcting Land Instruments Granted by Allotment Holders to Third Parties</i>	259
Section 5 Process.....	259
<i>Request for Council Consideration</i>	259
<i>Report to Council</i>	261
<i>Council Decision</i>	261
<i>Notice to Affected Persons</i>	262
<i>Report to Council</i>	262
<i>Land Instrument Issued or Allotted in Error or by Mistake – Non-Substantial</i>	262
<i>Land Instrument Issued or Allotted in Error or by Mistake – Substantial</i>	262
<i>Cancellation of Land Instrument Issued or Allotted in Error or by Mistake</i>	263
<i>Decision Not To Provide a Corrected Land Instrument</i>	263
<i>Correcting an Allotment</i>	263
<i>Correcting a Land Instrument Other Than an Allotment</i>	265

Land Instrument Was Issued or Allotted by Fraud **265**

Section 6 *References* **266**

POLICY 7-1: CORRECTING AND CANCELLING INTERESTS AND LICENCES GRANTED IN ERROR, BY MISTAKE OR BY FRAUD

Section 1 Purpose

(1) The objectives of this policy are to:

(a) set out a standardized process for cancelling or correcting a land instrument in ʔaḳam lands that has been issued or allotted by Council in error, by mistake or by fraud; and

(b) set out the procedures for issuing a replacement land instrument.

Section 2 General

Definitions

(1) In this policy:

“affected persons” means every person:

(a) who has a registered land instrument in the same parcel of land in which another land instrument is being considered by Council to have been issued in error, by mistake or by fraud; and

(b) whose rights under their registered land instrument may be affected by changes being made to, or the cancellation of, the land instrument being considered by Council to have been issued in error, by mistake or by fraud;

“issued or allotted in error” means a situation where Council issued or allotted a land instrument in ʔaḳam lands and in doing so incorrectly or accidentally approved of a provision in the land instrument;

“issued or allotted by fraud” means a situation where Council issued or allotted a land instrument and the person receiving the land instrument, knowing he or she was doing so, misrepresented the truth or concealed a material fact to induce the Council to approve of the land instrument to the detriment of ʔaḳam;

“issued or allotted by mistake” means a situation where Council issued or allotted a land instrument, and in doing so accidentally issued or allotted the wrong land instrument.

Role of Council

(2) Council is responsible for:

(a) consenting to the cancellation or correction of a land instrument that was issued in error, by mistake or by fraud;

(b) consenting to the issuance of a replacement land instrument;

(c) authorizing, by Band Council Resolution, a member of Council or the Lands Department to execute Form 7-1-02: Certificate of Cancellation, in relation to the cancellation of a land instrument on behalf of Council; and

(d) authorizing, by Band Council Resolution, a member of Council or the Lands Department to execute replacement land instruments.

Role of the Lands Department

(3) The Lands Department is responsible for:

(a) ensuring that the requirements in this policy for assessing error, fraud and mistake in the issuing or allotment of land instruments are complied with;

(b) ensuring that all recommendations to Council on the cancellation or correction of a land instrument are in accordance with the *ᐱᐱᐱᐱ Amended Land Code*, *ᐱᐱᐱᐱ* by-laws and any applicable provincial or federal laws;

(c) making recommendations to Council on the cancellation and correction of a land instrument;

(d) at the direction of Council, ensuring that Form 7-1-02: Certificate of Cancellation and any replacement land instruments are executed, provided to the appropriate interest holder, and filed with the First Nation Land Register in accordance with Policy 3-1; and

(e) if a request to correct a land instrument is approved by Council, ensuring all documentation related to a request is maintained in the Lands Department file of the land instrument that the request relates to.

Role of the Lands Committee

(4) The Lands Committee may assist the Lands Department and Council with any matter related to the cancellation and correction of a land instrument and may perform duties and functions as directed by either Council or the Lands Department.

(5) It is the responsibility of the Lands Committee to respond to all requests from the Lands Department or Council, and where necessary to consult with members on the cancellation and correction of a land instrument.

(6) The Lands Committee is not a decision-making body. However, the Lands Committee may make recommendations to Council on matters related to the cancellation and correction of a land instrument.

Section 3 Authorities

(7) The relevant statutory authority is section 31.2 of the *ᑭᐱᑦᐱᐱ ᐱᐱᐱᐱᐱ ᐱᐱᐱᐱ ᐱᐱᐱᐱ*, which states:

31.2 Council may, subject to an applicable ruling under Part 8 or by a court of competent jurisdiction:

(a) cancel or correct any land instrument that Council issued or allotted in error, by mistake or by fraud; and

(b) if required, issue a replacement land instrument.

Section 4 Policy

Cancelling and Correcting Land Instruments Granted by Allotment Holders to Third Parties

(1) The Council, Lands Department and Lands Committee have no role in determining the cancellation or correction of a land instrument over lands held under an allotment.

(2) If an allotment holder has granted a land instrument over his or her lands and determines that he or she granted such land instrument in error, by mistake or by fraud, the cancellation or correction of such grant must be dealt with between the allotment holder and the individual to whom the grant was made and, upon written agreement of the parties or determination by an Adjudicator or court, the cancellation or correction may be registered.

Section 5 Process

Request for Council Consideration

(1) The following persons may request Council to consider cancelling or correcting a land instrument where they have a reasonable belief that Council issued or allotted that land instrument in error, by mistake or by fraud:

(a) a member of Council, in relation to any land instrument;

(b) the Director of Lands and Natural Resources, in relation to any land instrument;

(c) any member of the Lands Committee, in relation to any land instrument;

(d) an allotment holder, in relation to their allotment;

(e) a lessee of ᑭᐱᑦᐱᐱ community lands, in relation to either an original lease naming ᑭᐱᑦᐱᐱ as lessor or a lease to which ᑭᐱᑦᐱᐱ is a party;

- (f) a licensee of ᑭᓄᓐ community lands, in relation to a licence in which he or she is named;
- (g) a permittee of ᑭᓄᓐ community lands, in relation to a permit in which he or she is named;
- (h) a grantee of ᑭᓄᓐ community lands, in relation to an easement or right-of-way in which he or she is named; or
- (i) any person who has a legal authority to represent a person who falls into one of categories (a) to (h).

(2) A request to Council, to cancel or correct a land instrument, must be made in Form 7-1-01: Correction of Land instrument Request and must include the following details:

- (a) the name of the person making the request and the status of that person under this policy that grants them the right to make such request;
- (b) the date the request is being made;
- (c) details of the specific land instrument to which the request relates;
- (d) details of every person who may be an affected person;
- (e) a copy of the land instrument and a copy of any Band Council Resolution related to the issuing or allotting of that land instrument;
- (f) whether the person making the request believes that the land instrument was granted:
 - (i) in error,
 - (ii) by mistake, or
 - (iii) by fraud, and
- (g) specific details, on the reasons the person making the request believes there has been an error, mistake or fraud, accompanied by any supporting documents that relate to the alleged error, mistake or fraud.

(3) A request to Council, to cancel or correct a land instrument, must be delivered to the Lands Department.

Report to Council

(4) As soon as possible after receiving Form 7-1-01: Correction of Land Instrument Request, the Lands Department must:

(a) search the Indian Land Registry System, First Nation Land Register and the Lands Department files to:

(i) identify and gather all relevant documentation that either supports or refutes the claim being made in the request; and

(ii) determine whether there are any known affected persons;

(b) attach the information gathered in (a) to Form 7-1-01: Correction of Land Instrument Request; and

(c) provide Council with Form 7-1-01: Correction of Land Instrument Request, along with all supporting documentation for a decision by Council at the next scheduled Council meeting on whether to:

(i) approve the request,

(ii) reject the request, or

(iii) pursue sending notice to all affected persons before Council makes a decision on whether to accept or reject the request.

Council Decision

(5) Council must review all documentation provided by the Lands Department and:

(a) where there are no affected persons, Council may pass a Band Council Resolution that either:

(i) approves the request and sets out instructions for the Lands Department on how to remedy the error, mistake or fraud; or

(ii) rejects the request, and sets out their reasons for decision; or

(b) where there are affected persons Council may either:

(i) pass a Band Council Resolution that rejects the request and sets out their reasons for decision; or

(ii) direct the Lands Department to pursue sending notice to all affected persons before Council makes a decision on whether to accept or reject the request.

Notice to Affected Persons

(6) If Council directs the Lands Department to pursue sending notice to all affected persons, the Lands Department must deliver written notice to all affected persons by regular mail addressed to their last known address.

(7) A written notice to an affected person must state:

(a) the circumstances of the alleged error, mistake or fraud;

(b) the actions that may be taken to correct the alleged error, mistake or fraud, if Council determines such action is necessary;

(c) that affected persons have thirty (30) days to provide any submissions with regard to effect on them of the alleged error, mistake or fraud to Council by delivering such submissions to the Lands Department; and

(d) the date and time where Council will consider whether the land instrument has been issued or allotted in error, by mistake or by fraud, which must be more than thirty (30) days from the date the notice is delivered to all affected persons.

Report to Council

(8) At the end of the thirty (30) day submission period, the Lands Department must provide to Council a package containing:

(a) Form 7-1-01: Correction of Land instrument Request;

(b) all submissions received from affected persons; and

(c) all documentation related to the request.

Land Instrument Issued or Allotted in Error or by Mistake – Non-Substantial

(9) Where Council determines that a land instrument was issued or allotted in error or by mistake and that the error or mistake is not substantial, Council may pass a Band Council Resolution to reject the request.

Land Instrument Issued or Allotted in Error or by Mistake – Substantial

(10) Where Council determines that a land instrument was issued or allotted in error or by mistake and that the error or mistake is substantial, the Lands Department must prepare and Council must approve a Band Council Resolution that sets out:

(a) the name of the interest holder;

(b) the date and title of the land instrument;

- (c) a description of the ʔaᑭam lands to which the land instrument relates;
- (d) that Council has determined the land instrument was issued or allotted in error, or by mistake;
- (e) the circumstances surrounding the error or mistake;
- (f) the reasons why Council considers the error or mistake to be substantial;
- (g) that to remedy the error or mistake, Council approves the land instrument being:
 - (i) cancelled or
 - (ii) cancelled and corrected; and
- (h) that Council authorizes the Lands Department to do one or more of the following (*whichever are applicable in the circumstances*):
 - (i) complete, sign, and register in the First Nation Land Register Form 7-1-02: Certificate of Cancellation of Land Instrument; and
 - (ii) prepare a corrected land instrument for Council consideration.

Cancellation of Land Instrument Issued or Allotted in Error or by Mistake

(11) If Council authorizes the Lands Department to complete, sign and register in the First Nation Land Register Form 7-1-02: Certificate of Cancellation of Land Instrument, the Lands Department must complete, have an authorized signatory sign, and register in the First Nations Land Register Form 7-1-02: Certificate of Cancellation of Land Instrument.

Decision Not To Provide a Corrected Land Instrument

(12) If Council does not authorize the Lands Department to issue a corrected land instrument, the Lands Department must prepare and provide a written notice to the interest holder setting out that their land instrument has been cancelled and the reasons for that cancellation.

Correcting an Allotment

(13) If Council instructs the Lands Department to prepare a corrected allotment, the Lands Department must prepare for Council and Council must sign:

- (a) two (2) copies of a Band Council Resolution granting the corrected allotment,

which must meet the requirements of Policy 4-1 and the *ᑭᓄᓐᓂ ᓂᓄᓂᓂᓂ ᓂᓄᓂᓂᓂ*;

(b) two (2) copies of the completed Form 4-1-02: Allotment to a Member granting the corrected allotment; and

(c) a letter to the member whose allotment was cancelled:

(i) setting out that their allotment has been cancelled and the reasons for such cancellation,

(ii) setting out that Council has approved the granting of a corrected allotment, and

(iii) inviting the member to contact the Lands Department so arrangements can be made for the member to execute a new Form 4-1-02: Allotment to a Member that grants the corrected allotment.

(14) The Lands Department must ensure that the member executes Form 4-1-02: Allotment to a Member.

(15) After the member executes Form 4-1-02: Allotment to a Member, the Lands Department must ensure the corrected allotment is registered in accordance with the *ᑭᓄᓐᓂ ᓂᓄᓂᓂᓂ* and Policy 3-1 in the First Nation Land Register;

(16) After the corrected allotment is registered, the Lands Department must:

(a) complete and have an authorized signatory execute one (1) Form 4-2-04: Certificate of Possession for each allotment holder;

(b) provide each allotment holder with:

(i) the names of all *ᑭᓄᓐᓂ* laws, by-laws and *ᑭᓄᓐᓂ ᓂᓄᓂᓂᓂ ᓂᓄᓂᓂᓂ ᓂᓄᓂᓂᓂ*, 2016 which are in effect and the locations where the new allotment holder may access such laws, by-laws and *ᑭᓄᓐᓂ ᓂᓄᓂᓂᓂ ᓂᓄᓂᓂᓂ*, 2016,

(ii) one (1) original, signed copy of the Band Council Resolution granting the corrected allotment,

(iii) one (1) original, signed copy of Form 4-1-02: Allotment to a Member,

(iv) one (1) original, signed copy of Form 4-2-04: Certificate of Possession, and

(v) the updated Parcel Abstract Report; and

(c) send the allotment holder's information to the *ᑭᓄᓐᓂ* Finance Department to update the taxation and assessment rolls.

Correcting a Land Instrument Other Than an Allotment

(17) If Council instructs the Lands Department to prepare a corrected land instrument other than an allotment, the Lands Department must:

- (a) prepare the corrected land instrument, ensuring it meets the requirements of the policy in this Manual that relates to that type of land instrument;
- (b) provide the corrected land instrument to Council for their approval;
- (c) obtain a Band Council Resolution from Council, approving the corrected land instrument, and such Band Council Resolution must meet the requirements in this Manual that relate to the type of land instrument being approved; and
- (d) prepare and have an authorized signatory sign a letter to the person whose land instrument was cancelled:
 - (i) setting out that their land instrument has been cancelled and the reasons for such cancellation,
 - (ii) setting out that Council has approved the granting of a corrected land instrument,
 - (iii) inviting the person to contact the Lands Department so arrangements can be made for the person to execute the corrected land instrument, and
 - (iv) attaching a copy of the corrected land instrument for the person to consider.

(18) If the person whose land instrument was cancelled agrees to execute the amended land instrument, the Lands Department must:

- (a) ensure the amended land instrument is executed in compliance with the requirements in this Manual that relate to the type of land instrument being corrected; and
- (b) register the amended land instrument in accordance with Policy 3-1.

Land Instrument Was Issued or Allotted by Fraud

(19) If Council determines that a land instrument may have been issued or allotted by fraud, Council must:

- (a) consult with legal counsel to determine what steps to take next; and
- (b) keep the Lands Department apprised of all decisions made in relation to the land instrument.

Section 6 References

(1) Besides this policy, consult the following resources:

(a) the *ᑭᓱᓱᓱᓱᓱ Amended Land Code*;

(b) Policies 5-3 and 6-3 for information on cancelling a land interest other than an allotment at the request of the interest holder; and

(c) Policies 5-3, 6-3, 10-1 and 10-2 for information on cancelling a land interest other than an allotment in circumstances where the interest holder fails to comply with the terms of their land instrument.

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EXPROPRIATION POLICY

- * **Currently Under Development.**
- * **Not yet approved by Council.**

TABLE OF CONTENTS

Policy 8-1 Expropriations by ᑭᐱᑖᐱᐃ	270
Section 1 Purpose	270
Section 2 General	270
<i>Definitions</i>	270
<i>Role of Council</i>	271
<i>Role of the Lands Department</i>	272
<i>Role of the Lands Committee</i>	272
<i>Characteristics of an Expropriation</i>	272
<i>Legal Interests Involved in an Expropriation</i>	273
Section 3 Authorities	273
Section 4 Policy	277
<i>Requirement for Acquisition Needs Assessment</i>	277
<i>Restrictions on Council's Power to Approve of an Expropriation</i>	278
<i>Band Council Resolution: Approving a Proposed Expropriation</i>	278
<i>Mandatory Elements of an Expropriation Agreement</i>	278
<i>Band Council Resolution: Expropriation Agreements</i>	279
<i>Method of Compensation Payments</i>	280
Section 5 Process	280
Section 6 References	280

POLICY 8-1 EXPROPRIATIONS BY ᑭᐱᑭᐱᑭ

Section 1 Purpose

(1) The objectives of this policy are to:

(a) ensure that a consistent and equitable framework is followed by ᑭᐱᑭᐱᑭ in acquiring interests in ᑭᐱᑭᐱᑭ lands by way of expropriation; and

(b) set out when and how ᑭᐱᑭᐱᑭ may acquire interests in ᑭᐱᑭᐱᑭ lands pursuant to both section 14 of the *ᑭᐱᑭᐱᑭ Amended Land Code* and the *ᑭᐱᑭᐱᑭ Expropriation Law, XXXX*.

(2) This policy applies where interests in ᑭᐱᑭᐱᑭ lands are acquired by ᑭᐱᑭᐱᑭ. This policy applies to ᑭᐱᑭᐱᑭ, Council, the Lands Department, and the Lands Committee.

Section 2 General

Definitions

(1) In this policy:

"appraisal report" means a written report, appraising the value of an interest in ᑭᐱᑭᐱᑭ land, which follows and would meet the requirements and standards adopted by the Appraisal Institute of Canada for such reports;

"community purpose" means a purpose that benefits the ᑭᐱᑭᐱᑭ community, and includes: a fire hall, sewage or water treatment facility, community center, public work, road, school, daycare facility, hospital, health-care facility and retirement home;

"expropriate" means ᑭᐱᑭᐱᑭ's taking of a legal interest in ᑭᐱᑭᐱᑭ lands, without the consent of the interest holder, pursuant to ᑭᐱᑭᐱᑭ's powers under the Framework Agreement, *First Nations Land Management Act*, *ᑭᐱᑭᐱᑭ Amended Land Code*, and *ᑭᐱᑭᐱᑭ Expropriation Law, XXXX*;

"expropriation document" means those documents required to be drafted and deposited in the First Nation Land Register;

"family home" means *the home which is the home of the owner used by him or her for his or her family residence and the land on which that home is located*;

"injurious affection" means

(a) where ḥaqām acquires part of ḥaqām lands of an owner,

(iv) the reduction in market value caused to the remaining interest in land of the owner by the acquisition or by the construction of the works or by the use of works or any combination of them on the owner's land, and

(v) such personal and business damages, resulting from the construction or use, or both, of the works as ḥaqām would be liable for if the construction or use were not under the authority of this Law,

(b) where ḥaqām only partially acquired the land of an owner,

(i) such reduction in the market value of the land of the owner as a result of the partial expropriation, and

(ii) such personal and business damages, resulting from the construction and not the use of the works by the ḥaqām, as ḥaqām would be liable for if the construction were not under the authority of this Law;

“interest holder” means any person who:

(a) has a registered land instrument, such as an allotment, lease, licence, permit, easement or other agreement granting that person a right to use, occupy or possess ḥaqām lands;

(b) has a lien, charge, mortgage or encumbrance on a land instrument affecting ḥaqām lands;

“market value” means the amount that would have been paid for a land interest, at the time of its taking, if it had been sold on ḥaqām lands by a willing seller to a willing buyer under no duress; and

“public work” includes: bridges, public buildings and all other works and property belonging to ḥaqām and which the ḥaqām community benefits from collectively.

Role of Council

(2) Council is responsible for:

(a) enacting a law setting out the rights and procedures for expropriation;

(b) ensuring that prior to initiating a proposed expropriation, good faith efforts are made by ḥaqām to acquire the interest or licence by mutual agreement;

(c) determining whether a proposed expropriation is reasonably necessary in the

circumstances;

(d) authorizing, by Band Council Resolution, the initiation of expropriation proceedings;

(e) approving expropriation documents;

(f) authorizing, by Band Council Resolution, a member of Council or another authorized signatory to sign expropriation documents; and

(g) approving compensation amounts related to expropriated lands.

Role of the Lands Department

(3) The Lands Department is responsible for:

(a) ensuring that the requirements in this policy are complied with;

(b) making recommendations to Council on the expropriation of an interest or licence in ?a?am lands

(c) at the direction of Council, ensuring that expropriation agreements are executed, provided to the appropriate interest holder, and filed with the First Nation Lands Registry in accordance with Policy 3-1; and

(d) at the direction of Council, assisting with expropriation proceedings.

Role of the Lands Committee

(4) The Lands Committee may assist the Lands Department and Council with any matter related to an expropriation and may perform duties and functions as directed by either Council or the Lands Department.

(5) It is the responsibility of the Lands Committee to respond to all requests from the Lands Department or Council, and where necessary to consult with members on a proposed expropriation.

(6) The Lands Committee is not a decision-making body. However, the Lands Committee may make recommendations to Council on matters related to expropriations.

Characteristics of an Expropriation

(7) The characteristics of an expropriation are:

(a) it may be either:

- (i) by way of an expropriation agreement between ᑭᓱᓂᓄᓂ and an interest holder, or
 - (ii) forced by ᑭᓱᓂᓄᓂ;
- (b) ᑭᓱᓂᓄᓂ is obligated to pay the interest holder just, timely and adequate compensation;
- (c) the rights and privileges of the interest holder become and are absolutely vested in ᑭᓱᓂᓄᓂ; and
- (d) if at any time the expropriated land or any part of such land is found to be unnecessary for the purpose for which the same was expropriated, or if it is found that a more limited interest only is required, the ᑭᓱᓂᓄᓂ may abandon the land or any part of such land and the abandoned land will revert to the allotment holder.

Legal Interests Involved in an Expropriation

- (8) The nature of the legal interests involved in an expropriation varies depending on the status of the proposed expropriation lands and the interest holders affected.
- (9) Persons who may be interest holders include:
- (a) a registered allotment holder;
 - (b) any person who has an estate or interest in the land, such as a lease, licence, permit, easement or other agreement granting the rights to use, occupy or access the land;
 - (c) any person who has a lien, charge, mortgage or encumbrance on the land; and
 - (d) any person in actual occupation of the land.

Section 3 Authorities

- (1) The relevant authorities are:
- (a) paragraph 6(1)(j), and sections 26(2) and 28 of the *First Nations Land Management Act*;
 - (b) sections 5.1, 5.2, 13.3 and 17.1 to 17.8 of the Framework Agreement;
 - (c) section 14 of the *ᑭᓱᓂᓄᓂ Amended Land Code*; and

(d) the *ᑲᓇᓴᓄᓐ ᐃᓂᓂᓄᓐ ᐃᓂᓂᓄᓐ ᐃᓂᓂᓄᓐ* Law, XXXX.

(2) Paragraph 6(1)(j), and sections 26(2) and 28 of the *First Nations Land Management Act* state:

6. (1) A First Nation that wishes to establish a land management regime in accordance with the Framework Agreement and this Act shall adopt a land code applicable to all land in a reserve of the First Nation, which land code must include the following matters:

(j) the general rules and procedures that apply in respect of the granting or expropriation by the First Nation of interests or rights in First Nation land;

26(2) Interests or rights in First Nation land may not be expropriated except by Her Majesty or a First Nation in accordance with the Framework Agreement and this Act.

28. (1) A First Nation may, in accordance with the general rules and procedures contained in its land code, expropriate any interest or right in its First Nation land that, in the opinion of its council, is necessary for community works or other First Nation community purposes.

(2) An interest or right in First Nation land obtained under section 35 of the *Indian Act* or held by Her Majesty is not subject to expropriation by a First Nation.

(3) An expropriation takes effect from the day on which a notice of expropriation is registered in the First Nation Land Register or the thirtieth day after the day on which the notice is served on the person whose interest or right is expropriated, whichever is the earlier.

(4) An expropriated interest becomes the property of the First Nation free of any previous claim or encumbrance. In Quebec, a First Nation becomes the holder of an expropriated right free of any previous right, charge or claim.

(5) A First Nation shall pay fair compensation to the holder of an expropriated interest or right and, in determining that compensation, the First Nation shall apply the rules set out in the Expropriation Act, with such modifications as the circumstances require.

(6) Any dispute concerning compensation shall be determined according to the system for the resolution of such disputes established by a First Nation in accordance with the Framework Agreement.

(3) Sections 5.1, 5.2, 13.3 and 17.1 to 17.8 of the Framework Agreement state:

5.1 A First Nation that wishes to manage one or more of its reserves will first develop a land code.

5.2 The land code of a First Nation will set out the general rules and procedures that apply to the First Nation when granting or expropriating interests or land rights in First Nation land, including provisions for notice and the service of notice;

13.3 First Nation land will not be sold, exchanged, conveyed or transferred, except for any exchange or expropriation of First Nation land made in accordance with this Agreement.

17.1 A First Nation with a land code in effect has the right to expropriate interests or land rights in First Nation lands without consent if deemed by the First Nation council to be necessary for community works or other First Nation purposes.

17.2 A First Nation's power of expropriation will be exercised in accordance with the rules and procedures specified in its land code, its laws and this Agreement.

17.3 In any province or territory other than Québec, an interest in First Nation land that a First Nation expropriates becomes the property of the First Nation free of any previous claim or encumbrance in respect of the interest.

17.4 A First Nation that expropriates an interest or land right in First Nation land will give fair compensation based on the heads of compensation set out in the Expropriation Act (Canada).

17.5 A First Nation will establish a mechanism to resolve disputes over compensation it pays for expropriation.

17.6 Any interest in First Nation land that was obtained pursuant to section 35 of the *Indian Act* or any interest or land right that has been acquired by Canada, or that is acquired after this Agreement comes into force by Canada in accordance with this Agreement, is not subject to First Nation expropriation.

17.7 A First Nation is not precluded from entering into an agreement with a utility or public body for the purpose of granting it an interest or land right in First Nation land that is exempt from expropriation by the First Nation.

17.8 No expropriation of an interest or land right in First Nation land by a First Nation takes effect earlier than either of the following days:

- (a) the date the notice of expropriation is registered in the First Nation Lands Register; or
- (b) the 30th day after the day the last copy of the notice is served.

(4) Section 14 of the *ᑭᓄᓄᓄ Amended Land Code* states:

14.1 An interest or licence in ᑭᓄᓄᓄ Lands or in any building or other structure on such land may only be expropriated by ᑭᓄᓄᓄ in accordance with the Framework Agreement and a law enacted in accordance with section 15.3.

14.2 ᑭᓄᓄᓄ may expropriate only for a necessary community purpose or works of ᑭᓄᓄᓄ, including a fire hall, sewage or water treatment facility, community center, public work, road, school, day-care facility, hospital, health-care facility or retirement home.

14.3 Council shall enact a law setting out the rights and procedures for expropriation, including provisions in relation to:

- (a) taking possession of the interest or licence;
- (b) transfer of the interest or licence;
- (c) notice of expropriation;
- (d) service of a notice of expropriation;
- (e) entitlement to compensation;

- (f) determination of the amount of compensation; and
- (g) the method of payment of compensation.

14.4 Before ?a?am may expropriate an interest or licence, Council shall:

- (a) prepare a report on the reasons for the expropriation; and
- (b) post a copy of the report in the ?a?am administration offices.

14.5 An interest of ?a?am, or an interest previously expropriated under section 35 of the *Indian Act*, is not subject to expropriation by ?a?am.

14.6 ?a?am may expropriate only after a good faith effort to acquire, by mutual agreement, the interest or licence in ?a?am Lands.

14.7 The law enacted under section 15.3 shall include provisions having the following effect:

- (a) an expropriation shall be made only for the smallest interest necessary and for the shortest time necessary; and
- (b) where less than a full interest is expropriated, a person whose interest is expropriated may continue to use and occupy the land for purposes that are not inconsistent with the expropriation.

14.8 The ?a?am shall, in accordance with a law enacted under section 15.3 and the Framework Agreement:

- (a) serve reasonable notice of the expropriation on each affected holder of the interest or licence to be expropriated; and
- (b) pay fair and reasonable compensation to the holder of the interest or licence being expropriated.

14.9 The total value of compensation under subsection 15.8(b) shall be based on:

- (a) the fair market value of the interest or licence being expropriated;
- (b) the replacement value of any improvement to the land being expropriated;
- (c) the damages attributable to any disturbance; and
- (d) damages for any reduction in the value of a remaining interest.

14.10 The fair market value of an expropriated interest or licence is equal to the amount that would have been paid for the interest or licence if it had been sold on ?a?am Lands by a willing seller to a willing buyer.

14.11 The resolution of disputes concerning the right of the ?a?am to expropriate shall be determined in accordance with Part 8.

(5) The *?a?am Expropriation Law, XXXX* sets out the rights and procedures for an expropriation by ?a?am, including:

- (a) ?a?am's power to expropriate;

- (b) the mandatory processes that must be followed by ᑭᓱᓴᓄᓐ in expropriations;
- (c) requirements for Band Council Resolutions related to expropriations;
- (d) the rights and powers of interest holders in relation to expropriations;
- (e) the documentary requirements to give effect to expropriations;
- (f) the methods and manner of determining compensation in relation to expropriations, including compensation for injurious affection; and
- (g) the processes for addressing disputes in relation to expropriations.

Section 4 Policy

Requirement for Acquisition Needs Assessment

- (1) Prior to considering the need for an expropriation, Council must obtain from the Lands Department an acquisition needs assessment that sets out:
- (a) a comprehensive description of the community purpose or works to which the proposed expropriation relates;
 - (b) the area and location of the proposed expropriation lands;
 - (c) the reasons why the expropriation, rather than a lesser interest, is necessary for achieving the community purpose or completing the works to which the proposed expropriation relates;
 - (d) a list of all authorizations that will be required to achieve the community purpose or complete the works to which the proposed expropriation relates, including any:
 - (i) building, construction or other permits,
 - (ii) re-zoning and changes to *ᑭᓱᓴᓄᓐ Community Land Use Plan, 2016*, and
 - (iii) environmental assessments,
 - (e) an inventory of current ᑭᓱᓴᓄᓐ assets and ᑭᓱᓴᓄᓐ community lands;
 - (f) an assessment of whether the community purpose or works to which the proposed expropriation relates can be economically met through the use of existing ᑭᓱᓴᓄᓐ assets and ᑭᓱᓴᓄᓐ community lands;

(g) an inventory of all land instruments, interests and rights that are being proposed for expropriation;

(h) a description of any alternatives to the proposed expropriation, such as obtaining a lease of land from an allotment holder and the costs associated with such alternatives; and

(i) an estimated budget for:

(i) the costs associated with the proposed expropriation; and

(ii) the costs associated with achieving the community purpose or completing the works to which the proposed expropriation relates in the event that the proposed expropriation is effected.

Restrictions on Council's Power to Approve of an Expropriation

(2) Prior to approving an expropriation, Council must confirm that:

(a) the acquisition needs assessment indicates the expropriation is reasonably necessary to achieve the community purpose or complete the works to which the proposed expropriation relates;

(b) the costs associated with the acquisition of all land instruments, interests and rights that are proposed for expropriation are pre- approved in ?aqam's annual budget or multi-year financial plan; and

(c) Council has provided authority for the appropriate person(s) or body(ies) to initiate and undertake legal surveys, appraisals, negotiations, expropriations, legal and other such related activities, as may be required.

Band Council Resolution: Approving a Proposed Expropriation

(3) A Band Council Resolution that approves a proposed expropriation must include the following:

(a) [to be developed];

(b) [to be developed] ...

Mandatory Elements of an Expropriation Agreement

(4) An expropriation agreement between ?aqam and an interest holder must address, at a minimum, the following:

- (a) the names of the parties to the expropriation agreement, being ᑭᓄᓂᓂ and the interest holder;
- (b) a legal description of the ᑭᓄᓂᓂ lands to which the expropriation relates, that refers to a registration plan or official plan;
- (c) details of the community purpose or works to which the expropriation relates and the estimated length of time for which the expropriated lands are required to fulfill such community purpose or works;
- (d) a clear articulation of the terms agreed to by the interest holder and ᑭᓄᓂᓂ for an expropriation of the interest holder's rights and interests in ᑭᓄᓂᓂ lands;
- (e) the interest holder's rights and interests in those ᑭᓄᓂᓂ lands being expropriated and a statement that those rights and interests will transfer to ᑭᓄᓂᓂ, free and clear of all encumbrances;
- (f) the date and time of the transfer to ᑭᓄᓂᓂ of the interest holder's rights and interests;
- (g) that the interest holder will finalise agreements with third parties with regard to all encumbrances to the satisfaction of ᑭᓄᓂᓂ;
- (h) that the interest holder agrees to accept a specified dollar amount as final compensation for the acquisition of the interest holder's lands by ᑭᓄᓂᓂ, with details of all adjustments made to the compensation. Furthermore, that ᑭᓄᓂᓂ must provide the interest holder with an independent appraisal report for the expropriated interest or licence to confirm the adequacy of the compensation;
- (i) the method of payment and the date on which ᑭᓄᓂᓂ will make the compensation payment to the interest holder;
- (j) that ᑭᓄᓂᓂ will pay all costs related to the expropriation, including the costs of the interest holder obtaining independent legal advice; and
- (k) that ᑭᓄᓂᓂ will ensure any environmental requirements are met.

Band Council Resolution: Expropriation Agreements

- (5) A Band Council Resolution that approves an expropriation agreement must include the following:
 - (a) reference to the expropriation agreement between the interest holder and ᑭᓄᓂᓂ, which must be attached as an appendix to the Band Council Resolution;
 - (b) reference to independent appraisal of land value information, which must be

attached as an appendix to the Band Council Resolution;

(c) if applicable, a copy of the environmental assessment completed by ᑭᓱᓱᓱ attached as an appendix to the Band Council Resolution;

(d) a copy of the legal land description and survey for the expropriated lands attached as an appendix to the Band Council Resolution;

(e) a statement of the total compensation package to be paid to the interest holder; and

(f) a copy of satisfactory evidence to ᑭᓱᓱᓱ that the interest holder has obtained independent legal advice with respect to the execution of the expropriation agreement, attached as an appendix to the Band Council Resolution.

Method of Compensation Payments

(6) Where ᑭᓱᓱᓱ pays compensation to an interest holder, that payment must be made by way of certified cheque to the interest holder.

Section 5 Process

[to be completed once the ᑭᓱᓱᓱ Expropriation Law, XXXX is enacted]

Section 6 References

(1) Besides this policy, consult the following resources:

(a) the *Framework Agreement*;

(b) the *Individual Agreement*;

(c) the *First Nations Lands Management Act*;

(d) ᑭᓱᓱᓱ *Amended Land Code*;

(e) ᑭᓱᓱᓱ *Expropriation Law*;

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**ENVIRONMENTAL REVIEW,
ASSESSMENT AND LAND
MANAGEMENT POLICIES**

Approved by Council on March 15, 2016

Revision History			
Date	Version	Changes	Author

TABLE OF CONTENTS

POLICY 9-1: ENVIRONMENTAL REVIEW AND ASSESSMENT POLICY	287
Section 1 Purpose	287
Section 2 General.....	287
<i>Definitions</i>	287
<i>Role Of Council</i>	290
<i>Role Of The Lands Department</i>	290
<i>Role Of The Lands Committee</i>	291
Section 3 Authorities.....	291
Section 4 Policy	296
<i>Environmental Assessment</i>	296
<i>Projects</i>	296
<i>Criteria For Writing Environmental Review Report And Determining Whether A Project Is Likely To Cause Significant Adverse Environmental Effects</i>	297
<i>Project Unlikely To Cause Significant Adverse Environmental Effects</i>	297
<i>Assessing Whether Significant Environmental Effects Resulting From A Project Are Justified</i>	297
<i>Designated Projects</i>	298
<i>Environmental Assessments – Who Is Responsible?</i>	298
Section 5 Process.....	299
<i>Determine Whether A Project Or Designated Project Is Involved</i>	299

Section 6	Process Where A Project Is Involved.....	299
	<i>Obtain Project Description From Proponent.....</i>	<i>299</i>
	<i>Lands Department Environmental Review Report</i>	<i>300</i>
	<i>Lands Committee Recommendation</i>	<i>303</i>
	<i>Comments From ?AqAm Departments.....</i>	<i>303</i>
	<i>Determination Of Whether A Project Has Significant Adverse Environmental Effects</i>	<i>304</i>
	<i>Exercise Of Power / Performance Of Duty Or Function</i>	<i>305</i>
Section 7	Process Where A Designated Project Is Involved.....	305
	<i>Provide Proponent A Copy Of This Policy And Obtain Designated Project Description</i>	<i>305</i>
	<i>Council Decision</i>	<i>306</i>
	<i>If Designated Project Rejected.....</i>	<i>306</i>
	<i>Community Land Code Meeting.....</i>	<i>307</i>
	<i>Council Decision</i>	<i>309</i>
	<i>If Designated Project Rejected.....</i>	<i>309</i>
	<i>If Environmental Assessment Directed: Negotiate Agreement With Proponent</i>	<i>309</i>
	<i>Notice Of Commencement Of Environmental Assessment.....</i>	<i>310</i>
	<i>Draft Terms Of Reference</i>	<i>311</i>
	<i>Finalizing Terms Of Reference.....</i>	<i>313</i>
	<i>Delivery Of Terms Of Reference To Proponent</i>	<i>313</i>
	<i>Draft Environmental Assessment Report</i>	<i>313</i>
	<i>Review Of Draft Environmental Assessment Report.....</i>	<i>313</i>
	<i>Environmental Assessment Report Comment Period</i>	<i>314</i>
	<i>Finalization Of Environmental Assessment Report</i>	<i>315</i>
	<i>Report To Council</i>	<i>315</i>
	<i>Determination Of Likely, Significant, And Adverse Environmental Effects</i>	<i>316</i>
	<i>Delivery Of Band Council Resolution</i>	<i>317</i>

<i>Implement Mitigation Measures And Obtain Additional Approvals</i>	317
Section 8 References	317
• <i>Appendix A: Reference Guide: Determining Whether A Project is Likely to Cause Significant Adverse Environmental Effects</i>	309
• <i>Appendix B: Regulations Designating Physical Activities</i>	325
POLICY 9-2: ENVIRONMENTAL SITE ASSESSMENTS	352
Section 1 Purpose	352
Section 2 General	352
<i>Definitions</i>	352
<i>Phase I Environmental Site Assessments</i>	352
<i>Phase II Environmental Site Assessments</i>	353
Section 3 Authorities.....	354
Section 4 Policy	354
<i>Environmental Site Assessment Required</i>	354
<i>Confirmed Contaminated Sites</i>	354
Section 5 Process.....	354
Section 6 References	355
POLICY 9-3: ENVIRONMENTAL REQUIREMENTS FOR LAND INSTRUMENTS.....	356
Section 1 Purpose	356

Section 2	General	356
	<i>Definitions</i>	356
Section 3	Authorities.....	356
Section 4	Policy	358
	<i>Mandatory Terms Regarding Interest Holder’s Compliance With Laws And Management Of Hazardous Substances</i>	359
	<i>Mandatory Terms For Expiry Of Land Instrument</i>	359
	<i>Mandatory Terms Regarding Mitigation Measures, Monitoring And Enforcement Following An Environmental Assessment</i>	359
	<i>Restriction On Council’s Consent To Transfer, Assign Or Renew A Land Instrument</i>	359
	<i>Documentation</i>	360
Section 5	Process.....	360
Section 6	References	360

POLICY 9-1: ENVIRONMENTAL REVIEW AND ASSESSMENT POLICY

Section 1 Purpose

(1) Until ʔaǰam enacts its own Environmental Assessment Law, this policy must be consulted every time that Council must make a decision in relation to any of its powers, duties or functions under the *ʔaǰam Amended Land Code* or any other ʔaǰam law.

(2) The objectives of this policy are to:

(a) provide information on the manner in which ʔaǰam will fulfill its responsibilities under their Individual Agreement with Canada with regard to environmental assessments;

(b) provide information on when and how an environmental assessment must be conducted in relation to ʔaǰam lands;

(c) assist Council in identifying potentially adverse impacts on the environment that may arise as a result of Council making a decision in relation to any of their powers, duties or functions under the *ʔaǰam Amended Land Code* or any other ʔaǰam law; and

(d) assist Council in determining whether mitigating measures are necessary to minimize the environmental impacts of actions being taken that affect ʔaǰam lands.

Section 2 General

Definitions

(1) In this policy:

“*Canadian Environmental Assessment Act*” means the *Canadian Environmental Assessment Act, 2012*, S.C. 2012, c. 19, s. 52;

“cumulative environmental effects” means changes to the environment that are caused by any **project**, or **designated project**, in combination with other past, present and future human actions. Examples of cumulative environmental effects include:

(a) air: air pollution levels within ʔaǰam lands that may be caused by the **project**, or **designated project**, in addition to already existing wood fires, outdoor burning associated with other **projects**, or emissions from **projects** that are within the region;

(b) water: combined wastewater levels or ground water contamination within ᑭᓄᓂ lands that may be caused by the **project**, or **designated project**, in addition to already existing farming activities in the region;

(c) wildlife: combined animal mortalities within ᑭᓄᓂ lands that may be caused by the **project**, or **designated project**, in addition to new roads, already existing roads and already existing hunting activities;

(d) resource use: combined decrease in the local availability of traditional berries and plants that may be caused by the **project**, or **designated project**, in addition to other construction, land development and removal of resources in adjacent lands to ᑭᓄᓂ lands;

“designated project” means one or more physical activities, and any physical activity that is incidental to those physical activities, that:

(a) are carried out on ᑭᓄᓂ lands; and

(b) are designated by:

(i) the *Regulations Designating Physical Activities*, which are attached as Appendix B to this Policy, or

(ii) an order made by the Minister of the Environment under subsection 14(2) of the *Canadian Environmental Assessment Act*.

“environment” has the same meaning as in subsection 2(1) of the *Canadian Environmental Assessment Act*, as follows:

...meaning the components of the Earth, and including:

(a) land, water and air, including all layers of the atmosphere;

(b) all organic and inorganic matter and living organisms; and

(c) the interacting natural systems that include components referred to in paragraphs (a) and (b);

"environmental assessment" means an assessment of the environmental effects of a **project** or **designated project** conducted in a manner consistent with this policy, the *Canadian Environmental Assessment Act* and its regulations;

“environmental effect” means the environmental effects that are to be taken into account in relation to an act or thing, a physical activity, a **designated project** or a **project**, including:

(a) a change that may be caused to the following components of the environment:

(i) fish and fish habitat as defined in subsection 2(1) of the *Fisheries Act*,

(ii) aquatic species as defined in subsection 2(1) of the *Species at Risk Act*,

(iii) migratory birds as defined in subsection 2(1) of the *Migratory Birds Convention Act, 1994*, and

(iv) any other component of the environment that is set out in Schedule 2 of the *Canadian Environmental Assessment Act*,

(b) a change that may be caused to the environment on ?a?am lands, or

(c) a change that may be caused to the environment that would effect ?a?am’s:

(i) health and socio-economic conditions,

(ii) physical and cultural heritage,

(iii) current use of lands and resources for traditional purposes, or

(iv) structures, sites or things that are of historical, archaeological, paleontological or architectural significance;

"mitigating measures" means measures that are taken by a proponent for the elimination, reduction, or control of the adverse environmental effects of a **project** or **designated project**, including restitution for any damage to the environment caused by those effects through replacement, restoration, compensation, or any other means;

“*Prescribed Information for the Description of a Designated Project Regulations*” means the *Prescribed Information for the Description of a Designated Project Regulations*, SOR/2012-148;

“project” means a physical activity that:

(a) is carried out on ᑭᓱᓂᓄᓐ lands in relation to a physical work; and

(b) is not a designated **project**,

and includes any physical activity that has the potential to affect the environment and that requires an authorization or consent from ᑭᓱᓂᓄᓐ;

"proponent" means the person, organization, government, or other entity that proposes to carry out a **project** or **designated project** on ᑭᓱᓂᓄᓐ lands where that **project** or **designated project** requires an authorization or consent from ᑭᓱᓂᓄᓐ; and

“Regulations Designating Physical Activities” means the *Regulations Designating Physical Activities*, SOR/2012-147.

Role of Council

(2) Council is responsible:

(a) prior to exercising any power or performing any duty or function conferred on it under the *ᑭᓱᓂᓄᓐ Amended Land Code*, or any other power, duty or function of Council that would permit a **project** to be carried out, for determining:

(i) whether that **project** is likely to cause adverse environmental effects, and

(ii) if it is likely to do so, determining whether such adverse environmental effects are justified in the circumstances; and

(b) prior to allowing a **designated project** to be carried out on ᑭᓱᓂᓄᓐ lands, for ensuring that an environmental assessment is conducted as set out in this policy and that such environmental assessment is consistent with the *Canadian Environmental Assessment Act*.

Role of the Lands Department

(3) The Lands Department is responsible for:

(a) ensuring all requirements under this policy are complied with:

- (i) every time that Council must make a decision in relation to any of its powers, duties or functions under the *ᑭᓄᓐᓄᓐ Amended Land Code* or any other ᑭᓄᓐᓄᓐ law;
 - (ii) during an expropriation of ᑭᓄᓐᓄᓐ lands by ᑭᓄᓐᓄᓐ;
 - (iii) during the assessment of applications for an allotment or use of ᑭᓄᓐᓄᓐ lands;
and
 - (iv) during the negotiation, drafting and execution of a lease, licence, permit, easement or other land interest document that relates to ᑭᓄᓐᓄᓐ community lands;
- (b) ensuring all land instruments that relate to an expropriation, allotment, lease, licence, permit or easement are in accordance with policy 9.2;
 - (c) in accordance with Policies 11-1 and 11-2, the monitoring and enforcement of all environmental requirements under an allotment, lease, licence, permit or easement;
 - (d) ensuring all environmental assessments conducted pursuant to this policy are maintained in a file at the Lands Department.

Role of the Lands Committee

- (4) The Lands Committee may assist the Lands Department and Council with any matter related to the environmental review and assessment processes set out in this policy and may perform duties and functions as directed by either Council or the Lands Department.
- (5) It is the responsibility of the Lands Committee to respond to environmental review related requests from the Lands Department or Council, and where necessary to consult with ᑭᓄᓐᓄᓐᓄᓐᓄᓐ on environmental review and assessment related issues.
- (6) The Lands Committee is not a decision-making body. However, the Lands Committee may make recommendations to the Lands Department and Council on matters related to environmental reviews and assessments under this policy.

Section 3 Authorities

- (1) The relevant authorities are:
 - (a) paragraphs 6(3)(c), 20(1)(b) and 20(2)(c), and sections 21 and 40 of the *First Nations Land Management Act*;

(b) sections 23, 25, 26 and 27 of the *Framework Agreement*;

(c) section 8.1 and Annex “F” of the Individual Agreement;

(d) the *Canadian Environmental Assessment Act*, S.C. 2012, c.19, s.52, and its Regulations; and

(e) the ʔaḡam Environmental Management Plan.

(2) Paragraphs 6(3)(c), 20(1)(b) and 20(2)(c), and sections 21 and 40 of the *First Nations Land Management Act* state:

6.(3) Individual Agreement – A First Nation that wishes to establish a land management regime shall, in accordance with the Framework Agreement, enter into an individual agreement with the Council describing the land that will be subject to the land code and providing for

(c) the environmental assessment process that will apply to **projects** on that land until the enactment of First Nation laws in relation to that subject;

20.(1) Power to enact laws – The council of a First Nation has, in accordance with its land code, the power to enact laws respecting

(b) the development, conservation, protection, management, use and possession of First Nation land

(2) Particular powers – Without restricting the generality of subsection (1), First Nation laws may include laws respecting

(c) environmental assessment and environmental protection;

21.(1) Environmental Protection Regime – After the coming into force of a land code, a First Nation shall, to the extent provided in the Framework Agreement, develop and implement through First Nation laws an environmental protection regime. The regime must be developed in accordance with the terms and conditions set out in the Framework Agreement.

(2) Minimum Standards – The standards of environmental protection established by First Nation laws and the punishments imposed for failure to meet those standards must be at least equivalent in their effect to any standards established and punishments imposed by the laws of the province in which the First Nation land is situated.

(3) Environmental Assessment Regime – First Nation laws respecting environmental assessment must, to the extent provided in the Framework Agreement, establish, in accordance with that Agreement, an environmental assessment regime that is applicable to all **projects** carried out on First Nation land that are approved, regulated, funded or undertaken by the First Nation.

40. (1) Environmental Laws – For greater certainty, in the event of any inconsistency or conflict between a land code or a First Nation law and any federal law that relates to environmental protection, the federal law prevails to the extent of the inconsistency or conflict.

(2) Migratory bird, endangered species, fisheries – For greater certainty, this Act does not extend or limit any right or power in relation to migratory birds, endangered species or fisheries.

(3) Sections 23, 25, 26 and 27 of the *Framework Agreement* state:

Part V ENVIRONMENT

23. GENERAL PRINCIPLES

23.1 The council of a First Nation with a land code in effect will have the power to make environmental laws relating to First Nation land.

23.2 The Parties intend that there should be both an environmental assessment and an environmental protection regime for each First Nation.

23.3 The principles of these regimes are set out below.

23.4 The environmental assessment and protection regimes will be implemented through First Nation laws.

23.5 The Parties agree to harmonize their respective environmental regimes and processes, with the involvement of the provinces where they agree to participate, to promote effective and consistent environmental regimes and processes and to avoid uncertainty and duplication.

23.6. This Agreement is not intended to affect rights and powers relating to migratory birds or endangered species. These matters may be dealt with in the context of other negotiations. This Agreement is not intended to determine or prejudice the resolution of these issues.

25. ENVIRONMENTAL ASSESSMENT

25.1 Subject to term 27, a First Nation will, with the assistance of the Lands Advisory Board and the appropriate federal agencies, make best efforts to develop an environmental assessment process within one year after the First Nation's land code takes effect, or within such longer period as the Council and the First Nation agree to.

25.2 The First Nation and the Council will, in the individual agreement referred to in term 6, address how to conduct the environmental assessment of **projects** on First Nation land during the interim period until the First Nation's environmental assessment process is developed.

25.3 The First Nation's environmental assessment process will be consistent with the requirements of the *Canadian Environmental Assessment Act*.

25.4 The First Nation's environmental assessment process will be triggered in appropriate cases where the First Nation is approving, regulating, funding or undertaking a **project** on First Nation

land. The assessment will occur as early as possible in the planning stages of the **project** before an irrevocable decision is made.

25.5 The Parties agree that section 10 of the *Canadian Environmental Assessment Act* will not apply to **projects** located on First Nation land.

25.6 The Parties Agree to use their best efforts to implement the principles that the First Nation's environmental assessment process be used where an environmental assessment of a **project** on First Nation land is required by the *Canadian Environmental Assessment Act*.

25.7 The Parties Agree to develop a plan to harmonize their respective environmental assessment processes, with the involvement of the provinces where they agree to participate.

26. OTHER AGREEMENTS

26.1 The First Nation and Canada recognize that it may be advisable to enter into other agreements with each other and other jurisdictions to deal with environmental issues like harmonization, implementation, timing, funding and enforcement.

26.2 Where matters being negotiated pursuant to term 26.1 normally fall within provincial jurisdiction, or may have significant impacts beyond the boundaries of First Nation land, the parties will invite the affected province to be a party to such negotiations and resulting agreements.

27. RESOURCES

27.1 The Parties understand that the obligation of a First Nation to establish environmental assessment and environmental protection regimes depends on adequate financial resources and expertise being available to the First Nation.

(4) Section 8.1 and Annex "F" of the Individual Agreement state:

8.1 As of the date the Land Code comes into force, the environmental assessment process set out in Annex "F" shall apply to **projects** on [?a?am lands] until the coming into force of First Nation laws enacted in relation to that subject.

Annex F: INTERIM ENVIRONMENTAL ASSESSMENT PROCESS

(1) In this Annex,

(a) "CEAA (1992)" means the *Canadian Environmental Assessment Act*, S.C. 1992, c. 37 [repealed, 2012, c. 19, s.66], as it read immediately prior to its repeal;

(b) "CEAA 2012" means the *Canadian Environmental Assessment Act*, S.C. 2012, c. 19, s.52, as amended from time to time.

(2) This Annex sets out the environmental assessment process that will apply to **projects** on First Nation Land until the enactment and coming into force of First Nation Laws on that subject.

(3) The First Nation shall conduct an assessment process in respect of every **project** on First Nation Land consistent with:

(a) CEAA (1992), or

(b) CEAA 2012.

(4) Notwithstanding term 3, the First Nation is not required to conduct an additional environmental assessment if the First Nation decides to adopt an environmental assessment that Canada conducts in respect of that **project**.

(5) If the First Nation elects to use a process consistent with CEAA (1992), the following applies:

(a) When the First Nation is considering the approval, regulation, funding or undertaking of a **project** on First Nation Land that is not described in the exclusion list as defined in CEAA (1992), the Council of the First Nation shall ensure that an environmental assessment of the **project** is carried out in accordance with a process that is consistent with that of CEAA (1992). Such assessment shall be carried out as early as practicable in the planning stages of the **project** before an irrevocable decision is made.

(b) The First Nation shall not approve, regulate, fund, or undertake the **project** unless the council has concluded, taking into consideration the results of the environmental assessment, any economically or technically feasible mitigation measures identified as necessary during the assessment, and any public comments received during the assessment, that the **project** is unlikely to cause any significant adverse environmental effects or that any such effects are justifiable under the circumstances.

(c) If the First Nation approves, regulates, funds, or undertakes the **project**, the First Nation shall ensure that all mitigation measures referred to in paragraph (b) above are implemented at its expense or it is satisfied that another person or body will ensure their implementation. The Council shall also consider whether a follow-up program, as defined in CEAA (1992), is appropriate in the circumstances and if so, shall design a follow-up program and ensure its implementation.

(6) If the First Nation elects to use a process that is consistent with the CEAA 2012, the following applies unless it is inconsistent with any amendments made to CEAA 2012 in the future or any legislation that replaces CEAA 2012.

(a) If the **project** is a “**designated project**” as defined in CEAA 2012, the First Nation shall conduct an environmental assessment of that **project** in accordance with a process that is consistent with that of CEAA 2012;

(b) If the **project** is a “**project**” as defined in section 66 of CEAA 2012, the First Nation shall not carry out the **project** on First Nation Land, or exercise any power or perform any duty or function conferred on it under the Land code or a First Nation Law that would permit the **project** to be carried out, in whole or in part, on First Nation Land, unless the Council of the First Nation determines that the carrying out of the **project**:

(i) is not likely to cause significant adverse environmental effects as defined in CEAA, 2012; or

(ii) is likely to cause significant adverse environmental effects and the Council decides that those effects are justified in the circumstances.

(7) All processes shall be conducted at the expense of the First Nation or of the proponent of the **project**.

(8) The provisions in this Annex are without prejudice to any environmental assessment process that the First Nation may develop in accordance with the Act and the Framework Agreement for incorporation in First Nation laws respecting environmental assessment.

(5) The *Canadian Environmental Assessment Act (CEAA)*, sets the rules for when an environmental assessment will be required by the federal government and the responsible authorities and types of assessments that are available. The CEAA process involves set timelines and opportunities for public and First Nations participation.

Section 4 Policy

Environmental Assessment

(6) An environmental assessment is a review process that is undertaken to:

(a) identify potentially adverse environmental effects of a proposed activity on ʔaǰam lands; and

(b) identify ways to prevent, correct or otherwise minimize those effects.

(7) If significant adverse environmental effects cannot be prevented, corrected or minimized, ʔaǰam must not provide any authorization or consent, or grant any interest or licence in ʔaǰam lands that would allow the proposed activity to proceed.

(8) Every time ʔaǰam is required to exercise a power or perform some duty or function under the *ʔaǰam Amended Land Code* or any other ʔaǰam law or otherwise, ʔaǰam must assess whether the exercise of that power or the performance of that duty or function is in relation to a **designated project** or a **project** and:

(a) if it is not in relation to a **designated project** or a **project** then this policy does not apply; and

(b) if it is in relation to a **project** or **designated project** then this policy does apply.

Projects

(9) Where a **project** is proposed to be carried out on ʔaǰam lands, ʔaǰam must not:

(a) carry out the **project** on ʔaḡam lands; or

(b) exercise any power or perform any duty or function under the *ʔaḡam Amended Land Code* or any ʔaḡam law or otherwise that would permit the **project** to be carried out, in whole or in part, on ʔaḡam lands,

unless Council first determines that the carrying out of the **project**:

(c) is not likely to cause significant adverse environmental effects; or

(d) is likely to cause significant adverse environmental effects and the Council believes that those effects are justified in the circumstances.

Criteria for Writing Environmental Review Report and Determining Whether a Project is Likely to Cause Significant Adverse Environmental Effects

(10) When the Lands Department writes an Environmental Review Report, and when Council decides whether a project is likely to cause significant adverse environmental effects, the Lands Department and Council must make reference to those criteria set out in the *Reference Guide: Determining Whether A Project is Likely to Cause Significant Adverse Environmental Effects*, which is attached as **Appendix A** to this Policy.

Project Unlikely to Cause Significant Adverse Environmental Effects

(11) In general, the following types of **projects** will be considered not likely to cause significant adverse environmental effects:

(a) construction of a single house, garage, or other structure or building that is less than 2,500 square feet;

(b) installation of telecommunications or internet infrastructure, such as transmission lines;

(c) renovations to existing structures; or

(d) upgrades to existing roads.

Assessing Whether Significant Environmental Effects Resulting from a Project are Justified

(12) In general, significant environmental effects will be justified in circumstances where the overall benefits of the proposed **project** to ᑭᓄᓂᓂ are significant and not in conflict with the best interests of ᑭᓄᓂᓂ.

Designated Projects

(13) Where a **designated project** is proposed to be carried out on ᑭᓄᓂᓂ lands, the proponent is prohibited from proceeding with any aspect of the **designated project** on ᑭᓄᓂᓂ lands that would have an effect on a component of the environment within ᑭᓄᓂᓂ lands, unless:

- (a) an environmental assessment has been completed; and
- (b) Council has passed a Band Council Resolution stating that:
 - (i) the **designated project** is unlikely to cause any significant adverse environmental effects, or
 - (ii) the **designated project** is likely to cause significant adverse environmental effects but those effects are justifiable in the circumstances; and
- (c) the proponent has complied with any conditions in the Band Council Resolution that relate to mitigating measures.

Environmental Assessments – Who is Responsible?

(14) Where a third party – including a member or a corporation owned by ᑭᓄᓂᓂ – is the proponent and Council determines that a physical activity is a **designated project** and that an environmental assessment is required, the third party proponent is responsible for conducting or arranging the environmental assessment and must provide the Lands Department with the results.

(15) Where ᑭᓄᓂᓂ is the proponent, the Lands Department is responsible for conducting or arranging for any required environmental assessments.

(16) The proponent has financial responsibility for the costs of an environmental assessment in connection with their **designated project**.

Section 5 Process

Determine Whether a Project or Designated Project is Involved

(1) To determine whether a proposed activity is part of a **designated project**, the Lands Department must ask whether it is in relation to a physical activity that is designated under the *Regulations Designating Physical Activities* (attached as **Appendix B** to this Policy). To do this, the Lands Department must refer directly to the *Regulations Designating Physical Activities* and compare those categories of physical activities described in the regulations with those activities being proposed to be carried out on ʔaḡam lands.

(2) If an activity being proposed to be carried out on ʔaḡam lands falls within one of the categories of physical activities described in the regulations then the activity is connected to a **designated project** and an environmental assessment is required.

(3) To determine whether a power, duty or function of Council is in relation to a **project**, the Lands Department must consider whether it is in relation to a physical activity that will be carried out on ʔaḡam lands (and that is not a **designated project**). If it is in relation to a physical activity that will be carried out on ʔaḡam lands then it is a **project**.

Section 6 Process Where a Project is Involved

Obtain Project Description from Proponent

(1) Where ʔaḡam is required to exercise a power or perform some duty or function under the *ʔaḡam Amended Land Code*, any other ʔaḡam law or otherwise, in relation to a **project**, the Lands Department must obtain from the proponent, and it is the proponent's responsibility to provide the Lands Department with a **project** description that includes the following information:

(a) **project** information (maximum 3,000 words), including:

(i) **project** title,

(ii) proponent contact details,

(iii) proposed start and end dates for the **project**,

(iv) a plain language description of each stage of the **project's** life-cycle (site

preparation, construction, operation, and decommissioning, and site restoration or rehabilitation, if relevant),

(b) a plain language land description of the proposed **project** area (maximum 1,000 words), including a summary of:

(i) all bodies of water within or near the proposed **project** area (such as rivers, lakes, streams, wetlands, bogs, drinking water wells or aquifers zones),

(ii) current uses of lands in the proposed **project** area and its surrounding area (such as farming, forestry, mining, fishing, hunting, and harvesting),

In providing such information, the proponent should attach maps of the proposed **project** area;

(c) if the project is anything other than the building of a family home, a plain language professional opinion (maximum 3,000 words) regarding the likely presence or absence of, and potential changes to the environment as a result of the **project** to:

(i) fish and fish habitat as defined in subsection 2(1) of the *Fisheries Act*,

(ii) aquatic species as defined in subsection 2(1) of the *Species at Risk Act*,

(iii) migratory birds as defined in subsection 2(1) of the *Migratory Birds Convention Act, 1994*, and

(iv) any other component of the environment that is set out in Schedule 2 [of the *Canadian Environmental Assessment Act*];

and such professional opinion must include information on the likelihood of any potential changes to the environment as a result of the **project**; and

(d) any further information that the proponent has regarding changes to the environment that may occur from the carrying out of the **project** on ?aqam lands.

(2) Where there are gaps in the information provided by the proponent, the Lands Department must consider whether to require the proponent to collect new information.

Lands Department Environmental Review Report

(3) The Lands Department must ensure that an environmental review report is prepared.

(4) The environmental review report must set out:

(a) the Lands Departments recommendation on whether the environmental effects of the project are **adverse**;

(b) information to assist Council in determining whether the environmental effects are **adverse**, including information on the quality of the existing environment compared to the predicted quality of the environment once the **project** is completed,

(c) the Lands Departments recommendation on whether the environmental effects of the project are **significant**;

(d) information to assist Council in determining whether the environmental effects are **significant**, including information on:

(i) the magnitude/severity of the adverse environmental effects and information on whether they are minor or catastrophic,

(ii) the extent that the **project** might contribute to cumulative environmental effects;

(iii) the geographic extent of the adverse environmental effects, including whether they are localised to a small geographic area or widespread;

(iv) the duration and frequency of the adverse environmental effects, such as whether they are long term or frequent;

(v) any known future adverse environmental effects and the likelihood of such effects arising;

(vi) the degree to which the adverse environmental effects are reversible or irreversible; and

(vii) the degree to which the environment has already been adversely affected by human activities, or the fragility of the environment as a result of human activities;

(e) the Lands Departments recommendation on whether the environmental effects of the project are **likely**;

(f) information to assist Council in determining whether the environmental effects are **likely**, which involves information on the probability of such effects occurring; and

(g) the Lands Department's recommendation on whether the environmental effects of the project can be adequately mitigated;

(h) information to assist Council in determining whether the environmental effects of the project can be mitigated, including any **mitigation measures** that are included in the proposed **project**, and any mitigation measures that the Lands Department recommends for the proposed **project**. For each adverse environmental effect that is identified, there should be mitigation measures proposed to address that effect.

(5) Mitigation measures include:

(a) measures that compensate for environmental effects through other means, such as:

(i) the replacement of habitat that will be lost (eg. tree planting),

(ii) awards of financial compensation for lost economic, cultural or ceremonial opportunities as a result of the environmental effects, or

(iii) the gifting of alternative tracts of land to ʔaḡam as reserve lands, or to be held for the use and benefit of ʔaḡam through an ʔaḡam trust or corporate entity;

(b) measures that repair the situation after environmental effects occur, such as:

(i) regeneration of degraded soils,

(ii) the creation of protected zones or parks to support the natural rehabilitation of the environment or the return of wildlife to an affected area, or

(iii) the containment and clean-up of an incident involving hazardous substances being released into the environment,

(c) measures that reduce the magnitude or duration of the impact of environmental effects, such as:

(i) the use of biodegradable materials instead of plastics and metals;

(ii) the establishment of run-off trenches or river ladders,

- (iii) the development of safe crossing sites for animals so that their migration patterns are minimally effected,
- (iv) finding ways to use less energy, less water or recycle, or
- (v) finding ways to minimize greenhouse gas emissions, and
- (d) measures that avoid the impact all together, such as changing the timing of the **project** being carried out so as to avoid spawning or migration periods, or changing the area in which the **project** will be carried out so that an environmentally sensitive area will not be impacted.

Lands Committee Recommendation

- (6) Within twenty (20) days of the environmental review report being completed, the Lands Department must:
- (a) deliver a copy of the environmental review report to the Lands Committee; and
 - (b) obtain a recommendation from the Lands Committee on whether the environmental review report should be accepted by Council as complete.

Comments from ᑭᓱᓴᓴᓴ Departments

- (7) Within twenty (20) days of the environmental review report being completed, the Lands Department must:
- (a) deliver a copy of the environmental review report to the director of each ᑭᓱᓴᓴᓴ department; and
 - (b) obtain from the director of each ᑭᓱᓴᓴᓴ department, any comments or concerns they have regarding a change that may be caused to the environment that would effect ᑭᓱᓴᓴᓴ'ᓂ:
 - (i) health and socio-economic conditions,
 - (ii) physical and cultural heritage,
 - (iii) current use of lands and resources for traditional purposes, or
 - (iv) structures, sites or things that are of historical, archaeological, paleontological or architectural significance.

Determination of Whether a Project Has Significant Adverse Environmental Effects

(8) In making a determination on whether a **project** is likely to cause significant adverse environmental effects, Council must consider:

- (a) the environmental review report from the Lands Department;
- (b) the recommendation from the Lands Committee;
- (c) all comments and concerns raised by directors of ᑭᓱᓱᓱ departments; and
- (d) all recommended mitigation measures and whether after implementing those mitigation measures the project is likely to cause significant adverse environmental effects.

(9) Council must, as soon as practical after receiving the environmental review report, Lands Committee recommendation and comments and concerns of directors, make a decision by Band Council Resolution that either: refers the project to a full environmental assessment in the same form and manner as is required for a **designated project**, or sets out one of the following:

(a) We, the Council of ᑭᓱᓱᓱ, have determined that [subject to [name of proponent]'s compliance with the following mitigating measures,] the [**project** name] is not likely to cause significant adverse environmental effects as defined in the *Canadian Environmental Assessment Act, 2012*:

- (i) [list any required mitigating measures]

We have further determined that [proponent's name] may proceed with the [project name] conditional on the above-mentioned mitigating measures being complied with and the following approvals being granted:

- (i) [list any required approvals....]

(b) We, the Council of ᑭᓱᓱᓱ, have determined that despite the proposed mitigating measures, the [**project** name] is likely to cause significant adverse environmental effects as defined in the *Canadian Environmental Assessment Act, 2012*.

We have further determined that those effects are justified in the circumstances as follows:

- (i) [list circumstances that justify the significant adverse environmental effects],
- (ii) [list...],

Therefore, [proponent's name] may proceed with the [project name] conditional on the following mitigating measures being complied with and approvals being granted:

- (i) [list any required mitigating measures and approvals....]

(c) We, the Council of ᑭᐱᑭᐱ, have determined that despite the proposed mitigating measures, the [project name] is likely to cause significant adverse environmental effects as defined in the *Canadian Environmental Assessment Act, 2012*. We have further determined that those effects are not justified in the circumstances. Therefore, [proponent's name] may not proceed with the [project name].

Exercise of Power / Performance of Duty or Function

(10) If Council passes a Band Council Resolution setting out that Council has determined the **project** is unlikely to cause significant adverse effects, or that the **project** is likely to cause significant environmental effects but those effects are justified in the circumstances:

- (a) Council may proceed with exercising its powers or performing its duty or function under the *ᑭᐱᑭᐱ Amended Land Code*, any other ᑭᐱᑭᐱ law or otherwise, in relation to the **project**, and
- (b) the Lands Department may proceed with its responsibilities in regard to Council exercising such powers or performing such duties or functions.

(11) If Council determines that a **project** is likely to cause significant adverse environmental effects and that those effects are not justified in the circumstances, Council must not exercise any of its powers or perform any of its duties or functions under the *ᑭᐱᑭᐱ Amended Land Code*, any other ᑭᐱᑭᐱ law or otherwise, in relation to the **project**.

Section 7 Process Where a Designated Project is Involved

Provide Proponent a Copy of This Policy and Obtain Designated Project Description

(1) Where an Application for Use of ᑭᓱᓱᓱ Lands contains a **designated project**, the Lands Department must:

- (a) provide the proponent with a copy of this Policy; and
- (b) obtain from the proponent a description of the **designated project** that includes all information required under the *Prescribed Information for the Description of a Designated Project Regulations*.

(2) Within ten (10) days of receiving the **designated project** description, the Lands Department must compare the **designated project** description to the information required under the *Prescribed Information for the Description of a Designated Project Regulations* and determine whether the **designated project** description is complete or further information is required from the proponent.

(3) If the Lands Department determines that the **designated project** description is incomplete or does not contain sufficient details to determine whether an environmental assessment of the **designated project** is required, the Lands Department must, within ten (10) days of receiving the **designated project** description, provide the proponent with a written notice setting out the information that is required to be submitted to the Lands Department before the **designated project** description will be considered complete.

Council Decision

(4) If the Lands Department determines that the designated project description is complete, the Lands Department must:

- (a) provide a copy of the designated project description to Council; and
- (b) obtain instructions from Council on whether to:
 - (i) reject having the designated project on ᑭᓱᓱᓱ lands; or
 - (ii) direct that, subject to funding provided by the proponent, a ᑭᓱᓱᓱ community lands code meeting be held to consult with ᑭᓱᓱᓱᓱᓱ on whether to proceed with an environmental assessment on the designated project.

If Designated Project Rejected

(5) If Council provides the Lands Department instructions to reject having a designated project on Ḥaqam lands, the Lands Department must advise the proponent that their Application for Use of Ḥaqam Lands has been rejected.

Community Land Code Meeting

(6) If Council directs that, subject to funding provided by the proponent, a Ḥaqam community lands code meeting be held to consult with Ḥaqamnik on whether to proceed with an environmental assessment on a designated project, the Lands Department must:

(a) advise the proponent that:

(i) a Ḥaqam community lands code meeting must be held, at the proponent's expense, so Council can consult with Ḥaqamnik on whether to proceed with an environmental assessment of the **designated project**, and

(ii) the proponent must attend part of the Ḥaqam community lands code meeting to explain the purpose and components of the **designated project** to all Ḥaqamnik who attend the meeting;

(b) obtain the agreement of the proponent and adequate funding from the proponent to hold a Ḥaqam community lands code meeting; and

(c) in consultation with Council and the proponent, set a date for when the Ḥaqam community lands code meeting will be held.

(7) Council must provide written notice of a Ḥaqam community lands code meeting to all eligible voters at least ten (10) business days before the date of the meeting by:

(a) either:

(iii) delivering or mailing the written notice to all eligible voters at their last known addresses, or

(iv) publicising the written notice in an Ḥaqam newsletter that is delivered or mailed to all eligible voters at their last known address; and

(b) posting the written notice in a public area of all Ḥaqam administration offices.

- (8) A written notice of a ʔaḡam community lands code meeting must include:
- (a) the date, time and location of the ʔaḡam community lands code meeting;
 - (b) a summary of the **designated project** description;
 - (c) notification that a full copy of the **designated project** description may be obtained by ʔaḡamnik at the ʔaḡam administration building or at the ʔaḡam community lands code meeting;
 - (d) an invitation for ʔaḡamnik to provide written comments to Council on whether members are in support of conducting an environmental assessment of the **designated project** as a first step to determining whether to have the designated project on ʔaḡam lands;
 - (e) the return date by which ʔaḡamnik shall provide written comments to Council, which date must be at least twenty (20) business days from the date of the ʔaḡam community lands code meeting; and
 - (f) the ʔaḡam community lands code meeting may be advertised or referred to in the written notice by the name of the **designated project** being discussed.
- (9) At a ʔaḡam community lands code meeting, either Council or the Lands Department must:
- (a) make copies of the **designated project** description available to all ʔaḡamnik who attend the meeting;
 - (b) ensure that the purpose and provisions of the **designated project** are explained by the proponent to all ʔaḡamnik who attend the meeting;
 - (c) invite questions and comments by ʔaḡamnik who attend the meeting; and
 - (d) ensure the questions and comments by ʔaḡamnik are documented for all members of Council to consider.
- (10) As soon as practical before the Council meeting following the twentieth (20th) business day after a ʔaḡam community lands code meeting in relation to a **designated project**, the Lands Department must compile all questions and written comments that

have been provided by ᑭᓱᓱᓱᓱᓱᓱ and provide each member of Council a copy of those comments.

Council Decision

(11) At the Council meeting following the twentieth (20th) business day after a ᑭᓱᓱᓱᓱᓱᓱ community lands code meeting in relation to a **designated project**, Council must provide instructions to the Lands Department on whether to:

- (a) reject having the designated project on ᑭᓱᓱᓱᓱᓱᓱ lands; or
- (b) direct that an environmental assessment be conducted on the **designated project**.

If Designated Project Rejected

(12) If Council provides the Lands Department instructions to reject having a designated project on ᑭᓱᓱᓱᓱᓱᓱ lands, the Lands Department must advise the proponent that their Application for Use of ᑭᓱᓱᓱᓱᓱᓱ Lands has been rejected.

If Environmental Assessment Directed: Negotiate Agreement with Proponent

(13) As soon as practical after Council directs that an environmental assessment be conducted on a **designated project**, the Lands Department must:

- (a) speak directly with the proponent;
- (b) confirm whether the proponent wishes to:
 - (i) pursue the required environmental assessment as part of the application for use of ᑭᓱᓱᓱᓱᓱᓱ lands process, or
 - (ii) abandon their application for use of ᑭᓱᓱᓱᓱᓱᓱ lands;
- (c) if the proponent wishes to pursue the environmental assessment as part of the application for use of ᑭᓱᓱᓱᓱᓱᓱ lands process, enter into a written agreement with the proponent in relation to the conduct and costs of the environmental assessment, including:
 - (i) the name of the agreed upon independent environmental assessment specialist who will develop the terms of reference,

(ii) the name of the agreed upon independent environmental assessment specialist who will conduct the environmental assessment; and

(iii) that the proponent will pay all costs associated with:

(A) ᑲᓱᓄᓐ's development of terms of reference for the environmental assessment,

(B) conducting the environmental assessment, and

(C) the drafting of a report to Council that meets the requirements set out in the terms of reference; and

(d) if the proponent wishes to abandon their application for use of ᑲᓱᓄᓐ lands, document in the Lands Department file to which the application relates that the proponent has made such a decision.

Notice of Commencement of Environmental Assessment

(14) Where Council enters into an agreement with a proponent in relation to the costs of an environmental assessment, the Lands Department must ensure that a notice of commencement is posted on the ᑲᓱᓄᓐ website, and in a conspicuous spot at the ᑲᓱᓄᓐ administration office, as follows:

[ᑲᓱᓄᓐ / NAME OF PROPONENT]

NOTICE OF COMMENCEMENT OF ENVIRONMENTAL ASSESSMENT

[Proponent's Name] has commenced an environmental assessment process for the [Name of **Project**] proposed by [Name of Proponent] and that environmental assessment process will be conducted in compliance with the ᑲᓱᓄᓐ Environmental Review and Assessment Policy, which is consistent with the *Canadian Environmental Assessment Act*.

The [Name of **Project**] proposed to [enter summary description of the **project**].

The first step in the environmental assessment process is for ᑲᓱᓄᓐ to ensure terms of reference are developed that set out the requirements for how the environmental assessment must be conducted and information that must be included in the environmental assessment report. The terms of reference will be made available to ᑲᓱᓄᓐᓃᓃᓃ.

At the end of the environmental assessment process, [proponent's name] will submit an environmental assessment report to ᑲᓱᓄᓐ that includes the findings and conclusions of the environmental assessment with respect, at minimum, to the following factors:

- the environmental effects of the [name of **project**], including the environmental

effects of malfunctions or accidents that may occur in connection with the [name of **project**] and any cumulative environmental effects that are likely to result from the **designated project** in combination with other physical activities that have been or will be carried out;

- the significance of the environmental effects of the [name of **project**];
- comments from ʔaḡam departments, the Lands Committee and ʔaḡamnik with respect to the environmental effects of [name of **project**] and the impact of those environmental effects on ʔaḡam's:
 - health and socio-economic conditions,
 - physical and cultural heritage,
 - current and future use of lands and resources for traditional purposes, or
 - interests in any structure, site or thing that is of historical, archeological, paleontological or architectural significance to ʔaḡam;
- mitigation measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the [name of **project**];
- the purpose of the [name of **project**];
- alternative means of carrying out the [name of **project**] that are technically and economically feasible and the environmental effects of such alternative means;
- any other matter relevant to the environmental assessment that is specifically directed by Council.

ʔaḡam has the option of requiring that the environmental assessment report be reviewed by an independent environmental assessment specialist. Prior to Council's review of the environmental assessment report and decision on whether the [Name of **Project**] will be allowed to be carried out on ʔaḡam lands, the report will be made available to ʔaḡam departments, the Lands Committee and ʔaḡamnik, each of whom will have an opportunity to provide their comments.

For further information regarding the [Name of **project**], please contact:

[Name of Contact Person at Lands Department]
ʔaḡam Lands Department

7470 Mission Road
Cranbrook, BC V1C 7E5

Telephone: [XXX-XXX-XXXX]
Email: [email address]

Draft Terms of Reference

(15) Within thirty (30) days of the notice of commencement, the proponent must ensure that draft terms of reference:

(a) are developed by the agreed upon environmental assessment specialist at the expense of the proponent;

(b) set out the process that must be followed in producing the environmental assessment report and the content that must be required in the environmental assessment report; and

(c) are compliant with the *Canadian Environmental Assessment Act*.

(16) The draft terms of reference must require the following information to be included in the environmental assessment report:

(a) the probable environmental effects of the **designated project**, including the environmental effects of malfunctions or accidents that may occur in connection with the **designated project** and any cumulative environmental effects that are likely to result from the **designated project** in combination with other physical activities that have been or will be carried out;

(b) the significance of the environmental effects of the **designated project**;

(c) comments from Inuit departments, the Lands Committee and Inuit with respect to the environmental effects of **designated project** and the impact of those environmental effects on Inuit's:

(i) health and socio-economic conditions,

(ii) physical and cultural heritage,

(iii) current and future use of lands and resources for traditional purposes, or

(iv) interests in any structure, site or thing that is of historical, archeological, paleontological or architectural significance to Inuit;

(d) mitigation measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the **designated project**;

(e) the purpose of the **designated project**;

(f) alternative means of carrying out the **designated project** that are technically and economically feasible and the environmental effects of such alternative means; and

(g) any other matter relevant to the environmental assessment that is specifically directed by Council.

Finalizing Terms of Reference

(17) The proponent must work with the Lands Department and Council to finalize the terms of reference.

(18) Council may require in the terms of reference that the proponent, at the proponent's expense, hold an open house, workshop or other community meeting to present the draft environmental assessment report to ᐅᐱᑦᐅᐅᐅ.

(19) Council must approve the terms of reference.

Delivery of Terms of Reference to Proponent

(20) The Lands Department must deliver to the proponent a copy of the terms of reference.

Draft Environmental Assessment Report

(21) Within one hundred (100) days of receiving a copy of the terms of reference, the agreed upon independent environmental assessment specialist must prepare a draft environmental assessment report that is in compliance with the terms of reference and that identifies and assesses the environmental effects of the **designated project** and the measures proposed to mitigate those effects.

Review of Draft Environmental Assessment Report

(22) Within sixty (60) days of the Lands Department receiving the draft environmental assessment report, the Lands Department must:

(a) review the draft environmental assessment report to verify that it clearly provides the information required by the terms of reference;

(b) if necessary, require additional information to be added to the draft environmental assessment report to clarify the potential environmental effects and proposed mitigation measures; and

- (c) confirm that the draft environmental assessment report is complete.

Environmental Assessment Report Comment Period

(23) Once the Lands Department confirms that the draft environmental assessment report is complete, the Lands Department must:

- (a) deliver a copy of the draft environmental assessment report to each ?a?am department and to the Lands Committee:

- (i) inviting them to provide written comments to the Lands Department respecting the draft environmental assessment report within twenty (20) days of receiving the draft environmental assessment report,

- (ii) setting out the person at the Lands Department to whom comments should be addressed and the methods of delivery that will be allowed; and

- (iii) setting out the date and time by which comments must be received to be considered in the screening, and

- (b) post a copy of the draft environmental assessment report on the ?a?am website and in a conspicuous spot at the ?a?am administration office:

- (i) inviting ?a?amnik to provide written comments to the Lands Department respecting the draft environmental assessment report within twenty (20) days of the draft environmental assessment report being posted,

- (ii) setting out the person at the Lands Department to whom comments should be addressed and the methods of delivery that will be allowed; and

- (iii) setting out the date and time by which comments must be received to be considered in the final environmental assessment report; and

- (c) at the proponent's expense, hold a ?a?am community lands code meeting in accordance with section 10 of the *?a?am Amended Land Code* and subsections 7(6) to 7(11) of this Policy to present the draft environmental assessment report to ?a?amnik.

- (d) if required under the terms of reference, the proponent must, at the proponent's expense, hold an open house, workshop or other community meeting to present the draft environmental assessment report to ?a?amnik.

Finalization of Environmental Assessment Report

(24) Within thirty (30) days of the draft environmental assessment report comment period coming to an end, the Lands Department must provide to the proponent and the agreed upon independent environmental assessment specialist who is responsible for conduct of the environmental assessment with:

- (a) all written comments from ʔaᑭam departments, the Lands Committee and ʔaᑭamnik, regarding the draft environmental assessment report; and
- (b) a list of suggested edits and comments from the Lands Department to be made to the draft environmental assessment report.

(25) Within thirty (30) days of receiving the list of suggested edits and comments from the Lands Department to be made to the draft environmental assessment report, the independent environmental assessment specialist who is responsible for conduct of the environmental assessment must:

- (a) finalize the environmental assessment report, incorporating all information provided by the Lands Department; and
- (b) provide the final environmental assessment report to the Lands Department.

Report to Council

(26) Within five (5) days of receiving a final environmental assessment report from the independent environmental assessment specialist who is responsible for conduct of an environmental assessment, the Lands Department must:

- (a) review the environmental assessment report and draft a written recommendation to Council on whether, in the opinion of the Lands Department, the environmental assessment report indicates the presence of **likely**, **significant** and **adverse** environmental effects;
- (b) compile a copy of the following documents and provide them to Council, for their consideration:
 - (i) the **designated project** description;
 - (ii) the terms of reference;
 - (iii) the final environmental assessment report;

(iv) the Lands Departments written recommendation on whether the environmental assessment report indicates the presence of **likely, significant** and **adverse** environmental effects; and

(v) all written comments from ᑭᓱᓱᓱ departments, the Lands Committee and ᑭᓱᓱᓱᓱ on the draft environmental assessment report.

Determination of Likely, Significant, and Adverse Environmental Effects

(27) Within three hundred and sixty-five (365) days from the date that a notice of commencement is delivered to ᑭᓱᓱᓱ departments and the Lands Committee, and posted on the ᑭᓱᓱᓱ website and in the ᑭᓱᓱᓱ administration office, Council must make a decision by Band Council Resolution that sets out one of the following:

(a) We, the Council of ᑭᓱᓱᓱ, have determined that subject to [name of proponent]'s compliance with the following mitigating measures, the [**designated project** name] is not likely to cause significant adverse environmental effects as defined in the *Canadian Environmental Assessment Act, 2012*:

(i) [list any required mitigating measures]

We have further determined that [proponent's name] may proceed with the [**designated project** name] conditional on the above-mentioned mitigating measures being complied with and the following approvals being granted:

(i) [list any required approvals....]

(b) We, the Council of ᑭᓱᓱᓱ, have determined that despite the proposed mitigating measures, the [**designated project** name] is likely to cause significant adverse environmental effects as defined in the *Canadian Environmental Assessment Act, 2012*;

We have further determined that those effects are justified in the circumstances as follows:

(i) [list circumstances that justify the significant adverse environmental effects],

(ii) [list...],

Therefore, [proponent's name] may proceed with the [**designated project** name] conditional on the following mitigating measures being complied with and approvals being granted:

(ii) [list any required mitigating measures and approvals....]; or

(c) We, the Council of ᑭᐱᑭᐱ, have determined that despite the proposed mitigating measures, the [**designated project** name] is likely to cause significant adverse environmental effects as defined in the *Canadian Environmental Assessment Act, 2012*;

We have further determined that those effects are not justified in the circumstances.

Therefore, [proponent's name] may not proceed with the [**designated project** name].

Delivery of Band Council Resolution

(28) Where Council has passed a Band Council Resolution regarding an environmental assessment decision in relation to a **designated project**, the Lands Department must ensure that a copy of the Band Council Resolution is provided to the proponent as soon as is reasonably practical.

Implement Mitigation Measures and Obtain Additional Approvals

(29) After Council has passed a Band Council Resolution that sets out the approval of a **designated project** with regard to an environmental assessment, the proponent must obtain all other necessary approvals from ᑭᐱᑭᐱ in relation to the **designated project** before commencing the **designated project** on ᑭᐱᑭᐱ lands.

(30) The Lands Department must ensure that all mitigation measures identified in a Band Council Resolution that approves an environmental assessment are either:

(a) completed by the proponent prior to the commencement of the **designated project**; or

(b) incorporated as conditions into all leases, licences, permits, easements and all Council authorizations in relation to the **designated project**.

Section 8 References

(31) Besides this policy, consult the following resources:

- (a) all policies in this Manual that relate to the type of land instrument being requested to which the project or designated project relates;
- (b) *ᑲᓄᓐᓄ ᓄᓄᓄᓄᓄ ᓄᓄᓄᓄ*;
- (c) *Canadian Environmental Assessment Act*, S.C. 2012, c. 19, s. 52;
- (d) *Regulations Designating Physical Activities*, SOR/2012-147;
- (e) *Prescribed Information for the Description of a Designated Project Regulations*, SOR/2012-148;
- (f) *Reference Guide: Determining Whether A Project is Likely to Cause Significant Adverse Environmental Effects*, Canadian Environmental Assessment Agency Publication, 1994
- (g) *Fisheries Act*, R.S.C., 1985, c. F-14;
- (h) *Species At Risk Act*, S.C. 2002, c. 29;
- (i) *Migratory Birds Convention Act*, S.C. 1994, c. 22.

Appendix A: Reference Guide: Determining Whether A Project is Likely to Cause Significant Adverse Environmental Effects

**A Reference Guide
for the
Canadian Environmental
Assessment Act**

**Determining Whether A Project
is Likely to Cause
Significant Adverse
Environmental Effects**

**Prepared by the
Federal Environmental Assessment
Review Office**

November 1994

Reference Guide: Determining Whether A Project is Likely to Cause Significant Adverse Environmental Effects

1. Introduction

This reference guide describes an approach for deciding whether a project is likely to cause significant environmental effects under the *Canadian Environmental Assessment Act (Act)*. It is one of several reference guides intended to provide the supporting documentation for the *Responsible Authority's Guide to the Canadian Environmental Assessment Act* prepared by the Federal Environmental Assessment Review Office (FEARO). All of the reference guides are complimentary to the *Responsible Authority's Guide to the Canadian Environmental Assessment Act* but go into more detail on individual issues. Specifically, this reference guide:

- reviews the concept of significance;
- discusses the relevant requirements of the Act;
- proposes an approach for deciding whether a project is likely to cause significant adverse environmental effects under the Act;
- provides a list of key references on the subject.

As the practice of environmental assessment evolves, it will be necessary to update and revise both the *Responsible Authority's Guide to the Canadian Environmental Assessment Act* and the individual reference guides. These guides should be seen as evolving documents rather than as static textual materials. Any suggestions for updates or revisions should be directed to:

Director
Process Development
Policy and Regulatory Affairs
Federal Environmental Assessment Review Office
14th Floor, Fontaine Building
200 Sacré-Coeur Boulevard
Hull, Quebec
K1A 0H3

This guide is intended primarily for responsible authorities (RAs) and the Minister of the Environment (the Minister), since under the Act, they are responsible for determining when a project is likely to cause significant adverse environmental effects.

2. The Concept of Significance

Deciding whether a project is likely to cause significant adverse environmental effects is central to the concept and practice of environmental assessment. Whatever

adverse environmental effects are addressed and whatever methods are used, the focus of environmental assessment always narrows down to a decision about whether the project is likely to cause significant adverse environmental effects.

The concept of significance cannot be separated from the concepts of "adverse" and "likely." Environmental effects that are **adverse**, and significant adverse environmental effects that are *likely*, are referred to for convenience in this guide as "the related matters."

Deciding when a project is likely to cause significant adverse environmental effects is not new to environmental assessment (EA). This concept was included in the Environmental Assessment and Review Process (EARP) Guidelines Order and can be found in most EA legislation, procedural manuals, documents and the research literature. But there is little guidance available on what to consider when determining significance and the related matters and how this should be done.

3. The Requirements of the *Canadian Environmental Assessment Act*

The concept of significance is extremely important in the Act. One of the stated purposes of the Act is:

to ensure that projects that are to be carried out in Canada or on federal lands do not cause significant adverse environmental effects outside the jurisdictions in which the projects are carried out " (section 4 (c)).

The central test in the Act is whether a project is ***likely to cause significant adverse environmental effects***. This determination is an objective test from a legal standpoint, which means that all decisions about whether or not projects are likely to cause adverse environmental effects must be supported by findings based on the requirements set out in the Act.

The definitions of "environment" and "environmental effect" are the starting point for this test. The Act defines the environment as:

the components of the Earth, and includes

- (a) land, water and air, including all layers of the atmosphere,***
- (b) all organic and inorganic matter and living organisms, and***
- (c) the interacting natural systems that include components referred to in paragraphs (a) and (b) (section 2(1)).***

Environmental effect means, in respect of a project,

- (a) **any change that the project may cause in the environment, including any effect of any such change on health and socio-economic conditions, on physical and cultural heritage, on the current use of lands and resources for traditional purposes by aboriginal persons, or on any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, and**
- (b) **any change to the project that may be caused by the environment,**

whether any such change occurs within or outside Canada (section 2 (7)).

Only environmental effects as defined in the Act can be considered in determinations of significance and the related matters. It follows that the determination of significance and the related matters can consider only:

- direct changes in the environment caused by the project;
- the effects of these environmental changes on:
 - health and socio-economic conditions,
 - physical and cultural heritage,
 - current use of lands and resources for traditional purposes by aboriginal persons,
 - any structure, site or thing that is of historical, archaeological, paleontological or architectural significance;
 - or
- changes to the project caused by the environment.

For example, the socio-economic effects of a project may or may not be factors in determining significance and the related matters. If a socio-economic effect (such as job losses) is caused by a change in the environment (such as loss of fish habitat), which is in turn caused by the project, then the socio-economic effect **is** an environmental effect within the meaning of the Act and must be considered when determining significance and the related matters. If the socio-economic effect is not caused by a change in the environment, however, but by something else related to the project (for example, reallocation of funding as a result of the project), then the socio-economic effect is **not** an environmental effect within the meaning of the Act and cannot be considered in the determination of significance and the related matters.

Determinations of significance and the related matters must be made:

- following a screening;
- after a comprehensive study report has been completed;
- after a mediation or review panel report has been submitted.

Following a screening, the RA must decide whether or not the project is likely to cause significant adverse environmental effects, taking into account the implementation of mitigation measures (section 20(1)). If the RA decides that the project is not likely to cause significant adverse environmental effects, it may allow the project to proceed, while ensuring that any appropriate mitigation measures are implemented. If the RA decides that the project is likely to cause significant adverse environmental effects (taking into account the implementation of mitigation measures) and these effects cannot be justified in the circumstances, it must not do anything that would permit the project to proceed.

The RA must refer the project to the Minister for referral to a mediator or a review panel when:

- it is uncertain whether the project is likely to cause significant adverse environmental effects (taking into account the implementation of mitigation measures);
- it decides that the project is likely to cause significant adverse environmental effects that may be justifiable in the circumstances; or
- public concerns warrant a referral.

When a comprehensive study report is sent to the Minister and the Canadian Environmental Assessment Agency (the Agency) by an RA, the Minister is required to make a process decision about whether or not further review of the project is necessary, or whether a final decision can be made by the RA (section 23). This decision must be based on the comprehensive study report. If the Minister decides that the project, taking into account the implementation of mitigation measures, is not likely to cause significant adverse environmental effects or that it is likely to cause significant adverse environmental effects that cannot be justified in the circumstances, the Minister must refer the project back to the RA for appropriate action. If it is uncertain, however, whether the project is likely to cause any significant adverse environmental effects or that the project will cause significant adverse environmental effects that may be justified in the circumstances, the project must be referred to a mediator or a review panel. Public concerns may also warrant referring the project to a mediator or a review panel.

After a panel review or a mediation is completed, or when a comprehensive study report of a project is referred back to the RA by the Minister, the RA must make the final determination and decide whether the project is likely to cause significant adverse environmental effects (section 37(1)). If the project is not likely to cause significant adverse environmental effects, or if it is likely to cause significant adverse environmental effects (taking into account the implementation of mitigation measures) that can be justified in the circumstances, the RA is free to provide federal support to or participate in the project. If, on the other hand, the RA considers that the project is likely to cause significant adverse environmental effects that cannot be justified in the

circumstances, it must not do anything to permit the project to proceed.

Four points merit special attention. First, with the exception of transboundary boundary reviews, the RA makes the determination about whether the project is likely to cause significant adverse environmental effects. The Minister, however, does make a process determination of significance and the related matters following receipt of a comprehensive study report from an RA. After considering whether the project is likely to cause significant adverse environmental effects, as described in the comprehensive study report, the Minister must make a decision whether further study, through a panel review or mediation, is warranted.

Second, in *all* cases, significance and the related matters are determined only after taking into account any mitigation measures the RA considers appropriate. In other words, no final determination can be made about the significance of the likely adverse environmental effects or the related matters unless the implementation of any appropriate mitigation measures has been considered.

Third, public input into the determination of significant adverse environmental effects must limit itself to questions related to scientific analysis and interpretation. The public, for example, could provide new evidence, offer a different interpretation of the facts, or question the credibility of the conclusions. Issues that are not directly linked to the scientific (including traditional ecological knowledge) analysis of environmental effects, such as long-term unemployment in a community or fundamental personal values, cannot be introduced into the determination at this step. Such public concerns and values are given prominence elsewhere in the EA process. Under the Act, serious public concerns can warrant referral of the project to a public review through either mediation or a public panel review. That is, public concerns – that may or may not have to do with scientific issues -- can prompt the EA process to take a closer look at the project.

Fourth, if there is a determination that the project, taking into account the implementation of appropriate mitigation measures, is likely to cause significant adverse environmental effects, then the RA must also determine whether or not such effects can be justified under the circumstances. The Act is clear that the project may be allowed to proceed if any likely significant adverse environmental effects can be justified in the circumstances. This is the final “test” in the Act. The RA can decide that likely significant adverse environmental effects are not justified after a screening, comprehensive study report, or a public review. It can decide that they *are* justified, however, only after a public review in the form of mediation or a panel review.

The central question for the RA or the Minister in the process decision following submission of a comprehensive study report, remains: “Is the project likely to cause any significant adverse environmental effects?” Thus, only environmental effects that are both *likely and adverse* can be considered in determinations of significance.

Environmental effects that are unlikely or are not adverse cannot be considered in significance decisions. It is important to note that the test is not of "significantly adverse" effects, but of adverse effects that are significant. The "likely" applies to the environmental effects of the project that are both adverse and significant.

4. A Framework

This section provides a framework for guiding RAs in determining whether environmental effects are *adverse, significant, and likely* within the context of the Act.

The framework consists of three general steps:

- Step 1: Deciding Whether the Environmental Effects are Adverse
- Step 2: Deciding Whether the Adverse Environmental Effects are Significant
- Step 3: Deciding Whether the Significant Adverse Environmental Effects are Likely

Each step consists of a set of criteria that RAs and the Minister should use to address these three questions, as well as examples of methods and approaches that can be applied. To apply the criteria, the RA and the Minister must rely on information provided by the proponent. Thus, the RA or the Minister should ensure that the proponent provides the necessary information (section 18(2)), by specifying the types of information required to determine significance and the related matters when the scope of the project is defined by the RA or the Minister.

4.1 Step 1: Deciding Whether the Environmental Effects are Adverse

In making this decision, it may be helpful to separate the effects on people from the effects on the environment, recognizing of course that people are integral to most ecosystems. It is important to remember that only "environmental effects" as defined in the Act can be considered.

Table 1 lists the major factors that should be used to determine whether environmental effects are adverse. Obviously, the importance of individual characteristics will be different in different EAs. To assist the RA and the Minister in deciding whether the environmental effects are adverse, the proponent should be required to submit information on these factors.

The most common way of determining whether a project's environmental effects are adverse is to compare the quality of the existing environment with the predicted quality of the environment once the project is in place, using some or all of the criteria shown in Table 1 as variables. This method implies a need for environmental monitoring information collected over time and/or distance before the project is in place. It also assumes normal baseline environmental conditions, although this may not always be

the case (e.g., fluctuating water levels in a river). It is the proponent's responsibility to ensure that such information is put before the RA. In most cases, the proponent should be expected to collect and synthesize the available information on baseline environmental quality. In some cases where there are gaps in information, the proponent can be requested to collect new information, depending on the size and nature of the project and the proponent's resources.

Occasionally, information from other situations may be helpful in determining whether the environmental effects are adverse. For example, if there are similar or identical projects already in place in similar ecosystems, it may be helpful for the proponent to provide information on their environmental effects.

4.2 Step 2: Deciding Whether the Adverse Environmental Effects are Significant

There are several criteria that should be taken into account in deciding whether the adverse environmental effects are significant. These are briefly discussed below:

Magnitude of the adverse environmental effect

Magnitude refers to the severity of the adverse environmental effects. Minor or inconsequential effects may not be significant. On the other hand, if the effects are major or catastrophic, the adverse environmental effects will be significant. When using this criterion, it is important to consider the extent to which the project could trigger or contribute to any cumulative environmental effects.

Table 1: Factors in determining adverse environmental effects

Changes in the Environment	Effects on People Resulting from Environmental Changes
<ul style="list-style-type: none"> • Negative effects on the health of biota, including plants, animals, and fish; • Threat to rare or endangered species; • Reductions in species diversity or disruption of food webs; • Loss of or damage to habitats, including habitat fragmentation; • Discharges or release of persistent and/or toxic chemicals, microbiological agents, nutrients (e.g., nitrogen, phosphorus), radiation, or thermal energy (e.g., cooling wastewater); • Population declines, particularly in top predator, large, or long-lived species; • The removal of resource materials (e.g., peat, coal) from the environment; • Transformation of natural landscapes; • Obstruction of migration or passage of wildlife; • Negative effects on the quality and/or quantity of the biophysical environment (e.g., surface water, groundwater, soil, land, and air). 	<ul style="list-style-type: none"> • Negative effects on human health, well-being, or quality of life; • Increase in unemployment or shrinkage in the economy; • Reduction of the quality or quantity of recreational opportunities or amenities; • Detrimental change in the current use of lands and resources for traditional purposes by aboriginal persons; • Negative effects on historical, archaeological, paleontological, or architectural resources; • Decreased aesthetic appeal or changes in visual amenities (e.g., views); • Loss of or damage to commercial species or resources; • Foreclosure of future resource use or production;

Geographic extent of the adverse environmental effects

Localized adverse environmental effects may not be significant. Alternatively, widespread effects may be significant. When considering this criterion, it will be important to take into account the extent to which adverse environmental effects caused by the project may occur in areas far removed from it (e.g., acid rain and the long-range transportation of atmospheric pollutants), as well as contribute to any cumulative environmental effects.

Duration and frequency of the adverse environmental effects

Long term and/or frequent adverse environmental effects may be significant. Future adverse environmental effects should also be taken into account. For example, many human cancers associated with exposure to ionizing radiation have long latency periods of up to 30 years. Obviously, when considering future adverse environmental effects, the question of their likelihood becomes very important.

Degree to which the adverse environmental effects are reversible or irreversible

Reversible adverse environmental effects may be less significant than adverse environmental effects that are irreversible. In practice, it can be difficult to know whether the adverse environmental effects of a project will be irreversible or not. It will be important to consider any planned decommissioning activities that may influence the degree to which the adverse environmental effects are reversible or irreversible.

Ecological context

The adverse environmental effects of projects may be significant if they occur in areas or regions that:

- have already been adversely affected by human activities; and/or
- are ecologically fragile and have little resilience to imposed stresses.

To assist the RA and the Minister in deciding significance, proponents should always be required to submit information on these criteria. All of them should be considered in deciding whether the adverse environmental effects are significant or not. Different criteria will be important in different EAs and the extent to which an individual criterion will influence the overall determination of significance will vary between assessments.

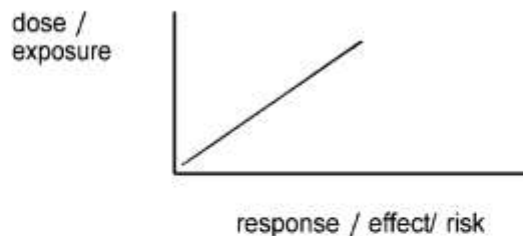
The most common method of determining whether the adverse environmental effects of a project are significant is to use environmental standards, guidelines, or objectives. If the level of an adverse environmental effect is less than the standard, guideline, or objective, it may be insignificant. If, on the other hand, it exceeds the standard,

guideline, or objective, it may be significant.

Environmental standards, guidelines and objectives have been established by federal, provincial, and in some cases municipal departments, ministries, and agencies. They often define either maximum levels of emissions or discharges of specific hazardous agents into the environment or maximum acceptable levels of specific hazardous agents in the environment. They are usually based on the results of studies in the field and with laboratory animals, available technology, and/or prevailing attitudes and values.

However, environmental standards, guidelines and objectives have been established only for a relatively small number of hazardous agents, such as some chemicals, radiation, and physical parameters including acidity and acceptable levels of particulates or suspended solids. Since there are no standards, guidelines, or objectives for most environmental effects, they cannot be used to determine the significance of many adverse environmental effects, nor do they necessarily protect ecological health. In addition, standards, guidelines, or objectives are set on the basis of individual hazardous agents and do not allow for any interactions that may occur (i.e., cumulative environmental effects).

Another method of determining significance is quantitative risk assessment, which is often used to determine the significance of the risks to human health from ionizing radiation and carcinogenic chemicals. Its use is restricted to agents that have predictable dose-response (or exposure-effect) relationships. Often derived from experiments using laboratory animals, these relationships usually approximate straight lines (see below).



The response, effect, or risk is often measured in terms of increased cancer incidence per million people exposed. In quantitative risk assessment, an "acceptable" level of risk is determined. Conventional levels for "acceptable risk" to the public are an increased incidence of between one in 10 thousand to 1 in 10 million. By using the dose-response relationship, it can be determined whether or not the dose/exposure

would result in an unacceptable level of risk. In other words, significance is determined on the basis of an "acceptable level" of a specified risk, often cancer incidence.

This approach assumes that there is an "acceptable" level of risk. In practice, occupational health and safety standards allow for a greater degree of risk than public exposure standards. The Delaney Clause in the U.S. *Food and Drugs Act* establishes zero as the acceptable or significant increased cancer risk associated with food additives. It is important to be clear on who determines acceptable risk levels as well as how they are determined when quantitative risk assessments are included in **EAs**. As well as determining significance, quantitative risk assessment can also be used to determine the probability of occurrence of significant environmental effects, i.e., likelihood.

If there are no relevant environmental standards, guidelines, or objectives and quantitative risk assessment is not possible, other methods and approaches must be used. In larger **EAs**, such as panel reviews, it may be possible to develop methods and approaches for determining significance for individual projects. In others, it will be necessary for the RA or the Minister to use a qualitative approach based on their best professional judgement.

When a project's adverse environmental effects are being compared to the adverse environmental effects of an alternative means of carrying out the project, weighting and ranking methods can assist in deciding whether the adverse environmental effects are significant. Generally, quantitative methods are used to weight or rank the individual adverse environmental effects of different alternatives which are then added to produce a total effect "score." These methods can be helpful in summarizing and comparing the effects of alternatives, but they can also hide the assumptions inherent in the weighting or ranking system. As well, weighting and ranking methods compare total effects, so that a locally significant individual effect may appear unimportant in the overall scheme. In other words, there is a loss of specificity. These problems can be at least partially resolved by ensuring that weighting and ranking exercises are conducted by those with a wide variety of experience and expertise.

Whatever methods are used to determine significance, they should be based on the criteria outlined above.

Cost-benefit analysis cannot be used to determine significance in federal **EAs**, because it compares the estimated environmental costs and benefits of a project, whereas the Act clearly states that only **adverse** environmental effects are to be considered in determining significance and likelihood. Although cost-benefit analysis could be used to justify proceeding with a project that is likely to cause significant adverse environmental effects, this justification can take place only **after** the likelihood of the significant adverse environmental effects has been determined.

4.3 Step 3: Deciding Whether the Significant Adverse Environmental Effects Are Likely

When deciding the likelihood of significant adverse environmental effects, there are two criteria to consider:

Probability of occurrence

If there is a high probability that the identified significant adverse environmental effects will occur, obviously they are likely. Conversely, if there is a low probability of occurrence, the significant adverse environmental effects are unlikely.

Scientific uncertainty

There will always be some scientific uncertainty associated with the information and methods used in EAs. This is often termed the "confidence limits". If the confidence limits are high, there is a low degree of uncertainty that the conclusions are accurate and that the significant adverse environmental effects are likely or not. If the confidence limits are low, there is a high degree of uncertainty about the accuracy of the conclusion. In this case, it will be difficult to decide whether the significant adverse environmental effects are likely or not. If low scientific uncertainty can lead to an unambiguous conclusion of likelihood or unlikelihood, conversely high uncertainty cannot be a basis for a clear conclusion about likelihood. In this case, only the probability of occurrence criterion should be used to determine likelihood.

To assist the RA or the Minister in deciding likelihood, proponents should be required to submit information on these criteria.

The use of confidence limits has already been mentioned as a method of determining likelihood based on scientific certainty or uncertainty. Others include a range of statistical methods that are used to determine "statistical significance," which is usually defined as the low probability of error. Although statistical methods themselves are not discussed in this paper, it is useful to note the two commonly encountered types of statistical errors. Type 1 is a false positive, that is, a false conclusion that there will be a significant adverse environmental effect. Type 2 is a false negative, that is, a false conclusion that there will not be a significant adverse environmental effect. Statistical results provided by proponents should always be required to state the probabilities of making both types of errors.

Another method used to determine the probability of occurrence is quantitative risk assessment. (See section 4.2 above.)

RAs and the Minister should require proponents to use statistical methods to determine statistical significance, whenever possible. These methods will facilitate a determination of likelihood by the RA or the Minister. In **EAs** where numerical methods cannot be used or are not feasible, the RA or the Minister must use a qualitative approach to determining likelihood, based on their best professional judgement.

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Appendix B: Regulations Designating Physical Activities



CANADA

CONSOLIDATION

CODIFICATION

**Regulations Designating
Physical Activities**

**Règlement désignant les
activités concrètes**

SOR/2012-147

DORS/2012-147

Current to May 25, 2015

À jour au 25 mai 2015

Last amended on December 31, 2014

Dernière modification le 31 décembre 2014

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OFFICIAL STATUS
OF CONSOLIDATIONS

Subsections 31(1) and (3) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published
consolidation in
evidence

31. (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

...

Inconsistencies
in regulations

(3) In the event of an inconsistency between a consolidated regulation published by the Minister under this Act and the original regulation or a subsequent amendment as registered by the Clerk of the Privy Council under the *Statutory Instruments Act*, the original regulation or amendment prevails to the extent of the inconsistency.

NOTE

This consolidation is current to May 25, 2015. The last amendments came into force on December 31, 2014. Any amendments that were not in force as of May 25, 2015 are set out at the end of this document under the heading "Amendments Not in Force".

CARACTÈRE OFFICIEL
DES CODIFICATIONS

Les paragraphes 31(1) et (3) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1^{er} juin 2009, prévoient ce qui suit :

Codifications
comme élément
de preuve

31. (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

[...]

Incompatibilité
— règlements

(3) Les dispositions du règlement d'origine avec ses modifications subséquentes enregistrées par le greffier du Conseil privé en vertu de la *Loi sur les textes réglementaires* l'emportent sur les dispositions incompatibles du règlement codifié publié par le ministre en vertu de la présente loi.

NOTE

Cette codification est à jour au 25 mai 2015. Les dernières modifications sont entrées en vigueur le 31 décembre 2014. Toutes modifications qui n'étaient pas en vigueur au 25 mai 2015 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

TABLE OF PROVISIONS

Section	Page
Regulations Designating Physical Activities	
1 Definitions	1
2 Designated activities — designated projects	4
3 Designated activities — participant funding program	4
4 Activities – Agency	5
*5 Coming into force	5
SCHEDULE	
PHYSICAL ACTIVITIES	6
RELATED PROVISIONS	13

TABLE ANALYTIQUE

Article	Page
Règlement désignant les activités concrètes	
1 Définitions	1
2 Activités concrètes — projets désignés	4
3 Activités concrètes — programmes d'aide financière	4
4 Activités liées à l'Agence	5
*5 Entrée en vigueur	5
ANNEXE	
ACTIVITÉS CONCRÈTES	6
DISPOSITIONS CONNEXES	13

Registration
SOR/2012-147 July 6, 2012

CANADIAN ENVIRONMENTAL ASSESSMENT ACT,
2012

Regulations Designating Physical Activities

The Minister of the Environment, pursuant to paragraphs 84(a) and (e) of the *Canadian Environmental Assessment Act, 2012*, makes the annexed *Regulations Designating Physical Activities*.

Ottawa, July 6, 2012

PETER KENT
Minister of the Environment

Enregistrement
DORS/2012-147 Le 6 juillet 2012

LOI CANADIENNE SUR L'ÉVALUATION
ENVIRONNEMENTALE (2012)

Règlement désignant les activités concrètes

En vertu des alinéas 84a) et e) de la *Loi canadienne sur l'évaluation environnementale (2012)*, le ministre de l'Environnement prend le *Règlement désignant les activités concrètes*, ci-après.

Ottawa, le 6 juillet 2012

Le ministre de l'Environnement
PETER KENT

^a S.C. 2012, c. 19, s. 52

^a L.C. 2012, ch. 19, art. 52

REGULATIONS DESIGNATING PHYSICAL ACTIVITIES

RÈGLEMENT DÉSIGNANT LES ACTIVITÉS CONCRÈTES

<p>Definitions</p>	<p>1. The following definitions apply in these Regulations.</p> <p>“abandonment” [Repealed, SOR/2013-186, s. 1]</p> <p>“aerodrome” «aérodrome»</p> <p>“aerodrome” has the same meaning as in subsection 3(1) of the <i>Aeronautics Act</i>.</p> <p>“airport” [Repealed, SOR/2013-186, s. 1]</p> <p>“area of mine operations” «aire d’exploitation minière»</p> <p>“canal” «canal»</p> <p>“Class IA nuclear facility” [Repealed, SOR/2013-186, s. 1]</p> <p>“Class IB nuclear facility” [Repealed, SOR/2013-186, s. 1]</p> <p>“decommissioning” [Repealed, SOR/2013-186, s. 1]</p> <p>“drilling program” «programme de forage»</p> <p>“exploratory well” «puits d’exploration»</p> <p>“flowline” «conduite d’écoulement»</p> <p>“hazardous waste” «déchets dangereux»</p>	<p>1. Les définitions qui suivent s’appliquent au présent règlement.</p> <p>«aérodrome» S’entend au sens du paragraphe 3(1) de la <i>Loi sur l’aéronautique</i>.</p> <p>«aéroport» [Abrogée, DORS/2013-186, art. 1]</p> <p>«aire d’exploitation minière» La surface occupée, au niveau du sol, par toute installation d’exploitation à ciel ouvert ou souterraine, tout complexe usinier ou toute aire d’entreposage des terrains de couverture, des stériles, des résidus miniers ou de minerai.</p> <p>«au large des côtes» Se dit d’un élément ou d’une action situé dans l’une ou l’autre des zones suivantes :</p> <p>a) une zone sous-marine décrite à l’alinéa 3b) de la <i>Loi sur les opérations pétrolières au Canada</i>, à l’égard de laquelle une autorisation est exigée aux termes de cette loi en vue de la recherche, notamment par forage, de la production, de la rationalisation de l’exploitation, de la transformation ou du transport du pétrole ou du gaz;</p> <p>b) une zone à l’égard de laquelle une autorisation est exigée, aux termes de la <i>Loi de mise en œuvre de l’Accord atlantique Canada — Terre-Neuve-et-Labrador</i> ou de la <i>Loi de mise en œuvre de l’Accord Canada — Nouvelle-Écosse sur les hydrocarbures extracôtiers</i>, en vue de la recherche, notamment par forage, de la production, de la rationalisation de l’exploitation, de la transformation ou du transport du pétrole ou du gaz.</p> <p>«canal» Voie navigable artificielle construite pour la navigation.</p>	<p>Définitions</p> <p>«aérodrome» “aerodrome”</p> <p>«aire d’exploitation minière» “area of mine operations”</p> <p>«au large des côtes» “offshore”</p> <p>«canal» “canal”</p>
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and “hazardous recyclable material” as defined in section 2 of those Regulations but does not include nuclear substances.

“marine terminal”
«terminal maritime»

“marine terminal” means

(a) an area normally used for berthing ships and includes wharves, bulkheads, quays, piers, docks, submerged lands, and areas, structures and equipment that are

(i) connected with the movement of goods between ships and shore and their associated storage areas, including areas, structures and equipment used for the receiving, handling, holding, consolidating, loading or unloading of waterborne shipments, or

(ii) used for the receiving, holding, regrouping, embarkation or landing of waterborne passengers; and

(b) any area adjacent to the areas, structures and equipment referred to in paragraph (a) that is used for their maintenance.

“migratory bird sanctuary”
«réfuge d'oiseaux migrateurs»

“migratory bird sanctuary” means an area set out in the schedule to the *Migratory Bird Sanctuary Regulations*.

“new right of way”
«nouvelle emprise»

“new right of way” means land that is subject to a right of way that is proposed to be developed for an electrical transmission line, an oil and gas pipeline, a railway line, or an all-season public highway and that is not alongside and contiguous to an existing right of way.

“nuclear facility”
«installation nucléaire»

“nuclear facility” has the same meaning as in section 2 of the *Nuclear Safety and Control Act*.

“nuclear substance”
«substance nucléaire»

“nuclear substance” has the same meaning as in section 2 of the *Nuclear Safety and Control Act*.

«conduite d'écoulement» S'entend au sens du paragraphe 2(1) du *Règlement sur les installations pétrolières et gazières au Canada*.

«conduite d'écoulement»
“flowline”

«déchets dangereux» S'entend au sens de «déchet dangereux» à l'article 1 du *Règlement sur l'exportation et l'importation de déchets dangereux et de matières recyclables dangereuses* et de «matière recyclable dangereuse» à l'article 2 du même règlement. La présente définition exclut les substances nucléaires.

«déchets dangereux»
“hazardous waste”

«désaffectation» [Abrogée, DORS/2013-186, art. 1]

«emprise» [Abrogée, DORS/2013-186, art. 1]

«fabrique de pâtes et papiers» [Abrogée, DORS/2013-186, art. 1]

«fermeture» [Abrogée, DORS/2013-186, art. 1]

«installation nucléaire» S'entend au sens de l'article 2 de la *Loi sur la sûreté et la réglementation nucléaires*.

«installation nucléaire»
“nuclear facility”

«installation nucléaire de catégorie IA» [Abrogée, DORS/2013-186, art. 1]

«installation nucléaire de catégorie IB» [Abrogée, DORS/2013-186, art. 1]

«mine d'uranium» S'entend d'une mine au sens de l'article 1 du *Règlement sur les mines et les usines de concentration d'uranium*.

«mine d'uranium»
“uranium mine”

«nouvelle emprise» Terrain qui est assujéti à un droit de passage, qui est destiné à être aménagé pour une ligne de transport d'électricité, un pipeline d'hydrocarbures, une ligne de chemin de fer ou une voie publique permanente, et qui n'est pas situé le long d'une emprise existante ni contiguë à celle-ci.

«nouvelle emprise»
“new right of way”

<p>“offshore” «au large des côtes»</p>	<p>“offshore” means located in</p> <p>(a) in a submarine area described in paragraph 3(b) of the <i>Canada Oil and Gas Operations Act</i> in respect of which an authorization under that Act is required for the exploration and drilling for, or the production, conservation, processing or transportation of, oil or gas; or</p> <p>(b) an area in respect of which an authorization under the <i>Canada-Newfoundland and Labrador Atlantic Accord Implementation Act</i> or the <i>Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act</i> is required for the exploration and drilling for, or the production, conservation, processing or transportation of, oil or gas.</p>	<p>«pâte» [Abrogée, DORS/2013-186, art. 1]</p> <p>«pipeline d’hydrocarbures» Pipeline qui est utilisé, ou destiné à être utilisé, pour le transport d’hydrocarbures, seuls ou avec tout autre produit.</p> <p>«plan d’eau» Tout plan d’eau jusqu’à la laisse des hautes eaux. La présente définition vise notamment les canaux, les réservoirs et les océans, ainsi que les terres humides au sens de <i>La Politique fédérale sur la conservation des terres humides</i> publiée en 1991 par le ministère de l’Environnement, mais exclut les étangs de traitement des eaux usées ou des déchets et les étangs de résidus miniers.</p>	<p>«pipeline d’hydrocarbures» “oil and gas pipeline”</p> <p>«plan d’eau» “water body”</p>
<p>“oil and gas pipeline” «pipeline d’hydrocarbures»</p>	<p>“oil and gas pipeline” means a pipeline that is used, or is to be used, for the transmission of hydrocarbons alone or with any other commodity.</p>	<p>«produit de papier» [Abrogée, DORS/2013-186, art. 1]</p> <p>«programme de forage» S’entend au sens du paragraphe 1(1) du <i>Règlement sur le forage et la production de pétrole et de gaz au Canada</i>.</p>	<p>«programme de forage» “drilling program”</p>
<p>“paper product” [Repealed, SOR/2013-186, s. 1]</p>	<p>“paper product” [Repealed, SOR/2013-186, s. 1]</p>	<p>«puits d’exploration» S’entend au sens du paragraphe 101(1) de la <i>Loi fédérale sur les hydrocarbures</i>. La présente définition exclut les puits de délimitation et les puits d’exploitation au sens de ce paragraphe.</p>	<p>«puits d’exploration» “exploratory well”</p>
<p>“pulp” [Repealed, SOR/2013-186, s. 1]</p>	<p>“pulp” [Repealed, SOR/2013-186, s. 1]</p>	<p>«refuge d’oiseaux migrateurs» Zone décrite à l’annexe du <i>Règlement sur les refuges d’oiseaux migrateurs</i>.</p>	<p>«refuge d’oiseaux migrateurs» “migratory bird sanctuary”</p>
<p>“pulp and paper mill” [Repealed, SOR/2013-186, s. 1]</p>	<p>“pulp and paper mill” [Repealed, SOR/2013-186, s. 1]</p>	<p>«réserve d’espèces sauvages» S’entend au sens de l’article 2 du <i>Règlement sur les réserves d’espèces sauvages</i>.</p>	<p>«réserve d’espèces sauvages» “wildlife area”</p>
<p>“right of way” [Repealed, SOR/2013-186, s. 1]</p>	<p>“right of way” [Repealed, SOR/2013-186, s. 1]</p>	<p>«substance nucléaire» S’entend au sens de l’article 2 de la <i>Loi sur la sûreté et la réglementation nucléaires</i>.</p>	<p>«substance nucléaire» “nuclear substance”</p>
<p>“uranium mill” «usine de concentration d’uranium»</p>	<p>“uranium mill” means a mill as defined in section 1 of the <i>Uranium Mines and Mills Regulations</i>.</p>	<p>«système de gestion des déchets» [Abrogée, DORS/2013-186, art. 1]</p>	
<p>“uranium mine” «mine d’uranium»</p>	<p>“uranium mine” means a mine as defined in section 1 of the <i>Uranium Mines and Mills Regulations</i>.</p>		
<p>“waste management system” [Repealed, SOR/2013-186, s. 1]</p>	<p>“waste management system” [Repealed, SOR/2013-186, s. 1]</p>		

“water body”
« plan d'eau »

“water body” means any water body, including a canal, a reservoir, an ocean and a wetland as that term is defined in *The Federal Policy on Wetland Conservation* published in 1991 by the Department of the Environment, up to the high-water mark, but does not include a sewage or waste treatment lagoon or a mine tailings pond.

“wetland” [Repealed, SOR/2013-186, s. 1]

“wildlife area”
« réserve
d'espèces
sauvages »

“wildlife area” has the same meaning as in section 2 of the *Wildlife Area Regulations*.
SOR/2013-186, s. 1; 2014, c. 13, s. 117.

« terminal maritime »

a) Les lieux qui servent habituellement à l'accostage des navires, notamment les quais, les structures en rideaux de palplanches, les jetées, les docks et les terres submergées, ainsi que les aires, l'équipement et les structures :

(i) liés au mouvement des marchandises entre les navires et la terre ferme ainsi que les aires d'entreposage connexes, y compris les aires, l'équipement et les structures affectés à la réception, à la manutention, à la mise en attente, au regroupement et au chargement ou au déchargement de marchandises transportées par eau,

(ii) affectés à la réception, à la mise en attente, au regroupement et à l'embarquement ou au débarquement de passagers transportés par eau;

b) les aires adjacentes aux lieux, aux aires, à l'équipement et aux structures visés à l'alinéa a) qui sont affectées à leur entretien.

« terminal
maritime »
“maritime
terminal”

« terres humides » [Abrogée, DORS/2013-186, art. 1]

« usine de concentration d'uranium » S'entend d'une usine de concentration au sens de l'article 1 du *Règlement sur les mines et les usines de concentration d'uranium*.

DORS/2013-186, art. 1; 2014, ch. 13, art. 117.

« usine de
concentration
d'uranium »
“uranium mill”

Designated
activities —
designated
projects

2. The physical activities that are set out in the schedule are designated for the purposes of paragraph (b) of the definition “designated project” in subsection 2(1) of the *Canadian Environmental Assessment Act, 2012*.

2. Pour l'application de l'alinéa b) de la définition de « projet désigné » au paragraphe 2(1) de la *Loi canadienne sur l'évaluation environnementale (2012)*, les activités concrètes sont celles prévues à l'annexe.

Activités
concrètes —
projet désigné

Designated
activities —
participant
funding program

3. The physical activities that are set out in the schedule or that are designated by the Minister under subsection 14(2) of the

3. Pour l'application de l'alinéa 58(1)a) de la *Loi canadienne sur l'évaluation environnementale (2012)*, les activités

Activités
concrètes —
programmes
d'aide financière

<p>Activités – Agence</p>	<p><i>Canadian Environmental Assessment Act, 2012</i> are designated for the purposes of paragraph 58(1)(a) of that Act.</p> <p>4. (1) The activities set out in items 1 to 30 of the schedule are linked to the Agency when they are not regulated under, or incidental to a physical activity that is regulated under, the <i>Nuclear Safety and Control Act</i>, the <i>National Energy Board Act</i> or the <i>Canada Oil and Gas Operations Act</i>.</p>	<p>concrètes sont celles prévues à l'annexe et celles désignées par le ministre en vertu du paragraphe 14(2) de cette loi.</p> <p>4. (1) Les activités prévues aux articles 1 à 30 de l'annexe sont liées à l'Agence lorsqu'elles ne sont pas régies par la <i>Loi sur la sûreté et la réglementation nucléaires</i>, la <i>Loi sur l'Office national de l'énergie</i> ou la <i>Loi sur les opérations pétrolières au Canada</i> ou accessoires à une activité concrète qui est régie par l'une ou l'autre de ces lois.</p>	<p>Activités liées à l'Agence</p>
<p>Activités – Canadian Nuclear Safety Commission</p>	<p>(2) The activities set out in items 31 to 38 of the schedule are linked to the Canadian Nuclear Safety Commission when they are regulated under the <i>Nuclear Safety and Control Act</i>.</p>	<p>(2) Les activités prévues aux articles 31 à 38 de l'annexe sont liées à la Commission canadienne de sûreté nucléaire lorsqu'elles sont régies par la <i>Loi sur la sûreté et la réglementation nucléaires</i>.</p>	<p>Activités liées à la Commission canadienne de sûreté nucléaire</p>
<p>Activités – National Energy Board</p>	<p>(3) The activities set out in items 39 to 48 of the schedule are linked to the National Energy Board when they are regulated under the <i>National Energy Board Act</i> or the <i>Canada Oil and Gas Operations Act</i>.</p> <p>SOR/2013-186, s. 2.</p>	<p>(3) Les activités prévues aux articles 39 à 48 de l'annexe sont liées à l'Office national de l'énergie lorsqu'elles sont régies par la <i>Loi sur l'Office national de l'énergie</i> ou la <i>Loi sur les opérations pétrolières au Canada</i>.</p> <p>DORS/2013-186, art. 2.</p>	<p>Activités liées à l'Office national de l'énergie</p>
<p>Coming into force</p>	<p>5. These Regulations come into force on the day on which section 52 of the <i>Jobs, Growth and Long-term Prosperity Act</i>, chapter 19 of the Statutes of Canada, 2012, comes into force.</p> <p>* [Note: Regulations in force July 6, 2012, see SI/2012-56.]</p>	<p>5. Le présent règlement entre en vigueur à la date d'entrée en vigueur de l'article 52 de la <i>Loi sur l'emploi, la croissance et la prospérité durable</i>, chapitre 19 des Lois du Canada (2012).</p> <p>* [Note : Règlement en vigueur le 6 juillet 2012, voir TR/2012-56.]</p>	<p>Entrée en vigueur</p>

SCHEDULE
(Sections 2 to 4)

PHYSICAL ACTIVITIES

CANADIAN ENVIRONMENTAL ASSESSMENT AGENCY

1. The construction, operation, decommissioning and abandonment, in a wildlife area or migratory bird sanctuary, of a new

- (a) electrical generating facility or electrical transmission line;
- (b) structure for the diversion of water, including a dam, dyke or reservoir;
- (c) oil or gas facility or oil and gas pipeline;
- (d) mine or mill;
- (e) industrial facility;
- (f) canal or lock;
- (g) marine terminal;
- (h) railway line or public highway;
- (i) aerodrome or runway; or
- (j) waste management facility.

2. The construction, operation, decommissioning and abandonment of

- (a) a new fossil fuel-fired electrical generating facility with a production capacity of 200 MW or more;
- (b) a new in-stream tidal power generating facility with a production capacity of 50 MW or more or a new tidal power generating facility, other than an in-stream tidal power generating facility, with a production capacity of 5 MW or more; or
- (c) a new hydroelectric generating facility with a production capacity of 200 MW or more.

3. The expansion of

- (a) an existing fossil fuel-fired electrical generating facility that would result in an increase in production capacity of 50% or more and a total production capacity of 200 MW or more;
- (b) an existing in-stream tidal power generating facility that would result in an increase in production capacity of 50% or more and a total production capacity of 50 MW or more or an existing tidal power generating facility, other than an in-stream tidal power generating facility, that would result in an increase in production capacity of 50% or more and a total production capacity of 5 MW or more; or
- (c) an existing hydroelectric generating facility that would result in an increase in production capacity of 50% or more and a total production capacity of 200 MW or more.

ANNEXE
(articles 2 à 4)

ACTIVITÉS CONCRÈTES

AGENCE CANADIENNE D'ÉVALUATION
ENVIRONNEMENTALE

1. La construction, l'exploitation, la désaffectation et la fermeture, dans une réserve d'espèces sauvages ou un refuge d'oiseaux migrateurs :

- a) d'une nouvelle installation de production d'électricité ou d'une nouvelle ligne de transport d'électricité;
- b) d'une nouvelle structure de dérivation des eaux, y compris d'un nouveau barrage, d'une nouvelle digue ou d'un nouveau réservoir;
- c) d'une nouvelle installation pétrolière ou gazière ou d'un nouveau pipeline d'hydrocarbures;
- d) d'une nouvelle mine ou usine;
- e) d'une nouvelle installation industrielle;
- f) d'un nouveau canal ou d'une nouvelle écluse;
- g) d'un nouveau terminal maritime;
- h) d'une nouvelle ligne de chemin de fer ou d'une nouvelle voie publique;
- i) d'un nouvel aéroport ou d'une nouvelle piste;
- j) d'une nouvelle installation de gestion des déchets.

2. La construction, l'exploitation, la désaffectation et la fermeture :

- a) d'une nouvelle installation de production d'électricité alimentée par un combustible fossile d'une capacité de production de 200 MW ou plus;
- b) d'une nouvelle installation de production d'énergie hydrolienne d'une capacité de production de 50 MW ou plus, ou de toute autre nouvelle installation de production d'énergie marémotrice d'une capacité de production de 5 MW ou plus;
- c) d'une nouvelle installation hydroélectrique d'une capacité de production de 200 MW ou plus.

3. L'agrandissement :

- a) d'une installation existante de production d'électricité alimentée par un combustible fossile qui entraînerait une augmentation de la capacité de production de 50 % ou plus et une capacité de production totale de 200 MW ou plus;
- b) d'une installation existante de production d'énergie hydrolienne qui entraînerait une augmentation de la capacité de production de 50 % ou plus et une capacité de production totale de 50 MW ou plus, ou de toute autre installation existante de production d'énergie marémotrice qui entraînerait une augmentation de la capacité de production de 50 % ou plus et une capacité de production totale de 5 MW ou plus;
- c) d'une installation hydroélectrique existante qui entraînerait une augmentation de la capacité de production de 50 % ou plus et une capacité de production totale de 200 MW ou plus.

4. The construction, operation, decommissioning and abandonment of a new dam or dyke that would result in the creation of a reservoir with a surface area that would exceed the annual mean surface area of a natural water body by 1 500 ha or more.

5. The expansion of an existing dam or dyke that would result in an increase in the surface area of the existing reservoir of 50% or more and an increase of 1 500 ha or more in the annual mean surface area of the existing reservoir.

6. The construction, operation, decommissioning and abandonment of a new structure for the diversion of 10 000 000 m³/year or more of water from a natural water body into another natural water body.

7. The expansion of an existing structure for the diversion of water from a natural water body into another natural water body that would result in an increase in diversion capacity of 50% or more and a total diversion capacity of 10 000 000 m³/year or more.

8. The construction, operation, decommissioning and abandonment of a new oil sands mine with a bitumen production capacity of 10 000 m³/day or more.

9. The expansion of an existing oil sands mine that would result in an increase in the area of mine operations of 50% or more and a total bitumen production capacity of 10 000 m³/day or more.

10. The drilling, testing and abandonment of offshore exploratory wells in the first drilling program in an area set out in one or more exploration licences issued in accordance with the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act* or the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

11. The construction, installation and operation of a new offshore floating or fixed platform, vessel or artificial island used for the production of oil or gas.

12. The decommissioning and abandonment of an existing offshore floating or fixed platform, vessel or artificial island used for the production of oil or gas that is proposed to be disposed of or abandoned offshore or converted on site to another role.

13. The construction, operation, decommissioning and abandonment of a new offshore oil and gas pipeline, other than a flowline.

14. The construction, operation, decommissioning and abandonment of a new

(a) oil refinery, including a heavy oil upgrader, with an input capacity of 10 000 m³/day or more;

(b) facility for the production of liquid petroleum products from coal with a production capacity of 2 000 m³/day or more;

(c) sour gas processing facility with a sulphur inlet capacity of 2 000 t/day or more;

(d) facility for the liquefaction, storage or regasification of liquefied natural gas, with a liquefied natural gas processing capacity of

4. La construction, l'exploitation, la désaffectation et la fermeture d'un nouveau barrage ou d'une nouvelle digue qui entraîneraient la création d'un réservoir dont la superficie dépasserait de 1 500 ha ou plus la superficie moyenne annuelle du plan d'eau naturel.

5. L'agrandissement d'un barrage existant ou d'une digue existante qui entraînerait une augmentation de 50 % ou plus de la superficie du réservoir existant et de 1 500 ha ou plus de la superficie moyenne annuelle de ce réservoir.

6. La construction, l'exploitation, la désaffectation et la fermeture d'une nouvelle structure destinée à dériver 10 000 000 m³/an ou plus d'eau d'un plan d'eau naturel dans un autre.

7. L'agrandissement d'une structure existante destinée à dériver l'eau d'un plan d'eau naturel dans un autre, qui entraînerait une augmentation de la capacité de dérivation de 50 % ou plus et une capacité de dérivation totale de 10 000 000 m³/an ou plus.

8. La construction, l'exploitation, la désaffectation et la fermeture d'une nouvelle mine de sables bitumineux d'une capacité de production de bitume de 10 000 m³/jour ou plus.

9. L'agrandissement d'une mine de sables bitumineux existante qui entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus et une capacité de production totale de bitume de 10 000 m³/jour ou plus.

10. Le forage, la mise à l'essai et la fermeture de puits d'exploration au large des côtes faisant partie du premier programme de forage dans une zone visée par un ou plusieurs permis de prospection délivrés conformément à la *Loi de mise en œuvre de l'Accord atlantique Canada — Terre-Neuve-et-Labrador* ou à la *Loi de mise en œuvre de l'Accord Canada — Nouvelle-Écosse sur les hydrocarbures extracôtiers*.

11. La construction, la mise sur pied et l'exploitation d'une nouvelle plate-forme flottante ou fixe, d'un nouveau navire ou d'une nouvelle île artificielle au large des côtes utilisés pour la production de pétrole ou de gaz.

12. La désaffectation et la fermeture d'une plate-forme flottante ou fixe existante, d'un navire existant ou d'une île artificielle existante au large des côtes utilisés pour la production de pétrole ou de gaz, dans le cas où il est proposé d'en disposer ou de les fermer au large des côtes, ou d'en modifier la vocation sur place.

13. La construction, l'exploitation, la désaffectation et la fermeture d'un nouveau pipeline d'hydrocarbures au large des côtes, autre qu'une conduite d'écoulement.

14. La construction, l'exploitation, la désaffectation et la fermeture :

a) d'une nouvelle raffinerie de pétrole, y compris une usine de valorisation d'huile lourde, d'une capacité d'admission de 10 000 m³/jour ou plus;

b) d'une nouvelle installation de production de produits pétroliers liquides, à partir du charbon, d'une capacité de production de 2 000 m³/jour ou plus;

c) d'une nouvelle installation de traitement de gaz sulfureux d'une capacité d'admission de soufre de 2 000 t/jour ou plus;

3 000 t/day or more or a liquefied natural gas storage capacity of 55 000 t or more;

(e) petroleum storage facility with a storage capacity of 500 000 m³ or more; or

(f) liquefied petroleum gas storage facility with a storage capacity of 100 000 m³ or more.

15. The expansion of an existing

(a) oil refinery, including a heavy oil upgrader, that would result in an increase in input capacity of 50% or more and a total input capacity of 10 000 m³/day or more;

(b) facility for the production of liquid petroleum products from coal that would result in an increase in production capacity of 50% or more and a total production capacity of 2 000 m³/day or more;

(c) sour gas processing facility that would result in an increase in sulphur inlet capacity of 50% or more and a total sulphur inlet capacity of 2 000 t/day or more;

(d) facility for the liquefaction, storage or regasification of liquefied natural gas that would result in an increase in the liquefied natural gas processing or storage capacity of 50% or more and a total liquefied natural gas processing capacity of 3 000 t/day or more or a total liquefied natural gas storage capacity of 55 000 t or more, as the case may be;

(e) petroleum storage facility that would result in an increase in storage capacity of 50% or more and a total storage capacity of 500 000 m³ or more; or

(f) liquefied petroleum gas storage facility that would result in an increase in storage capacity of 50% or more and a total storage capacity of 100 000 m³ or more.

16. The construction, operation, decommissioning and abandonment of a new

(a) metal mine, other than a rare earth element mine or gold mine, with an ore production capacity of 3 000 t/day or more;

(b) metal mill with an ore input capacity of 4 000 t/day or more;

(c) rare earth element mine or gold mine, other than a placer mine, with an ore production capacity of 600 t/day or more;

(d) coal mine with a coal production capacity of 3 000 t/day or more;

(e) diamond mine with an ore production capacity of 3 000 t/day or more;

(f) apatite mine with an ore production capacity of 3 000 t/day or more; or

(g) stone quarry or sand or gravel pit, with a production capacity of 3 500 000 t/year or more.

d) d'une nouvelle installation de liquéfaction, de stockage ou de regazéification de gaz naturel liquéfié d'une capacité de traitement de gaz naturel liquéfié de 3 000 t/jour ou plus ou d'une capacité de stockage de gaz naturel liquéfié de 55 000 t ou plus;

e) d'une nouvelle installation de stockage de pétrole d'une capacité de stockage de 500 000 m³ ou plus;

f) d'une nouvelle installation de stockage de gaz de pétrole liquéfié d'une capacité de stockage de 100 000 m³ ou plus.

15. L'agrandissement :

a) d'une raffinerie de pétrole existante, y compris une usine de valorisation d'huile lourde, qui entraînerait une augmentation de la capacité d'admission de 50 % ou plus et une capacité d'admission totale de 10 000 m³/jour ou plus;

b) d'une installation existante de production de produits pétroliers liquides, à partir du charbon, qui entraînerait une augmentation de la capacité de production de 50 % ou plus et une capacité de production totale de 2 000 m³/jour ou plus;

c) d'une installation existante de traitement de gaz sulfureux qui entraînerait une augmentation de la capacité d'admission de soufre de 50 % ou plus et une capacité d'admission totale de soufre de 2 000 t/jour ou plus;

d) d'une installation existante de liquéfaction, de stockage ou de regazéification de gaz naturel liquéfié, qui entraînerait une augmentation de la capacité de traitement ou de stockage de gaz naturel liquéfié de 50 % ou plus et, selon le cas, une capacité de traitement totale de 3 000 t/jour ou plus ou une capacité de stockage totale de 55 000 t ou plus;

e) d'une installation existante de stockage de pétrole qui entraînerait une augmentation de la capacité de stockage de 50 % ou plus et une capacité de stockage totale de 500 000 m³ ou plus;

f) d'une installation existante de stockage de gaz de pétrole liquéfié qui entraînerait une augmentation de la capacité de stockage de 50 % ou plus et une capacité de stockage totale de 100 000 m³ ou plus.

16. La construction, l'exploitation, la désaffectation et la fermeture :

a) d'une nouvelle mine métallifère, autre qu'une mine d'éléments des terres rares ou mine d'or, d'une capacité de production de minerai de 3 000 t/jour ou plus;

b) d'une nouvelle usine métallurgique d'une capacité d'admission de minerai de 4 000 t/jour ou plus;

c) d'une nouvelle mine d'éléments des terres rares ou d'une nouvelle mine d'or, autre qu'un placer, d'une capacité de production de minerai de 600 t/jour ou plus;

d) d'une nouvelle mine de charbon d'une capacité de production de charbon de 3 000 t/jour ou plus;

e) d'une nouvelle mine de diamants d'une capacité de production de minerai de 3 000 t/jour ou plus;

f) d'une nouvelle mine d'apatite d'une capacité de production de minerai de 3 000 t/jour ou plus;

17. The expansion of an existing

(a) metal mine, other than a rare earth element mine or gold mine, that would result in an increase in the area of mine operations of 50% or more and a total ore production capacity of 3 000 t/day or more;

(b) metal mill that would result in an increase in the area of mine operations of 50% or more and a total ore input capacity of 4 000 t/day or more;

(c) rare earth element mine or gold mine, other than a placer mine, that would result in an increase in the area of mine operations of 50% or more and a total ore production capacity of 600 t/day or more;

(d) coal mine that would result in an increase in the area of mine operations of 50% or more and a total coal production capacity of 3 000 t/day or more;

(e) diamond mine that would result in an increase in the area of mine operations of 50% or more and a total ore production capacity of 3 000 t/day or more;

(f) apatite mine that would result in an increase in the area of mine operations of 50% or more and a total ore production capacity of 3 000 t/day or more; or

(g) stone quarry or sand or gravel pit that would result in an increase in the area of mine operations of 50% or more and a total production capacity of 3 500 000 t/year or more.

18. The construction and operation of a new military base or military station that is to be established for more than 12 consecutive months.

19. The construction, operation, decommissioning and abandonment outside an existing military base of a new military training area, range or test establishment for training or weapons testing that is to be established for more than 12 consecutive months.

20. The expansion of an existing military base or military station that would result in an increase in the area of the military base or military station of 50% or more.

21. The decommissioning and abandonment of an existing military base or military station.

22. The testing of military weapons for more than five days in a calendar year in an area other than the training areas, ranges and test establishments established before October 7, 1994 by or under the authority of the Minister of National Defence for the testing of weapons.

23. The low-level flying of military fixed-wing jet aircraft for more than 150 days in a calendar year as part of a training program at an altitude below 330 m above ground level on a route or in an area that was not established before October 7, 1994 by or under the authority of the Minister of National Defence or the Chief of the Defence Staff as a route or area set aside for low-level flying training.

g) d'une nouvelle carrière de pierre, de gravier ou de sable d'une capacité de production de 3 500 000 t/an ou plus.

17. L'agrandissement :

a) d'une mine métallifère existante, autre qu'une mine d'éléments des terres rares ou mine d'or, qui entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus et une capacité de production totale de minerai de 3 000 t/jour ou plus;

b) d'une usine métallurgique existante qui entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus et une capacité d'admission totale de minerai de 4 000 t/jour ou plus;

c) d'une mine d'éléments des terres rares existante ou d'une mine d'or existante, autre qu'un placer, qui entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus et une capacité de production totale de minerai de 600 t/jour ou plus;

d) d'une mine de charbon existante qui entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus et une capacité de production totale de charbon de 3 000 t/jour ou plus;

e) d'une mine de diamants existante qui entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus et une capacité de production totale de minerai de 3 000 t/jour ou plus;

f) d'une mine d'apatite existante qui entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus et une capacité de production totale de minerai de 3 000 t/jour ou plus;

g) d'une carrière de pierre, de gravier ou de sable existante qui entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus et une capacité de production totale de 3 500 000 t/an ou plus.

18. La construction et l'exploitation d'une nouvelle base ou station militaire qui sera mise en place pour plus de douze mois consécutifs.

19. La construction, l'exploitation, la désaffectation et la fermeture, à l'extérieur d'une base militaire existante, d'un nouveau secteur d'entraînement, champ de tir ou centre d'essai et d'expérimentation militaire pour l'entraînement ou l'essai d'armes qui sera mis en place pour plus de douze mois consécutifs.

20. L'agrandissement d'une base ou station militaire existante qui entraînerait une augmentation de 50 % ou plus de la superficie de la base ou de la station.

21. La désaffectation et la fermeture d'une base ou station militaire existante.

22. L'essai d'armes militaires effectué pendant plus de cinq jours au cours d'une année civile dans toute zone, autre qu'un secteur d'entraînement, un champ de tir ou un centre d'essai et d'expérimentation établi pour la mise à l'essai d'armes avant le 7 octobre 1994 par le ministre de la Défense nationale ou sous son autorité.

23. Les vols à basse altitude d'avions à réaction militaires à voilure fixe, pour des programmes d'entraînement, lorsque les vols se déroulent à une altitude inférieure à 330 m au-dessus du niveau du sol sur des routes ou dans des zones qui n'ont pas été établies comme routes ou zones réservées à l'entraînement au vol à basse altitude, avant le 7 octobre 1994, par le ministre de la Défense nationale ou le chef d'état-major de la défense, ou sous leur autorité, lorsque les vols

24. The construction, operation, decommissioning and abandonment of a new

- (a) canal or a lock or associated structure to control water levels in the canal;
- (b) lock or associated structure to control water levels in existing navigable waterways; or
- (c) marine terminal designed to handle ships larger than 25 000 DWT unless the terminal is located on lands that are routinely and have been historically used as a marine terminal or that are designated for such use in a land-use plan that has been the subject of public consultation.

25. The construction, operation, decommissioning and abandonment of a new

- (a) railway line that requires a total of 32 km or more of new right of way;
- (b) railway yard with seven or more yard tracks or a total track length of 20 km or more;
- (c) all-season public highway that requires a total of 50 km or more of new right of way; or
- (d) railway line designed for trains that have an average speed of 200 km/h or more.

26. The construction, operation, decommissioning and abandonment of a new

- (a) aerodrome located within the built-up area of a city or town;
- (b) airport, as defined in subsection 3(1) of the *Aeronautics Act*, or
- (c) all-season runway with a length of 1 500 m or more.

27. The extension of an existing all-season runway by 1 500 m or more.

28. The construction, operation, decommissioning and abandonment of a new

- (a) international or interprovincial bridge or tunnel; or
- (b) bridge over the St. Lawrence Seaway.

29. The construction, operation, decommissioning and abandonment of a new facility used exclusively for the treatment, incineration, disposal or recycling of hazardous waste.

30. The expansion of an existing facility used exclusively for the treatment, incineration, disposal or recycling of hazardous waste that would result in an increase in hazardous waste input capacity of 50% or more.

se déroulent pendant plus de cent cinquante jours au cours d'une année civile.

24. La construction, l'exploitation, la désaffectation et la fermeture :

- a) d'un nouveau canal, ou d'une nouvelle écluse ou structure connexe pour contrôler le niveau d'eau du canal;
- b) d'une nouvelle écluse ou d'une nouvelle structure connexe pour contrôler le niveau d'eau dans des voies navigables existantes;
- c) d'un nouveau terminal maritime conçu pour recevoir des navires de plus de 25 000 TPL, sauf s'il est situé sur des terres qui sont utilisées de façon courante comme terminal maritime et qui l'ont été par le passé ou que destine à une telle utilisation un plan d'utilisation des terres ayant fait l'objet de consultations publiques.

25. La construction, l'exploitation, la désaffectation et la fermeture :

- a) d'une nouvelle ligne de chemin de fer qui nécessite un total de 32 km ou plus de nouvelle emprise;
- b) d'une nouvelle gare de triage qui comprend au moins sept voies de triage ou des voies dont la longueur totale est de 20 km ou plus;
- c) d'une nouvelle voie publique utilisable en toute saison qui nécessite un total de 50 km ou plus de nouvelle emprise;
- d) d'une nouvelle ligne de chemin de fer conçue pour des trains dont la vitesse moyenne est de 200 km/h ou plus.

26. La construction, l'exploitation, la désaffectation et la fermeture :

- a) d'un nouvel aéroport situé à l'intérieur de la zone bâtie d'une ville;
- b) d'un nouvel aéroport, au sens du paragraphe 3(1) de la *Loi sur l'aéronautique*;
- c) d'une nouvelle piste utilisable en toute saison d'une longueur de 1 500 m ou plus.

27. Le prolongement de 1 500 m ou plus d'une piste utilisable en toute saison existante.

28. La construction, l'exploitation, la désaffectation et la fermeture :

- a) d'un nouveau pont ou tunnel international ou interprovincial;
- b) d'un nouveau pont enjambant la Voie maritime du Saint-Laurent.

29. La construction, l'exploitation, la désaffectation et la fermeture d'une nouvelle installation utilisée exclusivement pour le traitement, l'incinération, l'élimination ou le recyclage de déchets dangereux.

30. L'agrandissement d'une installation existante utilisée exclusivement pour le traitement, l'incinération, l'élimination ou le recyclage de déchets dangereux qui entraînerait une augmentation de la capacité d'admission de déchets dangereux de 50 % ou plus.

CANADIAN NUCLEAR SAFETY COMMISSION

31. The construction, operation and decommissioning of a new uranium mine or uranium mill on a site that is not within the licensed boundaries of an existing uranium mine or uranium mill.

32. The expansion of an existing uranium mine or uranium mill that would result in an increase in the area of mine operations of 50% or more.

33. The construction, operation and decommissioning of a new

(a) facility for the processing, reprocessing or separation of an isotope of uranium, thorium, or plutonium, with a production capacity of 100 t/year or more;

(b) facility for the manufacture of a product derived from uranium, thorium or plutonium, with a production capacity of 100 t/year or more; or

(c) facility for the processing or use, in a quantity greater than 10^{15} Bq per calendar year, of nuclear substances with a half-life greater than one year, other than uranium, thorium or plutonium.

34. The expansion of an existing

(a) facility for the processing, reprocessing or separation of an isotope of uranium, thorium or plutonium that would result in an increase in production capacity of 50% or more and a total production capacity of 100 t/year or more;

(b) facility for the manufacture of a product derived from uranium, thorium or plutonium that would result in an increase in production capacity of 50% or more and a total production capacity of 100 t/year or more; or

(c) facility for the processing or use, in a quantity greater than 10^{15} Bq per calendar year, of nuclear substances with a half-life greater than one year, other than uranium, thorium or plutonium, that would result in an increase in processing capacity of 50% or more.

35. The construction, operation and decommissioning of a new nuclear fission or fusion reactor.

36. The expansion of an existing nuclear fission or fusion reactor that would result in an increase in power output of 50% or more.

37. The construction and operation of a new

(a) facility for the storage of irradiated fuel or nuclear waste, on a site that is not within the licensed perimeter of an existing nuclear facility; or

(b) facility for the long-term management or disposal of irradiated fuel or nuclear waste.

38. The expansion of an existing facility for the long-term management or disposal of irradiated fuel or nuclear waste that would result in an increase in the area, at ground level, of the facility of 50% or more.

COMMISSION CANADIENNE DE SÛRETÉ NUCLÉAIRE

31. La construction, l'exploitation et le déclassement d'une nouvelle mine d'uranium ou d'une nouvelle usine de concentration d'uranium sur un site à l'extérieur des limites autorisées d'une mine d'uranium ou d'une usine de concentration d'uranium existante.

32. L'agrandissement d'une mine d'uranium existante ou d'une usine existante de concentration d'uranium qui entraînerait une augmentation de l'aire d'exploitation minière de 50 % ou plus.

33. La construction, l'exploitation et le déclassement :

a) d'une nouvelle installation de traitement, de retraitement ou de séparation d'isotopes d'uranium, de thorium ou de plutonium, d'une capacité de production de 100 t/an ou plus;

b) d'une nouvelle installation de fabrication d'un produit dérivé de l'uranium, du thorium ou du plutonium, d'une capacité de production de 100 t/an ou plus;

c) d'une nouvelle installation de traitement ou d'utilisation d'une quantité supérieure à 10^{15} Bq par année civile de substances nucléaires d'une période radioactive supérieure à un an, autres que l'uranium, le thorium ou le plutonium.

34. L'agrandissement :

a) d'une installation existante de traitement, de retraitement ou de séparation d'isotopes d'uranium, de thorium ou de plutonium qui entraînerait une augmentation de la capacité de production de 50 % ou plus et une capacité de production totale de 100 t/an ou plus;

b) d'une installation existante de fabrication d'un produit dérivé de l'uranium, du thorium ou du plutonium qui entraînerait une augmentation de la capacité de production de 50 % ou plus et une capacité de production totale de 100 t/an ou plus;

c) d'une installation existante de traitement ou d'utilisation d'une quantité supérieure à 10^{15} Bq par année civile de substances nucléaires d'une période radioactive supérieure à un an, autres que l'uranium, le thorium ou le plutonium, qui entraînerait une augmentation de la capacité de traitement de 50 % ou plus.

35. La construction, l'exploitation et le déclassement d'un nouveau réacteur à fission ou à fusion nucléaires.

36. L'agrandissement d'un réacteur à fission ou à fusion nucléaires existant qui entraînerait une augmentation de la puissance de sortie de 50 % ou plus.

37. La construction et l'exploitation :

a) d'une nouvelle installation de stockage de combustibles nucléaires irradiés ou de déchets nucléaires, sur un site à l'extérieur du périmètre autorisé d'une installation nucléaire existante;

b) d'une nouvelle installation de gestion ou d'évacuation à long terme de combustible nucléaire irradié ou de déchets nucléaires.

38. L'agrandissement d'une installation existante de gestion ou d'évacuation à long terme de combustibles nucléaires irradiés ou de déchets nucléaires qui entraînerait une augmentation de 50 % ou plus de l'aire au niveau du sol occupée par l'installation.

NATIONAL ENERGY BOARD

39. The construction, operation, decommissioning and abandonment of a new electrical transmission line with a voltage of 345 kV or more that requires a total of 75 km or more of new right of way.

40. The drilling, testing and abandonment of offshore exploratory wells in the first drilling program in an area set out in one or more exploration licences issued in accordance with the *Canada Petroleum Resources Act*.

41. The construction, installation and operation of a new offshore floating or fixed platform, vessel or artificial island used for the production of oil or gas.

42. The decommissioning and abandonment of an existing offshore floating or fixed platform, vessel or artificial island used for the production of oil or gas that is proposed to be disposed of or abandoned offshore or converted on site to another role.

43. The construction, operation, decommissioning and abandonment of a new offshore pipeline, other than a flowline.

44. The construction, operation, decommissioning and abandonment of a new

(a) sour gas processing facility with a sulphur inlet capacity of 2 000 t/day or more; or

(b) petroleum storage facility with a storage capacity of 500 000 m³ or more.

45. The expansion of an existing

(a) sour gas processing facility that would result in an increase in sulphur inlet capacity of 50% or more and a total sulphur inlet capacity of 2 000 t/day or more; or

(b) petroleum storage facility that would result in an increase in storage capacity of 50% or more and a total storage capacity of 500 000 m³ or more.

46. The construction and operation of a new pipeline, other than an offshore pipeline, with a length of 40 km or more.

47. The decommissioning and abandonment of an existing pipeline, other than an offshore pipeline, if at least 40 km of pipe is removed from the ground.

48. The construction, operation, decommissioning and abandonment, in a wildlife area or migratory bird sanctuary, of

(a) a new electrical transmission line; or

(b) a new oil or gas facility or new pipeline.

SOR/2013-186, s. 3, 2014, c. 13, s. 117.

OFFICE NATIONAL DE L'ÉNERGIE

39. La construction, l'exploitation, la désaffectation et la fermeture d'une nouvelle ligne de transport d'électricité d'une tension de 345 kV ou plus qui nécessite un total de 75 km ou plus de nouvelle emprise.

40. Le forage, la mise à l'essai et la fermeture de puits d'exploration au large des côtes faisant partie du premier programme de forage dans une zone visée par un ou plusieurs permis de prospection délivrés conformément à la *Loi fédérale sur les hydrocarbures*.

41. La construction, la mise sur pied et l'exploitation d'une nouvelle plate-forme flottante ou fixe, d'un nouveau navire ou d'une nouvelle île artificielle au large des côtes utilisés pour la production de pétrole ou de gaz.

42. La désaffectation et la fermeture d'une plate-forme flottante ou fixe existante, d'un navire existant ou d'une île artificielle existante au large des côtes utilisés pour la production de pétrole ou de gaz, dans le cas où il est proposé d'en disposer ou de les fermer au large des côtes, ou d'en modifier la vocation sur place.

43. La construction, l'exploitation, la désaffectation et la fermeture d'un nouveau pipeline au large des côtes, autre qu'une conduite d'écoulement.

44. La construction, l'exploitation, la désaffectation et la fermeture :

a) d'une nouvelle installation de traitement de gaz sulfureux d'une capacité d'admission de soufre de 2 000 t/jour ou plus;

b) d'une nouvelle installation de stockage de pétrole d'une capacité de stockage de 500 000 m³ ou plus.

45. L'agrandissement :

a) d'une installation existante de traitement de gaz sulfureux qui entraînerait une augmentation de la capacité d'admission de soufre de 50 % ou plus et une capacité d'admission totale de soufre de 2 000 t/jour ou plus;

b) d'une installation existante de stockage de pétrole qui entraînerait une augmentation de la capacité de stockage de 50 % ou plus et une capacité de stockage totale de 500 000 m³ ou plus.

46. La construction et l'exploitation d'un nouveau pipeline, autre qu'un pipeline au large des côtes, d'une longueur de 40 km ou plus.

47. La désaffectation et la fermeture d'un pipeline existant, autre qu'un pipeline au large des côtes, si au moins 40 km de tuyau sont retirés du sol.

48. La construction, l'exploitation, la désaffectation et la fermeture, dans une réserve d'espèces sauvages ou un refuge d'oiseaux migrateurs :

a) d'une nouvelle ligne de transport d'électricité;

b) d'une nouvelle installation pétrolière ou gazière ou d'un nouveau pipeline.

DORS/2013-186, art. 3, 2014, ch. 13, art. 117.

RELATED PROVISIONS

— SOR/2013-186, s. 4

4. (1) The following definitions apply in this section.

“former Regulations”
«règlement antérieur»

“former Regulations” means the *Regulations Designating Physical Activities* as they read immediately before the day on which these Regulations come into force.

“former Act”
«ancienne loi»

“former Act” means the *Canadian Environmental Assessment Act*, chapter 37 of the Statutes of Canada, 1992.

“Act”
«Loi»

“Act” means the *Canadian Environmental Assessment Act, 2012*.

(2) The *Regulations Designating Physical Activities*, as amended by these Regulations, do not apply to a physical activity that was not designated under the former Regulations if, on the day on which these Regulations come into force, any of the following conditions apply:

(a) the carrying out of the physical activity, including any physical activity that is incidental to that physical activity, has begun and, as a result, the environment has been altered;

(b) a federal authority has exercised a power or performed a duty or function conferred on it under any Act of Parliament, other than the Act, that could permit the physical activity to be carried out, in whole or in part;

(c) a jurisdiction described in any of paragraphs (c) to (f) of the definition “jurisdiction” in subsection 2(1) of the Act or the responsible authority set out in paragraph 15(a) or (b) of the Act has commenced or completed an assessment of the environmental effects of the physical activity; and

(d) the physical activity was a project, or was included in a project, for which the screening, commenced under the former Act before the day on which the Act came into force, was not subject to the requirement in subsection 124(1) of the Act to be continued and completed.

DISPOSITIONS CONNEXES

— DORS/2013-186, art. 4

4. (1) Les définitions qui suivent s’appliquent au présent article.

« ancienne loi » La *Loi canadienne sur l’évaluation environnementale*, chapitre 37 des Lois du Canada (1992).

« Loi » La *Loi canadienne sur l’évaluation environnementale* (2012).

« règlement antérieur » S’entend du *Règlement désignant les activités concrètes*, dans sa version antérieure à l’entrée en vigueur du présent règlement.

(2) Le *Règlement désignant les activités concrètes*, dans sa version modifiée par le présent règlement, ne s’applique pas à l’activité concrète qui n’était pas désignée en vertu du règlement antérieur si, à la date d’entrée en vigueur du présent règlement, l’une ou plusieurs des conditions ci-après sont remplies :

a) l’exercice de l’activité concrète, y compris de toute activité concrète qui lui est accessoire, a commencé et, de ce fait, l’environnement est modifié;

b) une autorité fédérale a exercé des attributions qui lui sont conférées sous le régime d’une loi fédérale autre que la Loi et qui pourraient permettre l’exercice, en tout ou en partie, de l’activité concrète;

c) une instance visée à l’un des alinéas c) à f) de la définition de « instance », au paragraphe 2(1) de la Loi, ou l’autorité responsable mentionnée aux alinéas 15a) ou b) de la Loi a commencé ou achevé une évaluation des effets environnementaux de l’activité concrète;

d) l’activité concrète était un projet, ou était comprise dans un projet, dont l’examen préalable, commencé sous le régime de l’ancienne loi avant la date d’entrée en vigueur de la Loi, n’a pas été assujéti à l’exigence du paragraphe 124(1) de la Loi qu’il soit mené à terme.

« ancienne loi »
“former Act”

« Loi »
“Act”

« règlement antérieur »
“former Regulations”

POLICY 9-2: ENVIRONMENTAL SITE ASSESSMENTS

Section 1 Purpose

(1) This policy provides the Lands Department with an overview of ᑭᐱᑭᐱᑭ's Environmental Site Assessment policies and procedures.

Section 2 General

Definitions

(1) In this policy:

“certified environmental site assessor” means a person who has a valid environmental site assessor designation issued by the Associated Environmental Site Assessors of Canada Inc.; and

“CSA” means the Standards Council of Canada which is a federal Crown corporation with a mandate to promote efficient and effective standardization in Canada. The CSA reports to Parliament through the Minister of Industry.

Phase I Environmental Site Assessments

(2) A Phase I Environmental Site Assessment (CSA Standard Z768-94) is used to identify actual and potential site contamination and it involves the evaluation and reporting of existing information collected through the following means:

- (a) a detailed search, review and analysis of historical property use, occupancy records and aerial photographs of the subject lands;
- (b) a geology, hydrology, topography analysis to determine the type of soil, depth of water tables, direction and flow of ground water and other physical attributes to determine whether there may be any environmental hazards entering or leaving the subject lands;
- (c) a visual assessment of the subject lands and its adjacent lands to identify any storage locations of hazardous materials that may impact on the environmental quality of the subject lands; and
- (d) gathering of information from individuals who have historical knowledge of the subject lands' use.

Phase II Environmental Site Assessments

(3) A phase II Environmental Site Assessment (CSA Standard Z769-00) is used to confirm and describe the magnitude and quantification of a risk of, or to demonstrate the absence of, contamination on a property identified through a Phase I Environmental Site Assessment procedure.

(4) Unlike Phase I Environmental Site Assessments, Phase II Environmental Site Assessments always involve investigative procedures, such as:

- (a) sample collection and analysis of soil, groundwater, surface water, sediment and vapour;
- (b) in depth chemical analyses of samples of contaminants of concern;
- (c) groundwater elevation surveys to establish flow directions and velocities;
- (d) field and laboratory data interpretation;
- (e) comparative analysis of site-specific samples with regulatory criteria; and
- (f) a comprehensive factual report.

Role of Council

(5) Council is responsible for:

- (a) developing laws for environmental protection on ʔaᓄam lands;
- (b) making policies that set out the rules and procedures applicable to the protection of the environment on ʔaᓄam lands.

Role of the Lands Department

(6) The Lands Department is responsible for complying with this policy.

Role of the Lands Committee

(7) The Lands Committee may assist the Lands Department and Council with any matter related to the environmental site assessment processes set out in this policy and may perform duties and functions as directed by either Council or the Lands Department.

Section 3 Authorities

(1) The relevant authorities are sections 32.1 and 32.2 of the *ᑲᓱᓴᓄᓐ ᐱᓄᓇᓂᓇᓂᓇᓂᓇᓂᓇᓂᓇ Land Code*, which state as follows:

32.1 Subject to this Land Code, Council may grant:

- (a) interests in ᑲᓱᓴᓄᓐ community lands; and
- (b) licences and permits to take resources from ᑲᓱᓴᓄᓐ community lands

32.2 The grant of an interest, licence or permit in ᑲᓱᓴᓄᓐ community lands may be made subject to conditions.

Section 4 Policy

Environmental Site Assessment Required

(1) The Lands Department may require that a Phase I or Phase II Environmental Site Assessment be completed:

- (a) in circumstances where the Lands Department has reason to believe that contamination may exist on the parcel of ᑲᓱᓴᓄᓐ lands being proposed for the licence, permit or lease, by and at the expense of a proposed licensee, permittee or lessee, before the execution of that licence, permit or lease; and
- (b) in accordance with the terms of a licence, permit or lease if such terms are provided for, before Council consents to that licence, permit or lease being renewed, transferred, assigned, or cancelled, by and at the expense of a licensee, permittee or lessee.

Confirmed Contaminated Sites

(2) The Lands Department must ensure that ᑲᓱᓴᓄᓐ does not create, grant, dispose, or approve the transfer or assignment of a contaminated site without negotiating into the land instrument specific remediation and contaminated site risk management conditions prior to executing the transaction.

Section 5 Process

(1) During the negotiation of a licence, lease, permit or easement over ᑲᓱᓴᓄᓐ lands, the Lands Department must consider whether it is necessary and reasonable to require that an Environmental Site Assessment be completed as a pre-condition to execution.

(2) Where an interest holder requests that Council approve the renewal, transfer, assignment or cancellation of a land instrument, the Lands Department must consider whether it is necessary and reasonable to require that an Environmental Site Assessment be completed as a pre-condition to the renewal, transfer, assignment, or cancellation.

(3) If the Lands Department determines that an Environmental Site Assessment is necessary and reasonable, the Lands Department must proceed with the following steps:

- (a) collect existing environmental information related to the site (if available);
- (b) decide who is responsible for funding the Environmental Site Assessment;
- (c) draft the terms of reference for the Environmental Site Assessment, which must set out the type of Environmental Site Assessment required and that the Environmental Site Assessment must be completed by a certified environmental site assessor;
- (d) obtain a copy of the completed Environmental Site Assessment report for the relevant ᐃᐃᐃᐃ lands department file(s); and
- (e) use the results of the Environmental Site Assessment report to draft terms and conditions that will be mandatory before a licence, permit, easement or lease is executed, renewed, transferred, assigned or terminated over the ᐃᐃᐃᐃ lands to which the report relates. Such terms and conditions may relate to the remediation of a contaminated site or the development of a risk management strategy to address the contamination issue.

Section 6 References

(1) Besides this policy, consult the following resources:

- (a) Phase I Environmental Site Assessment CSA Standard Z768-94;
- (b) Phase II Environmental Site Assessment CSA Standard Z769-00; and
- (c) the Associated Environmental Site Assessors of Canada Inc. website.

POLICY 9-3: ENVIRONMENTAL REQUIREMENTS FOR LAND INSTRUMENTS

Section 1 Purpose

(1) This policy provides the Lands Department with information on choosing the appropriate environmental management conditions to include in a land transaction document, including conditions that will commit interest holders to:

- (a) minimize the environmental effects caused by the carrying out of their operations and activities on ᑭᓱᓴᓄᓄ lands;
- (b) comply with the best management practices set out in the ᑭᓱᓴᓄᓄ Environmental Management Plan;
- (c) avoid contaminating the environment in the course of carrying out their operations and activities on ᑭᓱᓴᓄᓄ lands; and
- (d) be responsible for the remediation of contamination and other negative environmental effects resulting from their operations and activities on ᑭᓱᓴᓄᓄ lands.

Section 2 General

Definitions

(1) In this policy:

“Environmental Laws” means every law, by-law, regulation or policy of Canada or ᑭᓱᓴᓄᓄ relating to environmental matters, including: the *Canadian Environmental Protection Act*, *Species at Risk Act*, *Fisheries Act*, *Migratory Birds Convention Act*, and the ᑭᓱᓴᓄᓄ Environmental Management Plan;

“Hazardous Substances” means any contaminant, pollutant, dangerous substance, noxious substance, toxic substance, hazardous waste, flammable or explosive material, radioactive material and any other substance or material regulated or controlled under or pursuant to any Environmental Law.

Section 3 Authorities

(1) The relevant authorities are:

- (a) section 24 of the Framework Agreement;

(b) the ʔaǰam Environmental Management Plan; and

(c) federal Laws, including:

(i) the *Canadian Environmental Protection Act*;

(ii) *Fisheries Act*, and

(iii) *Species at Risk Act*.

(2) Section 24 of the *Framework Agreement* states:

24. ENVIRONMENTAL MANAGEMENT

24.1 Subject to term 27, a First Nation with a land code in effect will develop an environmental protection regime, with the assistance of the appropriate federal agencies to the extent that they agree to participate.

24.2 Each First Nation agrees to harmonize environmental protection with the province in which the First Nation is situated, where the province agrees to participate.

24.3 The First Nation environmental protection standards and punishments will have at least the same effect as those in the laws of the province in which the First Nation is situated.

24.4 For greater certainty, if there is an inconsistency between the provision of a federal law respecting the protection of the environment and a provision in a land code or First Nation law respecting the protection of the environment, the federal provision will prevail to the extent of any inconsistency.

(3) The ʔaǰam Environmental Management Plan sets out ʔaǰam's minimum standards and best management practices in relation to:

(a) air quality and dust control;

(b) agricultural and range lands;

(c) woodlands;

(d) fuel handling and storage;

(e) waste water management;

(f) ground water protection;

(g) surface water protection;

(h) erosion and sediment control;

- (i) fish and wildlife; and
- (j) plants (invasive species).

(4) The *Canadian Environmental Protection Act* regulates the use and control of toxic substances that cause land, air and water pollution, and requires reporting releases and emissions under specified circumstances. It also imposes stringent liability and penalties for non-compliance.

(5) The *Fisheries Act* contains two key provisions on conservation and protection of fish habitat essential to sustaining freshwater and marine fish species:

(a) The Department of Fisheries and Oceans administers section 35 of the *Species at Risk Act*, which is the key habitat protection provision, prohibiting any work or undertaking that would cause the harmful alteration, disruption or destruction of fish habitat; and

(b) Environment Canada administers section 36 of the *Species at Risk Act*, which is the key pollution prevention provision, prohibiting the deposit of deleterious substances into waters frequented by fish, unless authorized by regulations under the *Fisheries Act* or other federal legislation. A deleterious substance can be any substance that, if added to any water, would degrade or alter its quality such that it could be harmful to fish, fish habitat or the use of fish by people.

(6) The *Species at Risk Act* is aimed at:

(a) preventing wildlife species in Canada from disappearing;

(b) providing for the recovery of wildlife species that are extirpated (no longer exist in the wild in Canada), endangered, or threatened as a result of human activity; and

(c) managing species of special concern to prevent them from becoming endangered or threatened.

Section 4 Policy

(1) Except in the case of allotments, the Lands Department is required to incorporate environmental conditions into each land instrument issued by ᑭᓄᓂᓄᓂ.

Mandatory Terms Regarding Interest Holder's Compliance with Laws and Management of Hazardous Substances

(2) Except in the case of allotments, all land instruments must require the interest holder to observe, abide by, and comply with all applicable laws, by-laws and regulations of Canada, the Province or ᑭᓱᓂᓂ in relation to the interest holder's use / occupation / taking of resources from ᑭᓱᓂᓂ lands, including laws, by-laws and regulations of Canada, the Province or ᑭᓱᓂᓂ relating in any way to Hazardous Substances, Environmental Laws, and human health and safety.

(3) Except in the case of allotments, all land instruments must set out specific terms in relation to the management of hazardous substances.

Mandatory Terms for Expiry of Land Instrument

(4) Except in the case of allotments, all land instruments must require that at the expiry of the term of the land instrument the interest holder:

- (a) ensure that a Phase 1 Environmental Site Assessment is completed; and
- (b) comply with any further assessments or remediation measures that are recommended in that Assessment and are related to the interest holder's operations or occupancy.

Mandatory Terms Regarding Mitigation Measures, Monitoring and Enforcement Following an Environmental Assessment

(5) Where a decision by Council on an environmental assessment sets out mandatory terms and conditions that a proponent must comply with in relation to a designated project, and the proponent is required to further obtain a land instrument from ᑭᓱᓂᓂ prior to commencing that designated project, the terms and conditions of that land instrument must include those terms and conditions set out by Council, including the roles and responsibilities of each party in relation to monitoring and enforcement of those terms and conditions.

Restriction on Council's Consent to Transfer, Assign or Renew a Land Instrument

(6) Environmental terms and conditions of a land instrument must be met before Council consents to the cancellation, transfer, assignment or renewal of a land instrument.

(7) Land instruments, or the interest granted in land, may not be cancelled, transferred, assigned or renewed unless the environmental terms and conditions contained in the existing instrument have been complied with.

Documentation

(8) The Lands Department is responsible for ensuring all environmental reports, monitoring and compliance information and any other pertinent environmental information related to land activities and/or land transactions are maintained in the appropriate Lands Department files.

Section 5 Process

(1) This policy must be considered in the drafting of every land instrument.

(2) Where an Environmental Assessment is conducted as part of an application process for the use of Ṛaḳam lands, and mitigation measures are recommended in that environmental assessment, those mitigation measures must be incorporated into the terms of the land instrument to which that use of Ṛaḳam lands relates.

(3) Where an Environmental Site Assessment is completed in relation to the renewal, transfer or assignment of a land instrument, and remediation measures are recommended in that Environmental Site Assessment, such measures must be complied with before Council consents to the renewal, transfer or assignment of that land instrument.

(4) The minimum acceptable standards set out in the Ṛaḳam Environmental Management Plan must be met in the drafting of all land instruments.

Section 6 References

(1) Besides this policy, consult the following resources:

- (a) Policy 9-1: Environmental Assessments;
- (b) Policy 9-2: Environmental Site Assessments; and
- (c) the Ṛaḳam Environmental Management Plan.

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MONITORING AND ENFORCEMENT POLICIES

Approved by Council on March 15, 2016

TABLE OF CONTENTS

POLICY 10-1 MONITORING	365
Section 1 Purpose	365
Section 2 General	365
<i>Definitions</i>	365
<i>How Is Monitoring Carried Out?</i>	365
<i>Why Is Monitoring Important?</i>	366
<i>Who Is Involved In Monitoring?</i>	366
Section 3 Authority.....	366
Section 4 Policy	367
<i>Priority Based Monitoring</i>	367
<i>Passive Monitoring</i>	368
<i>Active Monitoring</i>	369
<i>Monitoring Of Agents, Sub-Tenants And Other Persons</i>	369
Section 5 Process.....	370
<i>Developing Monitoring Plans For All Land Instruments</i>	370
<i>Developing And Maintaining A Bring Forward System</i>	371
<i>Records Keeping</i>	372
<i>Daily Checking Of The Bring Forward System</i>	372
<i>Review Task And Acquire Evidence</i>	372
<i>Reminder Letters</i>	372
<i>Acquiring Documents That Are Required For Monitoring</i>	373
<i>Site Inspections</i>	374
<i>Compliance Assessment</i>	375
<i>Enforcement Decision</i>	375
<i>Reporting To The Chief Operating Officer</i>	376

Section 6	References	376
POLICY 10-2 ENFORCEMENT PROCEEDINGS.....		377
Section 1	Purpose	377
Section 2	General.....	377
	<i>What Do We Mean By ‘Enforcement’?</i>	377
	<i>Who Is Involved In Enforcement?</i>	377
	<i>Enforcement Goals</i>	377
Section 3	Authorities.....	378
Section 4	Policy	379
	<i>The Goal Is To Achieve Voluntary Compliance</i>	379
	<i>Urgent Enforcement Measures</i>	379
	<i>Prioritizing Enforcement Measures</i>	379
	<i>Enforcement Cost Recovery</i>	380
	<i>Due Process And Fairness</i>	380
	<i>Documentation Of Enforcement Actions</i>	380
Section 5	Process.....	381
	<i>Finding Of Non-Compliance</i>	381
	<i>Review Of Land Instrument For Terms Related To Enforcement</i>	381
	<i>Notice Of Non-Compliance / Demand Letter</i>	381
	<i>Follow-Up & Negotiation</i>	382
	<i>Cancellation Of Land Instrument</i>	382
Section 6	References	382

POLICY 10-1 MONITORING

Section 1 Purpose

(1) This policy provides information on the policies and procedures that govern the monitoring of land instruments under the *Ḥaqām Amended Land Code*.

(2) Although this policy sets out the minimum requirements the Lands Department must comply with in the monitoring of land instruments, the Lands Department may be required to do responsive monitoring in situations where they receive concerns from the public regarding an interest holder's use of Ḥaqām lands. Responsive monitoring is not covered under this policy as the actions that will be required in responding to concerns from the public will be dependent upon the specific concern being raised and whether it relates directly to a term in the land instrument itself.

Section 2 General

Definitions

(1) In this policy, the following definitions apply:

“enforcement” means the act of taking positive steps towards ensuring an interest holder is in compliance with the terms of their land instrument. All enforcement steps and actions must be consistent with Policy 10-2;

“monitoring” means the act of comparing the terms of a land instrument to the actual actions of the interest holder and reporting to Council on any non-compliance; and

“site inspection” means any action taken to verify compliance with the terms of a land instrument that requires an employee of the Lands Department to enter the lands that are subject to the land instrument. Depending on the terms of a land instrument, a site inspection may be scheduled with the interest holder or may occur without the need for scheduling it.

How is Monitoring Carried Out?

(2) Monitoring involves the following actions to be taken by the Lands Department:

(a) the development of a monitoring plan for monitoring and enforcement;

(b) a review of the terms of a land instrument;

(c) the gathering of data about the actual actions of the interest holder;

(d) a comparison of the data on the actual actions of the interest holder to the terms

of the land instrument; and

(e) the drafting of a monitoring report for consideration by Council.

Why is Monitoring Important?

(3) Monitoring is important so that ᑭᓄᓄᓄ is viewed by members as upholding its duty toward members to ensure that all land instruments are managed in the best interests of ᑭᓄᓄᓄ and that ᑭᓄᓄᓄ lands are respected so that ᑭᓄᓄᓄ can maintain sustainability in its land base.

(4) The ᑭᓄᓄᓄ Lands Department uses monitoring to:

(a) uphold ᑭᓄᓄᓄ' s responsibilities under ᑭᓄᓄᓄ laws and by-laws, and the terms in land instruments;

(b) have a presence in the community to deter interest holders from non-compliance with the terms in their land instruments; and

(c) identify non-compliance situations that require corrective action to be taken.

Who is involved in Monitoring?

(5) The main individuals involved in monitoring are the:

(a) Council;

(b) Lands Department;

(c) Lands Committee; and

(d) interest holders.

Section 3 Authority

(1) The relevant authorities are as follows:

(a) paragraphs 26.2(a), (e) and (f), 26.4, 26.5(a),(b),(d),(e) and (i), 27.2(a),(d) and (e) of the *ᑭᓄᓄᓄ Amended Land Code*; and

(b) authority flowing from the terms of land instruments.

(2) Paragraphs 26.2(a), (e), and (f), 26.4, 26.5(a),(b),(d),(e) and (i), 27.2(a),(d) and (e) of the *ᑭᓄᓄᓄ Amended Land Code* state:

26.2 Without limiting the generality of section 26.1, the ʔaḡam Lands Department shall:

- (a) administer ʔaḡam lands in accordance with this Land Code and any other applicable law or policy of ʔaḡam;
- (e) maintain and protect records in relation to ʔaḡam Lands in the Lands Department files; and
- (f) perform such other duties and functions consistent with this Land Code as Council may direct.

26.4 In consultation with Council, the Director of Lands and Natural Resources may develop policies and procedures required for the proper administration and management of the ʔaḡam Lands Department.

26.5 Without limiting the generality of sections 26.1, 26.3 and 26.4, the Director of Lands and Natural Resources shall:

- (a) oversee the day-to-day operations of the Lands Department;
- (b) advise the Lands Committee and Council on matters in relation to ʔaḡam lands;
- (d) subject to Part 8 (Dispute Resolution), hold regular and special meetings with Members to discuss issues related to ʔaḡam Lands, and make recommendations to the Lands Committee and Council on the resolution of such issues;
- (e) assist in the exchange of information between Members and Council regarding ʔaḡam Lands issues;
- (i) perform such other duties and functions consistent with this Land Code as Council may direct.

27.2 The Lands Committee shall:

- (a) assist the Director of Lands and Natural Resources with administrative decisions in relation to ʔaḡam Lands;
- (d) consult with Members on land issues; and
- (e) perform such other duties and functions as Council or the Director of Lands and Natural Resources may direct.

Section 4 Policy

Priority Based Monitoring

(1) The Lands Department must prioritize monitoring with the following principles in mind:

- (a) all items in a land instrument that involve a major risk to health, safety, lands, resources, environment or ʔaḡam liability must be monitored;

- (b) all items in a land instrument that are required by law to be monitored must be monitored;
- (c) if a land instrument is being renewed, monitoring the interest holder's compliance with the land instrument must be completed before a new land instrument is granted;
- (d) priority should be given to cases where monitoring is likely to prevent or correct problems;
- (e) priority should be given to those items in a land instrument that involve higher risks to the health, safety, lands, resources, environment or Ḥaqām liability; and
- (f) the benefits of monitoring should always outweigh the cost of non-enforcement.

Passive Monitoring

(2) Passive monitoring refers to the monitoring of those terms in land instruments that require the interest holder to submit acceptable evidence of compliance to Ḥaqām within a specified timeframe, on a specified date, or following some specified event.

(3) Passive monitoring is appropriate in circumstances where it is the interest holder's responsibility to provide documentation to Ḥaqām. In such circumstances, it is not Ḥaqām's responsibility to request that the interest holder provides the information to Ḥaqām. Rather, Ḥaqām plays a passive, responsive role.

(4) Ḥaqām's responsibility in passive monitoring circumstances is to check whether the interest holder has complied with the requirement of their land instrument at the end of the specified timeframe, following the specified date, or following the specified event.

(5) In passive monitoring, the role of the Lands Department is limited to:

- (a) ensuring that Ḥaqām receives evidence of compliance with the terms of land instruments within the timeframes specified in the land instruments;
- (b) comparing the terms of land instruments to the evidence provided by the interest holder;
- (c) determining whether the evidence provided is satisfactory evidence that the term of the land instrument has been complied with; and
- (d) reporting to Council on non-compliance with the terms.

(6) Some examples of when passive monitoring may be used include:

(a) a lessee may be required to provide the Lands Department with a current certificate of insurance on an annual or bi-annual basis showing active insurance coverage for their property; or

(b) a licensee or permittee may be required to periodically (timing to be specified in the instrument) provide the Lands Department with logbooks that detail the resources taken from ʔaḳam lands within a specified time period.

Active Monitoring

(7) Some terms in a land instrument may require the Lands Department to take a more assertive and proactive role in monitoring the interest holder's compliance with those terms. Some steps that may be taken in active monitoring include:

(a) requests to the interest holder to provide the Lands Department with evidence of compliance with a term in a land instrument;

(b) site inspections to ensure that a term in a land instrument is being complied with;
or

(c) responding to complaints or concerns from the public regarding the interest holder's use of the ʔaḳam lands to which he or she has a right.

(8) Some examples of when active monitoring may be used include:

(a) a lessee may be required, at the request of the ʔaḳam to provide an active certificate of insurance;

(b) an interest holder may be required, at the request of ʔaḳam, to allow the Lands Department to inspect the lands for hazardous substances;

(c) an interest holder may be required to maintain the leased lands in a specific condition and such term must be monitored; or

(d) a lessee may be required to go through an additional approval process in order to develop the land.

Monitoring of Agents, Sub-tenants and other Persons

(9) Interest holders are responsible for monitoring their own agents, sub-tenants and other persons they allow on ʔaḳam lands under the terms of their land instrument.

Section 5 Process

Developing Monitoring Plans for All Land Instruments

(1) As soon as practical, after a land instrument is executed, the Lands Department must complete a Form 10-1-01: Monitoring Plan for each term in the land instrument.

(2) In the Form 10-1-01: Monitoring Plan, the Lands Department must identify and create a checklist for each land instrument, specifying:

(a) each term that requires monitoring;

(b) the information that needs to be collected as evidence of compliance with each term that requires monitoring;

(c) the location where, or person from whom, the Lands Department may access the evidence required for monitoring;

(d) details regarding how the Lands Department may collect the evidence and the processes and timeframes associated with the collection of such evidence;

(e) due dates setting out the latest date that such evidence must be collected and assessed by;

(f) reminder dates for when the processes of collecting evidence must be initiated in order to ensure the evidence is collected by the due dates;

(g) an assignment of the person at the Lands Department responsible for collecting the evidence; and

(h) a way to document the receipt of the evidence by the Lands Department.

(3) Some terms in a land instrument will not have set due dates attached to them for monitoring but may still require active monitoring and enforcement efforts to be undertaken.

(4) Examples of such terms include terms related to:

(a) the presence of hazardous substances;

(b) maintenance of the land in a specific condition;

(c) approved or restricted uses of the land; and

(d) restriction from building improvements on the land.

(5) Where a term in a land instrument does not have a set due date attached to it, the Lands Department must:

- (a) consider the specific term and section 4(1) of this policy when deciding on the timeframe within which the term should be followed-up;
- (b) follow up with monitoring of such terms at least once per year and more often where the Lands Department feels such monitoring is necessary based on the criteria in section 4(1) of this policy; and
- (c) if unsure about the timeframes to choose, consult with the Lands Committee or Council to determine an appropriate follow-up schedule.

(6) All monitoring plans should be able to be picked up by anyone involved in the monitoring and enforcement of land instruments at any time and be clear as to what must happen in terms of monitoring that land instrument.

Developing and Maintaining a Bring Forward System

(7) Each employee in the Lands Department must, in consultation with the Director of Lands and Natural Resources:

- (a) develop and maintain a bring forward system (i.e. a work planning system, calendar or reminder system) for tracking and managing deadlines in all of the monitoring plans that he or she is responsible for; and
- (b) check that bring forward system for tasks on a daily basis.

(8) Due dates identified in all monitoring plans, and reminders for those due dates, should be entered into each employee's bring forward system to them of all upcoming and due monitoring tasks that they are individually responsible for.

(9) When choosing a reminder date, employees at the Lands Department should consider the nature of the evidence that must be collected and the processes and timeframes involved in collecting such evidence.

(10) The bring forward system should be able to be picked up by anyone involved in the monitoring and enforcement of land instruments at any time and that person should be clear from the tasks in the bring forward system as to what they must do in terms of monitoring.

Records Keeping

(11) Employees of the Lands Department must record in Form 10-1-01: Monitoring Plan, or elsewhere in the Lands Department file for each land instrument, all steps taken and communications pertaining to the monitoring and enforcement of that land instrument and must maintain such written records in the Lands Department file for the land instrument to which the monitoring and enforcement efforts relate.

Daily Checking of the Bring Forward System

(12) It is the responsibility of each employee within the Lands Department, on a daily basis, to check their bring forward system for reminders and due dates.

Review Task and Acquire Evidence

(13) When a task comes up in the bring forward system, the employee at the Lands Department who is responsible for that task must:

- (a) review the term in the land instrument that relates to the reminder or due date;
- (b) review the monitoring plan for the steps that must be completed to gather the necessary evidence required for monitoring of that term in the land instrument; and
- (c) after reviewing a task in the bring forward system and its associated monitoring plan, ensure all necessary steps are taken to acquire the evidence that is required for monitoring that term in the land instrument.

Reminder Letters

(14) If it is cost effective and within operational abilities, the employee at the Lands Department who is responsible for the monitoring of a given task in a land instrument should send written notices to the interest holder to:

- (a) encourage self-compliance; and
- (b) advise them of upcoming requirements such as the delivery of insurance certificates, self-monitoring reports or annual payments to ʔaḡam.

Acquiring Documents That Are Required For Monitoring

(15) Sometimes, monitoring may require the gathering of documents from an interest holder or third party.

(16) If documents must be gathered from an interest holder, the Lands Department must check the land instrument to determine whether it sets out a process for such document gathering and if it does, follow that process.

(17) If a land instrument does not set out a process for gathering documents from an interest holder, the Lands Department must deliver the interest holder a written request for the documents, setting out:

(a) the type of land instrument and section number of the term in the land instrument that is being monitored;

(b) the documents that the interest holder is required to provide the Lands Department to assist them in monitoring the term in the land instrument; and

(c) the deadline for when the documents must be received by the Lands Department,

and the Lands Department must place a copy of the written request in the file related to the land instrument.

(18) Where time and resources are available to do so, the person at the Lands Department who sent a request for documents letter to an interest holder must consider following up with the interest holder by telephone to ensure the interest holder received the written request and confirm that the interest holder will be delivering the documents to the Lands Department within the required timeframe. Although this is not mandatory, it is recommended as the goal is to encourage compliance rather than wait until there is non-compliance. However, follow-up phone calls are a courtesy only. It is the interest holder's responsibility to comply with the terms of the land instrument.

(19) If documents must be gathered from third parties, the person at the Lands Department who is responsible for monitoring must first ensure that the land instrument sets out that he or she can gather such documents from third parties. If it does not, the Lands Department must obtain written permission from the interest holder to gather such documents from third parties and must place a copy of the written permission in the file related to the land instrument.

(20) If the Lands Department must gather documents from third parties, they must follow the same processes that are set out in section 5(16) and 5(17) of this policy in making a request to the third party for documents, and in making such a request they must attach a copy of the land instrument or the written permission from the interest

holder to the written request as evidence of the interest holder's consent to such information gathering.

Site Inspections

(21) Sometimes evidence gathering may require the person at the Lands Department who is responsible for monitoring to conduct a site inspection of the location, environment, physical condition and use of the land to which the interest holder has a right. A few examples of terms that may require site inspections include terms related to:

- (a) the presence of hazardous substances;
- (b) maintenance of the land;
- (c) approved or restricted uses of the land; and
- (d) improvements on the land.

(22) In some circumstances, the Lands Department may also wish to conduct a site inspection in response to a third party's complaint or report to the Lands Department in regard to an interest holder's use of ʔaḡam lands.

(23) If a site inspection is necessary, the person at the Lands Department responsible for monitoring must check the land instrument to determine any special steps that must be taken to gain access to the lands and if the land instrument sets out a process, that process must be followed.

(24) If a site inspection is necessary and the land instrument does not set out a process that must be followed for the Lands Department to access the area to which the land instrument relates, the person at the Lands Department responsible for monitoring must provide the interest holder with twenty-four hours (24hrs) written notice, setting out:

- (a) that ʔaḡam will be conducting a site inspection for the purpose of monitoring compliance with the terms of the land instrument;
- (b) the title and date of the land instrument to which the site inspection relates;
- (c) the date, time and location of the planned site inspection;
- (d) a request that the interest holder, or his or her representative, be present during the planned site inspection and that the interest holder advise the Lands Department of the name of the person who will be present for the site inspection; and

(e) the name and contact details for the person at the Lands Department who is responsible for monitoring and who will be conducting the site inspection.

(25) The person at the Lands Department responsible for a site inspection must ensure that a copy of the written notice and all communications regarding the site inspection is maintained in the Lands Department file to which the site inspection relates.

(26) The person at the Lands Department responsible for a site inspection must, preferably in the presence of either the interest holder or the interest holder's personal representative, conduct the site inspection and complete Form 10-1-02: Site Inspection Report, and if necessary take photographs as evidence of what he or she personally witnesses during the site inspection.

(27) The person at the Lands Department responsible for a site inspection must place a copy of the completed Form 10-1-02: Site Inspection Report and any photographs taken during the site inspection in the file related to the land instrument to which the site inspection relates.

Compliance Assessment

(28) Once the person at the Lands Department responsible for monitoring has taken all reasonable steps to gather the evidence required for monitoring a term in a land instrument, he or she must compare the evidence gathered to the term in the land instrument and determine whether the term has been adequately complied with.

Enforcement Decision

(29) Based on the Lands Department's compliance assessment and Policy 10-2, the Lands Department must determine which enforcement steps, if any, are required to ensure compliance with a term in a land instrument.

(30) In some circumstances, the Lands Department may wish to consider cancelling the land instrument, in which case Policy 5-3 should be consulted.

(31) Where the Lands Department determines that enforcement steps must be taken to ensure compliance with a land instrument, he or she must:

(a) update the monitoring plan for that land instrument to reflect the additional enforcements steps that must be taken; and

(b) update the bring forward system to reflect the additional enforcement steps that must be taken.

(32) Where the Lands Department determines, in accordance with Policy 10-2, that enforcement steps must be taken to ensure compliance with the land instrument, he or she must implement such enforcement steps in a timely manner.

Reporting to the Chief Operating Officer

(33) Whenever enforcement of an interest or licence is required, the Lands Department must provide a written report to the chief operating officer, setting out:

- (a) all shortfalls in compliance with a term in a land instrument;
- (b) the Lands Department's enforcement plan, and any actions taken to implement that plan in relation to shortfalls in compliance with a term in a land instrument; and
- (c) a copy of the updated monitoring plan related to the shortfalls in compliance with a term in an interest of licence.

Section 6 References

(1) Besides this policy, consult the following resources:

- (a) Policy 5-3: Cancelling a Lease; and
- (b) Policy 10-2: Enforcement Proceedings.

POLICY 10-2 ENFORCEMENT PROCEEDINGS

Section 1 Purpose

(1) This policy provides information on the policies and procedures which govern the enforcement of land instruments under the *ᑭᓱᓱᓐ ᐱᓄᓄᓄᓄ ᐱᓄᓄᓄ ᐱᓄᓄᓄ*.

Section 2 General

What do we mean by ‘enforcement’?

(1) “Enforcement” means taking the necessary steps to get interest holders to comply with the terms of their land instrument and managing those situations where an interest holders in non-compliance.

(2) Enforcement involves the following activities:

- (a) notices of non-compliance / demand letters;
- (b) negotiation; and
- (c) cancellation or termination of the land instrument.

Who is involved in enforcement?

(3) The following people may be involved in enforcement processes:

- (a) Council;
- (b) the Lands Department;
- (c) the Lands Committee;
- (d) interest holders; and
- (e) third parties, such as mortgagors or sub-lessees.

Enforcement Goals

(4) As with monitoring, enforcement is aimed at ensuring compliance with land instruments. It is important that the Lands Department:

- (a) acts as required by ᑭᓱᓱᓐ laws and the terms of the land instruments;

(b) encourages interest holders to comply with the terms of their land instruments;
and

(c) takes action to ensure compliance with land instruments.

Section 3 Authorities

(5) The relevant authorities are as follows:

(a) paragraphs 26.2(a), (e) and (f), 26.4, 26.5(a),(b),(d),(e) and (i), 27.2(a),(d) and (e) of the *ᑲᓱᓴᓄᓐ ᐱᓄᓄᓄᓐ ᐱᓄᓄᓄᓐ ᐱᓄᓄᓄᓐ*; and

(b) authority flowing from the terms of land instruments.

(6) Paragraphs 26.2(a), (e), and (f), 26.4, 26.5(a),(b),(d),(e) and (i), 27.2(a),(d) and (e) of the *ᑲᓱᓴᓄᓐ ᐱᓄᓄᓄᓐ ᐱᓄᓄᓄᓐ ᐱᓄᓄᓄᓐ* state:

26.2 Without limiting the generality of section 26.1, the ᑲᓱᓴᓄᓐ Lands Department shall:

(a) administer ᑲᓱᓴᓄᓐ lands in accordance with this Land Code and any other applicable law or policy of ᑲᓱᓴᓄᓐ;

(e) maintain and protect records in relation to ᑲᓱᓴᓄᓐ Lands in the Lands Department files; and

(f) perform such other duties and functions consistent with this Land Code as Council may direct.

26.4 In consultation with Council, the Director of Lands and Natural Resources may develop policies and procedures required for the proper administration and management of the ᑲᓱᓴᓄᓐ Lands Department.

26.5 Without limiting the generality of sections 26.1, 26.3 and 26.4, the Director of Lands and Natural Resources shall:

(a) oversee the day-to-day operations of the Lands Department;

(b) advise the Lands Committee and Council on matters in relation to ᑲᓱᓴᓄᓐ lands;

(d) subject to Part 8 (Dispute Resolution), hold regular and special meetings with Members to discuss issues related to ᑲᓱᓴᓄᓐ Lands, and make recommendations to the Lands Committee and Council on the resolution of such issues;

(e) assist in the exchange of information between Members and Council regarding ᑲᓱᓴᓄᓐ Lands issues;

(i) perform such other duties and functions consistent with this Land Code as Council may direct.

27.2 The Lands Committee shall:

(a) assist the Director of Lands and Natural Resources with administrative decisions in relation to ᑲᓱᓴᓄᓐ Lands;

(d) consult with Members on land issues; and

(e) perform such other duties and functions as Council or the Director of Lands and Natural Resources may direct.

Section 4 Policy

The Goal is to Achieve Voluntary Compliance

(1) Wherever possible, the Lands Department will seek interest holders voluntary compliance with the terms of a land instrument.

(2) The Lands Department will make every effort to:

(a) first seek enforcement through cooperation with interest holders;

(b) first resolve disputes over compliance on an informal or cooperative basis through negotiation; and

(c) cancel or terminate a land instrument only as a last resort to addressing non-compliance.

Urgent Enforcement Measures

(3) ᐱᐱᐱᐱ's main goal is to ensure ᐱᐱᐱᐱᐱᐱᐱᐱ (natural law) is preserved and the health and well-being of ᐱᐱᐱᐱᐱᐱ. The Lands Department must act quickly when dealing with situations that are very serious and have great urgency, which may involve acting without notice, consent or cooperation.

(4) The Lands Department will assess every instance of non-compliance and decide on the best course of action, given the facts of the situation. They will also assess the risk, cost and benefit to all effected persons when making such decisions.

Prioritizing Enforcement Measures

(5) ᐱᐱᐱᐱ will be guided by the following principles in enforcement related decision-making:

(a) enforcement measures must be taken when non-compliance relates to terms which involve a major risk to health, safety, lands, resources, environment or ᐱᐱᐱᐱ liability;

(b) enforcement measures must be taken when non-compliance relates to terms which direct or make a commitment to monitoring;

(c) when considering enforcement measures those which are less severe should be considered first and where they appear to offer a good chance of resolving a breach, default or dispute, they should be adopted before more severe action is taken; and

(d) enforcement measures will be prioritized when the benefits to the Ḥaqām of taking action outweigh the costs of not taking action.

Enforcement Cost Recovery

(6) Wherever possible, Ḥaqām will seek to recover the costs of an action involving non-compliance with a term in a land instrument from those responsible for the non-compliance.

Due Process and Fairness

(7) To the best extent possible, Ḥaqām will respond to non-compliance within the terms of a land instrument based on the following principles:

(a) interest holders will be provided with a notice of non-compliance and a reasonable opportunity to remedy their non-compliance; and

(b) interest holders will be provided an opportunity to meet with Ḥaqām and discuss the possibility of alternative remedies to their non-compliance.

Documentation of Enforcement Actions

(8) Documenting all enforcement actions is important because such documentation is evidence of Ḥaqām's fair processes.

(9) The Lands Department must keep a record in each land instrument file, of every enforcement action taken in relation to that land instrument, including all correspondence between the Lands Department and Interest Holder such as phone calls, letters, emails, etc.

(10) The Lands Department must ensure there is a piece of lined paper stapled to the inside cover of each Lands Department file and Lands Department employees must document on that piece of paper the dates, times and steps for enforcement that are taken and the name and signature of the person taking the enforcement steps on behalf of Ḥaqām.

(11) All emails and written forms of correspondence relating to the monitoring and enforcement of a land instrument must be printed out and added to the Lands Department file for that land instrument.

Section 5 Process

Finding of Non-Compliance

(1) The Lands Department must determine whether they have sufficient evidence of non-compliance with a term in the land instrument. A verbal statement made by one person about something another person said or did, that does not relate to something the person making the statement knows personally or witnessed firsthand, cannot be the only evidence of non-compliance. There must be physical evidence, or a first-hand witness account of non-compliance.

Review of Land instrument for Terms Related to Enforcement

(2) If the Lands Department determines that sufficient evidence of non-compliance with a term in the land instrument exists, they must review the land instrument for terms that set out the process to be followed for non-compliance and, if such terms exist, they must follow the process set out in the land instrument.

Notice of Non-Compliance / Demand Letter

(3) If the Lands Department determines that sufficient evidence of non-compliance with a term in a land instrument exists, and the terms in the land instrument do not provide for a process to follow in addressing the non-compliance, the Lands Department must:

- (a) complete Form 10-2-01: Notice of Non-Compliance;
- (b) make two (2) copies of the completed Form 10-2-01: Notice of Non-Compliance and:
 - (i) provide one (1) copy to Council; and
 - (ii) place one (1) copy in the Lands Department file to which the interest relates; and
- (c) send the original, completed Form 10-2-01: Notice of Non-Compliance to the interest holder by personal delivery or registered mail.

(4) If the Lands Department delivers Form 10-2-01: Notice of Non-Compliance to the interest holder by personal delivery, the person from the Lands Department who

delivers it must make a notation on the copy of the Form 10-2-01: Notice of Non-Compliance in the Lands Department file as follows:

I, [name of person from Lands Department], hand delivered an original, signed copy of this letter to [name of interest holder] on [date of delivery].

[Signature of person who delivered letter]

[Date of Signature]

(5) If the Lands Department delivers Form 10-2-01: Notice of Non-Compliance to the interest holder by registered mail, they must place the receipt for the mailing in the Lands Department file.

Follow-up & Negotiation

(6) If, within five (5) business days of delivering a Notice of Non-Compliance to the interest holder, the Lands Department does not hear anything from the interest holder, the Lands Department must follow up with the interest holder by telephone to determine whether the interest holder intends to complete the requirements set out in the Notice of Non-Compliance and if the interest holder does not intend to complete the requirements, the Lands Department must consider inviting the interest holder to have a meeting to discuss the Notice of Non-Compliance.

(7) The Lands Department must make attempts to negotiate with the interest holder a reasonable remedy to non-compliance and if a reasonable remedy is available, the Lands Department must pursue the remedy prior to considering cancellation of the land instrument.

Cancellation of Land Instrument

(8) Cancelling a land instrument should only be used as a last resort and in circumstances where an interest holder does not comply with their Notice of Non-Compliance and is not willing or able to comply with the terms of their land instrument.

(9) Refer to Policies 5-3 and 6-1 for information on the policies and procedures to follow in the cancellation of a land instrument.

Section 6 References

(10) Besides this policy, consult the following resources:

(a) the land instrument; and

(b) Policies 5-3 and 6-1.



LIST OF SCHEDULES

Schedule A: Lands Management Manual Forms	385
Schedule B: Residential Headlease Template	446
Schedule C: Residential Sublease Template	498
Schedule D: Commercial Lease template	539
Schedule E: Standard Form Licence Agreement	572
Schedule F: Standard Form Permit Agreement	588
Schedule G: Standard Form Easement Agreement	604
Schedule H: Standard Form Right-of-Way Agreement.....	617
Schedule I: Lands Department Fee Schedule	635

SCHEDULE A: LANDS MANAGEMENT MANUAL FORMS

Table of Contents

1-2-01 Oath of Office	386
1-2-02 Notice of Meeting and Vote	387
1-2-03 Statement of Witness	389
1-2-04 Certification of Meeting of Members Vote Results	390
1-2-05 Notice of Land Law Vote	392
1-2-06 Voter Registration Form	394
1-2-07 Declaration of ᐃAQAM Land Law Voting Officer	396
1-2-08 Certification of Ratification Vote Results.....	397
3-1-01 Registration Information Form	399
4-1-01 Application for Allotment	401
4-1-02 Allotment to Member	411
4-1-03 Undertaking to Build Residential Home.....	413
4-2-01 Transfer of Interest in Allotment.....	414
4-2-02 Declaration of Superintendent.....	418
4-2-03 Consent of Spouse/Common-Law Partner	420
4-2-04 Certificate of Possession	421
6-1-01 Application for Use of ᐃaqam Lands.....	423
6-1-02 Letter to Applicant	431
6-3-01 Request to Cancel Licence, Permit, Right of Way	433
6-3-02 Certificate of Cancellation of Licence, Permit, Right of Way	438
7-1-01 Request to Correct Interest or Licence	439
7-1-02 Certificate of Cancellation of Land Instrument	441
10-1-01 Monitoring Plan.....	442
10-1-02 Site Inspection Report.....	444
10-2-01 Notice of Non-Compliance	445



ʔaqam Lands Department

OATH OF OFFICE

Form No. 1-2-01

ʔAQAM LAND LAW VOTING OFFICER OATH OF OFFICE

NAME: _____

PH #: _____

ADRESSS: [Address]

[City, Province]

[Postal Code]

I _____, agree to act as the ʔaqam Land Law Voting Officer to determine whether the voters of ʔaqam approve the XXXX Law, and I DO HEREBY [SWEAR / AFFIRM] THAT:

1. I am not a member of ʔaqam;
2. I have no vested interest in the outcome of the vote on whether to approve the XXXX Law;
3. I am at least 21 years of age;
4. I will uphold and comply with the *ʔaqam Amended Land Code*, the Code of Ethics and all laws of ʔaqam;
5. I will fulfill the duties and responsibilities of my office under the *ʔaqam Amended Land Code*, the Code of Ethics, all laws of ʔaqam and Policy 1-2: "Law-Making" of the ʔaqam Land Management Manual;
6. I will carry out my duties faithfully, honestly, impartially and to the best of my abilities;
7. I will keep confidential, both during and after my term of office, any matter or information which, under the *ʔaqam Amended Land Code*, or any ʔaqam law or policy is considered confidential; and
8. I will always act in the best interests of ʔaqam in carrying out my duties.

I swear this oath in the presence of _____ on the __ day of _____, 20__.

Signature _____
Witness

Date _____

Signature _____
ʔaqam Land Law Voting Officer

Date _____



ʔaqam Lands Department

NOTICE OF MEETING AND VOTE

Form No. 1-2-02

NOTICE OF MEETING AND VOTE

TO: ʔaqam Membership

DATE: XXXX

TAKE NOTICE that a Meeting of Members and Vote will be held in accordance with the *ʔaqam Amended Land Code* in order to determine if eligible voters are in favour of enacting the XXXX Law.

Summary of XXXX Law:

The XXXX Law sets out that [enter a summary of the final draft law here].

Questions and Obtaining the Full Text of XXXX Law:

In order to obtain a copy of the full text of the XXXX Law and any background documents, or if you have any questions regarding the XXXX Law, please contact Leeanna Rhodes, Lands Officer, during normal business hours at:

Leeanna Rhodes, Lands Officer
ʔaqam Administration Office
7470 Mission Road, Cranbrook, BC V1C 7E5
Phone: 250-426-5717 ext. 3533

Ballot Question:

The following question will be asked of the Registered Voter of ʔaqam, by ballot:

Are you in favour of enacting the XXXX Law?

Meeting of Members and Voting In-Person:

The Meeting of Members and Voting will take place on [Date] from [time] until [time] local time at:

ʔaqam Administration Office- Boardroom
7470 Mission Road, Cranbrook, BC V1C 7E5
Phone: 250-426-5717

Voting By Mail-in or Phone-in Ballot:

Any Eligible Voter may also vote by mail-in ballot or phone-in ballot.

The ʔaąam Land Law Voting Officer will send mail-in ballot packages, and instructions for phone-in voting, to all Eligible Voters on [date].

If an Eligible Voter wishes to vote by mail-in ballot and has not received voting documents by [date], please contact the ʔaąam Land Law Voting Officer so that the necessary documents can be supplied to you.

If an Eligible Voter wishes to vote by phone-in ballot, please [enter details of date, time, phone numbers for phone in ballots]

Voting from Outside Canada:

If you live outside Canada you are encouraged to vote either in person or by phone-in ballot to ensure that your vote is received by the closing of polls. Mail-in ballots that are not received by the closing of polls will not be counted in the vote.

AND FURTHER TAKE NOTICE that all Members of ʔaąam 18 years of age or older as of the date of the Meeting and Vote are Eligible Voters.

DATED at Cranbrook, Province of British Columbia this [] day of [], 2015.

[Name of Appointed Land Law Voting Officer]

ʔaąam Land Law Voting Officer
400 22nd Avenue South
Cranbrook, British Columbia
V1C 5K8



?aqam Lands Department

STATEMENT OF WITNESS

Form No. 1-2-03

STATEMENT OF WITNESS

Date _____

I, _____ was personally present at _____ on _____, when the polls were opened in a Vote concerning the XXXX Law, and

1. I am an Eligible Voter.
2. I witnessed that the ballot box (#) was empty before any votes were cast in the XXXX Law Vote.
3. I witnessed the ?aqam Land Law Voting Officer seal the ballot box and sign the seal.

Signature of Witness

Name of Witness



ʔaqam Lands Department

CERTIFICATION OF MEETING OF MEMBERS VOTE RESULTS

Form No. 1-2-04

CERTIFICATION OF MEETING OF MEMBERS VOTE RESULTS

I, _____, the ʔaqam Land Law Voting Officer, as appointed by the Council of ʔaqam in the City of Cranbrook, in the Province of British Columbia, **DO SOLEMNLY DECLARE THAT:**

1. I was present at [name of voting location] on [date of vote] between the hours of [hours of vote], during which time I conducted a vote on the XXXX Law;
2. I observed the voters of ʔaqam as they cast their ballots concerning the XXXX Law.
3. A true copy of the Form 1-2-02: Notice of Meeting and Vote is attached as Exhibit "1" to this Declaration.
4. In accordance with sections 12.5 and 12.6 of the *ʔaqam Amended Land Code* and at least 10 days prior to the Meeting of Members and Voting Day, I ensured that the Form 1-2-02: Notice of Meeting and Vote was posted in a public area at the ʔaqam Administration Office and (choose one of the following and insert here)

[delivered or mailed to each person on the Eligible Voter's list at his or her last known address]

OR

[publicized in the ʔaqam newsletter that was delivered or mailed to all eligible voters at their last known addresses].

5. I conducted the voting procedures, including the handling of mail-in ballots and the counting of results, in accordance with the *ʔaqam Amended Land Code* and Policy 1-2 of the ʔaqam Lands Management Manual.
6. The number of Eligible Voters names that appeared on the Voter's List was: _____.
7. The number of Eligible Voters who constituted the minimum 10% required for a quorum of Eligible Voters under Section 12.3 of the *ʔaqam Amended Land Code* was _____.
8. The number of Eligible Voters who cast a ballot in the XXXX Law Vote was _____.
9. Of those Eligible Voters who cast a ballot in the XXXX Law Vote, [a majority / less than a majority] voted in favour of the XXXX Law.
10. The results of the XXXX Law Vote are as follows:
 - (a) _____ ballots were spoiled;

- (b) _____ ballots were rejected;
- (c) _____ ballots were marked "YES" for the Ballot Question; and
- (d) _____ ballots were marked "NO" for the Ballot Question.

11. The **XXXX** Law was [approved/ not approved] by ʔaᑭam Eligible Voters.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act*.

DECLARED BEFORE ME AT)
 _____)
 in the City of Cranbrook, in the Province of)
 British Columbia, this ____ day of _____,)
 20____.)
 _____)
 (Lawyer, Notary Public, Commissioner for)
 Taking Affidavits))
 _____)
 Address)

 ʔaᑭam Land Law Voting Officer Signature



ʔaqam Lands Department

NOTICE OF LAND LAW VOTE

Form No. 1-2-05

NOTICE OF LAND LAW VOTE

TO: ʔaqam Membership

DATE: XXXX

TAKE NOTICE that a Ratification Vote will be held in accordance with the *ʔaqam Amended Land Code* in order to determine if registered voters are in favour of enacting the XXXX Law.

Summary of XXXX Law:

The XXXX Law sets out that [enter a summary of the final draft law here].

Questions and Obtaining the Full Text of XXXX Law:

A copy of the full text of the XXXX Law and any background documents is attached to this Notice of Land Law Vote.

Ballot Question:

The following question will be asked of the Registered Voter of ʔaqam, by ballot:

Are you in favour of enacting the XXXX Law?

Voting In-Person:

The Ratification Vote will take place on [Date] from 9:00 a.m. until 9:00 p.m. local time at the following polling stations:

Polling Station 1: ʔaqam Administration Office- Boardroom
7470 Mission Road, Cranbrook, BC V1C 7E5
Phone: 250-426-5717

Polling Station 2: XXXXX
XXXXX
XXXXX

Voting By Mail-in or Phone-in Ballot:

Any Registered Voter may also vote by mail-in ballot.

To obtain a mail-in ballot package, you must complete Form 1-2-06: Voter Registration and return it to the ʔaḡam Land Law Voting Officer by mail, courier, hand delivery or facsimile by [enter date, which must be at least 21 days before the Ratification Vote]

The ʔaḡam Land Law Voting Officer will send a mail-in ballot package that contains voting materials and instructions to every eligible voter whom [he / she] receives a completed Form 1-2-06: Voter Registration from indicating that they would like to vote by mail-in ballot.

AND FURTHER TAKE NOTICE that all Members of ʔaḡam 18 years of age or older as of the date of the Meeting and Vote are Eligible Voters.

DATED at Cranbrook, Province of British Columbia this [] day of [], 2015.

[Name of Appointed Land Law Voting Officer]

ʔaḡam Land Law Voting Officer
400 22nd Avenue South
Cranbrook, British Columbia
V1C 5K8



ʔaqam Lands Department

VOTER REGISTRATION FORM

Form No. 1-2-06

VOTER REGISTRATION FORM

NAME: _____ **PH #:** _____

MAILING ADDRESS:

Address: _____

City, Province: _____

Postal Code: _____

I, _____, am registering as a registered voter.
(Print Full Name)

I confirm that I will be at least 18 years of age on [date of ratification vote] and that I am a member of ʔaqam.

My Band Number is _____

My Date of Birth is _____

Check One Only:

I will be able to attend a polling station in person

OR

I wish to receive a mail-in ballot package

Note: To vote by mail-in ballot, you must ensure this Form is received by the

ᐃᐱᑖᐱᐃ Land Law Voting Officer no later than [Date, which must be at least 21 days before the ratification vote date]

I have signed this Voter Registration Form, together with _____, who is a witness to my signature as follows: (Print Name of Witness)

Signature of Eligible Voter

Date

Signature of Witness

Date



ʔaqam Lands Department

DECLARATION OF ʔAQʔAM LAND LAW VOTING OFFICER

Form No. 1-2-07

DECLARATION OF ʔAQʔAM LAND LAW VOTING OFFICER

I, _____, the ʔaqam Land Law Voting Officer for ʔaqam, as appointed by the Council of ʔaqam in the City of Cranbrook, in the Province of British Columbia, **DO SOLEMNLY DECLARE THAT:**

- 1. I was personally responsible for receiving all mail-in ballots at ʔaqam, and for conducting in-person voting, in relation to the Ratification Vote to determine whether ʔaqam Registered Voters approve the XXXX Law.
- 2. In preparation for conducting the vote, I opened ballot box number #_____.
- 3. I saw that the ballot box was empty and I asked Registered Voters who were present to witness that the ballot box was empty.
- 4. I then properly sealed the ballot box, in front of the Registered Voters who were present, and prepared it for the reception of ballot papers.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act*.

DECLARED BEFORE ME AT _____)
 _____)
 in the City of Cranbrook, in the Province of _____)
 British Columbia, this ____ day of _____)
 20____.)
 _____)
 (Lawyer, Notary Public, Commissioner for)
 Taking Affidavits))
 _____)
 Address)

ʔaqam Land Law Voting Officer Signature



ʔaqam Lands Department

CERTIFICATION OF RATIFICATION VOTE RESULTS

Form No. 1-2-08

CERTIFICATION OF RATIFICATION VOTE RESULTS

(Results of Vote Regarding the XXXX Law)

I, _____, the ʔaqam Land Law Voting Officer for ʔaqam, as appointed by the Council of ʔaqam in the City of Cranbrook, in the Province of British Columbia, **DO SOLEMNLY DECLARE THAT:**

1. I was present at [name of voting location] on [date of vote] between the hours of [hours of vote], during which time I conducted a vote on the XXXX Law;
2. I observed the voters of ʔaqam as they cast their ballots concerning the XXXX Law.
3. A true copy of the Form 1-2-05: Notice Land Law Vote is attached as Exhibit "1" to this Declaration.
4. In accordance with the *ʔaqam Amended Land Code* and at least 40 days prior to the Ratification Vote, I:
 - (c) posted in a public place at the ʔaqam Administration Office a completed Form 1-2-05: Notice of Land Law Vote; and
 - (d) sent the following information to each Member on the List of Voters at the Member's last known address:
 - (vi) a completed Form 1-2-05: Notice of Land Law Vote;
 - (vii) Form 1-2-06: Voter Registration;
 - (viii) a prepaid return envelope;
 - (ix) a copy of the XXXX Law; and
 - (x) a summary of the XXXX Law.
5. I conducted the voting procedures, including the handling of mail-in ballots and the counting of results, in accordance with the *ʔaqam Amended Land Code* and Policy 1-2 of the ʔaqam Lands Management Manual.
6. The number of Eligible Voters names that appeared on the Registered Voter's List was: _____, which is (%) of all Eligible Voters.
7. The number of Registered Voters who cast a ballot in the XXXX Law Vote was _____.
8. Of those Registered Voters who cast a ballot in the XXXX Law Vote, [a majority / less than a majority] voted in favour of the XXXX Law.
9. The results of the XXXX Law Vote are as follows:
 - (a) _____ ballots were spoiled;

(b) _____ ballots were rejected;

(c) _____ ballots were marked "YES" for the Ballot Question; and

(d) _____ ballots were marked "NO" for the Ballot Question.

10. The **XXXX** Law was [approved/ not approved] by ʔaᓄam Registered Voters.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act*.

DECLARED BEFORE ME AT)

_____,)
in the City of Cranbrook, in the Province of)
British Columbia, this ____ day of _____,)
20____.)

_____)
(Lawyer, Notary Public, Commissioner for)
Taking Affidavits))

_____)
ʔaᓄam Land Law Voting Officer Signature

_____)
Address)



ʔaqam Lands Department

REGISTRATION INFORMATION FORM

Form No. 3-1-01

Approved as to form by the ʔaqam Lands Department pursuant to the *ʔaqam Amended Land Code*

Signature _____

Date _____

Notice to Applicant: You must provide all information requested in this Form to the Lands Department in order for them to register your land transaction. By registering your land transaction in the First Nation Land Register, ʔaqam, the Lands Department or any representative or employee of ʔaqam, is not assuming any responsibility or liability for ensuring that the land instrument you are submitting for registration:

- is validly made;
- complies with ʔaqam Laws or by-laws; or
- will be accepted by the First Nation Land Register for registration or recording.

Instructions: Please complete this form in full. The information contained in it must be exactly as it appears on the land transaction document that you are submitting for registration in the First Nation Land Register.

The Lands Department will:

- review this form with you and, if all required information is being provided, process the registration of your land transaction in the First Nation Land Register;
- make a copy of your land transaction document to maintain in the Lands Department file for your allotment; and
- if applicable, forward a copy of your land transaction to the ʔaqam Finance Department to update the tax roll and assessment roll.

Applicant:

Full Legal Name: _____

Address: _____

ʔaqam Membership No: _____

Phone: _____

Transferor(s) / Grantor(s):

Full Legal Name: _____

Address: _____

ʔaqam Membership No: _____

Certificate of Possession or Allotment No: _____

Transferee(s) / Grantee(s):

Full Legal Name: _____

Address: _____

?a?am Membership No (if applicable): _____

Details of Land Affected by the Document Being Registered:

Name of First Nation: _____

Name of Reserve: _____

Province Where Land is Located: _____

Parcel Identifier Number(s): _____

Legal Description(s): _____

Type of Document To Be Registered (may be more than one document):

(*You **MUST** bring the **ORIGINAL** document with you to your meeting with the Lands Department)

- Lease
- Sub-lease
- Assignment of Lease
- Assignment of Sublease
- Agreement for Sale
- Licence
- Permit
- Easement
- Discharge of a Mortgage
- Assignment of Mortgage
- Release
- Other (specify): _____

Date Document was Executed: _____

Applicant Signature

I am one of the persons named in this application. I affirm that the information contained herein is, to the best of my knowledge, true and correct.

APPLICATION DATE

Y	M	D
YYYY	MM	DD

Signature of Applicant



ʔaᑭam Lands Department

APPLICATION FOR ALLOTMENT

Form No. 4-1-01

Approved as to form by the ʔaᑭam Lands Department pursuant to the *ʔaᑭam Amended Land Code*

Signature _____

Date _____

ATTENTION APPLICANT:

YOU ARE ONLY ELIGIBLE TO APPLY FOR AN ALLOTMENT IF YOU ARE A MEMBER AND YOU DO NOT OWE ANY ARREARS OR BAD DEBT TO ʔAQAM.

YOU MUST COMPLETE THIS APPLICATION FORM AND SUBMIT IT, ALONG WITH A \$25.00 PROCESSING FEE, TO THE ʔAQAM LANDS DEPARTMENT FOR COUNCIL CONSIDERATION.

IF YOU ARE UNABLE TO FULFILL THE REQUIREMENTS AND RESPONSIBILITIES SET OUT BELOW, PLEASE DO NOT APPLY FOR AN ALLOTMENT.

PLEASE BE AWARE THAT COUNCIL CANNOT GRANT YOU A FINAL ALLOTMENT UNLESS THE FOLLOWING CONDITIONS ARE MET:

- at your own expense and within 1 year from the date Council makes a preliminary decision to grant an allotment to you, you must provide Council with:
 - a legal description of the requested allotment that refers to a registered plan or official plan and that shows there are no overlapping or inconsistent encumbrances on the requested allotment,
 - plans for the construction of all structures and residential homes on the requested allotment, and
 - the name and contact information of the person who will be responsible for constructing the residential home on the requested allotment; and
 - an undertaking in a form approved by Council, setting out that you will construct a residential home on the requested allotment within five (5) years of the date the final allotment is granted
- Council must approve your plans for the construction of all structures and residential homes on the requested allotment;
- at your own expense and within 2 years from the date Council makes a preliminary decision to grant an allotment to you, you must obtain all relevant building and other permits for the construction of all proposed structures and residential homes on the requested allotment,
- you must not owe any arrears or bad debt to ʔaᑭam on the date that a final allotment is made; and
- you must obtain a written decision from either Council or INAC setting out that the construction of all proposed structures and residential homes:
 - is not likely to cause significant adverse environmental effects as defined in the *Canadian Environmental Assessment Act*, or
 - is likely to cause significant adverse environmental effects, as defined in the *Canadian Environmental Assessment Act*, which are justified in the circumstances, and

PLEASE BE AWARE THAT IF COUNCIL APPROVES YOUR APPLICATION AND GRANTS YOU A FINAL ALLOTMENT YOU WILL BE RESPONSIBLE FOR THE FOLLOWING:

- all the responsibilities of a lawful land holder associated with the allotment;
- insurance and maintenance of the allotment;
- insurance, maintenance and repairs for structures and buildings on the allotment;
- managing, monitoring and all responsibilities of the grantor of any interests, licences, permits, easements or other subsidiary land interests granted over the allotment;
- registering any changes to ownership of the allotment with the First Nation Land Register; and
- ensuring all uses of the allotment comply with ʔaᑭam laws, by-laws and any applicable laws or regulations of Canada or the Province.

PART 1: TO BE COMPLETED BY APPLICANT

Applicant information:

Full Legal Name: _____

Address: _____

ʔaḳam Membership No: _____

Phone: _____

Description of land being requested for allotment:

List all known encumbrances on land being requested for allotment:

You MUST attach to this application a sketch of the land being requested for allotment. A “sketch” means a scaled drawing that shows: (a) the proposed allotment lot, including the distance of the lot in width, length and area, (b) the location of any existing and proposed residential homes, including the distance between residential homes and the distance from lot lines, (c) proposed and existing landscaping and fencing, (d) the location of any watercourses and the distance between watercourses and any existing or proposed residential home, and (e) existing and proposed parking areas, loading spaces and driveways.

Yes, sketch attached

No, sketch not attached

Provide details regarding your proposed building plans for a residential home on the land being requested for allotment (i.e. have you spoken to a builder already? will you buy a pre-fab home? When will you build the home?):

Do you owe any arrears or bad debt to ʔaḳam?

“arrears” means a sum of money that is owed by a member to ʔaḳam and consists of one (1) or more of the following types of payments: (a) unpaid rent payments, (b) unpaid mortgage payments, or (c) unpaid payments for services in relation to an ʔaḳam-owned rental property.

“bad debt” means any sum of money that is owed by a member to ᐱᐱᐱ through either lending or revenue receivable by ᐱᐱᐱ and is one (1) or more days overdue to be paid to ᐱᐱᐱ.

Yes No

If yes, explain:

Do you authorize the ᐱᐱᐱ Finance Department to disclose to the ᐱᐱᐱ Lands Department all information relating to arrears or bad debt in your name?

Yes

No

You MUST attach either:

(a) evidence that shows you have sufficient funds to construct the proposed structures and residential homes on the requested allotment; or

(b) evidence of a mortgage pre-approval. *If you are providing evidence of a mortgage pre-approval you must ensure that it (a) covers the estimated costs of construction for the proposed structures and residential homes, (b) is in your name, (c) was obtained within the three (3) month period preceding the date of this application, and (d) is accompanied by a written authorization granting the entity that provided your mortgage pre-approval with permission to confirm the authenticity of the mortgage pre-approval with the Lands Department.*

Yes, the evidence required above is attached

No, the evidence required above is not attached

Are you an owner of an existing allotment?

Yes, I am the owner of an existing allotment

If yes, is there an occupied residential home constructed on your existing allotment?

Yes

No

No, I am not the owner of an existing allotment

Applicant's Signature

I am the person named as the applicant in Part 1 of this application. I have provided all information contained in Part 1 of this application and I affirm that such information is, to the best of my knowledge, true and correct.

APPLICATION DATE

Y	M	D
YYYY	MM	DD

Signature of Applicant

PART 2: TO BE COMPLETED BY THE LANDS DEPARTMENT

Receipt of application

Date Received: _____ Time Received: _____

Received By: _____

Verification of applicant's identity:

I personally know the person named in this application. The person named in this application appeared before me and I verify that he / she is the person whose name appears on this

application form.

OR

[] _____ is an employee or Council member of ʔaᑭam who personally knows the person named in this application. The person named in this application appeared before _____, who has verified that he / she is the person whose name appears on this application form.

OR

[] I have viewed two pieces of the applicant's government issued identification as follows and it is my opinion that the person represented in the two pieces of government issued identification are a likely representation of the person making this request: *(Provide document identification numbers, photocopy identification and attach to this application):*

[] Status Card Number: _____

[] Drivers Licence Type and Number: _____

[] Provincial Identification (incl. Number): _____

[] Passport (incl. Number): _____

[] Other (specify): _____

Are the lands being requested for allotment ʔaᑭam community lands?

[] Yes [] No

List known encumbrances on the lands being requested for allotment, attach relevant documentation and assess whether any identified encumbrances are consistent with an allotment:

Encumbrance Type _____ ILRS / FNLR No. _____

Is this encumbrance consistent with the granting of an allotment?

[] Yes [] No

Encumbrance Type _____ ILRS / FNLR No. _____

Is this encumbrance consistent with the granting of an allotment?

[] Yes [] No

Encumbrance Type _____ ILRS / FNLR No. _____

Is this encumbrance consistent with the granting of an allotment?

[] Yes [] No

Do ᑲᓗᓗᓄᓐ's finance department records show that the applicant owes any arrears or bad debt to the band?

Yes No

If yes, explain: _____

List the specific sections or parts of ᑲᓗᓗᓄᓐ laws, by-laws and policies that apply to the application, as follows:

ᑲᓗᓗᓄᓐ Land Code, Section(s): _____

ᑲᓗᓗᓄᓐ Environmental Management Plan, Section(s): _____

ᑲᓗᓗᓄᓐ Community Land Use Plan, 2016, Section(s): _____

ᑲᓗᓗᓄᓐ Zoning Law, Section(s): _____

Policy/Policies _____ of the ᑲᓗᓗᓄᓐ Land Management Manual

Other (identify): _____

Do the applicant's proposed building plans require an environmental assessment?

Yes No

List details of any known environmental or contamination concerns with regard to granting the requested allotment to the applicant:

Do the lands being requested for allotment contain a cultural heritage site identified in a ᑲᓗᓗᓄᓐ Community Land Use Plan, 2016?

Yes No

If yes, explain: _____

Does the applicant own an existing allotment?

Yes

If yes, does the existing allotment have an occupied residential home on it?

Yes

No
 No

Are there any development plans that may be impacted by the granting of the lands being requested for allotment to the applicant?

Yes No

If yes, explain: _____

Site Visit Observations:

Description of Site (General Location, Proximity to Water Frontage, River, etc.)

Describe the Site Topography (Soil, Ground Cover, Flood Zone, etc.)

Describe the access to a public road, or the circumstances on why the requirement for access should be exempted:

Are the following services available at the site?

Water Yes No Sewer Yes No

Power Yes No Natural Gas Yes No

Telephone Yes No Garbage collection Yes No

Other (Specify) Yes No

What is the present use of the land at the site?

Signature of Lands Department:

I, _____, am a current employee of the ʔaḡam Lands Department and my position title is _____. I have personally verified all information contained in Part 2 of this application. I affirm that all information contained in Part 2 of this application is, to the best of my knowledge, true and correct.

DATE OF LANDS
DEPARTMENT REVIEW

Y	M	D
YYYY	MM	DD

Signature Line

PART 3: TO BE COMPLETED BY THE LANDS COMMITTEE

Recommendation of the Lands Committee:

I, _____, am the current chair of the ?aqam Lands Committee.

On the ____ day of _____, 20__, the Lands Committee reviewed this application and determined that:

- the Lands Committee recommends Council pursuing the grant of this requested allotment; **OR**
 for the following reasons, the Lands Committee does NOT recommend Council pursuing the grant of this requested allotment:

Signature of Lands Committee Chair:

DATE OF LANDS
COMMITTEE REVIEW

Y	M	D
YYYY	MM	DD

Signature Line

PART 4: TO BE COMPLETED BY COUNCIL

Preliminary Decision of Council:

On the ____ day of _____, 20__, the Council reviewed this application and passed a Band Council Resolution setting out our decision on whether to preliminarily grant this allotment.

The Band Council Resolution is attached to this application:

- Yes No

PART 5: TO BE COMPLETED BY LANDS DEPARTMENT

Condition 1: _____

Type of documentation required: _____

Lands Department Progress Monitoring Schedule: _____

Documentation Deadline: _____

Documentation received by _____ on the ____ day of _____, 20____

Documentation not received by required date

Condition 2: _____

Type of documentation required: _____

Lands Department Progress Monitoring Schedule: _____

Documentation Deadline: _____

Documentation received by _____ on the ____ day of _____, 20____

Documentation not received by required date

Documentation not received by required date

Condition 3: _____

Type of documentation required: _____

Lands Department Progress Monitoring Schedule: _____

Documentation Deadline: _____

Documentation received by _____ on the ____ day of _____, 20____

Documentation not received by required date

Condition 4: _____

Type of documentation required: _____

Lands Department Progress Monitoring Schedule: _____

Documentation Deadline: _____

Documentation received by _____ on the ____ day of _____, 20____

Documentation not received by required date

Signature of Lands Department:

I, _____, am a current employee of the ʔaᑭam Lands Department and my position title is _____.

I have personally verified all information contained in Part 5 of this application.

I affirm that all information contained in Part 5 of this application is, to the best of my knowledge, true and correct.

DATE OF LANDS
DEPARTMENT REVIEW

Y	M	D
YYYY	MM	DD

Signature Line



Aqam Lands Department

ALLOTMENT TO MEMBER

Form No. 4-1-02

Approved as to form by the Aqam Lands Department pursuant to the Aqam Amended Land Code

Signature

Date

ALLOTMENT TO MEMBER

Transferor:

Aqam
7470 Mission Road
Cranbrook, B.C., V1C 7E5

Transferee(s):

Full Legal Name(s):

Address(es):

Aqam Membership No(s):

[] Joint Tenants

[] Tenants in Common

Authority:

[] Section 32.1(a) of the Aqam Land Code

[] Section ___ of the Aqam Allotment Law, 2016

Parcel Identifier(s) and Legal Description(s) of Land:

Province and Reserve Name:

Parcel Identifier Number(s):

Legal Description:

Encumbrances on Land:

Encumbrance Type

ILRS / FNLR No.

Encumbrance Type

ILRS / FNLR No.

Encumbrance Type

ILRS / FNLR No.

Aqam Warranties and Representations:

Aqam understand(s) that this instrument operates to transfer lawful possession of the land described in this form to the transferee(s).

Aqam represents, warrants and covenants that it is a Band under section 2(1) of the Indian Act and has the power, authority, right and capacity to approve and execute this allotment.



Aqam Lands Department

UNDERTAKING TO BUILD RESIDENTIAL HOME

Form No. 4-1-03

Approved as to form by the Aqam Lands Department pursuant to the *Aqam Amended Land Code*

Signature

Date

UNDERTAKING TO BUILD RESIDENTIAL HOME

IN CONSIDERATION OF THE COUNCIL OF AQAM GRANTING AN ALLOTMENT OF AQAM LANDS TO THE UNDERSIGNED AS FOLLOWS:

Province and Reserve Name: _____

Parcel Identifier Number(s): _____

Legal Description: _____

THE UNDERSIGNED UNDERTAKES AS FOLLOWS:

To, within five (5) years from the date that the above-described allotment takes effect, ensure that a residential home is built on the above-described allotment to the stage when it's external wall cladding and roof covering are fixed, the flooring is laid and external doors and external windows are fixed (even if those doors or windows are only temporary).

Dated this _____ day of _____, 20__.

Name: _____

Witness Name: _____

Address:

Witness Address:



ʔaqam Lands Department

Approved as to form by the ʔaqam Lands Department pursuant to the *ʔaqam Amended Land Code*

Signature

Date

TRANSFER OF INTEREST IN ALLOTMENT

Form No. 4-2-01

ATTENTION APPLICANT: You must complete two copies of this application form and submit both copies, along with a \$25.00 processing fee and any required documentation, to the ʔaqam Lands Department for registration in the First Nation Land Register. Unless you are a member of ʔaqam you must also present two pieces of government issued identification at the time you submit this request.

ʔaqam makes no representations or warranties regarding:

- the condition of the land transferred using this form; or
- the validity or enforceability of any agreement, contract, or other instrument that sets out the terms related to a transfer of an interest in an allotment that is executed using this form.

ʔaqam will not assume any liability for any claims, losses, or damages arising out of the use of this form. All parties to a transfer of an allotment are responsible for seeking independent legal advice regarding their transaction.

All owners of an allotment are responsible for:

- insurance and maintenance of the parcel of land that is described in the Certificate of Possession;
- insurance, maintenance and repairs for structures and buildings on the parcel of land that is described in the Certificate of Possession;
- managing and monitoring any interests, licences or permits granted over the parcel of land that is subject to the Certificate of Possession;
- registering any changes to ownership of the Certificate of Possession with the First Nations Land Register; and
- ensuring all uses of the parcel of land that is subject to the Certificate of Possession comply with ʔaqam laws and any applicable laws or regulations of Canada or the Province.

Applicant:

Full Legal Name: _____

Address: _____

Phone: _____

Transferor(s):

Full Legal Name: _____

Address: _____

SMIB Membership No: _____

Certificate of Possession or Allotment No: _____

Transferee(s):

Full Legal Name: _____

Address: _____

ʔaqam Membership No: _____

***Proof of the transferee(s) membership MUST be attached to this form (Example – letter from membership clerk or photocopy of status card)**

Details of Land Being Transferred:

Name of First Nation: _____

Name of Reserve: _____

Province where Land is located: _____

Parcel Identifier Number(s): _____

Legal Description: _____

Consideration:

In the consideration of: _____

Instrument:

- This is a transfer by Contract / Agreement
**If the transferor has a spouse, you MUST attach Form 4-2-03: Consent of Spouse of Common Law Partner*
- This is a transfer pursuant to subsection 50(2) of the *Indian Act*
**Form 4-2-02: Declaration of Superintendent must be attached to this form.*
**An original Band Council Resolution consenting to this transfer must be attached to this form.*
- This is a reversion to the band pursuant to subsection 50(3) of the *Indian Act*
**Form 4-2-02: Declaration of Superintendent must be attached to this form.*
- This is a transfer where the transferor is a deceased member and this transfer of their allotment is a testamentary disposition being conducted in accordance with their will
**If the transferor ordinarily resided on ?aqam lands and the transferor's will is either approved in whole by the Minister, or the part of the transferor's will addressing the transfer of this allotment is approved by the Minister, under section 45 of the Indian Act, this form must be executed by either the executor who is approved by the Minister or if no executor is named in the transferor's will, by the administrator who is appointed by the Minister. A copy of such approval and appointment, certified by the person who has custody of the original approval or appointment, must be attached to this form. A copy of the transferor's will, certified by the person who has custody of the original will, must be attached to this form.*
**If the transferor did not ordinarily reside on ?aqam lands and the transferor's will is approved by a court, this form must be executed by the person named in the court order as the executor or administrator of the transferor's estate. A copy of the transferor's will, certified by the person who has custody of the original will, must be attached to this form.*
**If the transferor did not ordinarily reside on ?aqam lands and the Minister has assumed jurisdiction under sections 4(3) and 43 of the Indian Act over the management of the transferor's estate, this form must be executed by the person who is appointed by the Minister to be the administrator of the transferor's estate. A copy of such appointment, certified by the person who has custody of the original appointment, must be attached to this form. A copy of the transferor's will, certified by the person who has custody of the original will, must be attached to this form.*

- [] This is a transfer where the transferor is a deceased member and this transfer of their allotment is being conducted pursuant to the rules of intestacy

**If the transferor ordinarily resided on ?aqam lands this form must be executed on behalf of the transferor by the person who is appointed by the Minister under section 43 of the Indian Act to be the administrator of that Member's estate. A copy of such appointment, certified by the person who has custody of the original, must be attached to this form.*

**If the transferor did not ordinarily reside on ?aqam lands and the Minister has assumed jurisdiction under sections 4(3) and 43 of the Indian Act, this form must be executed on behalf of the transferor by the person who is appointed by the Minister under section 43 of the Indian Act to be the administrator of that Member's estate. A copy of such appointment, certified by the person who has custody of the original, must be attached to this form.*

**If the transferor did not ordinarily reside on ?aqam lands, the Minister has not assumed jurisdiction under section 4(3) and 43 of the Indian Act, and a court has made an order regarding the transferor's estate, this form must be executed by the person who is named in the court order as the administrator of the transferor's estate and a copy of that court order, certified by the court, must be attached to this form.*

- [] This is a transfer of an allotment that belongs to a member who has been declared mentally incompetent by either a health authority or a court

**If the transferor ordinarily resided on ?aqam lands, this form must be executed on behalf of the transferor by either the Minister or a person appointed by the Minister pursuant to section 51(2)(a) of the Indian Act. If this form is executed by the latter, a copy of such appointment, certified by the person who has custody of the original, must be attached to this form.*

** If the transferor ordinarily did not reside on ?aqam lands, this form must be executed on behalf of the transferor by either the person who is named in the transferor's power of attorney or the person named in an order from the court to be that member's committee. If the person executing this form is named in that member's power of attorney, a copy of that power of attorney document, certified by the person who has custody of the original, must be attached to this form. If the person executing this form is named in a court order to be the transferor's committee, a copy of that court order, certified by the court, must be attached to this form.*

- [] Other (specify): _____

Execution(s):

The transferor(s) accept(s) the above consideration and understand(s) that this instrument operates to register the transfer of lawful possession of the land described herein to the transferee(s).

Officer Signature(s)*

EXECUTION DATE

Transferor(s) Signature(s)

[Name]

Y	M	D
yyyy	mm	dd

[Name]

Officer Signature(s)*

EXECUTION DATE

Transferee(s) Signature(s)

[Name]

Y	M	D
yyyy	mm	dd

[Name]

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



Aqam Lands Department

DECLARATION OF SUPERINTENDENT

Form No. 4-2-02

Approved as to form by the Aqam Lands Department pursuant to the Aqam Amended Land Code

Signature

Date

ATTENTION: You must complete two copies of this form and submit both copies to the Aqam Lands Department.

Declaration of Superintendent

Transferor:

Full Legal Name:
Address:
Aqam Membership No:
Certificate of Possession or Allotment No:

Transferee:

Full Legal Name:
Address:
Aqam Membership No:

Details of Land Being Transferred:

Name of First Nation:
Name of Reserve:
Province where Land is located:
Parcel Identifier Number(s):
Legal Description:

Date of Sale / Reversion of Interest:

Declaration:

I, [name], [title of position with AANDC], of [City], in the Province of [name of Province], do hereby declare that:

I am the Superintendent, or a person authorized to act in the position of the Superintendent, for the

purposes of section 50(2) of the *Indian Act*, R.S.C. 1985, Chapter I-5 (the "Act");

I am authorized under section 50(2) of the *Indian Act* to offer the lawful possession of the land described herein, that is registered in the name of the transferor for sale to the highest bidder among persons who are entitled to live on ?aqam lands;

I posted a Notice of Sale, dated the ___ day of _____,20___;

I have reason to believe that the transferee is entitled to live on ?aqam lands; and

[] On the date stated herein, I sold the land described herein to the highest bidder who is the transferee for \$_____ pursuant to subsection 50(2) of the *Indian Act*, and I have received a Band Council Resolution from the Council of ?aqam approving of this sale (***attach to this declaration***);

OR

[] No persons bid on the land described herein and at least six months have passed since the date of the Notice of Sale. Therefore the land described herein reverts to ?aqam pursuant to subsection 50(3) of the *Indian Act*.

I HEREBY DECLARE that to the best of my knowledge, the information on this Declaration is true and complete.

DECLARATION DATE

Y	M	D
YYYY	MM	DD

[Witness Name]

[Name of Superintendent]



ᐱᐱᐱᐱ Lands Department

CONSENT OF SPOUSE/COMMON-LAW PARTNER

Form No. 4-2-03

Approved as to form by the ᐱᐱᐱᐱ Lands Department pursuant to the ᐱᐱᐱᐱ Amended Land Code

Signature

Date

ATTENTION: You must complete two copies of this form and submit both copies to the ᐱᐱᐱᐱ Lands Department.

Consent of Spouse/Common-Law Partner

Personal Information Protection and Electronic Documents Act ("PIPEDA") Statement

This statement explains the purposes and use of your personal information. The collection, use and disclosure of your personal information is in accordance with PIPEDA. In some cases, information may be disclosed without your consent pursuant to subsection 7(5) of the PIPEDA. The collection and use of your personal information is required for the application of the ᐱᐱᐱᐱ Matrimonial Real Property Law, and is required to effect a transfer of an allotment in ᐱᐱᐱᐱ lands.

We will use your personal information for the registration of a transfer of an allotment or Certificate of Possession in ᐱᐱᐱᐱ lands. The information collected is that information found in this form and will be published in the First Nation Land Registry as proof of your consent to a transfer of an allotment in ᐱᐱᐱᐱ lands.

As stated in PIPEDA, you have the right to access your personal information and request changes to incorrect information. Contact the ᐱᐱᐱᐱ Lands Department at 1-250-426-5717 to notify us about incorrect information. For more information on privacy issues and PIPEDA in general, you can contact the Office of the Privacy Commissioner of Canada at 1-(800)-282-1376.

Consent Statement From Spouse / Common-Law Partner

I, _____ spouse / common-law partner of, _____
(Print Name & Band No.) (Print Name & Band No.)

Residing at _____ on _____,
(Legal Description) (Name of Indian Reserve)

acknowledge that section 13 of the the ᐱᐱᐱᐱ Matrimonial Real Property Law establishes that, subject to the Indian Act, a spouse or common-law partner who holds an interest or right in or to the family home must not dispose of or encumber that interest or right during the conjugal relationship without the free and informed consent in writing of the other spouse or common-law partner, whether or not that person is an ᐱᐱᐱᐱ member.

By signing this form I provide my free and informed consent to the transaction. I also confirm I was provided the opportunity to seek independent legal advice on this transaction before signing this form and I:

[] have sought independent legal advice; or [] have decided not to seek independent legal advice.

Signed on this ____ day of _____, 20____, in the presence of:

(Name of Witness)

(Name of Spouse)

Address

Phone Number

CP Number: _____

CERTIFICATE OF POSSESSION

(Issued Pursuant to the laws of ʔaqam)

THIS IS TO CERTIFY that the undermentioned member of ʔaqam has lawful possession of the land described herein, subject to such encumbrances as are notified by endorsement herein, and subject to the conditions, exceptions, and reservations set out on the back of this Certificate of Possession:

Person with Lawful Possession:

ʔaqam Member..... _____

Membership Number..... _____

Description of Land:

Reserve Name..... _____

Lot..... _____

Plan Survey..... _____

IN WITNESS WHEREOF, the Council of ʔaqam has caused this Certificate of Possession to be signed by its duly authorized representative at the City of Cranbrook, in the Province of British Columbia on this _____ day of _____, _____.

Witness: _____

Council Representative: _____

PLACE
SEAL
HERE

*Witness Signature Line*_____
Council Representative Signature Line

Encumbrances:

Nature of Charge; Number; Date and Time Registered	Registered Owner of Charge	Remarks

Entitlements of Lawful Possession:

Subject to ?a?am laws, by-laws and policies, the person named in this Certificate of Possession is entitled to:

- (a) permanent possession of the land described herein;
- (b) benefit from the resources in and of the land described herein;
- (c) grant subsidiary interests, licences and permits in the land described herein;
- (d) transfer devise or otherwise dispose of the land described herein to another member; and
- (e) any other rights consistent with the *?a?am Amended Land Code* that are attached to Certificates of Possession under the *Indian Act*.

Responsibilities of Lawful Possession:

The person named in this Certificate of Possession is responsible for:

- (a) insurance and maintenance of land described herein;
- (b) insurance, maintenance and repairs for structures and buildings on the land described herein;
- (c) managing and monitoring any interests, licences or permits granted over the land described herein;
- (d) registering any changes to ownership of the land described herein with the First Nations Lands Registry and the ?a?am Lands Register;
and
- (e) ensuring all uses of the land described herein comply with ?a?am laws, by-laws and policies, and all applicable laws or regulations of Canada or the Province.



ʔaqam Lands Department

APPLICATION FOR USE OF ʔAQAM LANDS

Form No. 6-1-01

Approved as to form by the ʔaqam Lands Department pursuant to the *ʔaqam Amended Land Code*

Signature _____

Date _____

ATTENTION APPLICANT: You must complete two copies of this application form and submit both copies, along with a \$25.00 processing fee, to the ʔaqam Lands Department for Council consideration. You may complete one copy and photocopy it but your signature on both copies must be original. Unless you are a member of ʔaqam or a government representative, you must also present two pieces of government issued identification at the time you submit this request.

PART 1: TO BE COMPLETED BY APPLICANT

Applicant's Personal Information

Legal Name of Applicant _____

Address _____

Telephone (work) _____ Telephone (home) _____

Name of Applicant's Employer _____

Applicant's Occupation _____

Applicant's Employer's Address _____

If Applicant is a Corporation

Legal Name of Corporation _____

Names of all Directors _____

If Applicant is a Partnership

Legal Name of a Partnership _____

Names of all Partners, and their status as general or limited partners _____

If Applicant is a Society

Legal Name of the Society _____

Names of Directors _____

If Applicant is a First Nation, Band or Tribal Council

Legal Name of First Nation, Band or Tribal Council _____

If Applicant is the Government of Canada, a Province, Municipality or Other Local Government

Name of Government Ministry and Minister _____

Name of Government Department _____

Details of Land Requested for Use

Name of Reserve _____

Legal Description(s) Referencing Either A Registered or Official Plan (**A legal description will be required if this application is being made by a person who is not a member for either a lease or licence with a proposed duration of more than ten (10) years, or by any person making an application for an easement*)

You **MUST** attach to this application a sketch of the land being requested for use. A "sketch" means a scaled drawing that shows: (a) the proposed licence/permit/easement/etc area, including the distance of the area in width, length and area, (b) the location of any existing and proposed buildings or structures, including the distance between buildings or structures and the distance from lot lines, (c) proposed and existing landscaping and fencing, (d) the location of any watercourses and the distance between watercourses and any existing or proposed buildings or structures, and (e) existing and proposed parking areas, loading spaces and driveways:

[] Yes, sketch attached [] No, sketch not attached

List of Known Encumbrances on the Land Requested for Use

Type of Land Use Requested (select all that apply)

[] Licence (min. 2yrs duration) [] Permit (max. 5yrs duration, unless you are a member)

[] Lease [] Easement

[] Right of Way [] Other: Specify _____

Proposed Commencement Date: _____

Proposed Termination Date: _____

Proposed Purpose of Land Use:

- Commercial Agriculture Aquaculture
- Community Transportation Communications
- Utilities Residential Industrial

Other/Comments _____

Provide a Summary of All Potential Environmental and Resource Impacts (Describe the effects of the proposed land use on the land, water, flora and fauna. Use additional pages if necessary)

Applicant's Signature

I am the person named as the applicant in Part 1 of this application. I have provided all information contained in Part 1 of this application and I affirm that such information is, to the best of my knowledge, true and correct.

APPLICATION DATE

Y	M	D
YYYY	MM	DD

Signature of Applicant

PART 2: TO BE COMPLETED BY THE LANDS DEPARTMENT

Receipt of Application

Date Received: _____ Time Received: _____

Received By: _____

Verification of applicant's identity:

I personally know the person named in this application. The person named in this application appeared before me and I verify that he / she is the person whose name appears on this application form.

OR

_____ is an employee or Council member of ʔaᓄam who personally knows the person named in this application. The person named in this application appeared before _____, who has verified that he / she is the person whose name appears on this application form.

OR

I have viewed two pieces of the applicant's government issued identification as follows (document identification numbers, photocopy identification and attach to this application):

Status Card Number: _____

Drivers Licence Type and Number: _____

Provincial Identification (incl. Number): _____

Passport (incl. Number): _____

Other (specify): _____

Are the lands being requested for use ᑲᓱᓴᓴᓴ community lands?

Yes No

Is a Legal Description Required?

Yes No

Legal Description(s) of Affected ᑲᓱᓴᓴᓴ Lands (Attach Copy of Plan and/or NRCAN Letter of Description of Land)

CLSR _____ Plan No. _____ Lot No. _____

CLSR _____ Plan No. _____ Lot No. _____

CLSR _____ Plan No. _____ Lot No. _____

List known encumbrances on the lands being requested for use, attach relevant documentation and assess whether any identified encumbrances are consistent with the proposed use:

Encumbrance Type _____ ILRS / FNLR No. _____

Encumbrance Type _____ ILRS / FNLR No. _____

Encumbrance Type _____ ILRS / FNLR No. _____

List the specific sections or parts of ᑲᓱᓴᓴᓴ laws, by-laws and policies that apply to the application, as follows:

ᑲᓱᓴᓴᓴ Land Code, Section(s): _____

ᑲᓱᓴᓴᓴ Environmental Management Plan, Section(s): _____

ᑲᓱᓴᓴᓴ Community Land Use Plan, 2016, Section(s): _____

ᑲᓱᓴᓴᓴ Zoning Law, Section(s): _____

Policy/Policies _____ of the ᑲᓱᓴᓴᓴ Land Management Manual

Other (identify): _____

Does the applicant's proposed use of the lands being requested for use require an environmental assessment?

Yes No

List details of any known environmental or contamination concerns with regard to granting the requested use to the applicant:

Do the lands being requested for use contain a cultural heritage site as designated in a *ḡaqam Community Land Use Plan, 2016*?

Yes No

If yes, explain: _____

Are there any development plans that may be impacted by the granting of the lands being requested for use to the applicant?

Yes No

If yes, explain: _____

Site Visit:

Description of Site (General Location, Proximity to Water Frontage, River, etc.)

Topography (Soil, Ground Cover, Flood Plains, etc.)

Access to Public Road

Distance to Nearest Community

Available Services

Water Yes No Sewer Yes No

Power Yes No Natural Gas Yes No

Telephone Yes No Garbage collection Yes No

Other Yes No
(specify) _____

Present Use

Comments

Opinion of Lands Department

I, _____, am a current employee of the ᑭᐱᑭᐱ Lands Department and my position title is _____.

I have personally verified all information contained in Part 2 of this application.

I affirm that all information contained in Part 2 of this application is, to the best of my knowledge, true and correct.

I have searched the Indian Lands Registry, First Nation Lands Registry and ᑭᐱᑭᐱ Lands Department records relating to the parcels affected by this transaction.

I have conducted a site visit of the ᑭᐱᑭᐱ lands being proposed for use in this application.

According to these records, the proposed transaction (*tick applicable box*):

- will not cause a conflict with existing registered interests; or
 will cause a conflict with existing registered interests as identified herein.

DECLARATION DATE

Y	M	D
YYYY	MM	DD

[Name of Lands Department Representative]

PART 3: TO BE COMPLETED BY THE LANDS COMMITTEE

Recommendation of the Lands Committee:

I, _____, am the current chair of the ᑭᐱᑭᐱ Lands Committee.

On the ____ day of _____, 20__, the Lands Committee reviewed this application and determined that:

- the Lands Committee is in favour of Council pursuing the grant of this requested use of ᑭᐱᑭᐱ lands;

OR

[] for the following reasons, the Lands Committee is not in favour of Council pursuing the grant of this requested use of ?aqam lands:

Signature of Lands Committee Chair:

DATE OF LANDS
COMMITTEE REVIEW

Y	M	D
YYYY	MM	DD

Signature Line

PART 4: TO BE COMPLETED BY COUNCIL

Decision of Council:

On the ____ day of _____, 20__, the Council reviewed this application and passed a Band Council Resolution setting out our decision on whether to grant this use of ?aqam lands.

The Band Council Resolution is attached to this application:

[] Yes [] No

PART 5: TO BE COMPLETED BY LANDS DEPARTMENT

Condition 1: _____

Type of documentation required: _____

Lands Department Progress Monitoring Schedule: _____

Documentation Deadline: _____

[] Documentation received by _____ on the ____ day of _____, 20____

[] Documentation not received by required date

Condition 2: _____

Type of documentation required: _____

Lands Department Progress Monitoring Schedule: _____

Documentation Deadline: _____

[] Documentation received by _____ on the ____ day of _____, 20____

- Documentation not received by required date
- Documentation not received by required date

Condition 3: _____

Type of documentation required: _____

Lands Department Progress Monitoring Schedule: _____

Documentation Deadline: _____

- Documentation received by _____ on the ____ day of _____, 20____
- Documentation not received by required date

Condition 4: _____

Type of documentation required: _____

Lands Department Progress Monitoring Schedule: _____

Documentation Deadline: _____

- Documentation received by _____ on the ____ day of _____, 20____
- Documentation not received by required date

Signature of Lands Department:

I, _____, am a current employee of the ʔaᑭam Lands Department and my position title is _____.

I have personally verified all information contained in Part 5 of this application.

I affirm that all information contained in Part 5 of this application is, to the best of my knowledge, true and correct.

DATE OF LANDS
DEPARTMENT
REVIEW

Y	M	D
YYYY	MM	DD

Signature Line



Lands Department

[Name of Lands Department Representative]

[Position Title], Lands Department

ʔaqam

7470 Mission Road

Cranbrook, British Columbia

V1C 7E5

[Date]

[Applicant's Name]

[Address]

[City, Province]

[Postal Code]

Re: Application for Use of ʔaqam Lands

Dear [Applicant's Name],

I am writing on behalf of ʔaqam to confirm that on [date] the ʔaqam Lands Department received your application for a [lease / licence / permit / easement / right of way] over ʔaqam lands.

ʔaqam is currently conducting a preliminary assessment of your application and we will contact you in the near future to advise on whether we will negotiate a [lease / licence / permit / easement / right of way] with you. In the meantime, I have attached a copy of ʔaqam's standard [lease / licence / permit / easement / right of way] agreement to this letter for you. This agreement is pre-approved by ʔaqam and can be tailored to your specific needs with the written permission of ʔaqam's Council. Please be advised that:

- Council is responsible for consenting to all original [lease / licence / permit / easement / right of way] over ʔaqam lands and that this letter does not guarantee Council will provide their consent to your application;
- the general compensation for a [lease / licence / permit / easement / right of way] is based at minimum on fair market value;
- if your proposed use of ʔaqam lands involves the building of a structure or some other project activity then you will be required to conduct an environmental assessment before ʔaqam will grant you a [lease / licence / permit / easement / right of way]; and
- if an environmental assessment is required and you are required to comply with mitigation measures then ʔaqam must add terms to the standard [lease / licence / permit / easement / right of way] agreement to address those mitigation measures.

If application is for a land instrument with a term of 10 years or longer, or for an easement:

- prior to entering into a [lease / licence / permit / easement / right of way] with a term of 10 years or more it is required that you, at your sole expense, obtain a survey of the proposed [lease / licence / permit / easement / right of way] from a qualified Canada Lands Surveyor and provide

that survey to the Lands Department along with a legal description of the proposed [lease / licence / permit / easement / right of way] in reference to a registered plan or official plan.

We will contact you once our preliminary assessment of your application is completed. In the meantime, please do not hesitate to contact me directly if you have questions regarding the application assessment process. I can be reached at [xxx-xxx-xxxx], or [email@email.com].

Kind Regards,

[Name of Lands Department Employee Signing]

Cc. ʔaᑭam Lands Department File



ʔaqam Lands Department

**REQUEST TO CANCEL LICENCE, PERMIT,
RIGHT OF WAY**

Form No. 6-3-01

Approved as to form by the ʔaqam Lands
Department pursuant to the ʔaqam Amended
Land Code

Signature

Date

NOTICE TO APPLICANT: You must complete two copies of this application form and submit both copies, along with a \$25.00 processing fee, to the ʔaqam Lands Department for Council consideration. Unless you are a member of ʔaqam or a representative from a government agency, you must present two pieces of government issued identification at the time you submit this request.

If you are making this request on behalf of a corporation, partnership, society, First Nations Band Council / Tribal Council, or Government Body, you must present proof of your authority to cancel the licence or permit at the time you submit this request.

Unless otherwise specifically stated in your licence, permit or right of way agreement, ʔaqam will only consent to its cancellation if you have:

- made all payments due to ʔaqam before date of cancellation;
- complied with all requirements that relate to cancellation of the interest; and
- at the request of ʔaqam, completed an environmental site assessment and complied with all recommendations from that environmental site assessment.

Where a licence, permit or right of way does not include conditions related to cancellation, ʔaqam may impose reasonable conditions related to the remediation of ʔaqam lands which must be complied with before ʔaqam will consent to cancellation.

PART 1: TO BE COMPLETED BY THE LICENSEE / PERMITTEE / GRANTEE

Applicant (Licensee / Permittee / Grantee)'s Personal Information

Legal Name of Applicant _____

Address _____

Telephone (work) _____

Telephone (home) _____

Occupation: _____

If Applicable:

Corporation: _____

Partnership: _____

Society: _____

First Nation/Tribal Council: _____

Government Department: _____

Business Address: _____

Type of Document to Which This Request for Cancellation Relates

[] Licence [] Permit [] Right of Way

***NOTE:** You **MUST** attach to this request a copy of the licence, permit or right of way to which it relates.

Date you request this Licence, Permit or Right of Way Cancellation to be effective: _____
Compliance with Licence, Permit or Right of Way Agreement Fee / Payment Requirements

Have you fully paid to ʔaᑭam all payments that are due to ʔaᑭam under the licence, permit or right of way to which this request relates?

Yes No

***NOTE:** If you have ticked “No” above, you **MUST** attach to this application full payment for all outstanding payments that are due to ʔaᑭam under the licence, permit or right of way agreement.

Have you completed all requirements in the licence, permit or right of way agreement relating to its cancellation?

Yes No

***NOTE:** If you have ticked “No” above, ʔaᑭam will not approve the cancellation of your licence, permit or right of way until such requirements are completed and proof of their completion is provided to ʔaᑭam.

Applicant’s Signature

I am a lawful representative of the person named as the applicant in Part 1 of this application. I have provided all information contained in Part 1 of this application and I affirm, on behalf of the applicant, that such information is, to the best of my knowledge, true and correct.

APPLICATION DATE

Y	M	D
YYYY	MM	DD

Name of Lawful Representative:

Position of Lawful Representative:

PART 2: TO BE COMPLETED BY THE LANDS DEPARTMENT

Receipt of Request

Date Form Received: _____ Time Form Received: _____

Form Received By: _____

View two pieces of the applicant’s government issued identification, photocopy them and attach copies of them to this form:

Status Card Number: _____

Drivers Licence Type and Number: _____

Provincial Identification (incl. Number): _____

Passport (incl. Number): _____

Other (specify): _____

Declaration of Lands Department Personnel

I have verified that the applicant has the authority to make this request.

Yes No

I have verified that all payments due to ᑭᓱᓴᓴᓴ under the licence, permit or right of way agreement to which this request relates have been made and that there are no outstanding payments.

Yes No

I have verified that the licensee, permittee or grantee to which this request relates has complied with all requirements of their licence, permit or right of way agreement in relation to cancellation and remediation of those ᑭᓱᓴᓴᓴ lands to which their licence, permit or right of way agreement relates.

Yes No

I have completed a search of the Indian Lands Registry System and the First Nations Land Register, and it is my opinion that (**tick as many boxes as are applicable*):

the cancellation of this licence, permit or right of way agreement will adversely affect an interest in ᑭᓱᓴᓴᓴ community lands held by a third party.

the cancellation of this licence, permit or right of way agreement will not adversely affect an interest in ᑭᓱᓴᓴᓴ community lands held by a third party.

the cancellation of this licence, permit or right of way agreement will adversely affect a claim against, or interest in, ᑭᓱᓴᓴᓴ community lands held by ᑭᓱᓴᓴᓴ.

the cancellation of this licence, permit or right of way agreement will not adversely affect a claim against, or interest in, ᑭᓱᓴᓴᓴ community lands held by ᑭᓱᓴᓴᓴ.

Comments: _____

I have referred to Policies 9-1 and 9-2 in the ᑭᓱᓴᓴᓴ Lands Management Manual and I am of the opinion that all environmental requirements related to the cancellation of the licence, permit or right of way agreement to which this request relates have been complied with.

Yes No

I recommend that: (**Choose one of the following options only**)

Council consent to the cancellation of the licence, permit or right of way agreement to which this request relates, and I have attached two copies of a Band Council Resolution for your consideration;

OR

Council consent to the cancellation of the licence, permit or right of way agreement to which this request relates conditional on the licensee, permittee or grantee completing the following: _____
_____, and I have attached two copies of a Band Council Resolution for your consideration;

OR

Council deny the cancellation of the licence, permit or right of way agreement to which this request relates for the following reasons: _____
_____, and I have attached two copies of a Band Council Resolution for your consideration.

LANDS DEPARTMENT
REVIEW DATE

Y	M	D
YYYY	MM	DD

[Name of Lands Department Representative]

PART 3: TO BE COMPLETED BY LANDS DEPARTMENT (IF NECESSARY)

Condition 1: _____

Type of documentation required: _____

Documentation received by _____ on the ____ day of _____, 20____

Documentation not received

Condition 2: _____

Type of documentation required: _____

- Documentation received by _____ on the ____ day of _____, 20____
- Documentation not received

Condition 3: _____

Type of documentation required: _____

- Documentation received by _____ on the ____ day of _____, 20____
- Documentation not received

Condition 4: _____

Type of documentation required: _____

- Documentation received by _____ on the ____ day of _____, 20____
- Documentation not received

Signature of Lands Department:

I, _____, am a current employee of the ʔaᑭam Lands Department and my position title is _____.

I have personally verified all information contained in Part 3 of this application.

I affirm that all information contained in Part 3 of this application is, to the best of my knowledge, true and correct.

DATE OF LANDS
DEPARTMENT
REVIEW

Y	M	D
YYYY	MM	DD

Signature Line



ʔaqam Lands Department

CERTIFICATE OF CANCELLATION OF LICENCE, PERMIT, RIGHT OF WAY

Form No. 6-3-02

Approved as to form by the ʔaqam Lands Department pursuant to the ʔaqam Amended Land Code
Signature Date

Certificate of Cancellation of Licence, Permit or Right of Way

On [date] the Council of ʔaqam approved a Band Council Resolution cancelling the following land instrument at the request of the interest holder and that cancellation is effective on [date]:

Grantor: ʔaqam
7470 Mission Road
Cranbrook, British Columbia
V1C 7E5

Interest Holder: [Name]
[Address]
[City, Province]
[Postal Code]

Land Instrument Type: [type of land instrument]

Province: British Columbia

Band Name: ʔaqam

Reserve: [Name of Reserve]

Legal Description: [Lot and Plan numbers]

Date of Registration: [Enter date Instrument being cancelled was registered]

Registration Number: [Enter document number from Registry for Instrument being cancelled]

The following documents are attached to this Certificate of Cancellation and form part of it:

- a copy of the completed Form 6-3-01: Request to Cancel Licence, Permit or Right of Way; and
an original, signed Band Council Resolution approving cancellation of the land instrument

Despite the cancellation of this land instrument, ʔaqam reserves:

- the rights that survive the cancellation of the land instrument;
the right to proceed against the interest holder for all prospective losses or damages suffered by ʔaqam that arise from the grantee's use of ʔaqam lands under the land instrument; and
any other rights or remedies that ʔaqam may have under law or under the land instrument as a result of this cancellation.

[Signature of Authorized Signatory]

[Date]

[Name of Authorized Signatory]

Date



Aqam Lands Department

REQUEST TO CORRECT INTEREST OR LICENCE

Form No. 7-1-01

Approved as to form by the Aqam Lands Department pursuant to the *Aqam Amended Land Code*

Signature _____

Date _____

Request to Correct Interest or Licence

Applicant:

Full Legal Name: _____

Address: _____

Phone: _____

- I am a member of Council
- I am an employee in the Aqam Lands Department;
- I am a member of Aqam and this request relates to my allotment;
- I am a lessee of Aqam community lands;
- I am a licensee of Aqam community lands;
- I am a permittee of Aqam community lands;
- I am a grantee of Aqam community lands; or
- I am an agent of one of the above mentioned individuals (*also tick off who you act as an agent for*)

Parcel Identifier(s) and Legal Description(s) of Land Affected by Correction:

Parcel Identifier Number(s): _____

Legal Description: _____

Registered or Official Plan (*required for any corrections to the land description in an allotment):

- Yes (*attached) No

Details of the Interest or Licence:

The interest or licence that requires a correction is a(n) (***You MUST attach a copy of the interest or licence to this application and any relevant Band Council Resolution**):

- allotment / Certificate of Possession;
- lease;
- licence;
- permit; or
- easement.

I believe that this interest or licence was granted:

- in error;
- by mistake; or
- by fraud,

and I believe this because (***Please summarize and attach supporting documentation to this application**):

TICK ALL THAT APPLY:

I REQUEST that the following correction(s) be made to this interest or licence:

I REQUEST that a new interest or licence be issued according to the corrected information.

I REQUEST that this interest or licence be cancelled.

Applicant Signature:

DATE

Y	M	D
YYYY	MM	DD

[Name of Applicant]



ʔaqam Lands Department

CERTIFICATE OF CANCELLATION OF LAND INSTRUMENT

Form No. 7-1-02

Approved as to form by the ʔaqam Lands Department pursuant to the ʔaqam Amended Land Code

Signature

Date

Certificate of Cancellation of Land Instrument

On [date] the Council of ʔaqam approved a Band Council Resolution cancelling the following land instrument because the land instrument was issued or allotted by Council (tick one):

[] in error [] by mistake [] by fraud

The cancellation of the following land instrument is effective on [date]:

Grantor: ʔaqam
7470 Mission Road
Cranbrook, British Columbia
V1C 7E5

Interest Holder: [Name]
[Address]
[City, Province]
[Postal Code]

Land Instrument Type: [Type of Land Instrument]

Province: British Columbia

Band Name: ʔaqam

Reserve: [Name of Reserve]

Legal Description: [Must refer to registration plan or official plan]

Date of Registration: [Enter date of original registration of the land instrument]

Registration Number: [Enter document registration number in the FNLR]

Attached to this Certificate of Cancellation is a Band Council Resolution approving the cancellation of the above-mentioned land instrument.

Despite the cancellation of this land instrument, ʔaqam reserves:

- the rights that survive the cancellation of the land instrument;
the right to proceed against the interest holder for all prospective losses or damages suffered by ʔaqam that arise from the interest holder's use of ʔaqam lands under the land instrument; and
any other rights or remedies that ʔaqam may have under law or under the land instrument as a result of this cancellation.

[Signature of Chief/Lands Department Personnel]

[Date]

[Name of Chief / Lands Department Personnel]

[Date]



Aqam Lands Department

MONITORING PLAN

Form No. 10-1-01

MONITORING PLAN

NAME OF INTEREST HOLDER: _____

TYPE OF LAND INSTRUMENT: _____

TERM NUMBER AND CONTENT: _____

Lands Department Personnel Responsible: _____

Type of documentation / action required: _____

How documentation will be acquired or action will be taken: _____

Due date to obtain documentation / Take Action: _____

[] Documentation received by _____ on the ____ day of _____, 20____
from _____

[] Documentation not received by required date. I recommend the following enforcement actions: ____

TERM NUMBER AND CONTENT: _____

Lands Department Personnel Responsible: _____

Type of documentation / action required: _____

How documentation will be acquired or action will be taken: _____

Due date to obtain documentation / Take Action: _____

[] Documentation received by _____ on the ____ day of _____, 20____
from _____

[] Documentation not received by required date. I recommend the following enforcement actions: ____

TERM NUMBER AND CONTENT: _____

Lands Department Personnel Responsible: _____

Type of documentation / action required: _____

How documentation will be acquired or action will be taken: _____

Due date to obtain documentation / Take Action: _____

[] Documentation received by _____ on the ____ day of _____, 20__
from _____

[] Documentation not received by required date. I recommend the following enforcement actions: __

TERM NUMBER AND CONTENT: _____

Lands Department Personnel Responsible: _____

Type of documentation / action required: _____

How documentation will be acquired or action will be taken: _____

Due date to obtain documentation / Take Action: _____

[] Documentation received by _____ on the ____ day of _____, 20__
from _____

[] Documentation not received by required date. I recommend the following enforcement actions: __

Signature of Lands Department:

I, _____, am a current employee of the ʔaḡam Lands Department and my position title is _____. I have personally verified all information contained in this monitoring form. I affirm that all information contained in this monitoring form is, to the best of my knowledge, true and correct.

DATE OF REPORT TO COUNCIL

Y	M	D
YYYY	MM	DD



Aqam Lands Department

SITE INSPECTION REPORT

Form No. 10-1-02

SITE INSPECTION REPORT

Aqam Lands Department Employee Responsible for Site Inspection Report: _____

Land Instrument to Which Site Inspection Relates: _____

Date of Site Inspection: _____

Codes: **G** = Good **D** = Damaged
 F = Fair **DT** = Dirty
 P = Poor **B** = Broken

Terms of Land Instrument Being Monitored Pursuant to This Site Inspection:

Term # in Land Instrument	Details of "What" is being Monitored	Condition Code	Comments / Observations

↓ _____
Signature of Lands Department Employee

Date

↓ _____
Signature of Interest Holder

Date



Lands Department

[Name of Lands Department Representative]

[Position Title], Lands Department

?aqam

7470 Mission Road

Cranbrook, British Columbia

V1C 7E5

[Date]

[Interest Holder's Name]

[Address]

[City, Province]

[Postal Code]

Re: Notice of Non-Compliance with [Name of Document to which Letter Relates], dated [Date of Execution]

We are writing in relation to [Name of Document to which Letter Relates], dated [Date of Execution] (the "[lease, licence, permit, etc]").

?aqam has recently reviewed the Lands Department file for the above-mentioned [lease, licence, permit, etc] and we have assessed that you are in non-compliance with section(s) [enter specific section(s) from document that the person is in non-compliance with], which state(s):

[Set out the exact words from the lease, licence, permit, etc, in full]

If you wish to continue your use of [enter description of ?aqam lands] for [enter purpose attached to the lease, licence, permit, etc] under the above-mentioned [lease, licence, permit, etc], please:

- [enter information on what the interest holder needs to do to be in compliance with the terms of their agreement with ?aqam and set out specific deadline dates for the interest holder to complete what needs to be done to be in compliance with their lease, licence, permit, etc.]

Please contact [Name of Lands Department Representative] at [phone number] or [email address] by [enter deadline date] regarding your completion of the above requirements.

If you have any questions regarding this letter or you are unable to comply with the requirements set out in this letter we are willing to discuss this matter with you further and consider any suggestions you have on addressing your non-compliance. However, if we do not hear from you by [deadline date], and you do not comply with the requirements set out in this letter by [deadline date], we will consider this a breach of the above-mentioned [lease, licence, permit, etc] and will recommend that Council cancel the above-mentioned [lease, licence, permit, etc].

Yours truly,

[Name of Lands Department Personnel]

[Position Title of Lands Department Personnel]

Cc. ?aqam Council
Lands Department File

**SCHEDULE B:
RESIDENTIAL HEADLEASE TEMPLATE
UNDER LAND CODE**

Note: this template is drafted as between ᐃᓄᓄᓄ and an ᐃᓄᓄᓄ-owned company. The template provides for a discount to members on fair market value of a residential lease. Modification may be required should the parties be altered or should ᐃᓄᓄᓄ remove the discount.

TABLE OF CONTENTS

ARTICLE 1: INTENT, DEFINITIONS AND INTERPRETATION	452
Definitions.....	452
Interpretation	452
Joint and Several	452
All Terms are Covenants.....	453
Net Lease	453
Governing Law	453
Entire Agreement	453
Time is of the Essence.....	453
Severability.....	453
ARTICLE 2: LANDS AND MINERALS.....	454
Demise	454
Term.....	454
Minerals.....	454
ARTICLE 3: USE OF PREMISES.....	454
Types of Use	454
No Vacating or Abandoning	454
Access.....	454

Quiet Enjoyment.....	455
Artifacts and Survey Monuments	455
Other Interests	455

ARTICLE 4: RENTS 455

Rent to be Paid	455
Payment over to Beneficiary	456
Calculation of Fair Market Value	456
Additional Rent.....	457
Arrears to Bear Interest.....	457
Lessee Is Owned By Band And Rent Is Less Than Fair Market Value	458

ARTICLE 5: RECORDS..... 459

Lessee to Retain Documents	459
Lessee to Deliver Documents	459

ARTICLE 6: ASSIGNMENTS, SUBLEASES AND MORTGAGES 459

Assignments.....	459
Subleases.....	459
Mortgages	460
No Relief of Obligations	463

ARTICLE 7: CONSENT AND REGISTRATION 463

Provide Two Copies	463
Obligation to Provide Documents	463

ARTICLE 8: COMPLIANCE WITH LAWS..... 463

General Requirement.....	463
Notice	463
Contesting the Validity	464

ARTICLE 9: TAXES..... 464

General Requirements	464
Contesting the Validity	464
Provision of Documents	464

ARTICLE 10: UTILITIES.....	464
Responsibility to Provide	464
Interruption Not a Disturbance	465
 ARTICLE 11: ENVIRONMENT	 465
Covenants of Lessee	465
General Compliance	465
Hazardous Substances	465
Report of Release	465
Removal of Hazardous Substances.....	466
Increased Risks.....	466
Inspection.....	467
Title to Hazardous Substances	467
Additional Termination Rights	467
Environmental Indemnity.....	467
Environmental Site Assessment	468
Representations and Warranties of the Lessee.....	469
 ARTICLE 12: NUISANCE.....	 469
 ARTICLE 13: NEW IMPROVEMENTS	 469
Obtain Permits and Approvals	469
Provide Plans	469
Construction	469
 ARTICLE 14: MAINTENANCE AND ALTERATIONS	 470
Maintenance.....	470
Alterations	470
 ARTICLE 15: CONSTRUCTION REQUIREMENTS	 470
General Requirements	470
Development Plan.....	470
Approval Process for Development Plan	470
Lessor Not Responsible	470

Failure to Comply with the Development Plan	471
Builder’s Liens	471

ARTICLE 16: REPLACEMENT ON DESTRUCTION 471

ARTICLE 17: REMOVAL OF IMPROVEMENTS AND PERSONAL GOODS 471

Removal of Improvements	471
Removal of Improvements and Personal Goods on Notice.....	471
Lessee to Provide Performance Bond	472
Lessor May Remove	472
Lessor Not Responsible for Loss or Damage	472
Lessor Right to Vacant Possession	472
Lessor Right to Vacant Possession	472

ARTICLE 18: INSURANCE 473

Liability and Property Insurance.....	473
Insurance Provisions.....	473
Release from Liability.....	474
Payment of Loss Under Insurance.....	474
Insurance May be Maintained by Lessor	474

ARTICLE 19: INSOLVENCY 475

ARTICLE 20: CHANGE IN CONTROL OF LESSEE..... 475

ARTICLE 21: DEFAULT AND REMEDIES 475

Default.....	475
Termination	476
Right of Mortgagee and Sublessees to Notice and Replacement Lease	476
Curing of Default	477
End of Lease	477
Right to Cure	478
Access to Inspect and Perform	478
Right to Let.....	478
Remedies Cumulative	478

ARTICLE 22: SURRENDER OF POSSESSION 479

Holding Over 479

ARTICLE 23: GENERAL 479

Indemnity 479

No Warranties 479

Notices 480

Delivery 480

Dispute Resolution 481

Right to Renew Lease 481

No Right to Renew Lease 481

Right of Renewal of Lease Prior to Expiry of Lease 481

Encumbrances 482

Binding on Successors 482

No Waiver 482

Not a Joint Venture 482

Treaty 482

Corporate Authority 483

SCHEDULE A: DEFINITIONS..... 485

SCHEDULE B: ᐱᐱᐱᐱ BAND COUNCIL RESOLUTION..... 491

CONSENT TO LEASE OF ᐱᐱᐱᐱ COMMUNITY LANDS 491

SCHEDULE C: ASSIGNMENT OF HEADLEASE AND CONSENT TO ASSIGNMENT OF HEADLEASE.....493

SCHEDULE D: PLAN OF THE LANDS..... 497

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RESIDENTIAL HEADLEASE

This Lease, dated for reference (_____).

BETWEEN:

(LESSOR)
(ADDRESS)

(the "Lessor")

AND:

(LESSEE)
(ADDRESS)

(the "Lessee")

WHEREAS:

- A. the legal title to ᑭᓱᓱᓱ lands remains vested in Her Majesty the Queen in Right of Canada;
- B. Sections 18(1)(b), 18(2)(b) and 18(3) of the *First Nation Land Management Act* provide that a First Nation that has entered into an Individual Agreement with Canada and adopted a land code has the power to grant interests or right in and licences in relation to their land in accordance with their land code and has the legal capacity necessary to enter into contracts to exercise this power, and that the Council of the First Nation has the power to exercise these powers for the use and benefit of the First Nation;
- C. ᑭᓱᓱᓱ signed an Individual Agreement with Canada on June 18, 2014;
- D. The members of ᑭᓱᓱᓱ voted in favour of the *St. Mary's Indian Band Land Code* at a ratification vote held on April 14-16, 2014 and the *St. Mary's Indian Band Land Code* came into effect on July 1, 2014;
- E. In 2016, the *St. Mary's Indian Band Land Code* was amended when the members of ᑭᓱᓱᓱ voted in favour of the *ᑭᓱᓱᓱ Amended Land Code* at a Meeting of Members;

- F. the Council of ᑭᓄᓂᓂ may grant interests in ᑭᓄᓂᓂ lands pursuant to section 32.1 of the *ᑭᓄᓂᓂ Amended Land Code*;
- G. the Licensee made an application to the ᑭᓄᓂᓂ Lands Department on [date] requesting to [use / occupation / taking of resources from] ᑭᓄᓂᓂ lands for the purpose of [enter purpose];
- H. the Council of ᑭᓄᓂᓂ, by Band Council Resolution that is attached to this Agreement and entitled “**Schedule B: ᑭᓄᓂᓂ Band Council Resolution Consent to Lease**”, consents to this Agreement and authorizes [enter name] to execute this Agreement on behalf of ᑭᓄᓂᓂ; and
- I. the Parties wish to set out their respective rights and obligations with respect to the Lessee’s use of ᑭᓄᓂᓂ lands,

NOW THEREFORE, with mutual consideration, the Parties covenant and agree as follows:

ARTICLE 1: INTENT, DEFINITIONS AND INTERPRETATION

Definitions

1. Unless otherwise specifically provided elsewhere in this Lease, throughout this Lease the terms defined in Schedule "A" have the meanings ascribed to them in that schedule.

Interpretation

2. Unless otherwise expressly provided, any reference in this Lease to an article, section, subsection, paragraph or subparagraph must mean an article section, subsection, paragraph or subparagraph of this Lease

3. All headings in this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit, enlarge, modify or explain the scope or meaning of this Lease or any of its provisions.

4. Reference to a Party must be read as if all required changes in the singular and plural and all grammatical changes rendered necessary by gender had been made. All words in the singular must include the plural and vice-versa.

5. A reference to an enactment is a reference to that enactment as it is amended or replaced from time to time, and includes all regulations made under that enactment.

Joint and Several

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

All Terms are Covenants

7. All agreements, terms, conditions, covenants, provisions, duties and obligations to be performed or observed by the Lessee or the Lessor under this Lease must be deemed to be covenants.

Net Lease

8. This Lease is to be a completely carefree net lease for the Lessor and the Lessor is not to be responsible during the Term for any costs, charges, expenses or outlays of any nature whatsoever arising from or relating to the Premises, the use or occupancy of the Premises, or, if so authorized by the Lessor, any costs, charges, expenses or outlays of any nature whatsoever out of any business carried on at the Premises.

Governing Law

9. This Lease must be governed by and interpreted in accordance with the applicable laws of Québec, Canada and the Province of British Columbia.

Entire Agreement

10. This Lease constitutes the entire agreement between the Parties with respect to the subject matter of this Lease and supersedes and revokes all previous negotiations, arrangements, letters of intent, offers to lease and representations.

11. No modifications of this Lease are effective unless made in writing, and executed by both Parties in the same manner as this Lease was executed.

Time is of the Essence

12. Time is of the essence in this Lease.

Severability

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

ARTICLE 2: LANDS AND MINERALS

Demise

14. The Lessor leases to the Lessee and the Lessee leases from the Lessor, the Lands to have and to hold the Lands during the Term, paying Rent to the Lessor during the Term and subject to the terms, conditions, provisos, exceptions and reservations contained in this Lease.

Term

15. This Lease must be valid for a period from and including the Commencement Date until _____, unless this Lease is otherwise terminated in accordance with section 115.

Minerals

16. The Lessor excepts and reserves from the Lands all Minerals in, on or under the Lands.

ARTICLE 3: USE OF PREMISES

Types of Use

17. The Lessee covenants and agrees with the Lessor that the Premises must not be used for any purposes except that of single family residential use or such other uses as may be permitted by, and are in compliance with, the provisions of any and all applicable regulations, bylaws, or other laws of ?aqam that apply, or may apply at some future date and that affect, regulate, or specify the uses that may lawfully be made of the Premises.

No Vacating or Abandoning

18. The Lessee must not vacate or abandon the Premises at any time during the Term without the prior written consent of the Lessor.

Access

19. The Lessee acknowledges and agrees without limitation that the Lessee is solely responsible for securing access (be it by public or private road, water, air or otherwise) to and from the Premises.

20. The Lessor acknowledges and agrees that the Lessee may access the Premises by way of roads owned and operated by the Lessor.

Quiet Enjoyment

21. The Lessee, by paying the Rent and observing and performing the covenants in this Lease, has a right to peaceably and quietly possess, hold and enjoy the Premises during the Term without any interruption or disturbance by the Lessor.

Artifacts and Survey Monuments

22. Where the Lessee unearths or discovers any Artifacts on the Premises, the Lessee must:

(a) immediately notify the Lessor of the specific types and locations of the Artifacts that were unearthed or discovered;

(b) immediately cease all activities within [enter distance agreed by Council] meters of the area on the Premises in which the Artifacts were unearthed or discovered, until such time as Council notifies the Lessee that they may continue their activities; and

(c) not remove any Artifacts that are unearthed or discovered from the soil unless Council has provided the Lessee with written authorization to do so.

23. If any legal control survey monuments are disturbed, damaged or destroyed, the Lessee must ensure that they are replaced by a duly qualified surveyor to the satisfaction of the Surveyor General of Canada.

Other Interests

24. The Lessor hereby reserves the right to further charge the Lands, or any part thereof, by way of easement, right of way, or restrictive covenant in favour of any Authority and the Lessee agrees, at the request of the Lessor, to expeditiously execute and deliver to the Lessor such instrument as may be necessary to subordinate the Lessee's right and interest in the Land under this Lease to such charge.

ARTICLE 4: RENTS

Rent to be Paid

25. The Lessee covenants and agrees to make the following payments to the Lessor during the Term, in lawful money of Canada, without abatement, deductions or set-off, by certified cheque, electronic transfer or bank draft in favour of ?aqam:

(a) Base Rent in the amount of XXXX of any and all rental payments received by the Lessee from any and all Subleases of any portion of the Premises during the Term;

(b) Additional Rent, if any; and

(c) Supplementary Additional Rent, if any.

26. Rent must be paid by the Lessee to the Lessor no later than thirty (30) days from the date that the Lessee will have received any rental payments from any and all Sublessees for any portion of the Premises during the Term.

27. At the time the Lessee is required to pay the Base Rent to the Lessor, the Lessee must deliver to the Lessor copies of all statements related to the calculation of all rental payments received by the Lessee from any and all Subleases for any portion of the Premises during the pay period in question.

28. Within fifteen (15) days of receipt of written request by the Lessor, the Lessee must deliver to the Lessor any other receipts, information and documentation which are reasonably relevant to the calculation of Rent.

29. Unless otherwise agreed in writing between the parties, any Subleases granted by the Lessee to a Sublessee must only be granted in exchange for a rental payment equal to Fair Market Value.

Payment over to Beneficiary

30. Except as provided in section 31, the Lessee acknowledges and agrees that:

(a) any Rent paid to the Lessor will have been paid over to the benefit of the ?aqam and will not be available to be refunded to the Lessee;

(b) the Lessee must have no right to a refund of, and the Lessor must not be liable to the Lessee for refunding any Rent in the event of termination of this Lease; and

(c) the Lessee accepts this liability as its own.

Calculation of Fair Market Value

31. The following provisions apply in the event of a disagreement between the Lessor and the Lessee over the Fair Market Value:

Lessor's Determination

(a) The Lessor, utilizing the services of an accredited appraiser, must endeavor to determine and notify the Lessee of the Fair Market Value of the portion of the Lands and the Improvements, if applicable, which is the subject of the Sublease in question ninety (90) days before the Sublease term commences, but may make such determination and notify the Lessee at any time within one hundred

and eighty (180) days after the Sublease term commences, provided that, in the absence of, or pending such notice, the Lessee must continue to pay Rent in the same amount and in the same manner as provided in this Lease;

Payment of Deficiency

(b) If the Lessor gives notice of the Fair Market Value to the Lessee and the Fair Market Value is greater than the rent charged by the Lessee for the Sublease in question then the Lessee must pay the deficiency in Rent to the Lessor within thirty (30) days after such notice is given;

Dispute of Calculation

(c) If the Lessee disagrees with the Lessor's calculation of the Fair Market Value and the Lessee has paid all Rent then due, including any increase in Rent as determined by the Lessor, the Lessee may at its expense and within sixty (60) days from the Lessor delivering notice of the calculation to the Lessee, refer the matter to the Office of the Adjudicator for a review of the determination;

(d) Upon a final decision of the Adjudicator, the respective Party must expeditiously pay any adjustment of Rent; and

(e) If the Lessee fails to refer the matter to the Office of the Adjudicator within the time set out at paragraph (c) then the Fair Market Value must be deemed to be that set out in the Lessor's notice pursuant to this section.

Additional Rent

32. If at any time before or after the expiration or earlier termination of this Lease the Lessor suffers or incurs any damage, loss or expense by reason of any failure of the Lessee to perform or observe any of the Lessee's covenants or makes any payment for which the Lessee is liable under this Lease, or if the Lessor is compelled or elects to incur any expense, including, without limitation, reasonable legal fees in instituting, prosecuting or defending any action or proceeding instituted by reason of any default of the Lessee under this Lease, including any action or proceeding against the Lessee, then in every such case the amount of damage, loss, expense or payment, including reasonable legal fees of the Lessor, together with interest, must be expeditiously paid as Additional Rent by the Lessee to the Lessor on notice from the Lessor and must be recoverable in the manner provided by law including the manner provided by law for the recovery of rent in arrears.

Arrears to Bear Interest

33. If the Rent, or any other sum owing by the Lessee to the Lessor under this Lease is not paid within thirty (30) days from the date on which it is due then it must bear interest at a rate per annum equal at all times to the prime rate of the Lessor's bank plus five percent (5%), from the date the Rent or sum is due until the date of the payment by the Lessee. This stipulation for interest must not prejudice or affect any other remedies of the Lessor under this Lease or otherwise, or be construed to relieve the Lessee from any default in making the Rent payment at the time and in the manner specified in this Lease.

Lessee Is Owned By Band And Rent Is Less Than Fair Market Value

34. Sections 35 through 38 apply when the Lessee and the Lessor agree that the Lessee must pay Base Rent which is less than the Fair Market Value for the Lands and the Lessee is controlled or beneficially owned by ?aqam.

35. The Lessee must pay to the Lessor:

- (a) Supplementary Additional Rent for the remainder of the Term,
- (b) the reduced Base Rent agreed upon between the Lessee and Lessor; and
- (c) any Additional Rent payable under this Lease,

on the occurrence of any of the following events, and in the amounts specified:

(a) an amount equal to the difference between the Fair Market Value and the Revised Base Rent, less any amounts advanced to the Lessee and not recovered by the Mortgagee in the following circumstances:

(i) if there is a Mortgage and the Lessee's equity of redemption in this Lease or any part thereof is absolutely foreclosed pursuant to an order of a court of competent jurisdiction;

(ii) if a Mortgagee or receiver of the Lessee's interest in the Premises, whether or not it takes possession of the Premises, purports to:

(A) sell, assign or transfer the Lessee's interest in the Premises; or

(B) sublease the Premises or any part thereof; and

(iii) if an order of any competent court is made authorizing:

(A) the sale, assignment or transfer of the Lessee's interest in the Premises; or

(B) the subletting of the Premises;

(b) an amount equal to the difference between the Fair Market Value and the Revised Base Rent if the Lessee ceases to be controlled or beneficially-owned by ?aqam; and,

(c) an amount equal to the difference between the Fair Market Value and the Revised Base Rent less any consideration for assignment or transfer received by the Lessee, if the Lessee assigns or transfers the whole or any part of its interest in this Lease to any person or entity other than an entity controlled or beneficially owned by ?aqam.

36. The Lessee must make available to any member of ?aqam any information to which the Lessor would have access under this Lease.

37. The Lessee may charge reasonable fees for the provision of documents requested under section 36.

38. For greater certainty, Base Rent must be deemed to have been paid in full in respect to any and all portions of the Lands and Improvements which have been subleased to a Sublessee under a pre-paid sublease at fair market rent, and no further Base Rent must be payable in respect of such areas affected by such sublease, including but not limited to a proportionate share of those portions of the Lands and Improvements which are held in common for all Sublessees

ARTICLE 5: RECORDS

Lessee to Retain Documents

39. The Lessee must retain all documents or records pertaining to any expenditure made by or on behalf of the Lessee with respect to the Premises for six (6) years after the end of the year in which the expenditure was made.

Lessee to Deliver Documents

40. The Lessee will, upon written request by the Lessor, deliver to the Lessor copies of such documents or records required to be retained pursuant to section 39 as the Lessor requires, within

- (a) fifteen (15) days of such request, in the case of documents or records of the Lessee, or
- (b) thirty (30) days of such request, in the case of documents or records of any other Person.

ARTICLE 6: ASSIGNMENTS, SUBLEASES AND MORTGAGES

Assignments

41. No assignment is valid until the proposed assignee has executed a written agreement, substantially in the form set out in Schedule "C", covenanting and agreeing with the Lessor that the assignee must observe and perform all of the conditions, covenants and agreements to be observed or performed by the Lessee under this Lease.

42. For greater certainty, if the Lessee is a corporation, partnership or society, a change in ownership or beneficial control requires the Lessor's consent in accordance with section 41.

Subleases

43. A Sublease of any part or portion of the Lands must include and must be deemed to include the following provisions:

- (a) the Sublease must terminate no later than one (1) day before the expiration of the Term of this Lease;
- (b) the Sublease must be expressly subject and subordinate to this Lease and to the rights of the Lessor under this Lease and must terminate upon the termination of this Lease, subject to sections 112 to 127;
- (c) the Sublease must bind the Sublessee to all terms of this Lease and must provide that in the event of conflict between the terms of this Lease and the Sublease the terms of this Lease must govern;
- (d) the Sublease must be registered in the First Nation Land Register;
- (e) the Sublease must contain a provision that the Sublessee must not in any way use the Subleased portion of the Premises for a "project", as that term is defined in CEAA, unless the Council of ?aqam have provided to the Sublessee written confirmation setting out that the project:
 - (i) is not likely to cause significant adverse environmental effects as defined in CEAA; or
 - (ii) is likely to cause significant adverse environmental effects as defined in CEAA and either the Council of ?aqam has decided that those effects are justified in the circumstances.
- (f) the Sublease must contain a provision that the Sublessee will indemnify and save harmless ?aqam and ?aqam's servants, employees, representatives and agents from and against all claims, causes of action, liabilities, demands, losses, damages, costs and expenses including fees of solicitors and other professional advisors, made against or incurred, suffered or sustained by ?aqam where the same or any of them are based upon or arise out of or from a claim made by the Sublessee in relation to either the Council of ?aqam determining that a "project" proposed by the Sublessee cannot proceed due to significant adverse environmental effects.

The Lessee agrees to indemnify and save harmless ?aqam and ?aqam's servants, employees, representatives and agents from and against all claims, causes of action, liabilities, demands, losses, damages, costs and expenses including fees of solicitors and other professional advisors, made against or incurred, suffered or sustained by ?aqam where the same or any of them are based upon or arise out of or from a claim made by the Lessee in relation to either the Council of ?aqam determining that a "project" proposed by a Sublessee cannot proceed due to significant adverse environmental effects.

44. If ?aqam Environmental Laws, bylaws, policies and/or regulations are not in force, CEAA must apply.

Mortgages

45. If the Mortgagee takes possession (including the appointment of a receiver or receiver-manager) of the Lands or acquires the Lessee's equity of redemption, then the Mortgagee must perform and

observe all the Lessee's covenants and agreements under this Lease until this Lease is assigned in accordance with the provisions of this Lease.

46. Notwithstanding any other provisions of this Lease, where the whole or any part of the interest of the Lessee is mortgaged then:

(a) the Lessor must not exercise effectively as against the Mortgagee any right of re-entry or distress or right to terminate this Lease unless:

(i) the Lessor has provided the Mortgagee with at least sixty (60) days written notice of the Lessor's intention to re-enter or to distrain or to terminate, which notice must specify the full grounds thereof;

(ii) the Mortgagee fails, during that sixty (60) day period, to either:

(A) remedy all specified proper grounds for re-entry, distraint or termination, or

(B) give the Lessor notice in writing that the Mortgagee intends to take, or has taken, formal proceedings for the enforcement of its mortgage and the protection of its position, and

(iii) the Mortgagee, after receiving the notice specified in subparagraph (i), has been provided a reasonable amount of time to pursue to its conclusion all reasonable proceedings for the enforcement of its mortgage and the protection of its position;

(b) if, upon the conclusion of proceedings by the Mortgagee for the enforcement of its mortgage and the protection of its position, the rights of the Lessee have been released to the Mortgagee or foreclosed or sold, then all then existing grounds for re-entry or distress or termination and then existing rights (if any) of re-entry or distress or termination must terminate and the Mortgagee or purchaser must become the Lessee free of all liability for such grounds;

(c) where the Lessor, at the request of the Lessee, intends to terminate the Lease either by surrender of Lease or otherwise:

(i) the Lessor must provide to the Mortgagee written notice of such intention;

(ii) the Lessor must provide at least sixty (60) days to the Mortgagee from the date of such notice to obtain repayment in full of the outstanding mortgage, inclusive of interest and penalties, or take mortgage default enforcement action within its rights; and

(iii) if the Mortgagee provides to the Lessor notice of its intention to commence or proof of its commencement of mortgage default enforcement action to realize on its security, including but not limited to foreclosure proceedings, the Lessor must not accept the surrender of the Lease;

(d) throughout any period of time during which, as a result of proceedings for default under the mortgage including transfer of title under the *National Housing Act*, the Mortgagee as successor is in leasehold possession of the Lands and Improvements or holds leasehold title to the Lands, then the Lessor waives, as against the mortgagee and Canada Mortgage and Housing Corporation and their successors and assigns, all Rent, Additional Rent, Supplementary Rent and interest accruing and otherwise required to be paid under this Lease, but for the purposes

of this waiver, Rent, Additional Rent and Supplementary Rent do not include taxes or charges lawfully levied by an Authority, local improvement charges, water rates and utility charges required to be paid by the Lessor or the Lessee and the actual cost of construction, maintenance and repair of damage that are the responsibility of the Lessee and the consent of the Lessor must not be required with respect to any vacancy or removal of Personal Goods from the demised premises; and,

(e) notwithstanding the provisions of section 108, if the Improvements are damaged or destroyed to the extent of twenty-five (25%) per cent or more of their full insurable value, then the Mortgagee must have the option of determining whether the Improvements should or should not be repaired, replaced, rebuilt, or restored and if it elects not to repair, replace, rebuild or restore then the insurance proceeds will, notwithstanding anything to the contrary herein provided, be applied, in order of priority:

(i) firstly, but only if and to the extent required by the Lessor or Lessee, toward clearing and restoring the Lands as nearly as possible to their condition prior to the commencement of construction;

(ii) second, toward payment of all moneys owing on the mortgage;

(iii) third, towards payment of all moneys payable to the Lessor under this Lease; and

(iv) fourth, in payment to the Lessor and Lessee in accordance with their interests therein, and the Lessee must not be obligated to repair or build or restore; and,

(f) there must be no obligation on Canada Mortgage and Housing Corporation to arrange or maintain any insurance, and for the purposes of subsection (e), if because the corporation has not arranged or maintained insurance there are no or insufficient insurance proceeds and that Canada Mortgage and Housing Corporation makes the same election as that specified in subsection (e) then Canada Mortgage and Housing Corporation must not be required to do more than clear and restore the Lands as nearly as possible to their condition prior to the commencement of construction and must be entitled to apply to that end whatever insurance proceeds may be available; and

(g) there must be no obligation on the Canada Mortgage and Housing Corporation to indemnify the Lessor except where the Canada Mortgage and Housing Corporation would be obligated to do so apart from the terms of this Lease.

47. The Lessee must:

(a) observe and perform all of its obligations incurred in respect of any Mortgage; and

(b) not suffer or allow any of its obligations incurred in respect of any Mortgage to be in default.

48. If a default occurs in relation to any of the Lessee's obligations incurred in respect of any Mortgage:

(a) the Lessor may rectify such default on the account of the Lessee;

(b) any amount paid by the Lessor in rectifying such default on the account of the Lessee, together with all costs and expenses of the Lessor, and interest at the rate set forth in this Lease for arrears, must be reimbursed to the Lessor by the Lessee on delivery of notice from the Lessor to the Lessee; and

(c) any amount paid by the Lessor in rectifying such default on the account of the Lessee must be recoverable by the Lessor in the manner provided by law for the recovery of rent arrears.

No Relief of Obligations

49. The assignment, Sublease or Mortgage of the Lessee's interest in this Lease by the Lessee must not relieve or discharge the Lessee from any of its obligations or liabilities under this Lease.

ARTICLE 7: CONSENT AND REGISTRATION

Provide Two Copies

50. The Lessee must submit for registration to the First Nation Land Register, in a form acceptable to the registry, two (2) originally executed copies of every Sublease and every Mortgage between the Lessee and a Mortgagee.

Obligation to Provide Documents

51. Nothing contained in this Lease relieves the Lessee from the obligation to provide to the Lessor the form of document required for registration.

ARTICLE 8: COMPLIANCE WITH LAWS

General Requirement

52. The Lessee must at its expense observe, perform and comply with all applicable Laws of any Authority concerning this Lease, the Premises or any activity on the Premises.

Notice

53. If any notice is given from any Authority lawfully requiring the execution of works by the Lessee at the Premises during the Term, the Lessee will, upon receiving the notice, expeditiously forward it or a copy of it to the Lessor. The Lessee must expeditiously, upon completion of the works required by the notice, provide evidence satisfactory to the Lessor of compliance with the terms of the notice, including but not limited to any certificates of inspection issued in respect of the works.

Contesting the Validity

54. Without relieving or modifying the obligation of the Lessee to comply with section 53, the Lessee may, at its expense, contest or appeal, to the Authority or other Person, as may be set out by any Laws, the validity of the requirement of the Authority, provided that the Lessee expeditiously commences any proceedings to contest or appeal the validity and continues the proceedings with all due diligence.

ARTICLE 9: TAXES

General Requirements

55. Without limiting the generality of Article 8 the Lessee must pay on or before the due date in each and every year during the Term all applicable taxes, trade licences, rates, levies, duties and assessments of any kind lawfully imposed by any Authority, whether in respect of the Premises, fixtures, machinery, equipment, sales, transactions or business relating to the Premises or in respect of occupation of the Premises by any Person.

Contesting the Validity

56. Without in any way relieving or modifying the obligation of the Lessee to comply with section 55, the Lessee may, at its expense, contest or appeal (to the Authority or other Person, as may be set out by any Laws) the validity or amount of any tax, trade licence, rate, levy, duty or assessment provided that the Lessee expeditiously commences any proceedings to contest or appeal the validity or amount and continues the proceedings with all due diligence.

Provision of Documents

57. The Lessee must provide the Lessor with official receipts of the Authority or other proof satisfactory to the Lessor evidencing payment of any taxes, trade licences, rates, levies, duties or assessments within thirty (30) days of receipt of written notice.

ARTICLE 10: UTILITIES

Responsibility to Provide

58. The Lessor must provide the Lessee with reasonable access to available utilities, services and facilities, subject to applicable fees.

59. The Lessee may provide and maintain, at its expense, all services and facilities required from time to time for the use of the Premises which are not otherwise available through the Lessor, including,

without limitation, water, gas, telephone, light, power, heat, air-conditioning and sewage and garbage disposal services and facilities and all services and facilities must be installed and maintained to the satisfaction of the Lessor.

Interruption Not a Disturbance

60. The interruption of any service or facility provided to the Premises must not:
- (a) be a disturbance of the Lessee's enjoyment of the Premises;
 - (b) render the Lessor liable for injury to or in damages to the Lessee; or
 - (c) relieve the Parties from their obligations under this Lease.

ARTICLE 11: ENVIRONMENT

Covenants of Lessee

61. The Lessee covenants with the Lessor, which covenants survive the expiration or earlier termination of this Lease, as set out at sections 62 to 69.

General Compliance

62. Without limiting the generality of Article 8, the Lessee must use and occupy the Premises in compliance with all applicable Environmental Laws and regulations.

Hazardous Substances

63. The Lessee must not use or permit or suffer the use of the Premises to generate, manufacture, refine, treat, transport, store, handle, dispose of, transfer, produce or process any Hazardous Substances except in strict compliance with Environmental Laws and with the prior written consent of the Lessor, which consent may be withheld.

Report of Release

64. Upon the Release of Hazardous Substances, or discovery of a Release of Hazardous Substances, by the Lessee in, on or under the Premises, the Lessee will:

- (a) immediately deliver written notice to the Lessor and any appropriate Authority of the occurrence of the Release and details relating to the Release including, without limitation,

(i) the time of the Release,

(ii) the estimated amount of Hazardous Substances which was released,

(iii) remedial action taken prior to the delivery of the notice,

(iv) the remedial action which the Lessee intends to take in order to contain or rectify the Release, and

(v) any Persons observed who appeared to have caused or who were in the vicinity of the Release;

(b) at its own expense immediately take all remedial action necessary, in compliance with all Environmental Laws, to fully rectify the effects of the Release;

(c) provide the Lessor with an independent audit, satisfactory to the Lessor, of its activities under paragraph (b) and the state of the Premises after such activities compared with the state of the Premises prior to the Release; and

(d) do such further activities as the Lessor may reasonably require, based on the audit referred to in paragraph (c), to rectify the Release.

Removal of Hazardous Substances

65. Without limiting section 65, if requested by the Lessor or any Authority, the Lessee will, at its own expense, remove from the Premises any Hazardous Substances which are or have been located, stored or incorporated in, on or under the Premises.

66. Prior to the end of the Term, the Lessee will, at its own expense, remove from the Premises any Hazardous Substances which are or have been located, stored or incorporated in, on or under the Premises.

67. Nothing herein shall affect the Lessee's obligation to comply with any Law. The Lessee must be responsible for obtaining from any Authority all approvals, permits, licences or other authorizations that are necessary for the remedial action and removal of the Hazardous Substances, and such work must be completed to the reasonable satisfaction of the Lessor.

Increased Risks

68. The Lessee must not carry out any operations or activities or construct any Alterations or Improvements which, in the opinion of the Lessor, acting reasonably, materially increase the risk of liability to the Lessor, whether direct or indirect, as a result of the application of Environmental Laws.

Inspection

69. The Lessor may, at any time during the Term, inspect the Premises in order to assess the existence of any Hazardous Substances and to conduct an environmental site assessment, environmental audit or any other testing or investigations which the Lessor deems necessary in order to ascertain the compliance of the Lessor's operation on the Premises with Environmental Laws and to determine the extent of any contamination of the Premises due to the presence of any Hazardous Substances in, on or under the Premises. The reasonable costs to the Lessor of conducting any of the foregoing must be deemed to be Additional Rent payable by the Lessee upon the Lessor delivering notice of its costs.

Title to Hazardous Substances

70. The Lessee acknowledges and agrees that, notwithstanding any Law to the contrary, any Hazardous Substances which are located, stored or incorporated in, on or under the Premises, remain the sole and exclusive property of the Lessee and must not become the property of the Lessor regardless of any degree of affixation of the Hazardous Substances to the Premises. This section must survive the expiration or earlier termination of this Lease, save only that, to the extent that the performance of any obligation pertaining to it requires access to or entry upon the Premises after the expiration or earlier termination of this Lease, the Lessee must have entry and access only at such times and upon such terms and conditions as the Lessor may from time to time specify in writing.

Additional Termination Rights

71. Subject to sections 45 to 49 and 112 to 127, where any of the following circumstances occur the Lessor may terminate this Lease by providing the Lessee with sixty (60) days written notice of such termination:

- (a) a breach by the Lessee of any section in this Article;
- (b) the Lessor becoming aware of a breach of Environmental Laws with respect to the Premises or the presence of any Hazardous Substances on, in or under the Premises which raises a material risk of liability to the Lessor, as determined by the Lessor; or
- (c) the amendment of or the addition to any Environmental Laws in a manner which materially increases the probability or extent of the Lessor's liability with respect to the Lessee's use and occupancy of the Premises under any Environmental Laws.

Environmental Indemnity

72. Without limiting the generality of section 130, the Lessee hereby indemnifies and saves harmless the Lessor from and against all claims, demands, actions, suits or other proceedings, judgments, damages, penalties, fines, costs, liabilities and losses, including any diminution in the Fair Market Value of the Lands, based on the highest and best use of the Lands as opposed to the uses permitted by this Lease, sums paid in settlement of any claims, reasonable legal, consultant and expert fees or any costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or

restoration work required by any Authority which arise during or after the Term and are in any way based upon, arise out of or are connected with:

(a) the presence or suspected presence of Hazardous Substances in, on or under the Premises or in the soil, groundwater or surface water in, on under or near the Premises as a result of the actions or omissions of the Lessee; or

(b) the Release of any Hazardous Substances in, on or under the Premises by or at the direction of the Lessee, unless the presence of the Hazardous Substances is solely attributable to the negligence or willful misconduct of the Lessor or is the responsibility of any other person or entity.

73. The indemnity set out at section 72 must survive the expiration or earlier termination of this Lease.

Environmental Site Assessment

74. Within one hundred and twenty (120) days of the Commencement Date the Lessee must undertake and provide to the Lessor an environmental site assessment report conducted by an independent consultant designated or approved by the Lessor, which report must assess the existing environmental condition of the Premises. The environmental consultant must be required to review the site history and inspect the Premises to identify portions of the Premises with indicators of contamination and to conduct appropriate testing to assess suspect soil and, if practical, water. In identifying such portions of the Premises, the consultant must rely on historical information and instances of visually apparent unusual soil, water or vegetation conditions.

75. The report referred to in section 74 must be *prima facie* evidence between the Parties of the environmental condition of the Premises immediately prior to the commencement date of this Lease.

76. At least eight (8) months before the expiration or earlier termination of this Lease, the Lessee will, at its own expense, have an independent consultant, designated or approved by the Lessor, conduct an environmental site assessment of the Premises and prepare an environmental site assessment report that assesses the environmental condition of the Premises. The consultant must be required to examine the Premises for indications of environmental problems and to conduct testing at high risk locations following the same procedure required to be employed for the report referred to in section 74.

77. At least six (6) months prior to the expiration or earlier termination of this Lease, the Lessee must provide the environmental site assessment report referred to in section 76 to the Lessor, unless otherwise agreed to by the Lessor.

78. The Lessee will, at its own expense, prior to the expiration or earlier termination of this Lease unless otherwise agreed to by the Lessor, remediate the Premises to the environmental condition of the Premise identified in the environmental site assessment report referred to in section 74 or to an environmental condition that is acceptable to the Lessor.

79. The Lessee hereby authorizes the Lessor to make enquiries from time to time of any Authority in respect of the Lessee's compliance with any Environmental Laws. The Lessee will, immediately upon demand, provide the Lessor or the Authority, as the case may be, written authorization for the Lessor to obtain such information.

Representations and Warranties of the Lessee

80. The Lessee represents and warrants to the Lessor, and acknowledges that the Lessor is specifically relying on such representations and warranties, that:

(a) neither the Lessee nor any affiliated company of the Lessee, other company controlled by the same shareholders having control of the Lessee or any directors of the Lessee has ever been prosecuted or convicted of any offences under any Environmental Laws;

(b) neither the Lessee nor any affiliated company of the Lessee or other company controlled by the same shareholders having control of the Lessee has ever been the recipient of any notices of non-compliance or orders under any Environmental Laws; and

(c) the conduct of the Lessee's operations does not involve the storage or Release of any Hazardous Substances.

ARTICLE 12: NUISANCE

81. The Lessee must not cause, permit or suffer any nuisance at or on the Premises, however, without limiting the foregoing, the Lessee will, upon written notice from the Lessor, abate any nuisance arising directly or indirectly out of the use or occupation of the Premises by the Lessee. Written notice under this section must be deemed to be a request to remedy a default.

ARTICLE 13: NEW IMPROVEMENTS

Obtain Permits and Approvals

82. Prior to commencing any development of any Improvements on the Lands, the Lessee or any Sublessees must apply to all relevant Authorities to obtain all required permits and approvals necessary to construct the Improvements.

Provide Plans

83. Concurrently with the Lessee's obligation in section 82, the Lessee or Sublessee must provide the Lessor with a Development Plan for the Lessor's consent, which consent the Lessor must not unreasonably withhold, but which consent, if given, must be given pursuant to Article 15.

Construction

84. Upon receipt of the Lessor's consent to the Development Plan and all required permits and approvals, the Lessee or Sublessee must construct the Improvements expeditiously and in a proper and workmanlike manner in accordance with the Development Plan, the materials upon which any permits or approvals are based and Article 15.

ARTICLE 14: MAINTENANCE AND ALTERATIONS

Maintenance

85. The Lessee will, at its expense, maintain from time to time all Improvements in a good and tenable condition in every respect as would a careful owner in occupation.

Alterations

86. Whenever Alterations to the Premises are performed the Lessee must not undertake the work without first having received the written consent of the Lessor, such consent not to be unreasonably withheld.

ARTICLE 15: CONSTRUCTION REQUIREMENTS

General Requirements

87. Without limiting Article 8, all construction and other work on the Premises pursuant to Articles 13 and 14 must be carried out and completed to the highest standard and quality of any industry or construction standards for the respective type of Improvements, as those standards may be amended or replaced from time to time.

Development Plan

88. Whenever work under this Lease requires the Lessor's consent, the Lessee must provide the Lessor with a Development Plan and such other documents requested by the Lessor as must enable the Lessor to determine whether the work complies with the provisions of this section.

Approval Process for Development Plan

89. If the Lessor requires amendments or revisions to a Development Plan that is submitted to the Lessor from the Lessee, the Lessee must then resubmit an amended or revised Development Plan to the Lessor that complies with the Lessor's amendments or revisions.

Lessor Not Responsible

90. No consent or absence of consent by the Lessor to a Development Plan will in any way be an assumption of responsibility by the Lessor for the Development Plan or for any work completed in accordance with the Development Plan.

Failure to Comply with the Development Plan

91. Notwithstanding anything to the contrary in this Lease, if the Lessee fails to construct Improvements or perform Alterations in accordance with the relevant Development Plan, the Lessor may consider this failure to be a breach of this Lease.

Builder's Liens

92. The Lessee hereby indemnifies and saves harmless the Lessor from any liens on the Premises and any claims or judgments arising out of such liens, which indemnity must survive the expiration or earlier termination of this Lease.

ARTICLE 16: REPLACEMENT ON DESTRUCTION

93. The destruction, in whole or in part, of Improvements on the Premises by any means must not cause this Lease to terminate or entitle the Lessee to surrender possession or demand any abatement or reduction of the Rent.

ARTICLE 17: REMOVAL OF IMPROVEMENTS AND PERSONAL GOODS

Removal of Improvements

94. At any time during the Term, or within thirty (30) days after the expiration or earlier termination of this Lease or any Sublease, the Lessee may permit a Sublessee, if not in default of their Sublease and at the Sublessee's own expense, to remove from the Lands all of the Sublessee's Improvements provided that the Sublessee leaves the Lands in a neat, clean and tidy state and free from all debris to the reasonable satisfaction of the Lessor.

Removal of Improvements and Personal Goods on Notice

95. The Lessor may, not later than ninety (90) days before the Term expires or otherwise ends, give the Lessee written notice to take away Personal Goods and Improvements from the Lands, and the Lessee agrees that, upon receipt of such notice, the Lessee will, at its own expense, remove from the Lands all such Personal Goods and Improvements and must clear away all debris so that the Lands are on the date the Term expires or otherwise ends, in a neat, clean and tidy state to the reasonable satisfaction of the Lessor.

Lessee to Provide Performance Bond

96. The Lessee will, on receipt of the notice in section 95 and at the request of the Lessor, provide to the Lessor a performance bond in such an amount as the Lessor may reasonably require to cover the costs of the removal of the Personal Goods and Improvements, and to enable the Lessor to complete their removal and to return the Lands to a neat, clean and tidy state.

Lessor May Remove

97. If the Lessee does not:

- (a) allow a Sublessee to remove the Personal Goods and Improvements under section 94;
- (b) remove Personal Goods and Improvements when given notice to do so as set out in section 95;
or
- (c) leave the Lands in a neat, clean and tidy state and free from all debris to the reasonable satisfaction of the Lessor,

the Lessor may remove the Personal Goods and Improvements and dispose of them as the Lessor sees fit and the Lessee must pay to the Lessor forthwith upon demand all such costs as the Lessor may incur in carrying out or completing the removal and in putting the Lands in a neat and tidy state.

Lessor Not Responsible for Loss or Damage

98. The covenant at section 97 must continue to be enforceable against the Lessee, notwithstanding that the Term may have ended, and Lessor must not be responsible to the Lessee for any loss suffered by the Lessee as a result of the removal or the disposal of Personal Goods and Improvements.

Lessor Right to Vacant Possession

99. Provided that the permission set out in section 94 is not granted or exercised and the Lessor does not exercise its rights under section 95, at the expiration of the Term or sooner termination of this Lease, the Lessee must surrender and yield up vacant possession of the Lands and Improvements to the Lessor in good and tenantable repair, free from all claims whatsoever and without payment or allowance by the Lessor of any sum of money whatsoever to the Lessee and without notice from the Lessor of any right to notice to quit or vacate being hereby expressly waived by the Lessee, any law, usage, or custom to the contrary notwithstanding.

Lessor Right to Vacant Possession

100. The Lessor must not be construed as being in possession of the Lands and Improvements solely by its exercise of rights under sections 97 and 98.

ARTICLE 18: INSURANCE

Liability and Property Insurance

101. The Lessee must maintain throughout the entire Term, including, without limitation, any period when it is in possession of the Premises, at its expense:

(a) comprehensive general liability insurance to keep the Lessee insured against claims for personal injury, death or property damage or loss occurring at or about the Premises in an amount of not less than two million dollars (\$2 000 000) for any one occurrence or to such other reasonable amount as the Lessor may notify the Lessee in writing from time to time; and

(b) property insurance written in the name of the Lessee, with loss payable to the insureds and any Mortgagee, as their respective interests appear, insuring the Improvements for one hundred percent (100%) of their full replacement cost against fire and other perils from time to time included in standard fire insurance policies affecting similar properties in British Columbia (with extended or additional perils supplemental coverage), and as would be insured against by a prudent owner, including loss or damage by fire, explosion, impact by aircraft or vehicles, lightning, riot, vandalism or malicious acts, smoke, leakage from fire protection equipment, windstorm, hail and such other perils as the Lessor may reasonably require to be insured against.

Insurance Provisions

102. The Lessee covenants and agrees that:

(a) every insurance policy required under this Lease will:

(i) contain an agreement by the insurer that it must not cancel or substantially alter the policy without first giving the Lessor at least forty-five (45) days prior written notice, and

(ii) contain a clause to the effect that any release from liability entered into by the Lessee prior to any loss must not affect the right of the Lessee or Lessor to recover;

(b) If any insurance policy contains a co-insurance provision, then the Lessee must at all times maintain sufficient insurance to prevent the Lessor and the Lessee from being co-insurers and permit full recovery from the insurer, and the insurance must contain a waiver of subrogation so that the insurance must protect the Lessor and the Lessee as if they were fully insured under separate policies;

103. The Lessee must not do, permit or suffer anything to be done at the Premises which might cause any insurance policy required by this Lease to be invalidated or cancelled.

104. The Lessee must deliver certificates of the insurance evidencing every insurance policy that is required by this Lease to the Lessor immediately after the insurance is effected and must deliver a certificate of renewal or other evidence satisfactory to the Lessor that the insurance has been renewed or replaced to the Lessor at least ten (10) days before the expiry of any insurance policy in force.

105. The Lessee will, upon written request from the Lessor, deliver a certified copy of every insurance policy requested by the Lessor.

Release from Liability

106. The Lessee releases the Lessor from all liability for loss or damage caused by or resulting from any of the perils or injury against which it has covenanted in this Lease to insure even though the Lessee has failed to so insure.

107. A lease must include terms setting out that the lessee must indemnify and hold harmless against and from all claims, demands, actions, suits or other proceedings, judgments, damages, penalties, fines, costs, liabilities, losses, and sums paid in settlement of claims, howsoever arising out of or related to any breach of a Lessee's terms under a lease.

Payment of Loss Under Insurance

108. The Lessor and the Lessee covenant and agree as follows with respect to the use of insurance proceeds that:

(a) all proceeds from insurance policies must be applied to the repair, replacement, reconstruction or restoration of the property damage for which such proceeds have become payable. Any such repair, replacement, reconstruction or restoration must be carried out so as to repair, replace, reconstruct or restore the Lands and Improvements to the same condition as the Lessee is required to maintain pursuant to this Lease immediately prior to such damage or destruction. All repair, replacement, reconstruction and restoration must be completed in accordance with this Lease, and the Lessee must be responsible for the repair, replacement, reconstruction and restoration of the Lands and Improvements; and

(b) notwithstanding the provisions of subsection (a), if complete destruction or serious damage should occur to any of the Improvements on the Lands, the Lessee may at his or her option in the event that he or she is obliged to repair, reconstruct or replace such Improvements under subsection (a), decline to repair, reconstruct, or replace the Improvements. In such event, any insurance or other monies available by reason of fire or other casualty causing such destruction or damage must be divided between the Lessor and Lessee, and any other loss payee as said Parties agree that their respective interests in such monies appear immediately before the exercise of said option and, in default of agreement, as determined by the Office of the Adjudicator under sections 135 to 137.

Insurance May be Maintained by Lessor

109. The Lessee agrees that, should the Lessee at any time during the Term fail to insure or keep insured the Improvements as required by this Lease, then the Lessor, although not obliged to do so, may

obtain and maintain such insurance in such amount with such deductible amounts and for such period as the Lessor deems advisable. The Lessee covenants to pay to the Lessor as Additional Rent within thirty (30) days after receipt of any invoice from the Lessor such amounts as the Lessor has expended for such insurance.

ARTICLE 19: INSOLVENCY

110. If the Lessee becomes insolvent, bankrupt, makes an assignment for the benefit of creditors, or, if it is a corporation, proceedings are begun to wind it up or a receiver, receiver-manager or trustee has been appointed then:

(a) Rent, calculated at the same rate as would have been payable by the Lessee if no bankruptcy or other such event had taken place, must become due and payable as of one day prior to the date of bankruptcy, or other such event, and the Lessee acknowledges and agrees that it holds such Rent, in trust for the Lessor, whether or not it holds it separate and apart from its own funds, until such Rent is actually paid over to the Lessor; and

(b) the Lessor may declare the Term ended subject to sections 112 to 127.

ARTICLE 20: CHANGE IN CONTROL OF LESSEE

111. If the Lessee is one or more corporations, and if by the sale or other disposition of the securities of the corporation, or of any one of the corporations, the control or the beneficial ownership of twenty-five percent (25%) or more of the voting shares of any class of shares of such corporation is changed after the Commencement Date, without the Lessor's prior written consent, the Lessor may, within sixty (60) days of becoming aware of the change in control or ownership, deem this change to be a default under this Lease.

ARTICLE 21: DEFAULT AND REMEDIES

Default

112. The Lessor may give the Lessee a notice of the default if the Lessee:

(a) fails to pay any Rent or any other sum required to be paid by the Lessee when due under this Lease;

(b) fails to perform or observe any other condition of this Lease; or

(c) is otherwise in default of this Lease.

113. The Lessor must specify the particulars of a default in a notice of default.

Termination

114. Subject to sections 115 to 118, the Lessor may by notice to the Lessee declare the Term ended if the Lessor gives the Lessee a notice of default pursuant to this section and:

(a) the default is in respect of a monetary payment or is reasonably capable of being cured within sixty (60) days (or such longer period as is permitted under any Law) after the notice is given and the Lessee fails to cure the default within sixty (60) days (or such longer period as is permitted under any Law) after the notice is given; or

(b) the default is in respect of a non-monetary matter and is reasonably capable of being cured within sixty (60) days after the notice is given and the Lessee fails to commence to cure the default promptly upon receipt of the notice and to proceed to cure it with all due diligence to completion.

Right of Mortgagee and Sublessees to Notice and Replacement Lease

115. The Parties acknowledge that Mortgagees and Sublessees have or may have interests in the Premises or portions thereof. Accordingly, the Parties agree as follows:

(a) The Lessor must provide a copy of any notice to the Lessee pursuant to sections 112 and 113 to each Mortgagee and Sublessee, provided that they have provided to the Lessor in writing an address in British Columbia to which the Lessor may mail and deliver copies of such notices, and no notice given pursuant to sections 112 and 113 will be validly given unless the Lessor has done so. The copies of such notices may be given to the Mortgagees and Sublessees at the addresses provided to the Lessor in writing and otherwise on the same terms and conditions as are applicable to notices referred to in this Lease.

(b) Each Mortgagee and Sublessee must have the same opportunity to cure or cause to be cured defaults as is afforded the Lessee and a cure by any of such persons must be deemed to be a cure by the Lessee.

(c) The Lessor hereby covenants, to and in favour of the Lessee and to and in favour of and for the benefit of every Mortgagee and Sublessee, (each of which parties is herein called an "Interested Party"), that if this Lease is cancelled, terminated or otherwise determined for any reason whatsoever prior to the expiration of the Term or if any rights of the Sublessee hereunder are cancelled, suspended or interfered with for any reason whatsoever, the Lessor must not disturb or interfere with the possession, interest or rights of any such Interested Party in respect of any of the subleased Lands for the remainder of the term of the Sublessee's Sublease, provided that such Interested Party observes and performs or causes to be observed and performed all of the covenants, duties and obligations contained in the Sublessee's Sublease in accordance with the terms thereof, and the Lessor must sign such non-disturbance agreements as may be reasonably requested (but subject always to payment of the Lessor's reasonable legal and consulting costs) at the request of such Interested Party to confirm the Lessor's agreements relating hereto.

116. Notwithstanding anything to the contrary herein, the Lessor hereby covenants to and in favour of and for the benefit of each Sublessee and Mortgagee, that if at any time this Lease is cancelled, terminated or otherwise determined during the term of any Sublessee's Sublease, then upon the written request within one hundred and eighty (180) days after such cancellation, termination or other determination by any Sublessee (a "Qualifying Sublessee") for whom if there are no defaults then in existence in respect of any term or condition set out in this Lease (had it remained in full force and effect)

insofar as it relates to the Sublessee's Subleased Lands and which are capable of being cured by or on behalf of the Sublessee (or, if there is any such default then in existence, the Sublessee has commenced curing the default and continues to prosecute to completion the curing of such default within a reasonable period of time), the Lessor must grant directly to the Qualifying Sublessee a new lease in accordance with the following provisions:

(a) such new lease must be for the term commencing on the date of the issuance of such new lease and ending at the end of the term of the Qualifying Sublessee's Sublease, must be for nominal prepaid rent of ten dollars (\$10.00) and otherwise must be on the terms and conditions set out in this Lease, except that the leased lands must be the Qualifying Sublessee's Subleased Lands;

(b) any new lease granted must be granted subject to the interests of all Mortgagees of the Subleases of Qualifying Sublessees, to reflect the interests and rights of such Mortgagees prior to the termination of this Lease or the request for the grant of the new lease, as appropriate;

(c) in the absence of a written request for a new lease by any Qualifying Sublessee in accordance with the foregoing provisions, any Mortgagee in respect of a Qualifying Sublessee's Sublease may request in writing within such one hundred and eighty (180) day period that a new lease be granted, in which case the new lease must be granted to or to the order of the Mortgagee; and

(d) the reasonable legal and consulting costs of the Lessor required to issue any such lease must be payable by the party to whom the new lease is to be granted.

117. The Lessor hereby covenants and agrees with the intention that such covenant and agreement must be enforceable by any Interested Party that the provisions of the Lease expressed to be for the benefit of any Interested Party must be and enure for the benefit of any Interested Party and must be fully enforceable by any Interested Party notwithstanding that such Interested Party is not a party to the terms of the Lease.

118. If the Lessor is a party to the replacement lease, the replacement lease must specifically exclude the Lessor from liability for the actions of the Lessee in relation to the Sublease or early termination of the Lease.

Curing of Default

119. Any curing of a default by a Person other than the Lessee must be construed as a curing of that default by the Lessee.

120. If any disagreement arises as to whether the curing of any default is promptly commenced or is proceeded to be cured with due diligence, the question may be referred to the Federal Court.

End of Lease

121. Subject to sections 45 to 48, if the Lessor declares the Term ended then, except as otherwise expressly provided in this Lease, this Lease and everything contained in it and the estate and Term must terminate without re-entry or any other act or legal proceedings, and the Lessor may re-enter the Premises and possess and enjoy them as if this Lease had not been made; notwithstanding a declaration by the Lessor that the Term has ended, and the Lessor must be entitled to recover from the Lessee:

(a) Rent, then accrued or accruing; and

(b) any outstanding amounts, costs, damages, including solicitor and own client costs, as well as all prospective losses and damages, arising from the unexpired portion of the Term, had this Lease not ended, based on a present recovery for unpaid future rent, and for any other consequential loss, including losses arising from the Lessee's failure to carry on business, and enforce any right of action against the Lessee in respect of any antecedent breach of any of the Lessee's covenants including a right of action under any provisions which survive the expiration or earlier termination of this Lease.

Right to Cure

122. If the Lessor gives the Lessee notice of a breach of any of the Lessee's obligations and such breach is not fully rectified within sixty (60) days, then the Lessor, without relieving the Lessee of its obligations under this Lease and without limiting any other right of the Lessor, may undertake the performance of any necessary work in order to complete such obligations of the Lessee, but having commenced such work, the Lessor must have no obligation to the Lessee to complete such work. The Lessee must pay any and all costs and expenses incurred by the Lessor under this section as Additional Rent, such payment to be made expeditiously upon delivery by the Lessor to the Lessee of a notice outlining such costs and expenses.

Access to Inspect and Perform

123. The Lessee must provide the Lessor convenient access by any means to the Premises at all reasonable times for the purposes of viewing the Premises, determining that the Lessee's conditions are being duly observed or performed and performing the Lessee's conditions. In addition, the Lessor has the right to enter on the Premises on reasonable notice, except in the case of an emergency when the Lessor may enter without notice.

Right to Let

124. If the Premises are vacated or abandoned by the Lessee, the Lessor must have the right, at the Lessor's option, to 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 and to let the Premises as the agent and at the risk of the Lessee, and to receive the rent for any letting.

125. Rent received by the Lessor as agent for the Lessee for any letting may be applied by the Lessor to any expenses incurred by the Lessor in the entry of the Premises and in the letting and to any other monies owing to the Lessor under this Lease in such proportions and in such order of priority as the Lessor may decide.

126. The Lessor must not be construed as entering the Premises as agent of the Lessee if, prior to the entry, the Lessor has declared the Term ended.

Remedies Cumulative

127. All rights and remedies of the Lessor are cumulative and are in addition to and do not exclude any other right or remedy provided in this Lease or otherwise allowed by law. All rights and remedies of the Lessor may be exercised concurrently.

ARTICLE 22: SURRENDER OF POSSESSION

128. Subject to sections 94 to 100, when the Term expires or otherwise ends, the Lessee must peaceably surrender the Premises to the Lessor maintained, repaired and renewed as provided in this Lease.

Holding Over

129. If the Lessee holds over, notwithstanding any payment of Rent to the Lessor, the new tenancy thereby created must be a tenancy from month to month, not a tenancy from year to year at an annual Fair Market Value Rent, and payable in twelve (12) equal installments commencing on the first day after the end of the Term and on the first day of each subsequent month, and must be subject to the covenants and conditions contained in this Lease so far as the same are applicable to a tenancy from month to month.

ARTICLE 23: GENERAL

Indemnity

130. The Lessee must indemnify and save harmless the Lessor against and from all claims, demands, actions, suits or other proceedings, judgments, damages, penalties, fines, costs, liabilities, losses, and sums paid in settlement of claims, howsoever arising out of or related to any breach of a Lessee's covenant or for personal injury, death or property damage or loss arising out of or related to any act or omission of the Lessee, its officers, employees or agents or any Person for whom the Lessee is responsible. This section must survive the expiration or earlier termination of this Lease.

No Warranties

131. The Lessee acknowledges and agrees that:

- (a) the Lands are being leased to the Lessee by the Lessor on an "as is – where is" basis and that the Lessor makes no representations or warranties with respect to the condition of the Lands and in particular makes no representations with respect to compliance of the Lands with any Laws or the presence of Hazardous Substances on, in or under the Lands;

(b) it has inspected the Lands and has conducted all independent investigations of the Lands, including, without limitation, any investigations relating to the compliance of the Lands with any Laws and the presence of Hazardous Substances on, in or under the Lands, which it has deemed prudent prior to taking possession of the Lands; and

(c) it has not relied on any representations or warranties by the Lessor, ᐃᓐᓂᓂ, or any member of ᐃᓐᓂᓂ with respect to the Condition of the Lands, including, without limitation, the compliance of the Lands with any Laws and the presence of Hazardous Substances on, in or under the Lands.

Notices

132. All rent to be paid and notices or demands to be given or made under this Lease must be in writing (in the case of notices) and delivered in accordance with this section to the following addresses:

(a) to the Lessor:

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(INSERT ADDRESS)

(b) to the Lessee:

(Corporation Name)

(INSERT ADDRESS)

133. Either party may change their address for notices under this agreement by delivering notice to the other Party of the new address, and such change must take effect fifteen (15) days after the notice is received.

Delivery

134. If any question arises as to the date on which payment, notice or demand was made, it must be deemed to have been delivered on the earlier of:

(a) the day it was received;

(b) if sent by fax, the day of transmission; or

(c) if sent by mail, on the sixth (6th) day after the notice was mailed, provided that should there, between the time of mailing and the actual receipt of the notice, be a mail strike, slowdown or other

labour dispute which might affect delivery of such notice, then such notice must only be effective if actually delivered.

Dispute Resolution

135. Where this Lease provides that a question may or must be referred to the Office of the Adjudicator for determination, then the decision of the Adjudicator is considered final and binding upon the Parties.

136. If upon a reference to it, the Adjudicator fails to determine the question, then the Parties may exercise any other right or remedy they may have under this Lease or otherwise.

137. A party requiring Adjudication must give timely notice of all dispute resolution proceedings to the Mortgagee and the Mortgagee may participate fully in the proceedings if in its reasonable opinion the outcome may affect its security.

Right to Renew Lease

138. On the expiry of this Lease, the Lessee must have the first right to lease the Premises on such terms and conditions as the Lessor is willing to accept from any other Person, provided that:

- (a) ?aqam Council has consented to the lease in writing;
- (b) the Lessor is of the opinion, in the Lessor's sole discretion, that it is in not inconsistent with the best interests of the First Nation; and
- (c) the Lessee was or is not in default and had duly and regularly met and performed all of its covenants and obligations under this Lease,

139. Upon the Lessor receiving a written offer to lease the Premises, the Lessor must notify the Lessee of the same and the Lessee must have fifteen (15) days from receipt of such notice to notify the Lessor of its acceptance or refusal to exercise its option under section 138. If the Lessee does not notify the Lessor within such time, it must be deemed that the Lessee has refused to exercise its option.

No Right to Renew Lease

140. If the Lessor notifies the Lessee in writing no less than ninety (90) days prior to the expiration of this Lease that the Premises must not be available for the uses permitted by this Lease, then the Lessee's option under this section is void and of no further force or effect.

Right of Renewal of Lease Prior to Expiry of Lease

141. The Lessee may increase the term of this Lease for a term that does not exceed ninety-nine (99) years from the date of renewal, provided that:

- (a) the Lessor and Lessee have agreed to the terms, compensation and fees associated with the renewal of the lease;
- (b) ʔaḳam Council has consented in writing to the renewal of the lease;
- (c) the Lessor is of the opinion, in the Lessor's sole direction, that the renewal of the lease is not inconsistent with the best interests of ʔaḳam; and
- (d) the Lessee was or is not in default and has duly or regularly met and performed all of its covenants and obligations under this Lease prior to the date of the renewal.

Encumbrances

142. This Lease is subject to any right of occupation, timber permit or licence, permit or lease of mining rights or other leases or grants covering the Lands or any portion thereof and any other prior encumbrances or interests including road rights-of-way whether the Lessee has notice of the same or not.

Binding on Successors

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

No Waiver

144. No condoning, excusing or overlooking by the Lessor, of any default by the Lessee, at any time or times, in performing or observing any of the Lessee's covenants, must operate as a waiver of or otherwise affect the rights of the Lessor in respect of any continuing or subsequent default, and no waiver of these rights must be inferred from anything done or omitted by the Lessor, except by an express waiver in writing.

Not a Joint Venture

145. The Parties acknowledge and agree that nothing in this Lease must be construed as making the Lessor an agent, partner, joint venture or other such associate with the Lessee or as creating any relationship between the Parties other than the relationship of lessor and lessee.

Treaty

146. Upon the ratification and signing of a Treaty between ʔaḡam and Canada and British Columbia concerning the Lands, the Lessee agrees, at the request of the Lessor, to execute a new form of this Lease, on the same terms and conditions but including those amendments required to permit this lease to be registered as required under Treaty.

147. In the event that the form of ʔaḡam 's legal interest in the Lands subject to this Lease is altered through Treaty, the terms, conditions, covenants, provisions, duties and obligations to be performed or observed by the Lessee or the Lessor under this Lease must continue to apply to the extent they are not inconsistent with the Treaty.

Corporate Authority

148. If the Lessee is a corporation or society, then the Lessee warrants and represents to the Lessor that:

(a) the Lessee has the corporate authority pursuant to its documents of incorporation to enter into this Lease and to perform all of the covenants and agreements contained herein;

(b) the Lessee is a company duly incorporated under the laws of the Province of British Columbia, is not a reporting company, and is a valid and subsisting company in good standing with respect to the filing of annual reports with the provincial corporate registry; and

(c) without limiting Article 8, the Lessee must remain in good standing with respect to the filing of annual reports with the provincial corporate registry.

IN WITNESS WHEREOF the Parties have signed this Lease on this _____ day of _____ 201__.

SIGNED, SEALED AND DELIVERED)

By the Assignor in the presence of:)

) _____

) Lessor

)

_____) _____

As to the signatures of the Assignor(s)) Lessor

Name: _____)

Address: _____)

Telephone: _____)

SIGNED, SEALED, AND DELIVERED)

By the Assignee in the presence of:)

) Lessee

)

)

_____)

As to the signatures of the Assignee(s))

Lessee

Name: _____)

Address: _____)

Telephone: _____)

SCHEDULE A: DEFINITIONS

“Additional Rent” means any costs or expenses incurred by the Lessor on behalf of the Lessee under this Lease, including costs and expenses incurred pursuant to sections 32, 60, 97, 109 and 122.;

“Alterations” means all substantial restorations, renovations, relocations, reductions, additions, expansions, reconstruction, removals, replacements, modifications and improvements, or any one or more of them, to the Premises;

“Architect” means a person who is registered or licensed as a professional architect under the *Architects Act*, R.S.B.C. 1996, c.17, [as amended or replaced from time to time.];

"Artifacts" means:

(a) architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings, and combinations of features, which are of outstanding ᑭᓄᓂᓂ value from the point of view of history, art, science or culture;

(b) groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding ᑭᓄᓂᓂ value from the point of view of history, art, science or culture;

(c) human works or the combined works of nature and human, and areas including archaeological sites which are of outstanding ᑭᓄᓂᓂ value from the historical, aesthetic, cultural, ethnological or anthropological point of view;

(d) natural features consisting of physical and biological formations or groups of such formations, which are of outstanding ᑭᓄᓂᓂ value from the aesthetic, cultural or scientific point of view;

(e) geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of culture, science or conservation; and

(f) natural sites or precisely delineated natural areas of outstanding ᑭᓄᓂᓂ value from the point of view of culture, science, conservation or natural beauty;

“Authority” means any one or any combination of ᑭᓄᓂᓂ, federal, provincial, municipal, local or other governmental and quasi-governmental authorities, departments, commissions and boards having jurisdiction;

ᑭᓄᓂᓂ Council” or **“Council”** means the Chief and Councillors of ᑭᓄᓂᓂ, a Band within the meaning of the *Indian Act*, R.S.C. 1985, c. I-5;

ᑭᓄᓂᓂ lands” means those lands described in section 5.1 of the *ᑭᓄᓂᓂ Amended Land Code*;

“Base Rent” means the amounts identified as Base Rent at paragraph 26(a);

“CEAA” means the *Canadian Environmental Assessment Act, 2012*, S.C. 2012, c. 19, s. 52 [and any regulations made pursuant to it, all as amended or replaced from time to time.];

“CEPA” means the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33, [and any regulations made pursuant to it, all as amended or replaced from time to time];

“Commencement of Construction” means that all necessary permits, approvals or consents have been obtained from any Authority and the Lessor, and the foundations and footings of the Improvements have been commenced as certified to the Lessor by an Architect or Engineer.

“Commencement Date” means the date this Lease is registered in the First Nation Lands Register.

“Development Plan” means the complete and detailed conceptual plans, development plans, as-built plans, design briefs, construction specifications and cost estimates prepared by an Architect or Engineer, unless and to the extent the Lessor otherwise agrees in writing, and includes, without limitation, all site plans drawn to scale showing the following required features with appropriate dimensions:

- (a) boundary lines with dimensions and acreage;
- (b) natural and artificial features of subject property and adjacent property, including Improvements;
- (c) North arrow;
- (d) title block, including drawing scale, date, developer’s name and address and reference numbers;
- (e) location, dimension, size and construction specifications of roads;
- (f) location, dimension, size and construction specifications of buildings (including number of units, storeys, floor area, number of rooms) as well as dimensions of front, side and back yards;
- (g) location, dimension, size and construction specifications of on-site sanitary sewer connections;
and
- (h) location, dimension, size and construction specifications of existing and/or proposed water mains;

“Adjudicator” means the Adjudicator appointed under Part 8 of the *ᐱᐱᐱᐱ Amended Land Code* to hear and resolve disputes in relation to ᐱᐱᐱᐱ Lands;

“Engineer” means a person who is registered or licensed as a professional engineer under the *Engineers & Geoscientists Act*, R.S.B.C. 1996, c. 116 [and any regulations made under it, all as amended or replaced from time to time.];

“Environmental Laws” means:

- (a) any Laws of ᑭᐱᑦ, the federal and provincial governments relating, in whole or in part, to the protection and enhancement of the Environment, occupational safety, product liability, public health, public safety, and transportation of dangerous goods; and
- (b) any decision and any specifications, mitigative measures, and environmental protection measures described or contained, or referred to, in any decision under the Environmental Laws of ᑭᐱᑦ, the federal and provincial governments pertaining to any project on the Lands;

“Fair Market Value” means the most probable rent that the Lands must bring in a competitive and open market unaffected by undue stimulus and based on the following:

- (a) valuation must not make any discount for any expired portion of the Term;
- (b) notwithstanding that the Lands are inalienable, valuations of the Lands must be conducted as if the Lands were owned in fee simple, were not located on an Indian Reserve and had no charges or encumbrances existing against title;
- (c) valuations must not discount the rent for any factor relating to the Lands being on an Indian Reserve;
- (d) consideration must be given to whether or not the Lands are serviced;
- (e) the Lands are assumed to be used for uses permitted in this Lease;
- (f) subject to (g) valuation of the Lands must be for the Lands only and must not include the value of any Improvements; and
- (g) Fair Market Value of the Lands must include the Improvements on the Lands if the Improvements have not been removed by the Lessee pursuant to the terms of section 99 of this Lease;

“First Nations Land Management Act” means the *First Nations Land Management Act*, S.C. 1999, c. 24 [and any regulations made under it, all as amended or replaced from time to time.];

“First Nation Land Register” means the First Nation Land Register established under section 25 of the *First Nations Land Management Act*;

“Hazardous Substances” means any pollutants, wastes, special wastes or other such substances, including, without limitation, any flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls, chlorofluorocarbons, hydro chlorofluorocarbons, urea formaldehyde foam insulation, radon gas, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous

wastes, toxic substances (as that term is used in CEPA) or related materials, nutrients (as that term is used in CEPA) and petroleum and petroleum products, and any substance declared to be hazardous or toxic under any Environmental Laws;

“Improvements” means all buildings, structures, works, facilities, services, landscaping and other Improvements, by whomsoever made, and which are at any time and from time to time situate on, under or above the Lands and all Alterations thereto, and any Improvements which serve the Premises, determined according to the common law, including all equipment, machinery, apparatus and fixtures forming part of or attached to the improvements and all Alterations hereto, but excluding Trade Fixtures.

“Lands” means those Lands depicted in the map set out at Schedule D, which are situate, lying and being on ʔaᑭam lands in the Province of British Columbia and more particularly known and described as (insert legal description) as shown on plan CLSR (insert plan number) deposited in the Canada Lands Survey Records, Ottawa, Ontario;

“Laws” means all laws, statutes, regulations, by-laws, rules codes, guidelines, standards, declarations, notices, ordinances, requirements and directions of any Authority in force from time to time;

“Lease” means this lease agreement, including any schedules attached to it, which form part of and are integral to the agreement, but not including any attachments to it, which are for information purposes only and do not form part of the agreement;

“Lessee” means the second party and any Person mentioned as Lessee in this Lease, whether one or more, including, without limitation and where the context allows, the directors, officers, servants, employees, contractors and sub-contractors, agents, invitees and licensees of the Lessee and all other Persons over whom the Lessee may reasonably be expected to exercise control or is in law responsible;

“Lessor” means the first party and its authorized representatives and in any section of this Lease that contains a release or other exculpatory language in favour of the Lessor the term Lessor includes any of the Lessor’s officials, employees, servants, agents, contractors and subcontractors;

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

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

(b) is in the place or position in which it was originally formed or deposited, as distinguished from loose, fragmentary or broken rock or float which by decomposition or erosion of rock, is found in wash, loose earth, gravel or sand; or

(c) and includes coal, petroleum and all other hydrocarbons, regardless of gravity and howsoever and wheresoever recovered, natural gas, building and construction stone, limestone, dolomite, marble, shale, clay, sand and gravel;

“Mortgage” means any mortgage charging the leasehold interest of the Lessee in the Premises (including, without limitation, any debenture, deed of trust, bond, assignment of rents or any other means)

made to a Mortgagee as security;

“Mortgagee” means a mortgagee under a Mortgage of Lease or Sublease and includes Canada Mortgage and Housing;

“Party” means a party to this Lease;

“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 howsoever designated or constituted, or any group, combination or aggregation of any of them;

“Personal Goods” means goods and chattels of the Lessee or other occupier of part of the Lands that are not fixtures as determined at common law;

“Premises” means the Lands and the Improvements and every reference in this Lease to the Premises includes a reference to any part of the Premises;

“Release” means the releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of a Hazardous Substance;

“Rent” means Base Rent, Additional Rent, if any and Supplementary Additional Rent, if any;

“Revised Base Rent” means the amount of Base Rent agreed upon by the Parties under the circumstances set out at section 35;

“Sublease” means a formal grant of a portion of the interest in the Lands which are the subject of this Lease in such form as may, from time to time, be approved by the Lessor;

“Sublessee” means the Lessee in any Sublease;

“Substantial Completion” means the degree of completion set out in section 84 of this Lease;

“Supplementary Additional Rent” means the amount of damage, loss, expense or payment including interest referred to in section 36 of this Lease;

“Term” means the period commencing on the Commencement Date and expiring (insert date);

“Treaty” means a treaty and land claims agreement between ʔaḡam, the Province of British Columbia and Canada within the meaning of sections 25 and 35 of the *Constitution Act, 1982*;

"Trade Fixtures" means trade fixtures as determined at common law and includes the personal chattels installed during the Term by or on behalf of the Lessee or any Sublessee in, on or which serve the Premises for the sole purpose of the Lessee or Sublessee carrying-on its trade in the Premises pursuant to Article 3 of this Lease and which Trade Fixtures the Lessee or any Sublessee is permitted to remove only to the extent permitted by this Lease, but Trade Fixtures do not include Improvements or any inventory of the Lessee or any Sublessee; and

"Trustee" means, for the purposes of the insurance provisions of this Lease, either ʔaqam or a trust company appointed by the Lessor.

- [enter condition]
- [enter condition]; and
- providing to the ᑭᓄᓂ Lands Department the following documentary proof that such conditions have been complied with by the following dates:
 - [Documentary Proof] by [date];
 - [Documentary Proof] by [date];
 - [Documentary Proof] by [date];

consents to the attached Lease Agreement that grants to [Lessee's Name], a right to exclusive possession over the Lease Area subject to the terms of the lease, for the purpose of [enter details regarding the purpose of the lease]

FURTHER IT BE RESOLVED THAT the Council of ᑭᓄᓂ authorizes [Name of Lands Department personnel] to execute the attached Lease Agreement on behalf of ᑭᓄᓂ after

- [name of applicant] has complied with the conditions set out in this Band Council Resolution;

AND / OR

- the conditions set out in this Band Council Resolution have been added as conditions within the [Licence / Permit]

**SCHEDULE C: ASSIGNMENT OF HEADLEASE
AND CONSENT TO ASSIGNMENT OF HEADLEASE**

THIS INDENTURE made this < > day of < >, 20 < >

BETWEEN:

< >
< >
< >

(hereinafter called the "Assignor")

OF THE FIRST PART

AND:

< >
< >
< >

(hereinafter called the "Assignee")

OF THE SECOND PART

WHEREAS:

- A. ʔaᓄam granted a lease to [Name of Lessee] as Lessee, which Lease is hereinafter referred to as the "Headlease", and which was registered in the First Nation Land Register under No. <#> on the <#> day of <MONTH>, <YEAR>;
- B. The Assignor wishes to assign its interest in the Headlease to the Assignee;
- C. Pursuant to section 42 of the Headlease, no assignment of the Headlease is valid unless the Lessor has provided prior written consent to such assignment;

D. The portion of the interest of the [Name of Lessee] in the said Headlease that was assigned by the said Residential Sublease is more particularly known and described as:

That portion of the lands situate on the ʔaḡam Indian Reserve No. 1 in the Province of British Columbia described as:

[Legal Description of lands demised by the Sublease]

1. NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of these Lands and the sum of < >DOLLARS (\$) of lawful money of Canada, now paid by the Assignee to the Assignor and other good and valuable consideration (the receipt whereof is hereby acknowledged by the Assignor) the Assignor HEREBY GRANTS and assign unto the Assignee all of the Assignor's interest in the Lands subject to the aforesaid Headlease, or Assignment of the aforesaid Headlease, together with the unexpired term of years of the Headlease and the said Headlease and all benefit and advantage to be derived therefrom TO HAVE AND TO HOLD the same unto the Assignee, his heirs, executors, administrators, and approved assigns subject to the payment of the rents and the observance and performance of the Lessee's covenants and conditions in the Headlease contained.

2. The Assignor hereby covenants with the Assignee that:

(a) notwithstanding any act of the Assignor, the Headlease is a good, valid and subsisting Headlease, and the rents thereby reserved have been duly paid, and the covenants and conditions therein contained have been duly observed and performed by the Assignor up to the day of the date hereof;

(b) the Assignor now has in him good right, full power and absolute authority to assign the Headlease in the manner aforesaid; and

(c) subject to the payment of the rent by the Assignee to ʔaḡam and the Assignee's performance of the Lessee's covenants in the Headlease, the Assignor covenants with the Assignee that the Assignee may peaceably and quietly hold, occupy and enjoy the Lands in the Headlease that is hereby assigned during the residue of the Term without any interruption by the Assignor or any person claiming under it, free from all charges and encumbrances whatsoever. The Assignor and all persons lawfully claiming under it will, at all times at the request and cost of the Assignee, assign and confirm to the Assignee the Lands for the residue of the Term as the Assignee must reasonably require.

3. The Assignee hereby covenants with the Assignor and in consideration of ʔaḡam consenting to this Assignment with ʔaḡam that:

(a) the Assignee must at all times abide by the full terms of both the Headlease and every Sublease in relation to the Headlease and must pay the rent and perform the Lessee's covenants, conditions and agreements therein respectively reserved and contained and must indemnify and save harmless ʔaḡam and the Assignor therefrom and from all action, suits, costs, losses, charges, damages and expenses for or in respect thereof;

(b) the Assignee must cause every future Assignee to covenant in writing to abide by the full terms of both the Headlease and every Sublease in relation to the Headlease; and

(c) the Assignor must be entitled to all remedies in respect of non-payment of rent and breaches of covenants, conditions, and agreements in the Headlease and every Sublease in relation to the Headlease as if the Assignee were the Lessee named in the Headlease and every Sublease in relation to the Headlease.

4. The Assignee must effect registration of this Assignment in the First Nation Land Register as soon as reasonably possible following execution and the cost of the preparation and registration of this Assignment must be borne by and paid for by the Assignee.

5. IT IS HEREBY declared and agreed that these presents and everything herein contained must inure to the benefit of and be binding upon the parties hereto, and each his heirs, executors, administrators, successors and assigns respectively and words in the singular must include the plural and words in the plural include the singular and words importing the masculine gender includes the feminine and neuter genders where the context so requires, and that all covenants, liabilities, and obligations entered into or imposed hereunder upon the Assignee must be joint and several.

IN WITNESS WHEREOF THE ASSIGNOR, ASSIGNEE AND COUNCIL OF AQAM DO HEREBY CONSENT to this Assignment and have hereunto set their hands as of the day and year first above written.

SIGNED, SEALED AND DELIVERED)
By the Assignor in the presence of:)
) _____
) Assignor
)
)
 _____)
As to the signatures of the Assignor(s)) Assignor
Name: _____)
Address: _____)
Telephone: _____)

SIGNED, SEALED, AND DELIVERED)
By the Assignee in the presence of:)
) _____
) Assignee
)
)
 _____)
As to the signatures of the Assignee(s)) Assignee
Name: _____)

Address: _____)

Telephone: _____)

SIGNED, AND DELIVERED in the _____)

Presence of: _____)

)

_____)

As to the signatures on behalf of SFN _____)

Name: _____)

Address: _____)

Telephone: _____)

Signature of ?aqam

SCHEDULE D: PLAN OF THE LANDS

SCHEDULE C:
STANDARD RESIDENTIAL SUBLEASE TEMPLATE

TABLE OF CONTENTS

ARTICLE 1: Basic Terms, Schedules, and Definitions	546
Basic Terms	546
Schedules	546
Definitions	546
Parts of the Lease	547
Headings	547
Extended Meanings.....	547
ARTICLE 2: Premises	547
The Premises	547
Prior Rights	547
Other Rights	547
Common Areas and Facilities	547
Registration	549
ARTICLE 3: Permitted Use of Premises.....	549
Permitted Uses.....	549
“As is – Where is” Lease	549
No Vacating or Abandoning	549
Quiet Enjoyment.....	549
ARTICLE 4: Rent	550
Rent to be Paid	550
Additional Rent.....	550
Option to Extend Term	550
Fair Market Rent	551

ARTICLE 12: Improvements and Alterations.....	555
Construction of Improvements	555
Alterations	555
Signs	555
ARTICLE 13: Repair, Damage and Destruction	556
Lessor’s Repairs	556
Lessee’s Repairs.....	556
Abatement and Termination	556
ARTICLE 14: Trade Fixtures	557
Installation of Trade Fixtures	557
Removal of Trade Fixtures	557
Removal of Trade Fixtures on Notice	557
Lessee Must Fix Any Damage Arising from Removal of Trade Fixtures	557
Lessor May Remove	557
Lessee Not in Possession	558
Survival of Article	558
ARTICLE 15: Insurance and Liability	558
Lessor’s Insurance	558
Lessee’s Insurance	558
Limitation of Lessor’s Liability.....	559
Limitation of Lessee’s Liability.....	559
Indemnity of Lessor	560
ARTICLE 16: Insolvency and Other Defaults	560
Events of Default.....	560
ARTICLE 17: Default and Cancelation	560

Defaults Allowing Immediate Cancellation	560
Default Requiring Notice to Cancel	560
Curing of Default	561
End of Lease	
Access to Inspect and Perform	561
Remedies Cumulative	562
Modified Terms for Holding Over	562
ARTICLE 18: Surrender of Possession	562
Inspection of Premises by Lessor and Lessee	562
Premises to be Surrendered in Clean Condition	562
Lessee's Indemnity of Lessor	562
Survival of Article	562
Lease is Entire Agreement Between Parties	562
ARTICLE 19: Delivery	563
General Requirements	563
Delivery	563
Change of Contact Information	563
ARTICLE 20: Dispute Resolution	563
ARTICLE 21: General Provisions	563
Lessee's Covenants at Own Expense	563
Joint and Several	563
All Terms are Covenants	564
Survival of Obligations	564
Governing Law	564
No Modifications	564
Time is of the Essence	564
No Presumption	564

Severability	564
Binding on Successors.....	564
No Waiver	564
No Assumption of Liability by Lessor.....	564
Not a Joint Venture.....	565
Corporate Authority	565
Schedule “A” Definitions.....	566
Schedule “B” PREMISES	569
Schedule C ?AQAM BCR CONSENT TO LEASE AGREEMENT	570

RESIDENTIAL SUBLEASE

<Sublessor>

And

<Sublessee>

Note: this template is drafted as between an ʔaḳam-owned company and either member or non-member sublessees. The template provides for a discount to members on fair market value of a residential lease. Modification will be required should the parties be altered or should ʔaḳam remove the discount.

SUBLEASE

THIS SUBLEASE is made in quadruplicate this <#> day of <MONTH>, <YEAR>

BETWEEN:

CORPORATION NAME a company duly incorporated under the laws of the Province of British Columbia, and having its registered office at

<ADDRESS>

<CITY, PROVINCE, POSTAL CODE>

(the "SUBLESSOR")

AND:

SUBLESSEES' NAME(S)>

<ADDRESS>

<CITY, PROVINCE, POSTAL CODE>

< TENANCY I.E. JOINT SUBLESSEES OR SUBLESSEES IN COMMON>

(the "SUBLESSEE")

WHEREAS:

- A. the legal title to ʔaǰam lands remains vested in Her Majesty the Queen in Right of Canada;
- B. Sections 18(1)(b), 18(2)(b) and 18(3) of the *First Nation Land Management Act* provide that a First Nation that has entered into an Individual Agreement with Canada and adopted a land code has the power to grant interests or right in and licences in relation to their land in accordance with their land code and the legal capacity necessary to enter into contracts to exercise this power, and that the Council of the First Nation has the power to exercise these powers for the use and benefit of the First Nation;
- C. ʔaǰam signed an Individual Agreement with Canada on June 18, 2014;

- D. The members of ʔaǰam voted in favour of the *St. Mary's Indian Band Land Code* at a ratification vote held on April 14-16, 2014 and the *St. Mary's Indian Band Land Code* came into effect on July 1, 2014;
- E. On [date] 2015, the *St. Mary's Indian Band Land Code* was amended when the members of ʔaǰam voted in favour of the *ʔaǰam Amended Land Code* at a Meeting of Members;
- F. the Council of ʔaǰam may grant interests in ʔaǰam lands pursuant to section 32.1 of the *ʔaǰam Amended Land Code*;
- G. ʔaǰam granted a headlease to the Sublessor made the [Date], for a term of [XX] years, commencing on the date the Headlease was registered in the First Nation Land Register, respecting lands situate on ʔaǰam Indian Reserve [insert description] in the Province of British Columbia, more particularly including Lot [insert legal description of subleased lands], Block [insert] as shown on plan CLSR [insert CLSR number] deposited in the Canada Lands Survey Records, Ottawa, Ontario (the "**Headlease Lands**");
- H. the Sublessor and Sublessee have agreed to enter this Sublease with respect to Lot [insert] of the Headlease Lands (the "**Lands**");
- I. the Council of ʔaǰam, by Band Council Resolution that is attached to this Agreement and entitled "**Schedule B: ʔaǰam Band Council Resolution Consent to Licence**", consents to this Agreement and authorizes [enter name] to execute this Agreement on behalf of ʔaǰam; and
- J. the Parties wish to set out their respective rights and obligations with respect to their rights and obligations in relation to this Sublease,

NOW THIS AGREEMENT WITNESSES that, in consideration of the mutual covenants and agreements herein contained, the Parties covenant and agree as follows:

SCHEDULES

1. The schedules which form part of this Sublease consist of:

Schedule "A"	Plan of the Lands
--------------	-------------------

Schedule "B"	Rules and Regulations
Schedule "C"	Mitigation Compliance Report
Schedule "D"	General Mitigation Measures
Schedule "E"	Arbitration
Schedule "F"	Replacement Lease

DEFINITIONS

2. In this Sublease:

"Additional Rent" means any costs or expenses incurred by the Sublessor on behalf of the Sublessee under sections 9 and 10;

"Adjudicator" has the same meaning as set out in the Headlease;

"Administration Fee" means any fees in effect from time to time and charged by ᑭᓄᓄᓄ Land Registry for performing services;

"Artifacts" has the same meaning as set out in the Headlease;

"Authority" has the same meaning as set out in the Headlease;

"Building Inspector" means the building inspector appointed pursuant to the By-laws and/or Laws of ᑭᓄᓄᓄ;

"CMHC" means the Canada Mortgage and Housing Corporation and its successors and assigns;

"Deferred Payment" means the amount that ᑭᓄᓄᓄ has, by Band Resolution, agreed to discount the Rent of a Member of ᑭᓄᓄᓄ;

"Environmental Laws" has the same meaning as set out in the Headlease;

"Fair Market Value" means the most probable rent that the Lands will bring in a competitive and open market unaffected by undue stimulus and based on the following:

(a) valuation will not make any discount for any expired portion of the Term;

(b) notwithstanding that the Lands are inalienable, valuations of the Lands will be conducted as if the Lands were owned in fee simple, were not located on an Indian Reserve and had no charges or encumbrances existing against title; valuations will not discount the rent for any factor relating to the Lands being on an Indian Reserve;

(c) consideration will be given to whether or not the Lands are serviced;

(d) the Lands are assumed to be used for uses permitted in this Sublease;

(e) subject to (f) valuation of the Lands will be for the Lands only and will not include the value of any Improvements; and,

(f) Fair Market Value of the Lands will include the Improvements on the Lands if the Improvements have not been removed by the Sublessee pursuant to the terms of sections 29-35 of this Sublease but the value of the Improvements will not be included under s.4(6) herein.

"First Nation Land Register" has the same meaning as set out in the Headlease;

"Hazardous Substances" has the same meaning as set out in the Headlease;

"Headlease Lands" means the lease of the lands described in the preamble and includes any amendments and modifications to the Headlease that may be made from time to time;

"Improvements" has the same meaning as set out in the Headlease;

"Lands" means the whole of Lot (insert description), ʔaᑭam Indian Reserve (insert description), in the Province of British Columbia as shown on Survey Plan (number) deposited in the Canada Survey Plans and Records at Ottawa, Ontario.

"Laws" has the same meaning as set out in the Headlease;

"Lease Year" means a calendar year;

"Member" means a person registered on the Membership List;

"Membership List" means the list of names of Members maintained by ᐅᓇᓄᓐ;

"Mortgagee" means a mortgagee under a Mortgage of Sublease and includes CMHC.

"Party" means a party to this Sublease;

"Person" has the same meaning as set out in the Headlease;

"Personal Goods" has the same meaning as set out in the Headlease;

"Rent" means the sums set forth in Section 4.1 payable to the Sublessor by the Sublessee.

"Release" has the same meaning as set out in the Headlease;

"Residential Home" means a detached building for the occupation by an individual as a place of a single family residence;

"ᐅᓇᓄᓐ" has the same meaning as set out in the Headlease;

"ᐅᓇᓄᓐ Lands" has the same meaning as set out in the Headlease;

"Sublease" means this agreement and the Schedules attached to it, together with the rules and regulations made from time to time by the Sublessor pursuant to the provisions hereof;

"Supplementary Additional Rent" means the amount of damage, loss, expense or payment including interest referred to in section 10 of this Sublease;

"Tax Cost" means the total of all taxes, rates, duties, general and special assessments and charges levied or imposed by any Authority; and

"Term" means the duration of this Sublease set out at section 3.

DEMISE AND TERM

3. In consideration of the Rent, covenants and agreements contained in this Sublease to be paid, observed and performed by the Sublessee, and subject to the consent of ᑭᐱᑭᐱᐱ, the Sublessor does hereby demise and sublease unto the Sublessee the Lands excepting and reserving the minerals, petroleum and natural gas under the Lands to have and to hold for a term commencing on the date upon which both this Sublease and the Headlease are registered in the First Nation Land Register and ending one (1) day prior to the expiration of the term of the Headlease unless sooner terminated as herein provided. For greater certainty the Sublease shall expire on _____.

RENT

4. Yielding and paying therefore prepaid Rent for the Term of this Sublease in the sum of (... THOUSAND DOLLARS (insert appropriate assessment value)) in lawful money of Canada by certified cheque or bank draft payable in favour of the (sublessor).

5. Upon an assignment by the Sublessee under section 56, the Sublessee will pay any applicable Administration Fees.

6. All payments required to be made to the Sublessor pursuant to this Sublease will be made at the address of the Sublessor referred to in section 74, unless otherwise directed by the Sublessor.

7. This Sublease is to be a completely carefree net lease for the Sublessor and the Sublessor is not to be responsible during the Term for any costs, charges, expenses or outlays of any nature whatsoever arising from or relating to the Lands.

8. Subject to receipt of the Rent in section 4 and the terms of section 9 herein and for greater certainty, Rent will be deemed to have been paid in full in respect of any and all portions of the Lands and Improvements which have been subleased to a Sublessee and no further Rent will be payable in respect of such areas as affected by this Sublease.

9. If the Sublessee and the Sublessor agree that the Sublessee will pay Rent for the Sublessee's interest in this Sublease in an amount of the Fair Market Value of this Sublease less the Deferred Payment for the Lands at the time of the commencement of the term of this Sublease, and the Sublessee is a Member of ᑭᐱᑭᐱᐱ s "Member" then section 10 of this Sublease will apply.

10. The Sublessee will pay to the Sublessor

(a) Supplementary Additional Rent for the remainder of the Term,

(b) the Deferred Payment in the amount of \$_____ and,

(c) any Additional Rent payable under this Sublease,

on the occurrence of any of the following events, and in the amounts specified:

(d) an amount equal to the Deferred Payment at the time of the assignment of this Sublease, less any amounts advanced to the Sublessee and not recovered by the Mortgagee in the following circumstances:

(i) if there is a Mortgage and the Sublessee's equity of redemption in this Sublease or any part thereof is absolutely foreclosed pursuant to an order of a court of competent jurisdiction,

(ii) if a Mortgagee or receiver of the Sublessee's interest in the Lands and Improvements, whether or not it takes possession of the Lands and Improvements, purports to:

(A) sell, assign or transfer the Sublessee's interest in the Lands and Improvements, or

(B) sublease the Lands and Improvements or any part thereof;

(iii) if an order of any competent court is made authorizing:

(A) the sale, assignment or transfer of the Sublessee's interest in the Land and Improvements; or

(B) the subletting of the Lands and Improvements;

(e) an amount equal to the Deferred Payment if the Sublessee ceases to be a Member of ?aqam;

(f) an amount equal to the Deferred Payment if the Sublessee assigns or transfers the whole or any part of their interest in this Sublease to any person or entity, including another Member of ?aqam;

(g) notwithstanding **section 10** of this Sublease, the Sublessor and the Sublessee hereby covenant and agree that the obligation of the Sublessee to repay the Deferred Payment to the Sublessor shall terminate twenty-five (25) years from that date of the commencement of the Term of this Sublease; and

(h) the Sublessor and the Sublessee hereby covenant and agree that on the occurrence of any of the events in **section 10** herein the Deferred Payment shall be subordinate to any funds due and owing to a Mortgagee.

11. The Sublessor will make available to any Member any information to which the Sublessee would have access under this Sublease.

12. The Sublessor may charge reasonable fees for the provision of documents requested under section 11.

USE OF THE LANDS

13. The Sublessee covenants with the Sublessor that it will:

(a) only use the Lands for single family residential purposes;

(b) comply with the Rules and Regulations attached as Schedule "B"; and

(c) not carry on or permit to be carried on, any activity on the Lands which is deemed a nuisance by the Sublessor, acting reasonably, or which is illegal.

14. The Sublessee represents and warrants that it has satisfied itself that the Lands are suitable for the intended use and that the intended use is within the scope of permitted use.

ARTIFACTS AND SURVEY MONUMENTS

15. Where the Sublessee unearths or discovers any Artifacts on the Premises, the Sublessee must:

(d) immediately notify Council and the Sublessor of the specific types and locations of the Artifacts that were unearthed or discovered;

(e) immediately cease all activities within [enter distance agreed by Council] meters of the area on the Premises in which the Artifacts were unearthed or discovered, until such time as Council notifies the Sublessee that they may continue their activities; and

(f) not remove any Artifacts that are unearthed or discovered from the soil unless Council has provided the Sublessee with written authorization to do so.

16. If any legal control survey monuments are disturbed, damaged or destroyed, the Sublessee must ensure that they are replaced by a duly qualified surveyor to the satisfaction of the Surveyor General of Canada.

ENVIRONMENT

Covenants of Sublessee

17. The Sublessee covenants with the Sublessor, which covenants survive the expiration or earlier termination of this Lease, as follows:

General Compliance

(a) Without limiting the generality of sections 82 - 84, the Sublessee will use and occupy the Lands in compliance with all applicable Environmental Laws, regulations, ordinances and notices in effect from time to time;

Hazardous Substances

(b) The Sublessee will not cause, permit or suffer the use of the Lands to generate, manufacture, refine, treat, transport, store, handle, dispose of, transfer, produce or process any Hazardous Substances except in strict compliance with Environmental Laws and with the prior written consent of the Sublessor, which may be withheld; and

Report of Release

(c) Upon the Release of Hazardous Substances, or discovery of a Release of Hazardous Substances, by the Sublessee in, on or under the Lands, the Sublessee will:

(i) immediately deliver written notice to the Sublessor and any appropriate Authority of the occurrence of the Release and details relating to the Release including, without limitation,

(A) the time of the Release,

(B) the estimated amount of Hazardous Substances that was released,

(C) the remedial action taken prior to the delivery of the notice,

(D) the remedial action which the Sublessee intends to take in order to contain or rectify the Release, and

(E) provide the Sublessor with names of any Persons observed who appeared to have caused or who were in the vicinity of the Release;

(ii) at its own expense, immediately take all remedial action necessary, in compliance with all Environmental Laws, to fully rectify the effects of the Release;

(iii) provide the Sublessor with an independent audit, satisfactory to the Sublessor, of its activities under subparagraph 17(c)(ii) and the state of the Lands after such activities as compared to the state of the Lands prior to the Release; and,

(iv) do such further activities as the Sublessor may reasonably require, based on the audit referred to in subparagraph 17(c)(ii), to rectify the Release.

Removal of Hazardous Substances

18. Without limiting section 17, if requested by the Sublessor or any Authority, the Sublessee will, at its own expense, remove from the Lands any Hazardous Substances which are or have been located, stored or incorporated in, on or under the Lands.

19. In any event, even if not requested to remove the Hazardous Substances pursuant to section 18, prior to the end of the Term, the Sublessee will, at its own expense, remove from the Lands any Hazardous Substances which are or have been located, stored or incorporated in, on or under the Lands.

20. Nothing in this Sublease affects the Sublessee's obligation to comply with any Law. The Sublessee will be responsible for obtaining from any Authority all approvals, permits, licences or other authorizations that are necessary for the remedial action and removal of the Hazardous Substances, and such work will be completed to the reasonable satisfaction of the Sublessor.

Increased Risks

21. The Sublessee will not carry out any operations or activities, or construct any alterations or Improvements which, in the opinion of the Sublessor, acting reasonably, materially increase the risk of liability to the Sublessor, whether direct or indirect, as a result of the application of Environmental Laws.

Inspection

22. The Sublessor may, at any time during the Term, inspect the Lands in order to assess the existence of any Hazardous Substances and to conduct an environmental site assessment, environmental audit or any other testing or investigations which the Sublessor deems necessary in order to ascertain the compliance of the Sublessor's operation on the Lands with Environmental Laws and to determine the extent of any contamination of the Lands due to the presence of any Hazardous Substances in, on or under the Lands.

Title to Hazardous Substances

23. The Sublessee acknowledges and agrees that, notwithstanding any Law to the contrary, any Hazardous Substances, which are located, stored or incorporated in, on or under the Lands unless

introduced to the Lands by the Sublessor or anyone for whom it is responsible, remain the sole and exclusive property of the Sublessee and will not become the property of the Sublessor regardless of any degree of affixation of the Hazardous Substances to the Lands.

24. Section 23 will survive the expiration or earlier termination of this Sublease, save only that, to the extent that the performance of any obligation pertaining to it requires access to or entry upon the Lands after the expiration or earlier termination of this Sublease, the Sublessee will have entry and access only at such times and upon such terms and conditions as the Sublessor may from time to time specify in writing.

Environmental Site Assessment

25. The Sublessee acknowledges having received and reviewed an environmental site assessment report, which assessed the environmental condition of the Lands shortly before the commencement of the Term. The Sublessee agrees that the information contained in the environmental site assessment report accurately reflects the environmental condition of the Lands prior to the commencement of the Term.

CONDITION OF THE LANDS AND IMPROVEMENTS

Repairs

26. The Sublessee covenants with the Sublessor that it will, at all times during the Term, and at its own cost and expense, repair and maintain the Lands and Improvements in good order and as a careful owner would do.

27. The Sublessee must not in any way use the Subleased portion of the Premises for a "project", as that term is defined in CEAA, unless either the Council of ᑭᐱᑭᐱ has provided to the Sublessee written confirmation setting out that the project:

(g) is not likely to cause significant adverse environmental effects as defined in CEAA;
or

(h) is likely to cause significant adverse environmental effects as defined in CEAA and either the Council of ᑭᐱᑭᐱ has decided that those effects are justified in the circumstances.

28. The Sublessee will indemnify and save harmless ᑭᐱᑭᐱ and ᑭᐱᑭᐱ's servants, employees, representatives and agents from and against all claims, causes of action, liabilities, demands, losses, damages, costs and expenses including fees of solicitors and other professional advisors, made against or incurred, suffered or sustained by ᑭᐱᑭᐱ where the same or any of them are based upon or arise out of or from a claim made by the

Sublessee in relation to the Council of ʔaḡam determining that a “project” proposed by the Sublessee cannot proceed due to significant adverse environmental effects.

Removal of Improvements

29. At any time during the Term, or at least thirty (30) days prior to the expiration or earlier termination of this Sublease, the Sublessee may, if not in default hereunder, at the Sublessee’s own expense, remove from the Lands all of the Sublessee’s Improvements provided that the Sublessee leaves the Lands in a neat, clean and tidy state and free from all debris to the reasonable satisfaction of the Sublessor.

30. The Sublessor may, not later than sixty (60) days prior to the date the Term expires or otherwise ends, give the Sublessee written notice to remove any Personal Goods and Improvements, and the Sublessee agrees that, upon receipt of such notice, the Sublessee will, at its own expense, remove from the Lands all such Personal Goods and Improvements and will clear away all debris so that the Lands are on the date the Term expires other otherwise ends, in a neat, clean and tidy state to the reasonable satisfaction of the Sublessor.

31. The Sublessee will, on receipt of the written notice in section 30, provide to the Sublessor a performance bond in such an amount as the Sublessor may reasonably require to cover the costs of the removal of the Personal Goods and Improvements, and to complete their removal and to return the Lands to a neat, clean and tidy state.

32. If the Sublessee does not:

(a) remove the Personal Goods and Improvements under section 29, or when given notice to do so as set out in section 30; or

(b) leave the Lands in a neat, clean and tidy state and free from all debris to the reasonable satisfaction of the Sublessor,

then the Sublessor may remove the Personal Goods and Improvements and dispose of them as the Sublessor sees fit and the Sublessee will pay to the Sublessor forthwith upon demand all such costs as the Sublessor may incur in carrying out or completing the removal and in putting the Lands in a neat, clean and tidy state.

33. The covenant at subsection 32 will continue to be enforceable against the Sublessee, notwithstanding that the Term may have ended, and Sublessor will not be responsible to the Sublessee for any loss suffered by the Sublessee as a result of the removal or the disposal of Personal Goods and Improvements.

34. Provided that the Sublessor does not provide the written notice set out in section 30, and the

Sublessee does not exercise its rights under section 29, at the expiration of the Term or sooner termination of this Sublease, the Sublessee will surrender and yield up vacant possession of the Lands and Improvements to the Sublessor in good and tenantable repair, free from all claims whatsoever and without payment or allowance by the Sublessee of any sum of money whatsoever to the Sublessor and without notice from the Sublessor of any right to notice to quit or vacate being hereby expressly waived by the Sublessee, any law, usage, or custom to the contrary notwithstanding.

35. The Sublessor will not be construed as being in possession of the Lands and Improvements solely by its exercise of rights under sections 32 and 33.

INSURANCE

36. The Sublessor has obligations, pursuant to the Headlease in respect of insurance and certain of those obligations will be satisfied by the insurance to be provided by the Sublessee. The Sublessee will be required to obtain the insurance required by this Sublease and the insurance will comply in all respects with the requirements of the Headlease.

37. The Sublessee covenants with the Sublessor:

(a) to insure and keep insured at the Sublessees' cost all Improvements erected on the Lands in the sum of not less than one hundred percent (100%) of their full replacement cost against fire and other perils from time to time included in standard fire insurance policies affecting similar properties in British Columbia (with extended or additional perils supplemental coverage), and as would be insured against by a prudent owner, including loss or damage by fire, explosion, impact by aircraft or vehicles, lightning, riot, vandalism or malicious acts, smoke, leakage from fire protection equipment, windstorm, hail and such other perils as the Sublessor may reasonably require to be insured against, in an amount not less than the replacement cost of such buildings and replacements; and

(b) a comprehensive personal liability insurance policy against claims for personal injury, sickness, illness, disease or disability, death or property damage or loss (including liability coverage for pollution, to the extent such coverage is available) arising out of the ownership, occupation, maintenance and use of the Lands and Improvements by the Sublessee, in an amount not less than two million dollars (\$2M) in respect of any one (1) accident or occurrence, or such higher amount as the Sublessor may require from time to time.

38. The Sublessee covenants and agrees as follows:

(a) immediately after the insurance required under section 37 is effected, to deliver to the Sublessor and to ʔaąam certificates from its insurers evidencing each such policy of insurance;

(b) at least ten (10) days before the insurance required under section 37 is renewed, to deliver to the Sublessor and to ʔaąam certificates from its insurers evidencing each such policy of insurance has been renewed;

(c) not to do, permit or suffer anything to be done or omitted on the Lands and Improvements which might cause any policy of insurance (including the insurance of the Sublessor) to be invalidated or cancelled, and to comply forthwith with any and every written notice from the Sublessor, ?aqam or any insurer requiring the execution of works or the discontinuance of any use of the Lands and Improvements in order to avoid the invalidation or cancellation of any insurance; and

(d) to release the Sublessor or ?aqam from any and all liability for loss and damage caused at any time by any of the perils against which the Sublessee has covenanted to insure under this Sublease, and (except for negligent or fraudulent acts of the Sublessor) to indemnify and hold harmless the Sublessor and ?aqam from and against all manner of actions, suits, damages, losses, costs, claims and demands of any nature whatsoever relating to such loss or damage.

REPLACEMENT ON DESTRUCTION

39. The Sublessor and the Sublessee covenant and agree as follows with respect to the use of insurance proceeds:

(a) all proceeds from insurance policies will be applied to the repair, replacement, reconstruction or restoration of the property damage for which such proceeds have become payable. Any such repair, replacement, reconstruction or restoration will be carried out so as to repair, replace, reconstruct or restore the Lands and Improvements to the same condition as the Sublessee is required to maintain pursuant to this Sublease immediately prior to such damage or destruction. All repair, replacement, reconstruction and restoration will be completed in accordance with this Sublease, and the Sublessee will be responsible for the repair, replacement, reconstruction and restoration of the Lands and Improvements; and

(b) notwithstanding the provisions of subsection 39(a), if complete destruction or serious damage should occur to any of the Improvements on the Lands, the Sublessee may at his or her option in the event that he or she is obliged to repair, reconstruct or replace such Improvements under subsection 39(a), decline to repair, reconstruct, or replace the Improvements. In such event, any insurance or other monies available by reason of fire or other casualty causing such destruction or damage will be, subject to the right of any Mortgagee, as first loss payee, divided between ?aqam, the Sublessor, the Sublessee, and any other loss payee as the said Parties agree that their respective interests in such monies appear immediately before the exercise of said option and, in default of agreement, as determined by an Adjudicator under sections 86 - 88.

ACCESS, UTILITIES AND TAXES

40. The Sublessor acknowledges and agrees that the Sublessee may access the Lands by way of roads owned OR operated by the Sublessor.

41. The Sublessor acknowledges and agrees that the Sublessee may access the Lands by way of roads owned OR operated by ʔaḳam to which the Sublessor has a right of access pursuant to the Headlease.

42. The Sublessor covenants with the Sublessee that the Sublessor will not impede the Sublessee's access to available utilities, services and facilities.

43. The Sublessee covenants with the Sublessor that the Sublessee will pay for electricity, gas, telephone, water and other utilities consumed on the Lands and all taxes, rates, duties, general and special assessments and charges levied or imposed on or in respect of the Lands and Improvements and the Sublessee's occupation thereof whether levied or imposed by the Sublessor or any other Authority.

44. If a separate allocation of taxes, rates, duties, assessments or charges is not issued by the Authority with respect to the Lands and Improvements, the Sublessor may, from time to time, apply to the authority for a determination of a separate allocation or, in the event that no such allocation can be obtained, the Sublessor will determine the portion of taxes, rates, duties, assessments or charges attributed to the Lands and Improvements using the then current principles of assessment employed by taxing authorities.

EXCLUSION OF LIABILITY AND INDEMNITY

45. Unless caused by the negligence of the Sublessor or another person for whose negligence the Sublessor is responsible in law, the Sublessor, its agents, servants and employees will not be liable or responsible in any way for any injury that may be suffered or sustained by the Sublessee or any invitee of the Sublessee or for any loss of or damage to any property belonging to the Sublessee or to any other person while such property is on the Lands and in particular, but without limiting the generality of the foregoing, the Sublessor will not be liable for any damages or inconvenience caused by the failure to supply utilities to the Lands.

46. The Sublessee covenants with the Sublessor to indemnify and save harmless the Sublessor from any and all claims for personal injury or property damage arising from any default by the Sublessee in the observance or performance of the covenants and agreements on its part to be observed and performed pursuant to this Sublease, or from any act or omission of the Sublessee or any invitee of the Sublessee and from all costs, fees and expenses incurred as a result of any such claim or any action or proceedings brought in connection with such claim, and this indemnity will survive the expiration or sooner termination of the Term.

SUBLESSOR'S RIGHTS AND REMEDIES

47. Subject to the provisions of sections 57 to 60, in the case of the breach or non-observance or non-performance of any of the covenants, agreements, provisos or conditions or Rules and Regulations as amended from time to time on the part of the Sublessee to be kept, observed or performed, then and in every such case it will be lawful for the Sublessor at any time thereafter to give notice to the Sublessee and the Mortgagee and if such default is not cured within sixty (60) days of receipt of the notice then the Sublessor may:

(a) re-enter and re-take possession of the Lands and terminate this Sublease; or

(b) re-enter and re-take possession of the Lands for the purpose of re-leasing the same Lands as agent for the Sublessee and all money received by the Sublessor from such re-leasing will be applied:

(i) first to the payment of any indebtedness due under the Sublease from the Sublessee to the Sublessor,

(ii) second to the payment of all costs and expenses incurred by the Sublessor in re-leasing the Lands, including real estate brokerage fees, the Sublessor's lawyer's fees, and the cost of any alterations and repairs to the Lands,

(iii) third to the payment of any arrears of the current mortgage to the Sublessee's mortgage lender if the Sublessor is aware of same (provided that the Sublessor will not incur any liability for such payment); and

(iv) fourth, the balance of monies, if any, will be paid to the Sublessee.

48. If the Sublessee makes default in the performance of any of its covenants herein contained, and without waiving or releasing the Sublessee from its obligations herein, the Sublessor may, but will not be obliged to, observe and perform the covenant in respect of which the Sublessee has made default and all costs, payments and expenses incurred by the Sublessor in the observance and performance of such covenant including, without limitation, reasonable legal costs, will immediately become due and payable by the Sublessee to the Sublessor and will bear interest at the rate specified in section 49 from the date such costs, payments and expenses are paid until repaid by the Sublessee to the Sublessor.

49. Except where otherwise herein provided, the Sublessee will pay to the Sublessor interest at a variable rate per annum equal at all times to the prime rate of the bank used by the ?aqam plus 5% on all amounts which are due and owing by the Sublessee to the Sublessor.

50. Subject to the provisions of section 60, in the event that the Sublessee will have received three (3) notices in writing of defaults pursuant to section 47, even if such defaults will be cured within the sixty (60) day period, thereafter for further defaults the notice period will be reduced to five (5) days.

51. All rights and remedies of the Sublessor in this Sublease will be cumulative and not alternative.

52. No condoning, excusing or overlooking by the Sublessor or the Sublessee of any default, breach, or non-observance by the other in respect of any covenant provision or condition herein contained will operate as a waiver of the Sublessor's or the Sublessee's rights hereunder in respect of any continuing or subsequent default, breach or non-observance or so as to defeat or affect in any way the rights of the Sublessor or the Sublessee in respect of any continuing or subsequent default or breach and no waiver will be inferred from or implied by anything done or omitted by the Sublessor or the Sublessee, save only express waiver in writing.

53. Failure to comply with the Rules and Regulations as amended from time to time constitutes a breach under the Sublease which shall be remedied pursuant to sections 89 to 91 but will not result in termination rights referred to in section 47, notwithstanding anything to the contrary.

ASSIGNMENT BY THE SUBLESSOR

54. The Sublessor may assign its rights and remedies hereunder pursuant to the Headlease.

55. In the event of an assignment by the Sublessor of its interest in this Sublease, and to the extent that the assignee assumes the covenants and obligations of the Sublessor contained herein, the Sublessor will without further written agreement be relieved of any further liability relating to such covenants and obligations.

ASSIGNMENT BY THE SUBLESSEE

56. The Sublessee may assign this Sublease provided that the assignee agrees in writing to abide by all the terms and conditions of this Sublease.

RIGHT TO MORTGAGE BY SUBLESSEE

57. The Sublessee will have the right, at any time, and from time to time, to grant a mortgage of this Sublease.

58. If the Sublessee mortgages its interest in the Lands, the Sublessee will, at its own expense, register a copy of the mortgage and any amendments thereto at the First Nation Land Register.

59. If a Mortgagee takes possession of the Lands and Improvements or acquires the Sublessee's equity of redemption, then the Mortgagee will covenant and agree to perform and observe the Sublessee's covenants and agreements under this Sublease only during the time the Mortgagee is in possession of the Lands

60. Notwithstanding any other provisions of this Sublease, where the whole or any part of the interest of the Sublessee is mortgaged:

(a) the Sublessor shall not exercise effectively as against the Mortgagee any right of re-entry or distress or right to terminate this Sublease until:

(i) the Sublessor gives to the Mortgagee at least sixty (60) days written notice of the intention to re-enter or to distrain or to terminate specifying the full grounds thereof,

(ii) the Mortgagee does not during that sixty (60) day period either remedy all specified proper grounds for re-entry or distress or terminate or give to the Sublessor notice in writing that the Mortgagee intends to take, or has taken, formal proceedings for the enforcement of its mortgage and the protection of its position, and

(iii) the Mortgagee, having given the notice specified in (ii), has had reasonable time to pursue to their conclusion all reasonable proceedings for the enforcement of its mortgage and the protection of its position; and

(b) if upon the conclusion of proceedings by the Mortgagee for the enforcement of its mortgage and the protection of its position the rights of the Sublessee have been released to the Mortgagee or foreclosed or sold thereupon all then existing grounds for re-entry or distress or termination and then existing rights (if any) of re-entry or distress or termination shall terminate and the Mortgagee or purchaser shall become the Sublessee free of all liability for such grounds;

(c) where the Sublessor, at the request of the Sublessee/mortgagor, intends to terminate the Sublease either by surrender of Sublease or otherwise, notice of such intention shall be given in writing to the Mortgagee, allowing the Mortgagee at least sixty (60) days to obtain repayment in full of the outstanding mortgage, inclusive of interest and penalties, or take mortgage default enforcement action within its rights. If the Mortgagee provides to the Sublessor notice of its intention to commence or the commencement of mortgage default enforcement action to realize on its security, including but not limited to foreclosure proceedings, the Sublessor shall not accept the surrender of the Sublease;

(d) throughout any period of time during which, as a result of proceedings for default under the mortgage including transfer of title under the *National Housing Act*, the Mortgagee as successor is in leasehold possession of the Lands and Improvements or holds leasehold title to the Lands, then the Sublessor waives, as against the Mortgagee and CMHC and their successors and assigns, all rent and additional rent and interest accruing and otherwise required to be paid under this Sublease, but for the purposes of this waiver, rent and additional rent do not include taxes or charges lawfully levied by an Authority, local improvement charges, water rates and utility charges required to be paid by the Sublessor or the Sublessee and the actual cost of construction, maintenance and repair of damage that are the responsibility of the Sublessee and the consent of the Sublessor shall not be required with respect to any vacancy or removal of Personal Goods from the demised premises;

(e) no restriction on assignment or subletting of this Sublease by the Sublessee applies to any assignment or subletting or release of this Sublease to the Mortgagee as successor, and the Mortgagee shall not remain liable on the Sublease after assignment or release by them;

(f) Notwithstanding the provisions of section 39, if the Improvements are damaged or destroyed to the extent of twenty-five per cent (25%) or more of their full insurable value, then the Mortgagee will have the option of determining whether the Improvements should or should not be repaired, replaced, rebuilt, or restored and if it elects not to repair, replace, rebuild or restore then the insurance proceeds will, notwithstanding anything to the contrary herein provided, be applied, in the following order of priority:

(i) firstly, but only if and to the extent required by the Sublessor or Sublessee, toward clearing and restoring the Lands as nearly as possible prior to their condition prior to the commencement of construction;

(ii) second, toward payment of all moneys owing on the mortgage;

(iii) third, towards payment of all moneys payable to the Sublessor under this Sublease, and

(iv) fourth, in payment to the Sublessor and Sublessee in accordance with their interests therein, and the Sublessee shall not be obligated to repair or build or restore;

(g) there shall be no obligation on CMHC to arrange or maintain any insurance, and for the purposes of subsection (f), if because CMHC has not arranged or maintained insurance there are no or insufficient insurance proceeds and that CMHC makes the election as that election that is specified in subsection (e) then CMHC shall not be required to do more than clear and restore the Lands as nearly as possible to their condition prior to the commencement of construction and shall be entitled to apply to that end whatever insurance proceeds may be available; and

(h) there shall be no obligation on CMHC to indemnify the Sublessor except where CMHC would be obligated to do so apart from the terms of this Sublease.

SUBLESSOR'S COVENANTS

61. The Sublessor covenants with the Sublessee that, if the Sublessee pays the Rent hereby reserved and the Administration Fees, and performs the covenants herein on its part contained, the Sublessee will, subject to the terms of this Sublease and the Headlease, peaceably possess and enjoy the Lands for the Term without any interruption or disturbance from the Sublessor or any other person or persons lawfully claiming by, from or under it.

62. The Sublessor covenants with the Sublessee that it has fulfilled all requirements of the Headlease requiring acting on its part and in particular it has paid Rent for the Lands.

THE HEADLEASE

63. The Sublessor covenants with the Sublessee that it will pay the Rent and will observe and perform all of the terms, covenants and agreements in the Headlease to be observed and performed by the Sublessor and will indemnify and save the Sublessee and its permitted assigns and Mortgagee harmless from any loss, damage, liability, claim or expense incurred by the Sublessee resulting from any failure to do so.

64. The Sublessor will not amend the Headlease in any manner that will adversely affect the rights of the Sublessee and its permitted assigns and Mortgagees under the terms of this Sublease without the prior written consent of the Sublessee and Mortgagee, which consent will not be unreasonably withheld.

65. The Sublessee acknowledges that this Sublease is subject to and subordinate to the Headlease and to the rights of ʔaᑕam thereunder and this Sublease will terminate upon the termination of the Headlease

subject to a right of renewal as set out in sections 115 to 118 of the Headlease.

66. The Sublessee acknowledges that he or she has had the opportunity to read the Headlease and hereby agrees to comply with and be bound by all the applicable terms, covenants, conditions, provisions and terms of this Sublease and the Headlease, to the extent that they relate to the Lands and Improvements and the Sublessee's use and occupation thereof and in the event of conflict between the provisions of this Sublease and the Headlease, the provision of the Headlease will govern.

67. The Sublessee covenants and agrees with the Sublessor that it will not do or omit to do any act in or around the Lands and Improvements which would cause a breach of the Sublessor's obligations as Lessee under the Headlease.

68. The Sublessee acknowledges that ḥaqām will have the benefit of and be entitled to enforce any of the obligations of the Sublessee in favour of ḥaqām.

LEGAL RELATIONSHIP

69. It is understood between the Sublessor and the Sublessee that nothing contained in this Sublease will be deemed to create any relationship between the Sublessor and the Sublessee other than the relationship of Sublessor and Sublessee.

70. Should the Sublessee comprise of two (2) or more persons each of them will be jointly and severally bound to perform the obligations of the Sublessee hereunder.

71. References to the Sublessor and Sublessee will be read with such changes in gender as may be appropriate and, where appropriate, the singular will mean the plural and vice versa.

72. This Sublease will enure to the benefit of, and be binding upon, the Sublessor, its successors and assigns and the Sublessee, its heirs, executors, administrators, and successors and permitted assigns.

NO WARRANTIES

73. The Sublessee acknowledges and agrees that the Sublessee has inspected the Lands and Improvements and has conducted all independent investigations of the Lands and Improvements, including, and without limitation, any investigations relating to the compliance of the Lands and Improvements with any Laws and the presence of Hazardous Substances on, in or under the Lands, which it has deemed prudent prior to taking possession of the Lands and Improvements.

NOTICE

74. Any notice, demand or consent to be given hereunder will be given in writing and either delivered

personally or sent by registered mail, postage prepaid, addressed to:

(a) the Sublessor at:

<ADDRESS>

<CITY, PROVINCE, POSTAL CODE>

(b) The Sublessee at:

SUBLESSEES' NAME(S)>

<ADDRESS>

<CITY, PROVINCE, POSTAL CODE>

< TENANCY I.E. JOINT TENANTS OR TENANTS IN COMMON>

75. If any question arises as to the date on which payment, notice or demand was made, it will be deemed to have been delivered on the earlier of:

(a) the day it was received;

(b) if sent by fax, the day of transmission; or

(c) if sent by mail, on the sixth (6th) day after the notice was mailed, provided that if there should be a mail strike, slowdown or other labour dispute which might affect delivery of such notice then such notice will only be effective if actually delivered.

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

TENANCY AT WILL

77. The Sublessee agrees that if the Sublessee continues in possession of the leased Lands after the Term expires, the Sublessee's status will (unless a new indenture of lease is executed by the parties and notwithstanding any payment of Rent including payments in accordance with section 4) be and remain that of a tenant at will.

78. The Sublessee will, during the continuance of the tenancy at will referred to in section 77, pay in

advance on the first day of each month a monthly rent equal to one twelfth (1/12) of the annual fair market rent for the Lands at the expiration of the Term.

79. In making its determination of fair market rent for the purposes of the tenancy at will, the Sublessor shall assume, and if the Sublessor's determination of the fair market rent for the Lands is referred by the Sublessee to adjudication under sections 86 to 88, the decision-maker shall:

(a) compare the Lands to other lands including lands that are not Indian reserve lands under the Indian Act but without consideration of the inalienability of the Lands when comparing the Lands to lands that are not Indian reserve lands; and

(b) assume that:

(i) the Lands are owned by the Sublessor in fee simple and have no charges or encumbrances existing against title,

(ii) all necessary services to the Lands are available from utility sources which are nearest to the Lands and which have adequate capacity to provide such services,

(iii) motor vehicle access from a public highway to the Lands is available without cost to the Sublessee,

(iv) the lands are leased for the uses permitted in this Sublease,

(v) a reasonable amount of time is permitted to find a willing and knowledgeable Sublessee, and

(vi) the Sublessor and Sublessee are acting at arm's length and neither is acting on compulsion.

80. The Sublessee agrees that the Sublessor may keep the whole of each such rent payment, notwithstanding that the Sublessor terminates (as the Sublessee agrees the Sublessor may) the tenancy at will during the course of the ensuing month.

81. The Sublessee covenants that the tenancy at will referred to in section 77 will be subject to all the covenants and conditions of this Sublease, save as modified by sections 77 and 78, and save as they are inapplicable to a tenancy at will.

COMPLIANCE WITH LAWS

82. The Sublessee will, at its expense, observe, perform and comply with all applicable Laws of any Authority concerning this Sublease, the Lands and Improvements or any activity on, in or around the Lands

90. Upon written notice of any breach of the Rules and Regulations by the Sublessor to the Sublessee, the Sublessee shall have thirty (30) days in which to cure the breach of the Rules and Regulations. Failure to cure the breach of the Rules and Regulations within the thirty (30) day time period shall allow the Sublessor to commence proceedings to collect the fines referred to in section 89 herein as of the date of the commencement of the breach.

91. Notwithstanding sections 89 and 90 the Sublessor hereby acknowledges and agrees that any fines resulting from a breach of the Rules and Regulations as set out in section 89 shall be subordinate to any funds due and owing to a Mortgagee.

TIME IS OF THE ESSENCE

92. Time is of the essence in this Sublease.

ENTIRE AGREEMENT

93. If any provisions of this Sublease conflict with the provisions of the Headlease, the Headlease will prevail.

94. Should any provision of this Sublease be illegal or unenforceable it will be considered separate and severable from this Sublease and the remaining provisions and conditions of this Sublease will remain in force and be binding upon the Sublessor and Sublessee as though the illegal or unenforceable provision had not been included.

95. This Sublease constitutes the entire agreement between the parties with respect to the subject matter of a lease and that it supersedes and revokes all previous negotiations, arrangements, letters of intent, offers to lease and representations.

96. No modifications of this Sublease are effective unless made in writing, approved by ʔaᑕam and executed by both parties in the same manner as a lease was executed.

REGISTRATION OF SUBLEASE

97. This Sublessee will, at its expense and as soon as possible following execution of this Sublease, register this Sublease at the First Nation Lands Register.

98. Upon the ratification and signing of a Treaty between ʔaᑕam, Canada and British Columbia concerning the Lands, the Sublessee agrees, at the request of the Sublessor, to execute a new form of this Sublease, on the same terms and conditions but including those amendments required to permit this

Sublease to be registered in the New Westminster/Vancouver Land Title Office. The Sublessee will not be liable to pay any Land Title Office registration costs for the registration of the new form of this Sublease.

IN WITNESS WHEREOF the Parties have signed this Lease on this _____ day of _____ 201__.

SIGNED, SEALED AND DELIVERED)
By the Sublessor in the presence of:)
) _____
) Sublessor
)

_____) _____
As to the signatures of the Assignor(s)) Sublessor
Name: _____)
Address: _____)
Telephone: _____)

SIGNED, SEALED, AND DELIVERED)
By the Sublessee in the presence of:) _____
) Sublessee
)

_____) _____
As to the signatures of the Assignee(s)) Sublessee
Name: _____)
Address: _____)
Telephone: _____)

PROOF OF EXECUTION BY CORPORATION

I certify that on the <#> day of <MONTH>, <YEAR>, at the <CITY, TOWN. ETC> of <NAME OF CITY, TOWN, ETC>, in the province of British Columbia, <NAME OF PERSON AUTHORIZED>, who is personally know to me, appeared before me and acknowledged that he/she is the person who subscribed his/her name to the instrument and that he/she was authorized to subscribe his/her name to it (and the corporation existed a t the date the instrument was executed by the corporation).

_____)
A Commissioner for Oaths in and for the)
Province of British Columbia.)

SCHEDULE A: PLAN OF THE LANDS

Civic Address:

Legal Description:

The Survey Certificate is attached hereto and forms part of Schedule "A".

SCHEDULE B: RULES AND REGULATIONS

CONSTRUCTION

1. The Sublessee will not commence the making, constructing, assembling, affixing on the Lands of any Improvements or additions or alterations thereto without the prior written consent of the Sublessor of the plans, specifications and exterior finishes, such consent not to be unreasonably withheld if the plans and specifications comply with these rules and regulations.
2. The Sublessee agrees that any Improvements to be made, constructed, assembled or affixed on the Lands, and the plans and specifications for such Improvements will:
 - (a) comply with any applicable ?aqam design guidelines;
 - (b) comply with the standards of the National Building Code of Canada, as amended from time to time at the date of construction, alteration or remodeling, as the case may be;
 - (c) comply with the standards of the building laws, if any, made by ?aqam , as amended from time to time at the date of construction, alteration, or remodeling, as the case may be; and
 - (d) comply with the fire safety standards of the Federal Government or Dominion Fire Commissioner as at the date of construction, alteration, or remodeling, as the case may be.
3. If there is any conflict in the standards of the National Building Code of Canada and ?aqam building laws, the standards of the ?aqam building laws will prevail.
4. The Sublessee will make, construct, assemble, or affix or cause to be made, constructed, assembled, or affixed on the Lands or Improvements for which the Sublessor's written consent has been given in accordance with good and workmanlike building construction standards.
5. The Sublessee will not construct or place any building on the Lands other than a single family rancher dwelling with a minimum foot print area of 1,350 square feet, exclusive of garage or sundeck, or a single family two-storey dwelling with a minimum foot print area of 1,000 square feet exclusive of garage or sundeck.
6. No buildings or structures will be erected on any Lands unless the same will be completed within 12 months from the date of commencement of construction. For the purpose of this Sublease, the word "completed" will mean the completion of all exterior finishes, including siding and the like finished material and including placement of windows, doors and exterior painting, and also will include the completing of porches, patios and sundecks and other like annexures but will exclude interior finishing.
7. No more than one dwelling for one family or housing unit, or such further ancillary buildings as may be incidental and necessary to the use of one family, will be erected on the Lands.
8. No buildings, or any part thereof, will be used as a place of trade or business and the same will only be used exclusively for a single family residence.

9. No lot will be subdivided and no building or part thereof will be let with the intent or purpose that the same or any part or parts thereof will be used or occupied by more than one family or household unit.

USE OF PROPERTY

10. The Sublessee will not use the Lands and Improvements in a way that:

- (a) causes a nuisance or hazard to another person;
- (b) causes unreasonable noise;
- (c) unreasonably interferes with the rights of another person;
- (d) is illegal; or
- (e) is contrary to the Sublease or Headlease.

11. The Sublessee will not keep any animals on the Lands other than the following:

- (a) a reasonable number of fish or other small aquarium animals;
- (b) a reasonable number of small caged mammals; and
- (c) two dogs and two cats,

provided that no such domestic household pets may be kept for sale or kept in any way which, in the opinion of **either the** Sublessor or Ḥaqam, may be or become a nuisance or annoyance to the Sublessor or to any residents in the neighborhood.

12. The Sublessee will not conduct major repairs or maintenance to motor vehicles or trailers or other mechanical equipment on the Lands.

13. The Sublessee will not have exposed or open garbage cans, bags or containers on the Lands, unless being placed for collection on specified collection days only.

14. Signs will not be displayed on the Lands, except not more than one "For Sale" sign.

15. The Sublessee will repair and maintain the Lands and Improvements.

16. The Sublessee will keep all areas of the Lands clean, free of debris and well-maintained at all times.

17. No trees on the Lands will be cut or removed, without the prior written consent of the Sublessor and any applicable Authority.

18. No trees, hedges, or shrubs planted on the Lands will be permitted to grow to a height exceeding 10 feet provided however that on a corner lot no trees, hedges or shrubs will be permitted to grow to a height exceeding three feet within 25 feet of the corner of such lot fronting on two streets.

19. No excavation will be made or sand, gravel, marl or topsoil removed on or from the Lands without the prior written consent of the Sublessor and any applicable Authority.

20. Any of the foregoing rules and regulations may be waived in whole or in part by Ḥaqām or the Sublessor, provided that no such waiver will be effective unless made in writing in advance of the matter sought to be waived and provided further that waiver will be made at the sole discretion of Ḥaqām or the Sublessor, which will not be obliged to provide such waiver.

21. If there is a conflict between any of the provisions of these rules and regulations and any Ḥaqām law, the Ḥaqām law will prevail.

SCHEDULE C: MITIGATION COMPLIANCE REPORT

Reserve: _____

Lot: _____

Sublessee: _____

Mitigation measures are to be completed within four (4) months of the sublease execution date.

Sewage Systems

_____ Decommission outhouse (remove structure, fill, cap)

If filling but not removing structure please provide comment:

General Housekeeping Practices

_____ Improve storage conditions of fuel tanks/storage tanks

_____ Clean-up of spills/leaks/stains

_____ Proper storage of hazardous materials and/or household wastes

Other

Please specify

Mitigation Measure Completed

Signature of Sublessee

Date

SCHEDULE D: GENERAL MITIGATION MEASURES

In addition to environmental clauses found in the Sublease, and notwithstanding applicable standards, laws and regulations, the following mitigation measures apply:

1. Sublessees are responsible for ensuring their sewage disposal system is properly functioning.
2. All sewage disposal systems must meet Health Canada and ᐱᓐᓇᓄᓐ standards. Outhouses are not an approved permanent sewage system.
3. Where applicable, Sublessees are responsible for decommissioning outhouses, including pumping out of the pit prior to filling with compacted clean inert material (e.g. sand, gravel) and capping. The structure should then be removed.
4. Sublessees are responsible for testing water quality of drinking water sources other than drinking water supplied through a community water system. If drinking water sources do not meet water quality standards (as set by Health Canada), they are advised to import water for drinking.
5. Fuel, paints, household cleaners, pesticides, and other hazardous materials must be securely stored.
6. No refueling or oil changes within 30 meters of a water body.
7. No storage of automobile hulks on Lands.
8. No burning, storage, or disposal of waste materials on Lands without a permit issued under the Indian Reserve Waste Disposal Regulations or ᐱᓐᓇᓄᓐ laws.
9. Sublessees must use appropriate solid waste management practices
10. Materials containing PCB's (e.g. pre-1980 fluorescent lighting) are to be removed and disposed of properly when no longer in use.
11. Sublessees are responsible for ensuring all new structures meet National Building Code of Canada standards.
12. Pets must be secured when outdoors. If suitable fencing is not available, pets must be chained.
13. No livestock (e.g. horse, cattle) may be allowed on the Lands.
14. Sublessees must complete and submit Schedule F (Mitigation Compliance Report) to the Sublessor within four (4) months of the lease execution date if requested to do so by the Sublessor.

SCHEDULE E: ARBITRATION

Any matter which may be referred to adjudication or arbitration pursuant to a specific term of the Sublease may be submitted to and settled by arbitration in accordance with the provisions of this Schedule. Arbitration proceedings may be commenced by the party desiring arbitration giving notice to the other party specifying the matter to be arbitrated and requesting arbitration thereof. Such arbitration will be carried out as follows:

1. The Rules of Procedure (the “Rules”) for Domestic Arbitrations of the British Columbia International Commercial Arbitration Centre (the “Centre”) will apply to the arbitration, except as otherwise provided in this Schedule.

2. The arbitrator will be a single arbitrator agreed upon by the parties, or failing agreement on the arbitrator within ten business days after the giving of the notice requiring arbitration, an arbitrator appointed by the Centre upon the written request of either party after such period.

3. The arbitrator will be fully qualified in the field which is the subject matter of the arbitration, unless otherwise agreed to by the parties in writing.

4. The arbitrator will make his or her determination on the basis of written submissions and affidavits submitted by the parties, without any hearing, unless the arbitrator determines that a hearing is necessary. Each party will be entitled to a copy of each submission and affidavit.

5. The parties acknowledge and agree that they have provided for arbitration so as to promote the efficient, expeditious and inexpensive resolution of disputes. The parties will cooperate with the arbitrator and agree to act at all times so as to facilitate, and not frustrate nor delay, such efficient, expeditious and inexpensive resolution of disputes. The arbitrator is authorized and directed to make orders, on his or her initiative or upon application of either party to a disputed matter, to ensure that the arbitration proceeds in an efficient, expeditious and inexpensive manner, and in particular, to enforce strictly the time limits provided for in the Rules or set by order of the arbitrator, unless the arbitrator considers it inappropriate to do so. The parties acknowledge and agree that it is their intention that arbitration hearings will commence as soon as possible. The arbitrator is directed to make all reasonable efforts to make his or her award within 30 days following appointment.

6. The award of the arbitrator will be rendered in writing and will contain a recital of the facts upon which the award is made and reasons for the award.

7. The award of the arbitrator with respect to a disputed matter will be final and binding upon the parties to the arbitration, subject to section 30 of the *Commercial Arbitration Act* (British Columbia).

8. The arbitrator has jurisdiction to award the costs of the arbitration, including the fees of the arbitrator, as the arbitrator sees fit. The costs need not be on any court approved tariff basis and may be on a complete indemnity basis and include actual legal and other professional costs and disbursements incurred. In making an award of costs, the arbitrator will take into account delays or increased costs incurred as a result of a party failing to comply with its obligations under section 5 above.

In all other respects, the arbitration will be governed by the *Commercial Arbitration Act* (British Columbia).

SCHEDULE F: AGREEMENT RESPECTING REPLACEMENT LEASE PURSUANT TO THE HEADLEASE

This Agreement dated for reference (month, day, year) is

BETWEEN:

(the "Lessor")

AND:

(the "Sublessee")

GIVEN THAT:

- A. The Sublessee is not a party to the Headlease;
- B. The Lessor is not a party to the Sublease;
- C. Sections 115 to 118 of the Headlease grants the Sublessee a right to a replacement lease under certain circumstances; and
- D. The Lessor and Sublessee wish to enter into an Agreement which affirms their rights and obligations as set out in sections 115 to 118 of the Headlease.

THIS AGREEMENT is evidence that in consideration of payment of \$1.00 by the Sublessee to the Lessor (the receipt of which is acknowledged by the Lessor), and in consideration of the promises in consideration of the payment of Rent by the Sublessee, the Lessor and the Sublessee agree in accordance with section 115 to 118 of the Headlease that:

1. If the Lessor declares the Term of this Lease ended as a result of a breach by the Lessee of the terms and conditions of this Lease, or through bankruptcy, winding up or dissolution of the Lessee and the Sublessee is not in default and has duly or regularly met and performed all of its covenants and obligations under the Sublease prior to the termination of the Headlease, the Lessor will offer the Sublessee a replacement lease on substantially the same terms and conditions as the Sublease;

2. The replacement lease will be valid for the remainder of the term of the Sublease as of the date of termination of the Headlease;

3. The parties to the replacement lease will be the Lessor and the Sublessee; and

4. The replacement lease will specifically exclude the Lessor from liability for the actions of the Sublessee in relation to the Sublease or early termination of the Headlease.

IN WITNESS WHEREOF the Parties have signed this Agreement as of the date of this Sublease.

SIGNED, SEALED AND DELIVERED)

By the Sublessor in the presence of:)

)

)

)

Sublessor

_____))

As to the signatures of the Assignor(s))

Sublessor

Name: _____)

Address: _____)

Telephone: _____)

SIGNED, SEALED, AND DELIVERED)

By the Sublessee in the presence of:)

)

)

Sublessee

_____))

As to the signatures of the Assignee(s))

Sublessee

Name: _____)

Address: _____)

Telephone: _____)

SCHEDULE D:
STANDARD COMMERCIAL LEASE TEMPLATE

COMMERCIAL LEASE

ʔaḳam
(LESSOR)

AND

(LESSEE)

Table of Contents

ARTICLE 1: Basic Terms, Schedules, and Definitions	546
Basic Terms	546
Schedules	546
Definitions	546
Parts of the Lease	547
Headings	547
Extended Meanings.....	547
ARTICLE 2: Premises	547
The Premises	547
Prior Rights	547
Other Rights	547
Common Areas and Facilities	547
Registration	549
ARTICLE 3: Permitted Use of Premises.....	549
Permitted Uses.....	549
“As is – Where is” Lease	549
No Vacating or Abandoning	549
Quiet Enjoyment.....	549
ARTICLE 4: Rent	550
Rent to be Paid	550
Additional Rent.....	550
Option to Extend Term	550
Fair Market Rent	551
Arrears to Bear Interest	552
Damage, Loss or Expense	552

Alterations	555
Signs	555
ARTICLE 13: Repair, Damage and Destruction	556
Lessor’s Repairs	556
Lessee’s Repairs.....	556
Abatement and Termination	556
ARTICLE 14: Trade Fixtures	557
Installation of Trade Fixtures	557
Removal of Trade Fixtures	557
Removal of Trade Fixtures on Notice	557
Lessee Must Fix Any Damage Arising from Removal of Trade Fixtures	557
Lessor May Remove	557
Lessee Not in Possession	558
Survival of Article	558
ARTICLE 15: Insurance and Liability	558
Lessor’s Insurance	558
Lessee’s Insurance	558
Limitation of Lessor’s Liability.....	559
Limitation of Lessee’s Liability.....	559
Indemnity of Lessor.....	560
ARTICLE 16: Insolvency and Other Defaults	560
Events of Default.....	560
ARTICLE 17: Default and Cancelation	560
Defaults Allowing Immediate Cancellation	560
Default Requiring Notice to Cancel	560

Curing of Default	561
End of Lease 561	
Access to Inspect and Perform	561
Remedies Cumulative	562
Modified Terms for Holding Over	562
ARTICLE 18: Surrender of Possession	562
Inspection of Premises by Lessor and Lessee	562
Premises to be Surrendered in Clean Condition	562
Lessee’s Indemnity of Lessor.....	562
Survival of Article	562
Lease is Entire Agreement Between Parties	562
ARTICLE 19: Delivery	563
General Requirements	563
Delivery	563
Change of Contact Information	563
ARTICLE 20: Dispute Resolution	563
ARTICLE 21: General Provisions	563
Lessee’s Covenants at Own Expense.....	563
Joint and Several	563
All Terms are Covenants.....	564
Survival of Obligations.....	564
Governing Law	564
No Modifications.....	564
Time is of the Essence	564
No Presumption	564
Severability	564
Binding on Successors.....	564

No Waiver	564
No Assumption of Liability by Lessor.....	564
Not a Joint Venture.....	565
Corporate Authority	565
Schedule "A" Definitions.....	566
Schedule "B" PREMISES	569
Schedule C ?AQAM BCR CONSENT TO LEASE AGREEMENT	570

COMMERCIAL LEASE

This Lease is effective as of _____.

BETWEEN:

(LESSOR)
(ADDRESS)

(the "Lessor")

AND:

(LESSEE)
(ADDRESS)

(the "Lessee")

WHEREAS:

- A. The legal title to ʔaǰam lands remains vested in Her Majesty the Queen in Right of Canada;
- B. Sections 18(1)(b), 18(2)(b) and 18(3) of the *First Nation Land Management Act* provide that a First Nation that has entered into an Individual Agreement with Canada and adopted a land code has the power to grant interests or right in and licences in relation to their land in accordance with their land code and the legal capacity necessary to enter into contracts to exercise this power, and that the Council of the First Nation has the power to exercise these powers for the use and benefit of the First Nation;
- C. ʔaǰam signed an Individual Agreement with Canada on June 18, 2014;
- D. The members of ʔaǰam voted in favour of the *St. Mary's Indian Band Land Code* at a ratification vote held on April 14-16, 2014 and the *St. Mary's Indian Band Land Code* came into effect on July 1, 2014;
- E. In 2016, the *St. Mary's Indian Band Land Code* was amended when the members of ʔaǰam voted in favour of the *ʔaǰam Amended Land Code* at a Meeting of Members;
- F. the Council of ʔaǰam may grant interests in ʔaǰam lands pursuant to section 32.1 of the *ʔaǰam Amended Land Code*;
- G. the Lessee made an application to the ʔaǰam Lands Department on [date] requesting to use ʔaǰam lands for the purpose of [enter purpose];
- H. the Council of ʔaǰam, by Band Council Resolution that is attached to this Agreement and entitled "**Schedule C: ʔaǰam Band Council Resolution Consent to Lease**", consents to this Agreement and authorizes [enter name] to execute this Agreement on behalf of ʔaǰam; and
- I. the Parties wish to set out their respective rights and obligations with respect to the Lessee's use of ʔaǰam lands,

NOW THEREFORE, with mutual consideration, the Parties covenant and agree as follows:

ARTICLE 1: Basic Terms, Schedules, and Definitions

Basic Terms

1. The basic terms are as follows:

(a) Lessor:

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(INSERT ADDRESS)

(b) Lessee:

(INSERT ADDRESS)

(c) Premises: (insert civic address), shown outlined in heavy black on the plan attached to this Lease as Schedule B;

(d) Annual Rent for the first year: _____ plus all applicable Taxes to be paid in monthly instalments of _____ pursuant to section 29;

(e) Permitted Use: for the purpose of the operation of the _____;

(f) Parking Entitlement: _____; and

(g) Utilities: Lessor will provide electricity, water, and janitorial pursuant to sections 66 to 70 and the Lessee will provide and maintain all other required services including, but not limited to, telephone, internet and cable, pursuant to sections 71 and 72.

2. The Basic Terms set out in section 1 are approved by the parties. Each reference in this Lease to any of the Basic Terms will be construed to include the provisions set out in section 1 as well as all of the additional terms and conditions of the applicable sections of this Lease where such Basic Terms are more fully described.

Schedules

3. All Schedules to this Lease are incorporated into and form an integral part of this Lease and are as follows:

Schedule	Subject
A	Definitions
B	Floor Plan(s) of Premises
C	Band Council Resolution

Definitions

4. In this Lease, the terms defined in Schedule "A" have, unless otherwise provided elsewhere in this Lease, the meanings ascribed to them in that Schedule.

5. Any defined term will be read as having an appropriate corresponding meaning if referred to in the singular, plural, verb, or noun form.

Parts of the Lease

6. The structure of this Lease is as follows: Article (e.g. Article 1), Section (e.g. 1, 2, 3...), paragraph (e.g. (a), (b), (c)...), Subparagraph (e.g. (i), (ii), (iii)...). Unless otherwise stated, any reference to an Article, Section, Paragraph or Subparagraph means the appropriate part of this Lease.

Headings

7. The headings used in this Lease are for convenience of the parties only and will not be considered in interpreting the meaning of any provision of this Lease.

Extended Meanings

8. All words importing the singular will include the plural, and vice versa, where the context allows. All words importing gender include the masculine, feminine and neutral genders, where the context allows.

9. In this Lease:

- (a) "includes" means "includes, without limitation,";
- (b) "including" means "including without limitation,";
- (c) "Lessee will not use" includes "Lessee will not use, or suffer or permit the use of,"
- (d) "Lessee will not cause" includes "Lessee will not cause, permit, or suffer"; and
- (e) "on the Premises" means "in, on, under, or above the Premises" where the context allows.

ARTICLE 2: Premises

The Premises

10. The Lessor leases to the Lessee, and the Lessee leases from the Lessor, the Premises to have and to hold during the Term, paying Rent to the Lessor during the Term and subject to the provisions, exceptions, and reservations in this Lease.

Prior Rights

11. This Lease is subject to all existing encumbrances and rights given for or attaching to the Premises, whether or not the Lessee has notice of them.

Other Rights

12. The Lessor reserves the right to further charge the Premises by way of easement, right of way, restrictive covenant, or other interest in land in favour of any Authority, provided the charge does not materially affect the Permitted Uses or the Lessee's business conducted pursuant to the Permitted Uses.

Common Areas and Facilities

13. The use and occupation of the Premises by the Lessee will include the non-exclusive licence to use, in common with others entitled thereto, the Common Areas and Facilities, subject to this Lease and to the exclusive control, management, and direction of the Lessor. The Lessor hereby grants to the Lessee:

- (a) a non-exclusive licence, during the Term, and any Renewal Period, in common with all others entitled thereto, to pass and repass over those areas of the Buildings as necessary from time to time; and

(b) a non-exclusive licence, during the Term, and any Renewal Period, in common with all others entitled thereto, to pass and repass with or without vehicles over those areas of the Lands as the Lessor may from time to time designate in writing.

14. Notwithstanding the foregoing grant of easement and licence by the Lessor to the Lessee, the Lessor will have the right to alter the location and size of the areas which are subject to said easement and licence, provided that reasonable access to the Premises is provided to the Lessee.

15. The Common Areas and Facilities will at all times be subject to the exclusive control and management of the Lessor and will be provided or designated by the Lessor from time to time for the general use by or for the benefit of the Lessee and its employees, invitees, and licensees in common with the other lessees, tenants or permittees of the Lessor and such others as may be designated by the Lessor. The Lessor has the right from time to time to establish, modify, and enforce rules and regulations with respect to the Common Areas and Facilities, including those related to their use, maintenance, and operation, and the invitees, and licensees of the Lessee. The Lessor has the right to change the area, level, location, and arrangement of the Common Areas and Facilities and to enter into, modify and terminate easements and agreements pertaining to the use and maintenance thereof, and to police the Common Areas and Facilities and to close all or any portion thereof to such an extent as may in the reasonable opinion of the Lessor be legally sufficient to prevent the accrual or creation of rights to any person or the public therein, and to do and perform such other acts and things in and to the Common Areas and Facilities as the Lessor acting reasonably, considers advisable.

16. The Lessee covenants that it will and will cause its employees, licencees, and invitees to observe all regulations made by the Lessor from time to time with respect to parking on those portions of the Lands provided for that purpose, and that the Lessee will supply automobile licence numbers of its employees to the Lessor upon request. In particular, the Lessor reserves the right to remove any automobile infringing regulations made by the Lessor with respect to parking from time to time, such removal to be at the risk and expense of the Lessee.

17. It is understood and agreed that notwithstanding anything herein to the contrary, and on providing to the Lessee ninety (90) days' notice, the Lessor will have the right at all times and from time to time throughout the Term and Renewal Period to:

(a) Change the area, size, or arrangement of the Buildings and the Lands and any part thereof, including the Common Areas and Facilities;

(b) Construct other buildings or structures or improvements on the Lands and make alterations thereof, additions thereto, or re-arrangements thereof, demolish parts thereof, and construct additional buildings or facilities adjoining or proximate to the Buildings;

(c) Relocate or rearrange or make changes or additions to the Common Areas and Facilities from those existing at the effective date of this Lease in order to facilitate expansion or alteration of the Buildings;

(d) Grant new easements and rights of way in favour of other lessees, tenants, permittees, or others;

(e) Temporarily obstruct or close off the Common Areas and Facilities or any parts thereof for the purposes of maintenance, repair or construction;

provided however that the Lessor will not unreasonably interfere with the use and enjoyment of the Premises beyond the extent necessarily incidental to such changes, additions, and installations, and will make good any physical damage to the Premises arising in the course of such changes, additions and installations.

18. The Lessee will not have any right to object to nor any right to any claim for damages, compensation, or other sums whatsoever, nor any right of set-off or reduction of the Rent as a result of or on account of any exercise of the Lessor's rights under this Article. It is further understood and agreed that the exercise of the Lessor's rights set forth in this Article will not be deemed to be constructive or actual eviction of the Lessee, nor a breach of any covenant of quiet enjoyment or other covenant contained in this Lease.

Registration

19. The Lessee will, promptly after the execution of the Lease by the Lessee, ensure that an originally executed copy of this Lease is registered in the First Nation Land Register.

ARTICLE 3: Permitted Use of Premises

Permitted Uses

20. The Lessee will not use the Premises or any part thereof, or permit the Premises or any part thereof, to be used for any purpose except for the operation of the XXXX.

“As is – Where is” Lease

21. The Premises are being leased on an “as is- where is” basis.

22. The Lessee represents and warrants that it has:

(a) conducted any inspections of the Premises that it deems prudent, including the condition of the Premises; and

(b) satisfied itself that the Premises are suitable for the intended uses and that those uses are within the scope of the Permitted Uses.

No Vacating or Abandoning

23. The Lessee will not vacate or abandon the Premises at any time during the Term without the prior written consent from the Lessor.

24. If the Premises are vacated or abandoned, the Lessor may:

(a) enter the Premises as the agent of the Lessee, either by force or otherwise, without being liable for any loss or damage caused by such entry;

(b) lease the Premises as the agent and at the risk of the Lessee; and

(c) receive the Rent for any lease.

25. Rent received by the Lessor as agent for the Lessee for any leasing may be applied by the Lessor to any expenses incurred by the Lessor in the entry and leasing of the Premises and to any other monies owing the Lessor under this Lease in any proportions and in order of priority as the Lessor decides.

26. The Lessor will not be construed as entering the Premises as agent of the Lessee if, prior to entry, the Lessor has declared the Term ended.

Quiet Enjoyment

27. The Lessee, by paying the Rent and observing and performing the covenants in this Lease, may peaceably and quietly possess, hold, and enjoy the Premises during the Term without any interruption or disturbance by the Lessor, except as otherwise provided in this Lease.

ARTICLE 4: Rent

Rent to be Paid

28. The Lessee will pay the Lessor all Rent due under this Lease, together with any applicable Taxes, at the time and in the manner set out in this Lease in lawful money of Canada, without abatement, deductions, set-off, or prior demand.
29. On or before the first day of each month during the Term, the Lessee will pay to the Lessor 1/12 of the Annual Rent, being \$_____ per month, with the first payment owed and due on the Effective Date of this Lease.
30. Any Rent paid to the Lessor will be paid over to the benefit of ʔaqam and will not be available to be refunded to the Lessee. The Lessee will have no right to a refund of, and the Lessor will not be liable to the Lessee for refunding, any Rent if this Lease is terminated.
31. The Rent due and payable for any Renewal Period, if such Renewal Period is approved and consented to by the Lessor, will be Fair Market Rent and subject to this Article where appropriate.

Additional Rent

32. Upon notice from the Lessor, the Lessee will promptly pay the Lessor for any damage, loss, or expense of the Lessor (together with an administration fee of 15% of the damage, loss, or expense) because of a breach of any of the Lessee's covenants in this Lease.
33. Any amount payable by the Lessee under this Article may be recovered by the Lessor as if the amount was Rent in arrears.
34. This Article survives the expiration or early termination of this Lease.

Option to Extend Term

35. The option for a Renewal Period to extend the Term of this Lease is at the sole discretion of the Lessor.
36. The following are conditions precedent for any Renewal Period to renew or extend the term:
- (a) The Lessee must notify the Lessor not less than sixty (60) days before the then current Term expires (i.e. sixty (60) days before the expiration of the Term as currently defined in this Lease) that it is interested in renewing or extending the Term;
 - (b) The Lessee must have duly and regularly paid Rent and complied with its obligations and covenants under this Lease, unless otherwise waived by the Lessor; and
 - (c) The Lease must not be in default at any time between the effective date of this Lease and the date the renewal takes place, unless any such default has been cured by the Lessee in accordance with the Lease or any such default has been waived by the Lessor.
37. The Rent due for any Renewal Period will be Fair Market Rent determined as follows:
- (a) The Lessor and the Lessee will, at their own cost, discuss the determination of Fair Market Rent;
 - (b) If the parties are unable to determine Fair Market Rent between them by thirty (30) days prior to the expiration of the Term, then the Parties will discuss the terms of reference for an appraisal and jointly choose an Appraiser;
 - (c) Following such a discussion, the Lessee will retain the Appraiser and will bear the costs of the Appraisal; and
 - (d) Fair Market Rent will be deemed to be the amount determined by the Appraisal.

Fair Market Rent

38. Pursuant to section 31, this Article will apply to determine the Fair Market Rent for any particular period after the original one year Term expires.

39. The terms of reference to be used by an Appraiser, utilizing methodologies acceptable to the Appraisal Institute of Canada (or its successor) to determine Fair Market Rent for rent reviews are as follows:

(a) The Premises are to be assessed as fully serviced accessible office space, with parking, available for immediate occupancy, not subject to any adverse site conditions, and without restriction to on-reserve or off-reserve market data and as if the Premises were property held in fee simple (with no charges or encumbrances on title that limit the use of the property);

(b) The Premises include any Improvements installed by the Lessor (or by any person other than the Lessor before the Effective Date of this Lease and do not include any Improvements by the Lessee);

(c) The Permitted Uses are assumed to be the highest and best use of the Lands and Premises for the entire term of this Lease;

(d) Valuation will not make any discount for the expired portion of the Term or otherwise reduce Rent because of the time left in the Term; and

(e) Valuation will not make any discount for any factor relating to the Premises or Lands being on an Indian Reserve.

40. If by the expiration of the Term the Parties have agreed to renew the Term, but have not agreed upon Fair Market Rent pursuant to section 37, then:

(a) The Lessor will, at its own cost, promptly choose an Appraiser and obtain an appraisal;

(b) The Lessee will, at its own cost, promptly choose an Appraiser and obtain an appraisal; and

(c) Within one month after the beginning of the Renewal Period, each Party will promptly deliver a copy of its appraisal to the other Party.

41. If the determination of Fair Market Rent in the Lessee's appraisal is not more than 10% lower than the determination of Fair Market Rent in the Lessor's appraisal, then Fair Market Rent will be deemed to be the amount determined in the higher appraisal.

42. If the determination of Fair Market Rent in the Lessee's appraisal is more than 10% lower than the determination of Fair Market Rent in the Lessor's appraisal, then the Lessor's Appraiser (at the cost of the Lessor) and the Lessee's Appraiser (at the cost of the Lessee) will:

(a) Discuss (at all times at arms length and without further instructions or suggestions from the Lessor or Lessee) the two appraisals;

(b) Attempt to reconcile the differences between the two appraisals; and

(c) Jointly determine Fair Market Rent.

43. If the Appraisers are unable to jointly determine Fair Market Rent, then the Lessee's Appraiser and the Lessor's Appraiser will jointly choose a third, independent Appraiser to:

(a) Review the two appraisals;

(b) Review any reasonable submissions that each Appraiser (at all times at arms length and without further instructions or suggestions from the Lessor or Lessee) may wish to make to the independent Appraiser; and

(c) Determine Fair Market Rent.

44. The Lessor and Lessee will each pay 50% of the cost of this work of the third independent Appraiser.

45. If the Fair Market Rent is determined after the expiration of the original Term (i.e. after the beginning of the Renewal Period), then the Lessee will, each month of the Renewal Period, continue to pay Rent in accordance with sections 28 to 31, in the amount established in respect of the prior Term. On the determination of Fair Market Rent for the Renewal Period, the Lessee will promptly pay the Lessor any outstanding Rent as if the determination had been made prior to the beginning of the Renewal Period. For greater certainty, and notwithstanding section 46, no interest is payable on this outstanding Rent.

Arrears to Bear Interest

46. If any Rent is not paid when due, then the Lessee will pay interest on the unpaid amount at the rate established from time to time by the Treasury Board of Canada for Indian moneys held in the Government of Canada's Consolidated Revenue Fund, plus 5%, calculated quarterly and compounded semi-annually, from the date the payment is due until the date the payment is made by the Lessee.

47. Section 46 will not prejudice any of the Lessor's other remedies or relieve the Lessee from any default in paying Rent when due.

48. Any amount payable by the Lessee under section 46 is recoverable by the Lessor as if the amount was Rent in arrears.

49. Sections 46 to 48 survives the expiration or early termination of this Lease.

Damage, Loss or Expense

50. If at any time before or after the expiration or earlier termination of the Lease the Lessor suffers or incurs any damage, loss or expense by reason of any failure of the Lessee to perform or observe any of the Lessee's covenants or makes any payment for which the Lessee is liable under this Lease, or if the Lessor is compelled or elects to incur any expenses (including, without limitation, legal fees in instituting, prosecuting or defending any action or proceeding instituted by reason of any default of the Lessee under this Lease, including any action or proceeding against the Lessee), then in every such case the amount of damage, loss or expense or payment (including any legal fees of the Lessor on a solicitor-client basis), together with interest, will be expeditiously paid by the Lessee to the Lessor on notice from the Lessor and be recoverable in the manner provided by law for the recovery of Rent in arrears.

ARTICLE 5: Records

Lessee to Retain Documents

51. The Lessee will retain all documents or records for any expenditure made by or on behalf of the Lessee with respect to the Premises for six (6) years after the end of the year in which the expenditure was made.

Lessee to Deliver Documents

52. The Lessee will within fifteen (15) days of a written request by the Lessor, deliver to the Lessor copies of the documents or records required to be retained under this Article as the Lessor requires.

ARTICLE 6: Assignments, Subleases and Mortgages

Assignments

53. The Lessee will not assign in whole or in part, the Premises without the written consent of the Lessor, which consent may be unreasonably and arbitrarily withheld. Any assignment not consented to by the Lessor is invalid against the Lessor.

54. If the lessee is a corporation, partnership or society, a term must be added here to address whether a change in ownership or beneficial control without the lessor's consent will be deemed to be a default under a lease.

Subleases

55. The Lessee will not sublease in whole or in part, the Premises without the written consent of the Lessor, which consent can be unreasonably and arbitrarily withheld. Any sublease not consented to by the Lessor is invalid against the Lessor.

Mortgages

56. The Lessee will not grant a mortgage of the whole or any part of its interest in the Premises, without the written consent of the Lessor, which consent can be unreasonably and arbitrarily withheld. Any mortgage not consented to by the Lessor is invalid against the Lessor.

No Relief of Obligations

57. A disposition of any of the Lessee's interest in this Lease will not relieve or discharge the Lessee from any of its covenants under this Lease.

ARTICLE 7: Laws

Laws

58. The Lessee will comply with all applicable Laws concerning this Lease, the Premises or Lands, or any activity on the Premises or Lands.

59. The Lessee will promptly deliver to the Lessor a copy of any notice received from any Authority lawfully requiring the execution of works or the commencement or cessation of any activity on the Premises. Upon resolution satisfactory to the Authority, the Lessee will promptly deliver evidence satisfactory to the Lessor of the resolution.

60. If the Lessee contests the validity of any requirements set out in section 58, proceedings relating thereto must be commenced before the expiration of sixty (60) days after the Lessee has first been notified of any breach of such requirements.

61. The Lessee will indemnify and hold harmless the Lessor from all loss, damage, costs and expense suffered by the Lessor by reason of the Lessee undertaking such proceedings, and the Lessee covenants that it will conduct such proceedings with all due diligence.

ARTICLE 8: Taxes

Taxes

62. Without limiting the generality of Article 7, the Lessee will pay, on or before the due date and during the Term, all Taxes imposed by any Authority:

- (a) On the Premises;
- (b) For sales, transactions, or business relating to the Premises; or
- (c) For the occupation of the Premises by any Person.

63. The Lessee will deliver to the Lessor official receipts of the Authority or other evidence satisfactory to the Lessor confirming payment of Taxes.

64. Amounts payable by the Lessee as Taxes will not be deemed to be Rent or Additional Rent, but the Lessor will have the same rights and remedies for non-payment of Taxes as it has for non-payment of Rent.

Authorization to Receive Information

65. On notice from the Lessor, the Lessee will promptly deliver to the Lessor, an Authority, or both, written authorization for the Lessor to receive any information from the Authority about the Lessee's compliance with any applicable Laws, including the payment of any applicable Taxes.

ARTICLE 9: Services

Lessor Will Provide

66. The Lessor will provide electricity and water and will provide appropriate infrastructure for bringing building standard telephone services to the Premises.

67. The Lessor will cause when reasonably necessary from time to time the floors of the Premises to be swept and cleaned, the windows on the exterior of the Premises to be cleaned, the desks, tables, and other furniture of the Lessee in the Premises to be dusted, and such other janitorial services to be provided as are commonly provided in comparable buildings, but with the exception of the obligation to cause such work to be done, the Lessor will not be responsible for any act of omission or commission on the part of the persons employed to perform such work; such work to be done at the Lessor's direction without interference by the Lessee, its agents, or employees.

68. The Lessor will permit the Lessee and its employees and invitees in common with others so entitled to use the washrooms in the Building on the floor and floors on which the Premises are situate.

69. The Lessor will permit the Lessee and its, agents, employees and invitees to have the use during Normal Business Hours in common with others entitled thereto of the common entrances, lobbies, stairways and corridors of the Buildings giving access to the Premises (subject to reasonable limitations as the Lessor may from time to time impose) provided that notwithstanding the foregoing the Lessor reserves the right to restrict for security purposes the method of access on Saturdays, Sundays and holidays; and to permit access to the Premises outside of the Normal Business Hours by the Lessee and its authorized employees subject to such reasonable restrictions for security purposes as the Lessor may impose.

70. The Lessor will provide any maintenance and services required to render reasonably accessible the parking spaces for the Lessee, including snow removal.

Lessee's Responsibility to Provide

71. The Lessee will provide and maintain all other required services including, but not limited to, telephone, internet and cable, which they require from time to time for the use and occupation of the Premises, other than those specifically provided by the Lessor under this Lease.

72. The Lessee acknowledges that the Premises are designed to provide standard office use electrical facilities and standard office lighting. The Lessee will not use any equipment or devices that utilizes excessive electrical energy or which may, in the Lessor's reasonable opinion, overload the wiring or interfere with electrical services to other lessees tenants, permittees or others.

Interruption Not a Disturbance

73. The interruption of any service or facility provided to the Premises will not be a disturbance of the Lessee's enjoyment of the premises or render the Lessor liable for injury to or in damages to the Lessee or relieve the Parties from their obligations under this Lease.

ARTICLE 10: Environment

No Contaminants

74. Except as may be reasonably required for the Permitted Uses of the Premises, and in strict compliance with any Environmental Laws, and without limiting the generality of Article 7, the Lessee will not permit any Contaminants to be used, emitted, discharged, transported to or stored on the Premises, or any adjacent land, by the Lessee or a Responsible Person.

75. If requested by the Lessor or any Authority, the Lessee will promptly remove any Contaminants that are on the Premises by the actions or omissions of the Lessee or a Responsible Person, and upon the removal, will promptly deliver to the Lessor evidence satisfactory to the Lessor confirming the removal satisfactory to the Lessor and any Authority.

76. On or before the end of the Term, the Lessee will remove any Contaminants that are on the Premises by the actions or omissions of the Lessee or Responsible Person.

77. Notwithstanding any rule of law to the contrary, any Contaminants that are on the Premises by the actions or omissions of the Lessee or Responsible Person, remain the sole and exclusive property of the Lessee and will not become the property of the Lessor, regardless of any degree of affixation of the Contaminants on the Premises.

78. This Article survives the expiration or earlier termination of this Lease.

ARTICLE 11: Nuisance and Rubbish

Nuisance

79. Except as reasonably required by the uses permitted under this Lease, the Lessee will not cause, permit or suffer any nuisance in, on, or about the Premises.

Rubbish

80. Without limiting section 79, the Lessee will not cause any rubbish or debris to be placed or left in, on or about the Premises, except as is reasonably necessary in accordance with the Permitted Uses or as permitted in writing by the Lessor, and will take all necessary and reasonable precautions to protect the Premises against fire.

ARTICLE 12: Improvements and Alterations

Construction of Improvements

81. The Lessee will not construct any additional or new Improvements without the prior written consent of the Lessor, which consent can be unreasonably and arbitrarily withheld.

Alterations

82. The Lessee will not make any Alterations to the Premises without the prior written consent of the Lessor, which consent can be unreasonably and arbitrarily withheld.

Signs

83. The Lessee will not use any signs or other advertising device without the prior written consent of the Lessor.

84. The Lessor may refuse consent to any proposed signage that is in the Lessor's opinion too large, deceptive, unattractive or otherwise inconsistent with or inappropriate to the Premises or use of the Lands or Building by any other lessee, tenant, or permittee.

85. The Lessee will repair all damage to the Premises resulting from the installation or removal of signs installed by the Lessee, and sections 83 to 85 survives the expiration or earlier termination of this Lease.

ARTICLE 13: Repair, Damage and Destruction

Lessor's Repairs

86. The Lessor covenants with the Lessee:

- (a) Subject to Paragraph (b), to keep in a good and reasonable state of repair:
 - (i) The Building (other than the Premises and premises of other tenants) including the foundation, roof, exterior walls including glass portions thereof, the systems for interior climate control, the elevators, entrances, stairways, corridors, lobbies, and washrooms from time to time provided for use in common by the Lessee and other tenants of the Building and the systems provided for bringing utilities to the Premises; and
 - (ii) the structural members or elements of the Premises; and
- (b) to repair defects in construction performed or installations made by the Lessor in the Premises and Insured Damage.

Lessee's Repairs

87. The Lessee covenants with the Lessor:

- (a) Subject to Paragraph 86(b), to keep in a good and reasonable state of repair, the Premises including all Improvements and all trade fixtures and all glass in them other than glass portions of exterior walls, but with the exception of structural members or elements of the Premises, defects in construction performed or installations made by the Lessor and Insured Damage therein;
- (b) that the Lessor may enter and view the state of repair, and that the Lessee will repair according to notice in writing, and that the Lessee will leave the Premises in a good and reasonable state of repair, subject always to the exceptions referred to in Paragraph 86(a); and
- (c) that if any part of the Building including the systems for interior climate control and for the provision of utilities becomes out of repair, damaged, or destroyed through the negligence or misuse of the Lessee or its employees, invitees, or others over which the Lessee can reasonably be expected to exercise control, the expense of repairs or replacements necessitated thereby will be reimbursed to the Lessor promptly upon demand.

Abatement and Termination

88. It is agreed between the Lessor and the Lessee that in the event of damage to the Premises or to the Building:

- (a) if the damage is such that the Premises or any substantial part of them are rendered not reasonably capable of use and occupancy by the Lessee for the purposes of its business for any period of time in excess of 10 days, then:
 - (i) unless the damage was caused by the fault or negligence of the Lessee or its employees, invitees, or others under its control, from and after the date of occurrence of the damage and until the Premises are again reasonably capable of use and occupancy as specified, Rent will abate from time to time in proportion to the part or parts of the Premises not reasonably capable of use and occupancy, and
 - (ii) unless this Lease is terminated as hereinafter provided, the Lessor or the Lessee, as the case may be (according to the nature of the damage and their respective obligations to repair as provided in sections 86 and 87) will repair such damage with all reasonable diligence, but to the extent that any part of the Premises is not reasonably capable of such use and occupancy by

reason of damage that the Lessee is obligated to repair under this Lease, any abatement of Rent to which the Lessee is otherwise entitled under this Lease will not extend later than the time by which, in the reasonable opinion of the Lessor, repairs by the Lessee ought to have been completed with reasonable diligence; and

(b) if either:

(i) the Premises; or

(ii) premises, whether of the Lessee or other tenants of the Building, comprising in the aggregate 25% or more of the rentable area of the Building

are substantially damaged or destroyed by any cause to the extent such that in the reasonable opinion of the Lessor they cannot be repaired or rebuilt (based on standard hours of construction work) within 240 days after the occurrence of the damage or destruction, then the Lessor may at its option, exercisable by written notice to the Lessee given within 60 days after the occurrence of such damage or destruction, terminate this Lease, in which event neither the Lessor nor the Lessee will be bound to repair as provided sections 86 and 87, and the Lessee will instead deliver up possession of the Premises to the Lessor with reasonable expedition but in any event within 60 days after delivery of such notice of termination, and Rent will be apportioned and paid to the date upon which possession is so delivered up (but subject to any abatement to which the Lessee may be entitled under paragraph 88(a) by reason of the Premises having been rendered in whole or in part not reasonably capable of use and occupancy), but otherwise the Lessor or the Lessee as the case may be (according to the nature of the damage and their respective obligations to repair as provided in sections 86 and 87) will repair such damage with reasonable diligence.

ARTICLE 14: Trade Fixtures

Installation of Trade Fixtures

89. The Lessee has the right to place Trade Fixtures (including personal property, equipment and other temporary installations) in and upon the Premises, and fasten same to the Premises.

Removal of Trade Fixtures

90. The Lessee may remove all of its Trade Fixtures from the Premises at any time during the Term, if the Lessee is not in default under the Lease.

Removal of Trade Fixtures on Notice

91. The Lessee will at its own expense promptly remove from the Premises all Trade Fixtures or any moveable goods as the Lessor notifies the Lessee to be removed. The notice from the Lessor may be delivered upon, or up to ninety (90) days after, the expiration or earlier termination of the Lease.

Lessee Must Fix Any Damage Arising from Removal of Trade Fixtures

92. The Lessee will pay for all damage to the Premises caused by the installation or removal of any Trade Fixtures or movable goods and leave the remainder of the Premises in good and substantial repair and condition and free from all debris to the reasonable satisfaction of the Lessor.

Lessor May Remove

93. If the Trade Fixtures or moveable goods that were requested to be removed by the Lessor under section 91 are not removed from the Premises, then the Lessor may remove them and dispose of them in the Lessor's absolute discretion, the Lessor's expenses for which are recoverable against the Lessee as Additional Rent.

94. The Lessor will not be responsible to the Lessee for any damage, loss, or expense suffered by any of them as a result of the removal or disposal of the Trade Fixtures or any moveable goods.

Lessee Not in Possession

95. The Lessee will not be construed as being in possession of the Premises solely by its exercise of rights under this Article.

Survival of Article

96. This Article survives the expiration or earlier termination of this Lease.

ARTICLE 15: Insurance and Liability

Lessor's Insurance

97. The Lessor will be deemed to have insured (for which purpose it will be a co-insurer, if and to the extent that it will not have insured) the Building and all improvements and installations made by the Lessor in the Premises, except to the extent hereinafter specified, in respect of perils and to amounts and on terms and conditions that from time to time are insurable at a reasonable premium and that are normally insured by reasonably prudent owners of properties similar to the Building, as from time to time determined at reasonable intervals (but that need not be determined more often than annually) by insurance advisors selected by the Lessor, and whose written opinion will be conclusive. Upon the request of the Lessee from time to time the Lessor will furnish a statement as to the perils in respect of which and the amounts to which it has insured the Building. The Lessor may maintain such other insurance in such amounts and upon such terms as would normally be carried by a prudent owner.

Lessee's Insurance

98. The Lessee will take out and keep in force during the Term:

(a) comprehensive general liability (including bodily injury, death, and property damage) insurance on an occurrence basis with respect to the business carried on, in, or from the Premises and the Lessee's use and occupancy of them, of not less than three million (\$3,000,000) per occurrence, which insurance will include the Lessor as a named insured and will protect the Lessor in respect of claims by the Lessee as if the Lessor were separately insured; and

(b) insurance in such amounts as may be reasonably required by the Lessor in respect of fire and such other perils, including sprinkler leakage, as are from time to time defined in the usual extended coverage endorsement covering the Lessee's trade fixtures and the furniture and equipment of the Lessee and (except as to Insured Damage) all Improvements in the Premises, and which insurance will include the Lessor as a named insured as the Lessor's interest may appear with respect to the insured Improvements and provided that any proceeds recoverable in the event of loss to Improvements will be payable to the Lessor, but the Lessor agrees to make available such proceeds toward the repair or replacement of the insured property if this Lease is not terminated under any other provision of it.

99. If the Lessor so requires from time to time, the Lessee will take out and keep in force during the Term:

(a) tenant's fire legal liability insurance in an amount not less than the actual cash value of the Premises; and

(b) insurance upon all plate glass in or which forms a boundary of the Premises in an amount sufficient to replace all such glass.

100. All insurance required to be maintained by the Lessee under this Lease will be on terms and with insurers to which the Lessor has no reasonable objection and will provide that such insurers will provide to the Lessor thirty (30) days' prior written notice of cancellation or material alteration of such terms. The Lessee will furnish to the Lessor certificates or other evidence acceptable to the Lessor as to the insurance from time to time required to be effected by the Lessee and its renewal or continuation in force, either by means of a certified copy of the policy or policies of insurance with all amendments and

endorsements or a certificate from the Lessee's insurer that, in the case of comprehensive general liability insurance, will provide such information as the Lessor reasonably requires. If the Lessee fails to take out, renew, and keep in force such insurance the Lessor may do so as the agent of the Lessee and the Lessee will repay to the Lessor any amounts paid by the Lessor as premiums promptly upon demand.

101. The Lessee will deliver a certificate of insurance to ʔaḳam at any time or times upon request by ʔaḳam and such certificates of insurance shall include ʔaḳam as an additional insured and shall contain a cross-liability and severability of interest clauses as well as a waiver of subrogation in favour of ʔaḳam

Limitation of Lessor's Liability

102. The Lessee agrees that:

(a) the Lessor will not be liable for any bodily injury to or death of the Lessee or its employees, invitees, or licensees or any other person in, on, or about the Building or the Land, or loss or damage to any property belonging to the Lessee or its employees, invitees, or licensees or any other person in, on, or about the Building or the Land, or for any interruption of any business carried on in the Premises, and, without limiting the generality of the foregoing, in no event will the Lessor be liable:

(i) for any damage other than Insured Damage or for bodily injury or death of anyone resulting from fire, explosion, earthquake, flood, falling plaster, steam, gas, electricity, water, rain, snow, dampness, or leaks from any part of the Premises or from the pipes, appliances, electrical system, plumbing works, roof, subsurface, or other part or parts of the Building or Land or from the streets, lanes, and other properties adjacent to them;

(ii) for any damage, injury, or death caused by anything done or omitted to be done by the Lessee or any of its servants or agents or by any other tenant or person in the Building;

(iii) for the non-observance or the violation of any provision of any of the rules and regulations of the Lessor in effect from time to time or of any lease by another tenant of premises in the Building or any concessionaire, employee, licensee, agent, customer, officer, contractor, or other invitee of any of them, or by anyone else;

(iv) for any act or omission (including theft, malfeasance, or negligence) on the part of any agent, contractor, or person from time to time employed by it to perform janitorial services, security services, supervision, or any other work in or about the Premises or the Building;

(v) for loss or damage, however caused, to money, securities, negotiable instruments, papers, or other valuables of the Lessee or any of its servants or agents;

(vi) for the failure to supply interior climate control or elevator service when prevented from doing so by strikes, the necessity of repairs, any order or regulation of any body having jurisdiction, the failure of the supply of any utility required for the operation thereof, or any other cause beyond the Lessor's reasonable control; or

(vii) for any bodily injury, death, or damage to property arising from the use of, or any happening in or about, any elevator; and

(b) the Lessee releases and discharges the Lessor from any and all actions, causes of action, claims, damages, demands, expenses, and liabilities that the Lessee now or hereafter may have or incur arising from any matter for which the Lessor is not liable under paragraph (a), notwithstanding that negligence or other conduct of the Lessor or anyone for whose conduct the Lessor is responsible may have caused or contributed to such matter.

Limitation of Lessee's Liability

103. The Lessor releases the Lessee from all claims or liabilities in respect of any damage that is Insured Damage, to the extent of the cost of repairing such damage, but not from injury, loss, or damage that is consequential to it or that arises from it where the Lessee is negligent or otherwise at fault.

Indemnity of Lessor

104. Except as provided in section 103, the Lessee agrees to indemnify and save harmless the Lessor in respect of all claims for bodily injury or death, property damage, or other loss or damage arising from the conduct of any work by or any act or omission of the Lessee or any assignee, subtenant, agent, employee, contractor, invitee, or licensee of the Lessee, and in respect of all costs, expenses, and liabilities incurred by the Lessor in connection with or arising out of all such claims, including the expenses of any action or proceeding pertaining to them, and in respect of any loss, costs, expense, or damage suffered or incurred by the Lessor arising from any breach by the Lessee of any of its covenants and obligations under this Lease. This indemnity will survive the expiry or termination of this Lease.

ARTICLE 16: Insolvency and Other Defaults

Events of Default

105. The Lessee will be considered in default of this Lease if the Lessee:

- (a) becomes insolvent;
- (b) becomes bankrupt;
- (c) makes an assignment for the benefit of creditors; or
- (d) is a corporation and proceedings are begun to wind it up; a receiver, receiver manager, or trustee has been appointed; or more than 50% of the voting shares of the Lessee change ownership from the ownership at the effective date of this Lease, without the Lessor's prior written consent.

ARTICLE 17: Default and Cancellation

Defaults Allowing Immediate Cancellation

106. If the Lessee fails to pay any Rent or is deemed to be in default under section 105, then the Lessor may, by notice to the Lessee, immediately declare the Term ended.

Default Requiring Notice to Cancel

107. If the Lessee fails to perform or observe any covenant other than those referred to in section 106, or is otherwise in default under this Lease, then the Lessor may deliver a default notice to the Lessee.

108. If the Lessor delivers a default notice to the Lessee under this Article and the default is reasonably capable of being cured within thirty (30) days after the notice is delivered but the default is not cured within that time, then the Lessor may, by notice to the Lessee, immediately declare the Term ended.

109. If the Lessor delivers a default notice to the Lessee under this Article and default is not reasonably capable of being cured with thirty (30) days after the notice is delivered and the Lessee fails to:

- (a) Begin to cure the default promptly after the notice is delivered; or
- (b) Proceed to cure the default with all due diligence to completion,

then the Lessor may, by notice to the Lessee, immediately declare the Term ended.

110. If the Lessor delivers a default notice to the Lessee under this Article and the default is not cured within the time permitted, then, without relieving the Lessee of its covenants under this Lease and without limiting any other right of the Lessor, the Lessor may undertake the performance of any necessary work in order to complete such covenants of the Lessee. However, having commenced any work under this section, the Lessor has no obligation to complete such work.

111. Without limiting sections 32 to 34, the Lessor's expenses under this Article are Additional Rent. This section survives the expiration or earlier termination of this Lease.

Curing of Default

112. Any curing of a default by a Person other than the Lessee will be construed as a curing of that default by the Lessee.

End of Lease

113. If the Lessor declares the Term ended, then, except as otherwise expressly provided in this Lease, this Lease and everything contained in it and the Term will terminate without re-entry or any other act or legal proceedings and the Lessor may re-enter the Premises and possess and enjoy them as if the Lease had not been made. Notwithstanding a declaration by the Lessor that the Term has ended, the Lessor will be entitled to:

- (a) recover from the Lessee:
 - (i) the Rent then accrued or accruing,
 - (ii) all prospective losses and damages arising from the unexpired portion of the Term (had the Lease not ended) based on a present recovery for unpaid future Rent, and for any other consequential loss or damage, including losses incurred by or accruing to the Lessor arising from the Lessee's failure to carry on business, and
 - (iii) any other amounts allowed by law; and
- (b) enforce any right of action (including a right of action under any provisions that survive the expiration or earlier termination of this Lease) against the Lessee in respect of any prior breach of the Lessee's covenants.

Access to Inspect and Perform

114. The Lessee will provide the Lessor and the Lessor's officials, employees, servants, agents, contractors, and subcontractors convenient access by any means to the Premises at all reasonable times for the purposes of:

- (a) viewing the Premises;
- (b) conducting any test or investigation that the Lessor considers necessary to determine that the Lessee's covenants are being met;
- (c) determining the presence of Contaminants on the Premises; or
- (d) performing any of the Lessee's covenants as provided for in this Lease.

115. The right of access under section 114 requires reasonable notice to the Lessee, except in the case of an emergency, when no notice is required.

116. Without limiting sections 32 to 34, the Lessor's expenses under this Article are Additional Rent.

117. During the last three months of the Term, the Lessor may:

- (a) Display on the Premises the usual signs advertising the Premises for lease;
- (b) Allow representatives of the First Nation and prospective lessees, tenants, permittees or others, and their advisers, access to the Premises, with reasonable notice to the Lessee, for the purpose of viewing the Premises and performing any due diligence that a Person deems necessary,

as long as the activity does not unreasonably interfere with the Lessee's use and enjoyment of the Premises.

Remedies Cumulative

118. All rights and remedies of the Lessor are cumulative and are in addition to and do not exclude any other right or remedy provided in this Lease or otherwise allowed by law. All rights and remedies of the Lessor may be exercised concurrently.

Modified Terms for Holding Over

119. If the Lessee holds over, then notwithstanding any payment of Rent to the Lessor, the new tenancy created will be a tenancy from month to month, not a tenancy from year to year, at a Monthly Hold Over Rent (payable in advance on or before the first day of each month) of 1/4 of the Annual Rent paid for the original Term, and will be subject to the covenants in this Lease so far as they are applicable to a tenancy from month to month, and the Lessee will be liable for all costs, expenses, losses, and damages resulting or arising from the failure of the Lessee to deliver up possession of the Premises to the Lessor.

ARTICLE 18: Surrender of Possession

Inspection of Premises by Lessor and Lessee

120. At the commencement of this Lease, the Lessor and Lessee will jointly inspect the Premises and mutually agree on the condition of the Premises.

Premises to be Surrendered in Clean Condition

121. Without limiting section 92, upon expiry or earlier termination of the Lease, the Lessee will peaceably surrender to the Lessor the Premises in the condition the Premises were required to be kept under the Lease, free of all claims whatsoever and without the payment of any sum of money whatsoever and without notice from the Lessor, any right to notice to quit or vacate at that time being especially waived by the Lessee, any law, usage or custom to the contrary notwithstanding.

Lessee's Indemnity of Lessor

122. The Lessee indemnifies and saves harmless the Lessor and the Lessor's officials, employees, servants, agents, contractors, and subcontractors against and from all claims, demands, damages, losses (including economic losses or any diminution in the fair market value of the Premise, based on highest and best use of the Premises as opposed to the Permitted Uses), expenses (including legal fees of the Lessor on a solicitor client basis), or payments arising from:

- (a) a breach of any of the Lessee's covenants;
- (b) injury, death, damage or loss of any Person because of the actions or omissions of the Lessee or a Responsible Person; or
- (c) contaminants on the Premises as a result of the actions or omissions of the Lessee or a Responsible Person.

Survival of Article

123. This Article survives the expiration or earlier termination of this Lease.

Lease is Entire Agreement Between Parties

124. This Lease is the entire agreement between the Parties with respect to the subject matter of this Lease and supersedes and revokes all previous negotiations, arrangements, letters of intent, offers to lease and representations. For further certainty, it is the provisions of this Lease that apply to the Term.

125. The Lessor, the Lessor's officials, employees, servants, agents, contractors, or subcontractors, ʔaǰam, the Band Council, or any member of ʔaǰam has not made any representations or warranties with respect to, and the Lessee has not relied upon any such person with regard to:

- (a) the condition of the Premises;
- (b) compliance of the Premises with any Laws; or
- (c) the presence of Contaminants on the Premises.

ARTICLE 19: Delivery

General Requirements

126. All deliveries of Rent, notices, or otherwise must be made in accordance with the addresses set out for the Lessor and Lessee in subsections 1(a) and (b).

Delivery

127. If any question arises as to the date on which payment, notice or demand was made, it will be deemed to have been made:

- (a) (except in the case of Rent), if sent by fax before 3:00 pm Pacific time, on the day of transmission;
- (b) (except in the case of Rent), if sent by fax after 3:00 pm Pacific time, on the next business day;
- (c) if sent by mail, on the sixth day after it was mailed; or
- (d) if sent by any other means than fax or mail, the day it was received.

128. If the postal service is interrupted, or threatened to be interrupted, then any delivery will only be sent by means other than mail.

Change of Contact Information

129. Any change in contact information will take effect thirty (30) days after the notice is delivered to the other Party.

ARTICLE 20: Dispute Resolution

130. The Parties agree that, both during and after the performance of their responsibilities under this Lease, each of them will make bona fide efforts to resolve any disputes arising between them by amicable negotiations and provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate those negotiations.

131. The Parties agree that if they cannot resolve a dispute arising out of or in connection with this Lease, or in respect of any legal relationship associated with it or from it, the Parties will attempt to resolve the dispute pursuant to Part 8 of the *ʔaǰam Amended Land Code*.

ARTICLE 21: General Provisions

Lessee's Covenants at Own Expense

132. All of the Lessee's covenants are at its own expense.

Joint and Several

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

All Terms are Covenants

134. All agreements, terms, conditions, covenants, provisions, duties, and obligations to be performed or observed by the Lessee under this Lease are deemed to be covenants.

Survival of Obligations

135. If a provision states that it survives the expiration or earlier termination of this Lease, then the survival of the provision is only to the extent required for the performance of any covenants pertaining to it, and the Lessee's entry on the Premises after the expiration or earlier termination of this Lease will only be at such times and upon such terms and conditions as the Lessor may from time to time specify in writing.

Governing Law

136. This Lease will be governed by, and is to be interpreted in accordance with, the applicable Laws of Canada, British Columbia and Québec.

No Modifications

137. No modifications of this Lease are effective unless in writing and executed in the same manner as this Lease.

Time is of the Essence

138. Time is of the essence in this Lease.

No Presumption

139. No ambiguity in any of the terms of this Lease will be interpreted in favour of any Party.

Severability

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

Binding on Successors

141. This Lease will be for the benefit of, and be binding upon, the heirs, executors, administrators, successors, assigns, and other legal representatives, as the case may be, of each Party.

No Waiver

142. No condoning, excusing, or overlooking by the Lessor of any default of the Lease operates as a waiver of, or otherwise affects the rights of, the Lessor in respect of any continuing or subsequent default.

143. No waiver will be inferred from anything done or omitted to be done by the Lessor, but only from an express waiver in writing.

No Assumption of Liability by Lessor

144. No consent or absence of consent by the Lessor will in any way be an assumption of responsibility or liability by the Lessor for any matter subject to or requiring the Lessor's consent.

Not a Joint Venture

145. The Parties acknowledge and agree that nothing in this Lease will be construed as making the Lessor an agent, partner, joint venture or other such associate with the Lessee or as creating any relationship between the Parties other than the relationship of Lessor and Lessee.

Corporate Authority

146. If the Lessee is a corporate body, then the Lessee warrants and represents to the Lessor that the Lessee:

- (a) has the corporate authority under its documents of incorporation to enter into this Lease and to perform all of the Lessee’s covenants contained in this Lease;
- (b) is a company duly incorporated under the Laws of British Columbia;
- (c) is not a reporting company; and
- (d) is a valid and subsisting company in good standing with respect to the filing of annual reports with the British Columbia corporate registry.

147. If applicable, and without limiting Articles 7 and 8, the Lessee will remain in good standing with respect to the filing of annual reports with the British Columbia corporate registry.

IN WITNESS WHEREOF the Parties have executed this Lease, by their signatures here given, and agree to be bound by the terms of this Lease effective the date first written on page 1.

Executed in the Presence of:	)	For ᑲᓱᓂᓂ:
)	
_____)	_____
Witness Signature	)	ᑲᓱᓂᓂ Authorized Representative
)	
_____)	_____
Printed Name	)	Printed Name:
)	
_____)	
Address)	

Executed in the Presence of:	)	For
)	
_____)	_____
Witness Signature	)	Authorized Representative
)	
_____)	_____
Printed Name	)	Printed Name:
)	
_____)	
Address)	

Schedule A: Definitions

“Additional Rent” means the amounts set out in sections 32 to 34.

“Alterations” means any substantial alterations, restorations, renovations, relocations, reductions, additions, expansions, reconstructions, removals, replacements, modifications, or improvements to the Premises.

“Annual Rent” means _____ per year, for the first year of this Lease.

“Appendix” means an attachment to this Lease labelled as “Appendix”, which is attached for information purposes only and does not form part of the agreement between the Parties.

“Appraiser” means an appraiser accredited by the Appraisal Institute of Canada or its successor.

“*ᑭᐱᑦᐱᑦᐱᑦ Amended Land Code*” means the Land Code ratified by the ᑭᐱᑦᐱᑦᐱᑦ on July 1, 2014, in accordance with the *Framework Agreement on First Nation Land Management* and the *First Nations Land Management Act*, S.C. 1999, c.24.

“Authority” means any one, or any combination of Federal, Provincial, territorial, municipal, local and other governmental and quasi governmental authorities, departments, commissions, and boards having jurisdiction, including the Band Council and any utility company lawfully acting under its statutory power.

“Band Council” means the ᑭᐱᑦᐱᑦᐱᑦ Council within the meaning of the *Indian Act*, or any successor to the Band Council.

“Basic Terms” means those terms set out in Section 1, some of which are more particularly defined in this Schedule A.

“Building” means all buildings, improvements, equipment, fixtures, property and facilities from time to time located at _____, as from time to time altered, expanded or reduced by the Lessor in its sole discretion.

“Common Areas and Facilities” means those portions of the Buildings’ areas, buildings, improvements, facilities, utilities, equipment and installations in or forming part of the Buildings which from time to time are not designated or intended by the Lessor to be leased to tenants of the Buildings including, without limitation, structural elements including bearing walls, exterior weather walls, and other installation or services as well as the structures housing the same, fire prevention and communication systems, roofs, entrances and exits, parking areas, driveways, loading docks and area, storage, mechanical, plumbing, drainage, and electrical rooms, general signs, lighting facilities, areas above and below leasable premises and not included within leasable premises, washrooms (other than washrooms within the Premises or within other premises leased to tenants), security and alarm equipment, grassed and landscaped areas, retaining walls and maintenance, cleaning and operating equipment serving the Buildings; and those lands, areas, buildings, improvements, facilities, utilities, equipment and installations which serve or are for the useful benefit of the Buildings, the tenants of the Buildings or the Lessor and those having business with them, whether or not located within, adjacent to or near the Buildings and which are designated from time to time by the Lessor as part of the Common Areas and Facilities.

“Contaminants” means and includes any contaminant, toxic substance, hazardous substance, hazardous waste, hazardous recyclable, ozone-depleting substance, halocarbon, pesticide, deleterious substance, corrosive, special waste or waste of any kind, or any similar substance, and any substance defined or referred to as such under any Environmental Laws, or prohibited, controlled or regulated under Environmental Laws.

“Environmental Laws” means any statutes, laws, regulations, orders, bylaws, standards, guidelines, permits, and other lawful requirements of any governmental authority having jurisdiction over the Premises, or adjacent Lands, now or hereafter in force relating in any way to the environment, health, occupational health and safety, or transportation of dangerous goods, including principles of common

law and equity.

“Effective Date” means September 1, 2010.

“Fair Market Rent” means the amount due and payable pursuant to sections 38 to 45.

“First Nation” means ᑭᐱᑭᐱᑭ, a band within the meaning of the *Indian Act*, or any successor to the First Nation pursuant to a federal statute.

“Indian Act” means the *Indian Act*, R.S.C. 1985, c.I-5, and any regulations made under it, all as amended or replaced from time to time.

“Improvements” means all fixtures, improvements, installations, alterations, and additions now or from time to time hereafter made, erected, or installed, whether by the Lessee, the Lessor or anyone else, in the Premises or in other premises in the Building with the exception of trade fixtures and furniture and equipment not of the nature of fixtures, but includes all partitions however fixed (including movable partitions) and includes all wall-to-wall carpeting with the exception of such carpeting where laid over vinyl tile or other finished floor and affixed so as to be readily removable without damage.

“Insurance” means any insurance referred to in section 97.

“Insured Damage” means that part of any damage occurring to any portion of the Premises for which the Lessor is responsible, of which the entire cost of repair is actually recoverable by the Lessor under a policy of insurance in respect of fire and other perils from time to time effected by the Lessor, or, if and to the extent that the Lessor has not insured and is deemed to be a co-insurer or self-insurer under section 97, would have been recoverable had the Lessor effected insurance in respect of perils, to amounts and on terms for which it is deemed to be insured.

“Lands” means those lands situate, lying, and being in the Reserve, and more particularly known and described as:

Lot _____, CLSR Plan No. _____.

“Laws” means all laws, statutes, regulations, by-laws, rules, codes, guidelines, approvals, permits, licences, or other authorizations, standards, declarations, notices, ordinances, requirements, and directions of any Authority in force from time to time.

“Lease” means this Lease agreement, and includes any Schedules, but does not include any Appendices.

“Monthly Hold Over Rent” means the amount due and payable pursuant to section 119. For clarity, Monthly Hold Over Rent is 1/4 of the Annual Rent (i.e. \$6,000.00 per month).

“Normal Business Hours” means from 8:30 am to 4:30 pm Monday through Friday, except on holidays and special occasions determined by the First Nation.

“Party” means a party to this Lease and “Parties” means all of them.

“Permitted Uses” means those uses set out in Article 3.

“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 quasigovernmental agency, board, commission or authority, organization or any other form of entity howsoever designated or constituted, or any group, combination, or aggregation of any of them.

“Premises” means the portion of the Building described in Schedule B.

“Renewal Period”, if created, means the agreed upon new term that commences after the original Term expires, and is always subject to written consent by the Lessor, which consent can be unreasonably and arbitrarily withheld.

“Rent” means Additional Rent, Monthly Hold Over Rent, Annual Rent, Fair Market Rent, Parking Rent, FNGST and any interest on any of them.

“Reserve” means _____, which has been set apart for the use and benefit of the First Nation.

“Responsible Person” means the Lessee, its officers, directors, invitees, agents, employees, contractors and subcontractors or any Person over whom the Lessee may reasonably be expected to exercise control or is in law responsible.

“Schedule” means an attachment to this Lease labelled as “Schedule”, which forms part of and is integral to the agreement between the Parties.

“Taxes” includes taxes, trade licences, rates, levies, duties, and assessments of any kind, whether levied, imposed, rated, or assessed by any Authority.

“Term” means the _____-year period of time commencing on the 1st day of _____, and expiring on the _____ or as extended by a Renewal Period.

“Trade Fixtures” means trade fixtures as determined at common law and, for greater certainty, includes the personal chattels installed during the Term by or on behalf of the Lessee in, on, or which serve the Premises for the sole purpose of the Lessee carrying-on the Permitted Uses in the Premises.

“Registry” means the First Nations Land Registry, or any successor or replacement registry with registration jurisdiction over the Lands.

Schedule B: PREMISES

Schedule C:

ᑭᑭᑭᑭ BAND COUNCIL RESOLUTION CONSENT TO LEASE AGREEMENT

WHEREAS in 1996 fourteen First Nations and Canada signed the *Framework Agreement on First Nation Land Management (Framework Agreement)*, which established a process by which each of these communities could consider the option of assuming control over their reserve lands and resources by developing a Land Code and a community approval process, concluding an Individual Agreement with Canada, and ratifying the Land Code and Individual Agreement through a vote of the eligible members;

AND WHEREAS in 1999 Canada passed the *First Nations Land Management Act* to ratify the *Framework Agreement*;

AND WHEREAS in 2001 the fourteen First Nations and Canada agreed to amend the *Framework Agreement* to make it possible for additional First Nations to become signatories of the *Framework Agreement*;

AND WHEREAS ᑭᑭᑭᑭ signed an Individual Agreement with Canada on June 18, 2014;

AND WHEREAS the members of ᑭᑭᑭᑭ voted in favour of the *St. Mary's Indian Band Land Code* at a ratification vote held on April 14-16, 2014 and the *St. Mary's Indian Band Land Code* came into effect on July 1, 2014;

AND WHEREAS the members of ᑭᑭᑭᑭ voted in favour of amendments to the *St. Mary's Indian Band Land Code* at a Meeting of Members vote held in accordance with section 48.1 and 13.1 to 13.9 of the *St. Mary's Indian Band Land Code* on January 7, 2016, which has become the *ᑭᑭᑭᑭ Amended Land Code, 2016*;

AND WHEREAS the Council of ᑭᑭᑭᑭ has authority pursuant to section 32.1 of the *ᑭᑭᑭᑭ Amended Land Code* to grant interests in ᑭᑭᑭᑭ community lands;

THEREFORE BE IT RESOLVED THAT the Council of ᑭᑭᑭᑭ (***choose from one of the following options***)

A. consents to the attached Lease Agreement that grants to [Lessee's Name], a right to exclusive possession over the Lease Area subject to the terms of the lease, for the purpose of [enter details regarding the purpose of the lease]

FURTHER IT BE RESOLVED THAT the Council of ᑭᑭᑭᑭ authorizes [Name of Lands Department personnel] to execute the attached Lease Agreement on behalf of ᑭᑭᑭᑭ.

OR

B. conditional on [name of applicant]:

- [enter condition]
- [enter condition]; and
- providing to the ᑭᑭᑭᑭ Lands Department the following documentary proof that such conditions have been complied with by the following dates:
 - [Documentary Proof] by [date];
 - [Documentary Proof] by [date];
 - [Documentary Proof] by [date];

consents to the attached Lease Agreement that grants to [Lessee's Name], a right to exclusive possession over the Lease Area subject to the terms of the lease, for the purpose of [enter details regarding the purpose of the lease]

FURTHER IT BE RESOLVED THAT the Council of ?aqam authorizes [Name of Lands Department personnel] to execute the attached Lease Agreement on behalf of ?aqam after

- [name of applicant] has complied with the conditions set out in this Band Council Resolution;

AND / OR

- the conditions set out in this Band Council Resolution have been added as conditions within the [Licence / Permit]

OR

C. does not consent to the attached Lease Agreement that grants to [Applicant's Name], a right to exclusive possession over the Lease Area subject to the terms of the lease, for the purpose of [enter details regarding the purpose of the lease]

SCHEDULE E: STANDARD FORM LICENCE AGREEMENT

Table of Contents

Article 1 – Definitions and Interpretation..... **574**
Article 2 – Licence and Term..... **576**
Article 3 – Fees and Taxes..... **576**
Article 4 – Covenants of Licensee..... **577**
Article 5 – Limitations **579**
Article 6 – Insurance..... **579**
Article 7 – Assignment and Transfer **580**
Article 8 – Termination **580**
Article 9 – Notice **581**
Article 10 – Dispute Resolution **582**
Article 11 – Representations and Warranties **582**
Article 12 – Miscellaneous..... **582**

THIS AGREEMENT is dated for reference [date] and is made under the *ᑭᐱᑭᐱᐱ Amended Land Code*.

BETWEEN:

ᑭᐱᑭᐱᐱ, a “band” within the meaning of section 2(1) of the *Indian Act*, with an office at
7470 Mission Road
Cranbrook, British Columbia
V1C 7E5

(hereinafter “ᑭᐱᑭᐱᐱ”)

AND:

[NAME OF LICENSEE – See Policy 6-2 for requirements]

[Mailing Address]

[City, Province]

[Postal Code]

(hereinafter the “Licensee”)

WHEREAS:

- A. the legal title to ᑭᐱᑭᐱᐱ lands remains vested in Her Majesty the Queen in Right of Canada;
- B. Sections 18(1)(b), 18(2)(b) and 18(3) of the *First Nation Land Management Act* provide that a First Nation that has entered into an Individual Agreement with Canada and adopted a land code has the power to grant interests or right in and licences in relation to their land in accordance with their land code and the legal capacity necessary to enter into contracts to exercise this power, and that the Council of the First Nation has the power to exercise these powers for the use and benefit of the First Nation;
- C. ᑭᐱᑭᐱᐱ signed an Individual Agreement with Canada on June 18, 2014;
- D. The members of ᑭᐱᑭᐱᐱ voted in favour of the *St. Mary’s Indian Band Land Code* at a ratification vote held on April 14-16, 2014 and the *St. Mary’s Indian Band Land Code* came into effect on July 1, 2014;
- E. In 2016, the *St. Mary’s Indian Band Land Code* was amended when the members of ᑭᐱᑭᐱᐱ voted in favour of the *ᑭᐱᑭᐱᐱ Amended Land Code* at a Meeting of Members;
- F. the Council of ᑭᐱᑭᐱᐱ may grant interests in ᑭᐱᑭᐱᐱ lands pursuant to section 32.1 of the *ᑭᐱᑭᐱᐱ Amended Land Code*;
- G. the Licensee made an application to the ᑭᐱᑭᐱᐱ Lands Department on [date] requesting to [use / occupation / taking of resources from] ᑭᐱᑭᐱᐱ lands for the purpose of [enter purpose];
- H. the Council of ᑭᐱᑭᐱᐱ, by Band Council Resolution that is attached to this Agreement and entitled “**Schedule B: ᑭᐱᑭᐱᐱ Band Council Resolution Consent to Licence**”, consents to this Agreement and authorizes [enter name] to execute this Agreement on behalf of ᑭᐱᑭᐱᐱ; and

- I. the Parties wish to set out their respective rights and obligations with respect to the Licensee's use of ʔaǰam lands,

NOW, THEREFORE, in consideration of the Terms, conditions and agreements contained herein, the Parties hereby acknowledge, covenant and agree as follows:

ARTICLE 1 – DEFINITIONS AND INTERPRETATION

Definitions

1. In this Agreement,

“Agreement” means this Licence Agreement;

ʔaǰam” means ʔaǰam who is a party to this Agreement, formerly known as the St. Mary's Indian Band, within the meaning of the *Indian Act* for whose use and benefit in common ʔaǰam lands have been set apart by Canada;

ʔaǰam lands” means:

- (a) Kootenay Indian Reserve No. 1 (07422);
- (b) Isidore's Ranch No. 4 (07423);
- (c) Cassimayooks No. 5 (07424);
- (d) Bummer's Flat No. 6 (07425); and
- (e) lands set apart by Canada in the future as lands reserved for the use and benefit of ʔaǰam lands, within the meaning of subsection 91(24) of the *Constitution Act, 1867* and section 2(1) of the *Indian Act*;

“Canada” means Her Majesty the Queen in Right of Canada;

“Commencement Date” means that date referenced on page 1 of this Agreement;

“ʔaǰam community lands” means those ʔaǰam lands in which all ʔaǰam members have a common interest;

“Environmental Law” means any law, by-law, regulation or policy of Canada or ʔaǰam relating to environmental matters, including: the *Canadian Environmental Protection Act, Species at Risk Act, Fisheries Act, Migratory Birds Convention Act*, and the ʔaǰam Environmental Management Plan;

“Fees” means the fees set out in Article 3 of this Agreement;

“Hazardous Substances” means any contaminant, pollutant, dangerous substance, noxious substance, toxic substance, hazardous waste, flammable or explosive material, radioactive material and any other substance or material regulated or controlled under or pursuant to any Environmental Law;

“Improvement” means any building, fixture, structure or similar thing constructed, placed or affixed on, in or to the Licence Area or on, in or to another improvement and included a manufactured home;

“Licence Area” means that part or those parts of ʔaǰam lands described as [enter description of lands] and shown outlined by a bold red line on Schedule A to this Agreement entitled “**Schedule A: Licence Area**”;

“Person” includes a corporation, partnership, society, First Nations Indian Band or Tribal Council and the personal or other legal representatives of that person;

“Province” means Her Majesty the Queen in Right of the Province of British Columbia;

“Taxes” means all taxes imposed, levied, assessed or assessable under the *St. Mary’s Indian Band Property Taxation Law, 2008*, and all penalties, interest and costs added to taxes under that Law; and

“Term” means the period of time set out in Article 2 of this Agreement.

Interpretation

2. In this Agreement,

(a) the use of the word “must” denotes an obligation that, unless this Agreement provides to the contrary, must be carried out as soon as practicable after this Agreement comes into effect or the event that gives rise to the obligation occurs;

(b) unless it is otherwise clear from the context, the use of the word “including” means “including, but not limited to”, and the use of the word “includes” means “includes, but is not limited to”;

(c) headings and subheadings are for convenience only, do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any section of this Agreement;

(d) a reference to a statute includes every amendment to it, every regulation made under it and any law enacted in substitution for it or in replacement of it;

(e) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular; and

(f) unless it is otherwise clear from the context, the use of the masculine includes the feminine, and the use of the feminine includes the masculine.

3. Each Schedule to and Recital in this Agreement is an integral part of, and forms part of, this Agreement.

4. Where any law or regulation of Canada or the Province or any other ʔaǰam law or by-law applies to any matter covered by this Agreement, compliance with this Agreement does not relieve the person from also complying with the sections of the other applicable laws, by-law or regulations.

5. Wherever this Agreement provides that an action must be taken, a consent or approval must be obtained, or a determination must be made, ʔaǰam or the Licensee, as the case may be, must act reasonable in taking that action, deciding whether to provide that consent or approval, or making that determination.

6. Wherever this Agreement requires ʔaǰam or the Licensee to act reasonably, ʔaǰam or the Licensee, as the case may be, must not be required to act in a manner that is contrary to or inconsistent with any law, by-law or regulation of Canada, the Province or ʔaǰam.

7. Wherever this Agreement requires the Licensee to refrain from some action, the Licensee must not permit any person who enters upon or uses the Licence Area to take that action on behalf of the Licensee.

ARTICLE 2 – LICENCE AND TERM

Licence

8. On the terms and conditions set out in this Agreement, ᑭᓄᓐ authorizes the Licensee a non-exclusive right, privilege, licence and liberty and permission to enter on and [use / occupy / take resources from] the Licence Area, for the duration of the Term, for the sole purpose of:

- (a) [clearly define the allowable purposes / uses here]
- (b) [NOTE: If the allowable uses include the taking of resources identify the specific resource that may be taken and the quantity of that resource that may be taken, as well as any conditions or restrictions on the manner of taking of that resource]

9. The Licensee must not use, occupy or take resources from ᑭᓄᓐ lands except:

- (a) in accordance with the terms and conditions set out in this Agreement; or
- (b) with the written consent of ᑭᓄᓐ.

10. Subject to compliance with the provisions of this Agreement, the rights granted under this Agreement may be exercised by the Licensee, or on the Licensee's behalf by its agents, servants, representatives, workers, employees, consultants or contractors.

Term

11. The Term of this Agreement commences on the Commencement Date and expires on the earlier of:

- (a) [date]; or
- (b) the date that one of the Parties terminates this Agreement pursuant to Article 8.

ARTICLE 3 – FEES AND TAXES

12. **(Choose one of the following)**

The Fee for the Term is \$[XXXXX], the receipt of which ᑭᓄᓐ acknowledges.

OR

The Fee for the Term is \$[XXXXX] and ᑭᓄᓐ acknowledges the receipt of \$[XXXX] from the Licensee. The Licensee must pay, when due, the remainder of the Fee to ᑭᓄᓐ by cheque delivered by hand or registered mail to the ᑭᓄᓐ Lands Department at the address set out in this Agreement for notice, as follows:

- (a) \$[XXXX] due on [Date];

- (b) \$[XXXX] due on [Date];
- (c) \$[XXXX] due on [Date]; and
- (d) \$[XXXX] due on [Date].

13. The Licensee must

- (d) pay, when due, all Taxes to ᐅᐱᑖᐱ;
- (e) pay, when due, all charges for electricity, gas, water and other utilities supplied to the Licence Area for use by the Licensee;
- (f) deliver to ᐅᐱᑖᐱ, immediately and upon demand, receipts or other evidence of the payment of charges required to be paid under this Agreement.

ARTICLE 4 – COVENANTS OF LICENSEE

Compliance with Laws

14. The Licensee must observe, abide by, and comply with all applicable laws, by-laws and regulations of Canada, the Province or ᐅᐱᑖᐱ in relation to the Licensee's [use / occupation / taking of resources from] the Licence Area, including laws, by-laws and regulations of Canada, the Province or ᐅᐱᑖᐱ relating in any way to Hazardous Substances, Environmental Laws, and human health and safety.

Maintenance of Licence Area

15. The Licensee must, in respect of the use of the Licence Area by the Licensee or any person who enters upon the Licence Area as a result of the Licensee's [use / occupation / taking of resources from] the Licence Area, keep the Licence Area and the Improvements in a safe, clean and sanitary condition free of waste, rubbish, debris and other similar material, and at ᐅᐱᑖᐱ' s written request, must rectify any failure to comply with this covenant by making the Licence Area and the Improvements safe, clean and sanitary free of waste, rubbish, debris and other similar material.

16. The Licensee must not commit any damage to the Licence Area or Improvements and where the Licensee does commit damage to the Licence Area or Improvements, the Licensee must repair such damage at the cost of the Licensee.

Hazardous Substances

17. The Licensee must not use the Licence Area:

- (a) for the storage or disposal of a Hazardous Substance; or
 - (b) in any other manner whatsoever which causes or contributes to a Hazardous Substance being added to or released on, to or under the Licence Area or into the environment from the Licence Area,
- unless

(c) such storage, disposal, release or other use does not result in the Licensee's breach of any other term of this Agreement, including the Licensee's obligation to comply with all laws relating in any way to Hazardous Substances, the environment, human health and safety; and

(d) ʔaḡam has provided the Licensee with written consent to such storage, disposal, release or other use.

18. In the event of any spill or discharge of a Hazardous Substance upon or relating to ʔaḡam lands caused solely or contributed to by the Licensee or its agents, servants, representatives, workers, employees, consultants or contractors, the Licensee must as soon as is practical notify ʔaḡam in writing setting out the:

- (a) type of Hazardous Substance that has spilled or discharged;
- (b) date, time and location of the spill or discharge of the Hazardous Substance;
- (c) circumstances surrounding the spill or discharge of the Hazardous Substance; and
- (d) Licensee's plan for complying with the requirements set out in section 1919.

19. If the event that a spill or discharge of a Hazardous Substance upon or relating to ʔaḡam lands is caused solely or contributed to by the Licensee or its agents, servants, representatives, workers, employees, consultants or contractors, the Licensee must immediately and at its sole cost:

- (a) remove that Hazardous Substance from ʔaḡam lands and remediate the portion of ʔaḡam lands affected by the spill or discharge;
- (b) promptly restore the portion of ʔaḡam lands affected by the spill or discharge of the Hazardous Substance to substantially the same condition that the portion of ʔaḡam lands was in prior to the spill or discharge of the Hazardous Substance; and
- (c) upon the completion of the requirements in paragraphs (a) and (b), provide ʔaḡam with a Phase II Environmental Site Assessment prepared by a qualified and independent professional who has been approved by ʔaḡam.

20. The Licensee must:

- (a) on the expiry of this Agreement; and
- (b) at any time requested by ʔaḡam following a breach of this Agreement related to Hazardous Substances,

promptly remove from the Licence Area all Hazardous Substances stored, or disposed of, on the Licence Area, or which have otherwise been added or released on, to or under the Licence Area:

- (c) by the Licensee; or
- (d) as a result of the Licensee's [use / occupation / taking of resources from] the Licence Area,

save and except only to the extent that ʔaḡam has given a prior written approval expressly allowing specific Hazardous Substances to remain on the Licence Area following the expiry of the Term.

Historical, Anthropological, Archeological and Cultural Materials

21. Upon discovering any historical, anthropological, archeological or cultural material on or under the Licence Area, the Licensee must immediately:

- (a) stop all actions related to their operations that may disturb the historical, anthropological, archeological or cultural material; and
- (b) notify ᐱᓄᓂ.

22. The Licensee must not resume their operations until provided consent to do so by ᐱᓄᓂ.

Access to Licence Area

23. The Licensee must permit ᐱᓄᓂ and ᐱᓄᓂ's agents, servants, representatives, workers, employees, consultants or contractors to enter the Licence Area at any time to inspect the Licence Area and Improvements, including to test and remove soil, groundwater and other materials and substances, where the inspection is necessary or advisable in ᐱᓄᓂ'ᓂ opinion to determine whether the Licensee has complied with this Agreement.

ARTICLE 5 – LIMITATIONS

Third Party Interests and Licences

24. The Licensee acknowledges that:

- (a) other persons may hold or acquire rights to the use of the Licence Area in accordance with the *ᐱᓄᓂ Amended Land Code* and that such rights may exist as of the Commencement Date or they may be granted or acquired subsequent to the Commencement Date and that they may affect the Licensee's [use/occupation/taking of resources from] the Licence Area; and
- (b) the Licensee has no right to compensation from ᐱᓄᓂ and releases ᐱᓄᓂ from all claims, actions, causes of action, suits, debts and demands that the Licensee has, or may at any time in the future have, against ᐱᓄᓂ arising out of any conflict between the Licensee's use of the Licence Area under this Agreement and any use of, or impact on the Licence Area arising from the exercise or operation of the non-exclusive interests, rights and privileges that Council may grant to a person in accordance with the *ᐱᓄᓂ Amended Land Code*.

Improvements

25. The Licensee must not construct, place or affix any Improvement on ᐱᓄᓂ lands unless the Licensee first obtains written consent from ᐱᓄᓂ to do so.

26. The Licensee must not remove or permit the removal of any Improvement on ᐱᓄᓂ lands unless the Licensee first obtains written consent from ᐱᓄᓂ to do so.

27. Any interest that the Licensee has to an Improvement ceases to exist and becomes the property of ᐱᓄᓂ upon the expiry of this Agreement, except where the removal of that Improvement is expressly permitted by the written consent of ᐱᓄᓂ.

ARTICLE 6 – INSURANCE

28. The Licensee must:

- (a) maintain Commercial General Liability Insurance in an amount not less than [\$2,000,000.00], inclusive per occurrence, insuring against liability for personal injury, bodily injury (including death) and property damage, including coverage for all accidents or occurrences on the Licence Area or the Improvements. Such insurance policy must include a cross liability clause, provision to provide ᐱᐱᐱ with thirty (30) days written notice of any material change or cancellation of the policy, and name ᐱᐱᐱ as an additional insured;
- (b) ensure that all insurance required under paragraph (a) that is maintained by the Licensee is primary insurance and does not require the sharing of any loss by any of ᐱᐱᐱ' s insurers;
- (c) within ten (10) business days of the Commencement Date, provide ᐱᐱᐱ evidence of the insurance required under paragraph (a) in the form of a completed "Province of British Columbia Certificate of Insurance";
- (d) within ten (10) business days before the date that the insurance policy required under paragraph (a) is set to expire or is cancelled, provide ᐱᐱᐱ evidence of a new policy or a renewal of the policy that meets the insurance requirements under paragraph (a) in the form of a completed "Province of British Columbia Certificate of Insurance";
- (e) at ᐱᐱᐱ' s request, provide ᐱᐱᐱ with a certified copy of the insurance policy required under paragraph (a); and
- (f) maintain and pay for any additional insurance that the Licensee is required by law to carry.

ARTICLE 7 – ASSIGNMENT AND TRANSFER

29. The Licensee must not sub-licence, assign, mortgage or transfer this Agreement, in whole or in part, or permit any person to use, occupy or take resources from ᐱᐱᐱ lands, without ᐱᐱᐱ' s prior written consent, which consent ᐱᐱᐱ may withhold.

30. The grant of a sub-licence, assignment or transfer of this Agreement does not release the Licensee from any obligation to observe and perform all the provisions of this Agreement on the Licensee' s part to be observed and performed.

31. This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.

ARTICLE 8 – TERMINATION

32. If:

- (a) the Licensee:
 - (i) defaults on, or fails to comply with, a condition or obligation under this Agreement and such default or failure to comply continues for more than thirty (30) days after ᐱᐱᐱ gives the Licensee written notice of the default or failure to comply;

(ii) in the opinion of ʔaǰam, fails to make diligent use of the Licence Area for the purposes set out in this Agreement, and this failure continues for more than thirty (30) days after ʔaǰam gives the Licensee written notice of the failure;

(iii) fails to maintain good standing with ʔaǰam in relation to any other land interest;

(iv) becomes insolvent or bankrupt; or

(v) has a change in legal capacity; or

(b) ʔaǰam requires the Licence Area for its own use and in ʔaǰam's opinion it is in ʔaǰam's interest to cancel this Agreement and ʔaǰam has provided the Licensee with one hundred and eighty (180) days written notice of such opinion,

this Agreement will, at the option of ʔaǰam and on written notice to the Licensee, terminate and the Licensee's right to [use/occupy/take resources from] the Licence Area will cease.

33. If Council determines this licence has been issued by fraud, Council may unilaterally cancel this licence in accordance with section 31.2 of *ʔaǰam Amended Land Code* and the ʔaǰam Lands Management Manual, Policy 7-1: Correcting and Cancelling Interests and Licences Granted In Error, by Mistake, or by Fraud.
34. If Council unilaterally cancels this licence pursuant to section 32, ʔaǰam will not be liable to any third party to whom the licensee has granted a subsidiary interest in this licence.
35. The Licensee may cancel this Agreement by providing ʔaǰam with one hundred and eighty (180) days written notice of such cancellation and obtaining consent from ʔaǰam to the cancellation.

ARTICLE 9 – NOTICE

36. All notices or other communications required under this Agreement will be made in writing and delivered either in person or by way of registered mail to the addresses set forth below:

(a) if to ʔaǰam:

[Name of Contact]
ʔaǰam
7470 Mission Road
Cranbrook, BC V1C 7E5

(b) if to Licensee:

[Name of Contact]
[Name of Licensee]
[Address]
[City, Province] [Postal Code]

and any such notice will be deemed to be received if delivered in person, on the day of delivery, and if mailed, 5 business days after the time of mailing.

37. A party may change their address for notice by giving notice to the other party of such change.

ARTICLE 10 – DISPUTE RESOLUTION

38. If a dispute arises under this Agreement, the Parties will make all reasonable efforts to resolve the dispute through informal discussions, mediation or negotiation within thirty (30) days of the dispute arising, and the Parties will provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.

39. If a dispute under this Agreement cannot be resolved under section 38, either Party may refer the dispute for resolution to the Office of the Adjudicator in accordance with Part 8 of the *ᐱᓄᓄᓄ ᐱᓄᓄᓄ ᐱᓄᓄᓄ ᐱᓄᓄᓄ*.

ARTICLE 11 – REPRESENTATIONS AND WARRANTIES

40. ᐱᓄᓄᓄ has not made, and the Licencee does not rely upon, any representation or warranty from ᐱᓄᓄᓄ as to:

(e) the suitability of the Licence Area for any particular use, including the use permitted by this Agreement;

(f) the condition of the Licence Area (including surface and groundwater), environmental or otherwise;

(g) the general condition and state of utilities or other systems on or under the Licence Area which serve the Licence Area; or

(h) the application of any laws or regulations of Canada or the Province that apply to the Licence Area.

41. The Licensee has been provided a reasonable opportunity to inspect the Licence Area and investigate those matters set out in section 40, and as of the Commencement Date is satisfied in relation to those matters.

42. ᐱᓄᓄᓄ is under no obligation to provide access or services to the Licence Area or to improve existing access roads to and from the Licence Area.

ARTICLE 12 – MISCELLANEOUS

Time of the Essence

43. Time is of the essence in this Agreement.

Indemnity

44. The Licensee indemnifies and saves harmless ᐱᓄᓄᓄ and ᐱᓄᓄᓄ's servants, employees, representatives and agents from and against all claims, causes of action, liabilities, demands, losses, damages, costs and expenses including fees of solicitors and other professional advisors, made against

or incurred, suffered or sustained by ᐃᓄᓄᓄ where the same or any of them are based upon or arise out of or from one or more of the following:

- (a) any breach, violation or non-performance by the Licensee of a provision of this Agreement;
- (b) any conflict between the Licensee's [use / occupation / taking of resources from] the Licence Area under this Agreement and the lawful use of the Licence Area by another person; and
- (c) any personal injury, bodily injury (including death) or damage to property occurring on ᐃᓄᓄᓄ lands as a result of the entry upon, use or occupation of the Licence Area by the Licensee its agents, servants, representatives, workers, employees, consultants or contractors.

Expiry

45. At the expiry of this Agreement, the Licensee will at the Licensee's cost:

- (a) ensure that the Licensee and its agents, servants, representatives, workers, employees, consultants and contractors leave the Licence Area and all Improvements in a safe, clean and sanitary condition free of waste, rubbish, debris and other similar material;
- (b) within ninety (90) days, ensure any Improvements that ᐃᓄᓄᓄ has provided written consent or direction to the Licensee to remove are removed;
- (c) ensure that any Improvement from the Licence Area are not removed if the Licensee is in default of this Agreement, unless ᐃᓄᓄᓄ provides written consent for the Licensee to remove the Improvement despite that default;
- (d) ensure the Licence Area is restored substantially to the condition that it was in on the Commencement Date; and
- (e) ensure that a Phase 1 Environmental Site Assessment is completed and comply with any further assessments or remediation measures that are recommended in that Assessment and are related to the Licensee's operations or occupancy;
- (f) [you may wish to add additional Terms here]

46. If the Licensee fails to abide by one of the conditions set out in section 45, ᐃᓄᓄᓄ has a right to complete such conditions on behalf of the Licensee, and the Licensee has an obligation to pay to ᐃᓄᓄᓄ the costs of completing such conditions. If the Licensee fails to pay such costs to ᐃᓄᓄᓄ, ᐃᓄᓄᓄ may recover such costs from the Licensee as a breach of this contract.

Waiver

47. Neither Party shall be deemed to have waived the other Party's compliance with any provision of this Agreement unless such waiver is made in writing and delivered to the other Party.

48. No waiver made with respect to any specific instance respecting a provision of this Agreement will be deemed to be a waiver with respect to any other provision or instance.

Severability

49. If any provision of this Agreement is held invalid by a court of competent jurisdiction, the invalid provision must be severed from and must not affect the remaining provisions of this Agreement.

Entire Agreement

50. This Agreement is the entire agreement between the Parties and supersedes and cancels all previous negotiations, agreements, commitments and writings in respect of the subject-matter in this Agreement and there are no understandings, representations, conditions made or assumed by the Parties, other than those expressly contained in this Agreement.

Amendment

51. This Agreement must not be modified except by a subsequent written agreement between the Parties.

Execution in Counterparts

52. This Agreement may be executed in any number of counterparts with the same effect as if both Parties had signed the same document. All counterparts will be construed together and will constitute one in the same original Agreement.

IN WITNESS WHEREOF this Agreement has been duly executed by the Parties on the [] day of [], [20].

ʔaʔam _____

[Name of Authorized Signatory]

[Name of Licensee]

[Name of Authorized Signatory]

Schedule A: Licence Area

[Insert Map of ?aqam lands with the Licence Area outlined in bold red ink]

Schedule B:

**ᑭᑭᑭᑭᑭᑭ BAND COUNCIL RESOLUTION
CONSENT TO LICENCE AGREEMENT**

WHEREAS in 1996 fourteen First Nations and Canada signed the *Framework Agreement on First Nation Land Management (Framework Agreement)*, which established a process by which each of these communities could consider the option of assuming control over their reserve lands and resources by developing a Land Code and a community approval process, concluding an Individual Agreement with Canada, and ratifying the Land Code and Individual Agreement through a vote of the eligible members;

AND WHEREAS in 1999 Canada passed the *First Nations Land Management Act* to ratify the *Framework Agreement*,

AND WHEREAS in 2001 the fourteen First Nations and Canada agreed to amend the *Framework Agreement* to make it possible for additional First Nations to become signatories of the *Framework Agreement*,

AND WHEREAS ᑭᑭᑭᑭᑭᑭ signed an Individual Agreement with Canada on June 18, 2014;

AND WHEREAS the members of ᑭᑭᑭᑭᑭᑭ voted in favour of the *St. Mary's Indian Band Land Code* at a ratification vote held on April 14-16, 2014 and the *St. Mary's Indian Band Land Code* came into effect on July 1, 2014;

AND WHEREAS the members of ᑭᑭᑭᑭᑭᑭ voted in favour of amendments to the *St. Mary's Indian Band Land Code* at a Meeting of Members vote held in accordance with section 48.1 and 13.1 to 13.9 of the *St. Mary's Indian Band Land Code* on January 7, 2016, which has become the *ᑭᑭᑭᑭᑭᑭ Amended Land Code, 2016*;

AND WHEREAS the Council of ᑭᑭᑭᑭᑭᑭ has authority pursuant to section 32.1 of the *ᑭᑭᑭᑭᑭᑭ Amended Land Code* to grant interests in ᑭᑭᑭᑭᑭᑭ community lands and to grant licences and permits to take resources from ᑭᑭᑭᑭᑭᑭ community lands;

THEREFORE BE IT RESOLVED THAT the Council of ᑭᑭᑭᑭᑭᑭ (**choose from one of the following options**)

A. consents to the attached Licence Agreement that grants to [Name of Licensee], a right to [use / occupy / take resources from] the Licence Area, for the purpose of [enter details regarding the purpose of the Licence.]

FURTHER IT BE RESOLVED THAT the Council of ᑭᑭᑭᑭᑭᑭ authorizes [Name of Lands Department personnel] to execute the attached Licence Agreement on behalf of ᑭᑭᑭᑭᑭᑭ.

OR

B. conditional on [name of applicant]:

- [enter condition]
- [enter condition]; and
- providing to the ᑭᑭᑭᑭᑭᑭ Lands Department the following documentary proof that such conditions have been complied with by the following dates:

- [Documentary Proof] by [date];
- [Documentary Proof] by [date];
- [Documentary Proof] by [date];

consents to the attached Licence Agreement that grants to [Name of Licensee], a right to [use / occupy / take resources from] the Licence Area, for the purpose of [enter details regarding the purpose of the Licence].

FURTHER IT BE RESOLVED THAT the Council of ?aqam authorizes [Name of Lands Department personnel] to execute the attached Licence Agreement on behalf of ?aqam after

- [name of applicant] has complied with the conditions set out in this Band Council Resolution;

AND / OR

- the conditions set out in this Band Council Resolution have been added as conditions within the Licence Agreement.

OR

C. does not consent to the attached Licence Agreement because [enter reasons for denying the application]

SCHEDULE F: STANDARD FORM PERMIT AGREEMENT

Table of Contents

Article 1 – Definitions and Interpretation.....	574
Article 2 – Licence and Term.....	576
Article 3 – Fees and Taxes.....	576
Article 4 – Covenants of Licensee.....	577
Article 5 – Limitations	579
Article 6 – Insurance.....	579
Article 7 – Assignment and Transfer	580
Article 8 – Termination	580
Article 9 – Notice	581
Article 10 – Dispute Resolution	582
Article 11 – Representations and Warranties	582
Article 12 – Miscellaneous.....	582
Article 1 – Definitions and Interpretation.....	590
Article 2 – Permit and Term.....	592
Article 3 – Fees and Taxes.....	592
Article 4 – Covenants of Permittee	593
Article 5 – Limitations	595
Article 6 – Insurance.....	595
Article 7 – Assignment and Transfer	596
Article 8 – Termination	596
Article 9 – Notice	597
Article 10 – Dispute Resolution	597
Article 11 – Representations and Warranties	598
Article 12 – Miscellaneous.....	598
Schedule A: Permit Area.....	601
Schedule B: ?Aqam Band Council Resolution Consent to Permit Agreement.....	602

THIS AGREEMENT is dated for reference [date] and is made under the *ᑭᐱᑭᐱᐱ Amended Land Code*.

BETWEEN:

ᑭᐱᑭᐱᐱ, a “band” within the meaning of section 2(1) of the *Indian Act*, with an office at
7470 Mission Road
Cranbrook, British Columbia
V1C 7E5

(hereinafter “ᑭᐱᑭᐱᐱ”)

AND:

[NAME OF PERMITTEE – See Policy 6-2 for requirements]

[Mailing Address]

[City, Province]

[Postal Code]

(hereinafter the “Permittee”)

WHEREAS:

- A. the legal title to ᑭᐱᑭᐱᐱ lands remains vested in Her Majesty the Queen in Right of Canada;
- B. Sections 18(1)(b), 18(2)(b) and 18(3) of the *First Nation Land Management Act* provide that a First Nation that has entered into an Individual Agreement with Canada and adopted a land code has the power to grant interests or right in and licences in relation to their land in accordance with their land code and the legal capacity necessary to enter into contracts to exercise this power, and that the Council of the First Nation has the power to exercise these powers for the use and benefit of the First Nation;
- C. ᑭᐱᑭᐱᐱ signed an Individual Agreement with Canada on June 18, 2014;
- D. The members of ᑭᐱᑭᐱᐱ voted in favour of the *St. Mary’s Indian Band Land Code* at a ratification vote held on April 14-16, 2014 and the *St. Mary’s Indian Band Land Code* came into effect on July 1, 2014;
- E. In 2016, the *St. Mary’s Indian Band Land Code* was amended when the members of ᑭᐱᑭᐱᐱ voted in favour of the *ᑭᐱᑭᐱᐱ Amended Land Code* at a Meeting of Members;
- F. the Council of ᑭᐱᑭᐱᐱ may grant interests in ᑭᐱᑭᐱᐱ lands pursuant to section 32.1 of the *ᑭᐱᑭᐱᐱ Amended Land Code*;
- G. the Permittee made an application to the ᑭᐱᑭᐱᐱ Lands Department on [date] requesting to [use / occupation / taking of resources from] ᑭᐱᑭᐱᐱ lands for the purpose of [enter purpose];
- H. the Council of ᑭᐱᑭᐱᐱ, by Band Council Resolution that is attached to this Agreement and entitled “**Schedule B: ᑭᐱᑭᐱᐱ Band Council Resolution Consent to Permit**”, consents to this Agreement and authorizes [enter name] to execute this Agreement on behalf of ᑭᐱᑭᐱᐱ; and
- I. the Parties wish to set out their respective rights and obligations with respect to the Permittee’s use of ᑭᐱᑭᐱᐱ lands,

NOW, THEREFORE, in consideration of the terms, conditions and agreements contained herein, the

Parties hereby acknowledge, covenant and agree as follows:

ARTICLE 1 – DEFINITIONS AND INTERPRETATION

Definitions

53. In this Agreement,

“Agreement” means this Permit;

ᑭᓱᓱᓱᓱ” means ᑭᓱᓱᓱᓱ who is a party to this Agreement, formerly known as the St. Mary’s Indian Band, within the meaning of the *Indian Act* for whose use and benefit in common ᑭᓱᓱᓱᓱ lands have been set apart by Canada;

ᑭᓱᓱᓱᓱ lands” means:

- (f) Kootenay Indian Reserve No. 1 (07422);
- (g) Isidore’s Ranch No. 4 (07423);
- (h) Cassimayooks No. 5 (07424);
- (i) Bummer’s Flat No. 6 (07425); and
- (j) lands set apart by Canada in the future as lands reserved for the use and benefit of ᑭᓱᓱᓱᓱ lands, within the meaning of subsection 91(24) of the *Constitution Act, 1867* and section 2(1) of the *Indian Act*;

“Canada” means Her Majesty the Queen in Right of Canada;

“Commencement Date” means that date referenced on page 1 of this Agreement;

“ᑭᓱᓱᓱᓱ community lands” means those ᑭᓱᓱᓱᓱ lands in which all ᑭᓱᓱᓱᓱ members have a common interest;

“Environmental Law” means any law, by-law, regulation or policy of Canada or ᑭᓱᓱᓱᓱ relating to environmental matters, including the *Canadian Environmental Protection Act, Species at Risk Act, Fisheries Act, Migratory Birds Convention Act* and the ᑭᓱᓱᓱᓱ Environmental Management Plan;

“Fees” means the fees set out in Article 3 of this Agreement;

“Hazardous Substances” means any contaminant, pollutant, dangerous substance, noxious substance, toxic substance, hazardous waste, flammable or explosive material, radioactive material and any other substance or material regulated or controlled under or pursuant to any Environmental Law;

“Improvement” means any building, fixture, structure or similar thing constructed, placed or affixed on, in or to the Permit Area or on, in or to another improvement and included a manufactured home;

“Permit Area” means that part or those parts of ᑭᓱᓱᓱᓱ lands described as [enter description of lands] and shown outlined by a bold red line on Schedule A to this Agreement entitled “**Schedule A: Permit Area**”;

“person” includes a corporation, partnership, society, First Nations Indian Band or Tribal Council and the personal or other legal representatives of that person;

“Province” means Her Majesty the Queen in Right of the Province of British Columbia;

“Taxes” means all taxes imposed, levied, assessed or assessable under the *St. Mary’s Indian Band Property Taxation Law, 2008* , and all penalties, interest and costs added to taxes under that Law; and

“Term” means the period of time set out in Article 2 of this Agreement.

Interpretation

54. In this Agreement,

(g) the use of the word “must” denotes an obligation that, unless this Agreement provides to the contrary, must be carried out as soon as practicable after this Agreement comes into effect or the event that gives rise to the obligation;

(h) unless it is otherwise clear from the context, the use of the word “including” means “including, but not limited to”, and the use of the word “includes” means “includes, but is not limited to”;

(i) headings and subheadings are for convenience only, do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;

(j) a reference to a statute includes every amendment to it, every regulation made under it and any law enacted in substitution for it or in replacement of it;

(k) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular; and

(l) unless it is otherwise clear from the context, the use of the masculine includes the feminine, and the use of the feminine includes the masculine.

55. Each Schedule to and Recital in this Agreement is an integral part of, and forms part of, this Agreement.

56. Where any law or regulation of Canada or the Province or any other ᑭᓄᓂ law or by-law applies to any matter covered by this Agreement, compliance with this Agreement does not relieve the person from also complying with the sections of the other applicable laws, by-law or regulations.

57. Wherever this Agreement provides that an action must be taken, a consent or approval must be obtained, or a determination must be made, ᑭᓄᓂ or the Permittee, as the case may be, must act reasonable in taking that action, deciding whether to provide that consent or approval, or making that determination.

58. Wherever this Agreement requires ᑭᓄᓂ or the Permittee to act reasonably, ᑭᓄᓂ or the Permittee, as the case may be, must not be required to act in a manner that is contrary to or inconsistent with any law, by-law or regulation of Canada, the Province or ᑭᓄᓂ.

59. Wherever this Agreement requires the Permittee to refrain from some action, the Permittee must not permit any person who enters upon or uses the Permit Area to take that action on behalf of the Permittee.

ARTICLE 2 – PERMIT AND TERM

Permit

60. On the terms and conditions set out in this Agreement, ᑭᓄᓐ authorizes the Permittee a non-exclusive right, privilege, Permit and liberty and permission to enter on and [use / occupy / take resources from] the Permit Area, for the duration of the Term, for the sole purpose of:

(c) [clearly define the allowable purposes / uses here]

(d) [NOTE: If the allowable uses include the taking of resources identify the specific resource that may be taken and the quantity of that resource that may be taken, as well as any conditions or restrictions on the manner of taking of that resource]

61. The Permittee must not use, occupy or take resources from ᑭᓄᓐ lands except:

(c) in accordance with the terms and conditions set out in this Agreement; or

(d) with the written consent of ᑭᓄᓐ.

62. Subject to compliance with the provisions of this Agreement, the rights granted under this Agreement may be exercised by the Permittee, or on the Permittee's behalf by its agents, servants, representatives, workers, employees, consultants or contractors.

Term

63. The Term of this Agreement commences on the Commencement Date and expires on the earlier of:

(c) [date]; or

(d) the date that one of the Parties terminates this Agreement pursuant to Article 8.

ARTICLE 3 – FEES AND TAXES

64. **(Choose one of the following)**

The Fee for the Term is \$[XXXXX], the receipt of which ᑭᓄᓐ acknowledges.

OR

The Fee for the Term is \$[XXXXX] and ᑭᓄᓐ acknowledges the receipt of \$[XXXXX] from the Permittee. The Permittee must pay, when due, the remainder of the Fee to ᑭᓄᓐ by cheque delivered by hand or registered mail to the ᑭᓄᓐ Lands Department at the address set out in this Agreement for notice, as follows:

(e) \$[XXXXX] due on [Date];

(f) \$[XXXXX] due on [Date];

(g) \$[XXXX] due on [Date]; and

(h) \$[XXXX] due on [Date].

65. The Permittee must

(g) pay, when due, all Taxes to ʔaḳam;

(h) pay, when due, all charges for electricity, gas, water and other utilities supplied to the Permit Area for use by the Permittee;

(i) deliver to ʔaḳam, immediately and upon demand, receipts or other evidence of the payment of charges required to be paid under this Agreement.

ARTICLE 4 – COVENANTS OF PERMITTEE

Compliance with Laws

66. The Permittee must observe, abide by, and comply with all applicable laws, by-laws and regulations of Canada, the Province or ʔaḳam in relation to the Permittee's [use / occupation / taking of resources from] the Permit Area, including laws, by-laws and regulations of Canada, the Province or ʔaḳam relating in any way to Hazardous Substances, Environmental Laws, and human health and safety.

Maintenance of Permit Area

67. The Permittee must, in respect of the use of the Permit Area by the Permittee or any person who enters upon the Permit Area as a result of the Permittee's [use / occupation / taking of resources from] the Permit Area, keep the Permit Area and the Improvements in a safe, clean and sanitary condition free of waste, rubbish, debris and other similar material, and at ʔaḳam's written request, must rectify any failure to comply with this covenant by making the Permit Area and the Improvements safe, clean and sanitary free of waste, rubbish, debris and other similar material.

68. The Permittee must not commit any damage to the Permit Area or Improvements and where the Permittee does commit damage to the Permit Area, the Permittee must repair such damage at the cost of the Permittee.

Hazardous Substances

69. The Permittee must not use the Permit Area:

(e) for the storage or disposal of a Hazardous Substance; or

(f) in any other manner whatsoever which causes or contributes to a Hazardous Substance being added to or released on, to or under the Permit Area or into the environment from the Permit Area,

unless

(g) such storage, disposal, release or other use does not result in the Permittee's breach of any other Term of this Agreement, including the Permittee's obligation to comply with all laws relating in any way to Hazardous Substances, the environment, human health and safety; and

(h) ʔaǰam has provided the Permittee with written consent to such storage, disposal, release or other use.

70. In the event of any spill or discharge of a Hazardous Substance upon or relating to ʔaǰam lands caused solely or contributed to by the Permittee or its agents, servants, representatives, workers, employees, consultants or contractors, the Permittee must immediately notify ʔaǰam in writing setting out the:

- (e) type of Hazardous Substance that has spilled or discharged;
- (f) date, time and location of the spill or discharge of the Hazardous Substance;
- (g) circumstances surrounding the spill or discharge of the Hazardous Substance; and
- (h) Permittee's plan for complying with the requirements set out in section 1919.

71. If the event that a spill or discharge of a Hazardous Substance upon or relating to ʔaǰam lands is caused solely or contributed to by the Permittee or its agents, servants, representatives, workers, employees, consultants or contractors, the Permittee must at its sole cost and expense:

- (d) remove that Hazardous Substance from ʔaǰam lands and remediate the portion of ʔaǰam lands affected by the spill or discharge;
- (e) promptly restore the portion of ʔaǰam lands affected by the spill or discharge of the Hazardous Substance to substantially the same condition that the portion of ʔaǰam lands was in prior to the spill or discharge of the Hazardous Substance; and
- (f) upon the completion of the requirements in paragraphs (a) and (b), provide ʔaǰam with a report prepared by a qualified and independent professional who has been approved by ʔaǰam, as to the environmental condition of the portion of ʔaǰam lands affected by the spill or discharge of the Hazardous Substance.

72. The Permittee must:

- (e) on the expiry of this Agreement; and
- (f) at any time requested by ʔaǰam following a breach of this Agreement related to Hazardous Substances,

promptly remove from the Permit Area all Hazardous Substances stored, or disposed of, on the Permit Area, or which have otherwise been added or released on, to or under the Permit Area:

- (g) by the Permittee; or
- (h) as a result of the Permittee's [use / occupation / taking of resources from] the Permit Area,

save and except only to the extent that ʔaǰam has given a prior written approval expressly allowing specific Hazardous Substances to remain on the Permit Area following the expiry of the Term.

Historical, Anthropological, Archeological and Cultural Materials

73. Upon discovering any historical, anthropological, archeological or cultural material on or under the Permit Area, the Permittee must immediately:

- (c) stop all actions related to their operations that may disturb the historical, anthropological, archeological or cultural material; and

(d) notify Ḥaḥam.

74. The Permittee must not resume their operations until provided consent to do so by Ḥaḥam.

Access to Permit Area

75. The Permittee must permit Ḥaḥam, agents, servants, representatives, workers, employees, consultants or contractors to enter the Permit Area at any time to inspect the Permit Area and Improvements, including to test and remove soil, groundwater and other materials and substances, where the inspection is necessary or advisable in Ḥaḥam's opinion to determine whether the Permittee has complied with this Agreement.

ARTICLE 5 – LIMITATIONS

Third Party Interests and Permits

76. The Permittee acknowledges that:

(c) other persons may hold or acquire rights to the use of the Permit Area in accordance with the *Ḥaḥam Amended Land Code* and that such rights may exist as of the Commencement Date or they may be granted or acquired subsequent to the Commencement Date and that they may affect the Permittee's [use/occupation/taking of resources from] the Permit Area; and

(d) the Permittee has no right to compensation from Ḥaḥam and releases Ḥaḥam from all claims, actions, causes of action, suits, debts and demands that the Permittee has, or may at any time in the future have, against Ḥaḥam arising out of any conflict between the Permittee's use of the Permit Area under this Agreement and any use of, or impact on the Permit Area arising from the exercise or operation of the non-exclusive interests, rights and privileges that Council may grant to a person in accordance with the *Ḥaḥam Amended Land Code*.

Improvements

77. The Permittee must not construct, place or affix any Improvement unless the Permittee first obtains written consent from Ḥaḥam to do so.

78. The Permittee must not remove or permit the removal of any Improvement unless the Permittee first obtains written consent from Ḥaḥam to do so.

79. Any interest that the Permittee has to an Improvement ceases to exist and becomes the property of Ḥaḥam upon the expiry of this Agreement, except where the removal of an Improvement is expressly permitted by the written consent of Ḥaḥam.

ARTICLE 6 – INSURANCE

80. The Permittee must:

- (g) maintain Commercial General Liability Insurance in an amount not less than **[\$2,000,000.00]**, inclusive per occurrence, insuring against liability for personal injury, bodily injury (including death) and property damage, including coverage for all accidents or occurrences on the Permit Area or the Improvements. Such insurance policy must include a cross liability clause, provision to provide ᐃᐱᑦᐱ with thirty (30) days written notice of any material change or cancellation of the policy, and name ᐃᐱᑦᐱ as an additional insured;
- (h) ensure that all insurance required under paragraph (a) that is maintained by the Permittee is primary insurance and does not require the sharing of any loss by any of ᐃᐱᑦᐱ' s insurers;
- (i) within ten (10) business days of the Commencement Date, provide ᐃᐱᑦᐱ evidence of the insurance required under paragraph (a) in the form of a completed "Province of British Columbia Certificate of Insurance";
- (j) within ten (10) business days from the date that the insurance policy required under paragraph (a) is set to expire or is cancelled, provide ᐃᐱᑦᐱ evidence of a new policy or a renewal of the policy that meets the insurance requirements under paragraph (a) in the form of a completed "Province of British Columbia Certificate of Insurance";
- (k) at ᐃᐱᑦᐱ' s request, provide ᐃᐱᑦᐱ with a certified copy of the insurance policy required under paragraph (a); and
- (l) maintain and pay for any additional insurance that the Permittee is required by law to carry.

ARTICLE 7 – ASSIGNMENT AND TRANSFER

- 81. The Permittee must not assign, mortgage or transfer this Agreement, in whole or in part, or permit any person to use, occupy or take resources from ᐃᐱᑦᐱ lands except as provided for in this Agreement, without ᐃᐱᑦᐱ' s prior written consent, which consent ᐃᐱᑦᐱ may withhold.
- 82. The grant of an assignment or transfer of this Agreement does not release the Permittee from any obligation to observe and perform all the provisions of this Agreement on the Permittee' s part to be observed and performed unless ᐃᐱᑦᐱ specifically and in writing releases the Permittee from such obligation.
- 83. This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.

ARTICLE 8 – TERMINATION

- 84. If:
 - (c) the Permittee:
 - (vi) defaults on, or fails to comply with, a condition or obligation under this Agreement and such default or failure to comply continues for more than 30 days after ᐃᐱᑦᐱ gives the Permittee written notice of the default or failure to comply;
 - (vii) in the opinion of ᐃᐱᑦᐱ, fails to make diligent use of the Permit Area for the purposes set out in this Agreement, and this failure continues for more than 30 days after ᐃᐱᑦᐱ gives the Permittee written notice of the failure;

(viii) fails to maintain good standing with ʔaᓄam in relation to any other land interest;

(ix) becomes insolvent or bankrupt; or

(x) has a change in legal capacity; or

(d) ʔaᓄam requires the Permit Area for its own use and in ʔaᓄam's opinion it is in ʔaᓄam's interest to cancel this Agreement and ʔaᓄam has provided the Permittee with one hundred and eighty (180) days written notice of such opinion,

this Agreement will, at the option of ʔaᓄam and on written notice to the Permittee, terminate and the Permittee's right to [use/occupy/take resources from] the Permit Area will cease.

85. If Council determines this Agreement has been issued by fraud, Council may unilaterally cancel this Agreement in accordance with section 31.2 of *ʔaᓄam Amended Land Code* and the ʔaᓄam Lands Management Manual, Policy 7-1: Correcting and Cancelling Interests and Licences Granted In Error, by Mistake, or by Fraud.

86. If Council unilaterally cancels this Agreement pursuant to section 33, ʔaᓄam will not be liable to any third party to whom the licensee has granted a subsidiary interest in this Agreement.

87. The Permittee may cancel this Agreement by providing ʔaᓄam with one hundred and eighty (180) days written notice of such cancellation and obtaining consent from ʔaᓄam to the cancellation.

ARTICLE 9 – NOTICE

88. All notices or other communications required under this Agreement will be made in writing and delivered by way of registered mail to the addresses set forth below:

(c) if to ʔaᓄam:

[Name of Contact]
ʔaᓄam
7470 Mission Road
Cranbrook, BC V1C 7E5

(d) if to Permittee:

[Name of Contact]
[Name of Permittee]
[Address]
[City, Province] [Postal Code]

and any such notice will be deemed to be received if delivered, on the day of delivery, and if mailed, 5 business days after the time of mailing.

89. A party may change their address for notice by giving notice to the other party of such change.

ARTICLE 10 – DISPUTE RESOLUTION

90. If a dispute arises under this Agreement, the Parties will make all reasonable efforts to resolve the dispute through informal discussions, mediation or negotiation within thirty (30) days of the dispute arising, and the Parties will provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.

91. If a dispute under this Agreement cannot be resolved under section 38, either Party may refer the dispute for resolution to the Office of the Adjudicator in accordance with Part 8 of the *ᐱᓄᓄᓄ ᐱᓄᓄᓄ ᐱᓄᓄᓄ*.

ARTICLE 11 – REPRESENTATIONS AND WARRANTIES

92. ᐱᓄᓄᓄ has not made, and the Permittee does not rely upon, any representation or warranty from ᐱᓄᓄᓄ as to:

- (i) the suitability of the Permit Area for any particular use, including the use permitted by this Agreement;
- (j) the condition of the Permit Area (including surface and groundwater), environmental or otherwise;
- (k) the general condition and state of utilities or other systems on or under the Permit Area which serve the Permit Area;
- (l) the application of any laws or regulations of Canada or the Province that apply to the Permit Area.

93. The Permittee has been provided a reasonable opportunity to inspect the Permit Area and investigate those matters set out in section 40, and as of the Commencement Date is satisfied in relation to those matters.

94. ᐱᓄᓄᓄ is under no obligation to provide access or services to the Permit Area or to improve existing access roads to and from the Permit Area.

ARTICLE 12 – MISCELLANEOUS

Time of the Essence

95. Time is of the essence in this Agreement.

Indemnity

96. The Permittee indemnifies and saves harmless ᐱᓄᓄᓄ and ᐱᓄᓄᓄ'ᓄ servants, employees, representatives and agents from and against all claims, causes of action, liabilities, demands, losses, damages, costs and expenses including fees of solicitors and other professional advisors, made against or incurred, suffered or sustained by ᐱᓄᓄᓄ where the same or any of them are based upon or arise out of or from one or more of the following:

- (d) any breach, violation or non-performance by the Permittee of a provision of this Agreement;
- (e) any conflict between the Permittee's [use / occupation / taking of resources from] the Permit Area under this Agreement and the lawful use of the Permit Area by another person;
- (f) any personal injury, bodily injury (including death) or damage to property occurring on ᐱᓄᓄᓄ lands as a result of the entry upon, use or occupation of the Permit Area by the Permittee its agents, servants, representatives, workers, employees, consultants or contractors.

Expiry

97. At the expiry of this Agreement, the Permittee will at the Permittee's cost:

(g) ensure that the Permittee and its agents, servants, representatives, workers, employees, consultants and contractors leave the Permit Area and all Improvements in a safe, clean and sanitary condition free of waste, rubbish, debris and other similar material;

(h) within 90 days, ensure any Improvements that ʔaḳam has provided written consent or direction to the Permittee to remove are removed;

(i) ensure that any Improvement from the Permit Area are not removed if the Permittee is in default of this Agreement, unless ʔaḳam provides written consent for the Permittee to remove the Improvement despite that default;

(j) ensure the Permit Area is restored substantially to the condition that it was in on the Commencement Date;

(k) ensure that a Phase 1 Environmental Site Assessment is completed and comply with any further assessments or remediation measures that are recommended in that Assessment and are related to the Permittee's operations or occupancy; and

(l) [you may wish to add additional terms here]

98. If the Permittee fails to abide by one of the conditions set out in section 45, ʔaḳam has a right to complete such conditions on behalf of the Permittee, and the Permittee has an obligation to pay to ʔaḳam the costs of completing such conditions. If the Permittee fails to pay such costs to ʔaḳam, ʔaḳam may recover such costs from the Permittee as a breach of this contract.

Waiver

99. Neither Party shall be deemed to have waived the other Party's compliance with any provision of this Agreement unless such waiver is made in writing and delivered to the other Party.

100. No waiver made with respect to any specific instance respecting a provision of this Agreement will be deemed to be a waiver with respect to any other provision or instance.

Severability

101. If any provision of this Agreement is held invalid by a court of competent jurisdiction, the invalid provision must be severed from and must not affect the remaining provisions of this Agreement.

Entire Agreement

102. This Agreement is the entire agreement between the Parties and supersedes and cancels all previous negotiations, agreements, commitments and writings in respect of the subject-matter in this Agreement and there are no understandings, representations, conditions made or assumed by the Parties, other than those expressly contained in this Agreement.

Amendment

103. This Agreement must not be modified except by a subsequent written agreement between the Parties.

Execution in Counterparts

104. This Agreement may be executed in any number of counterparts with the same effect as if both Parties had signed the same document. All counterparts will be construed together and will constitute one in the same original Agreement.

IN WITNESS WHEREOF this Agreement has been duly executed by the Parties on the [] day of [], [20].

ᲕᲗᲘᲙ _____

[Name of Authorized Signatory]

[Name of Permittee] _____

[Name of Authorized Signatory]

Schedule A: Permit Area

[Insert Map of ʔaḡam lands with the Permit Area outlined in bold red ink]

Schedule B: ᑭᐱᑦᐱᑦᐱᑦ BAND COUNCIL RESOLUTION CONSENT TO PERMIT AGREEMENT

WHEREAS in 1996 fourteen First Nations and Canada signed the *Framework Agreement on First Nation Land Management (Framework Agreement)*, which established a process by which each of these communities could consider the option of assuming control over their reserve lands and resources by developing a Land Code and a community approval process, concluding an Individual Agreement with Canada, and ratifying the Land Code and Individual Agreement through a vote of the eligible members;

AND WHEREAS in 1999 Canada passed the *First Nations Land Management Act* to ratify the *Framework Agreement*;

AND WHEREAS in 2001 the fourteen First Nations and Canada agreed to amend the *Framework Agreement* to make it possible for additional First Nations to become signatories of the *Framework Agreement*;

AND WHEREAS ᑭᐱᑦᐱᑦ signed an Individual Agreement with Canada on June 18, 2014;

AND WHEREAS the members of ᑭᐱᑦᐱᑦ voted in favour of the *St. Mary's Indian Band Land Code* at a ratification vote held on April 14-16, 2014 and the *St. Mary's Indian Band Land Code* came into effect on July 1, 2014;

AND WHEREAS the members of ᑭᐱᑦᐱᑦ voted in favour of amendments to the *St. Mary's Indian Band Land Code* at a Meeting of Members vote held in accordance with section 48.1 and 13.1 to 13.9 of the *St. Mary's Indian Band Land Code* on January 7, 2016, which has become the *ᑭᐱᑦᐱᑦ Amended Land Code, 2016*;

AND WHEREAS the Council of ᑭᐱᑦᐱᑦ has authority pursuant to section 32.1 of the *ᑭᐱᑦᐱᑦ Amended Land Code* to grant interests in ᑭᐱᑦᐱᑦ community lands and to grant licences and permits to take resources from ᑭᐱᑦᐱᑦ community lands;

THEREFORE BE IT RESOLVED THAT the Council of ᑭᐱᑦᐱᑦ (***choose from one of the following options***)

A. consents to the attached Permit Agreement that grants to [Name of Permittee], a right to [use / occupy / take resources from] the Permit Area, for the purpose of [enter details regarding the purpose of the Permit].

FURTHER IT BE RESOLVED THAT the Council of ᑭᐱᑦᐱᑦ authorizes [Name of Lands Department personnel] to execute the attached Permit Agreement on behalf of ᑭᐱᑦᐱᑦ.

OR

B. conditional on [name of applicant]:

- [enter condition]
- [enter condition]; and
- providing to the ᑭᐱᑦᐱᑦ Lands Department the following documentary proof that such conditions have been complied with by the following dates:
 - [Documentary Proof] by [date];
 - [Documentary Proof] by [date];
 - [Documentary Proof] by [date];

consents to the attached Permit Agreement that grants to [Name of Permittee], a right to [use / occupy / take resources from] the Permit Area, for the purpose of [enter details regarding the purpose of the Permit].

FURTHER IT BE RESOLVED THAT the Council of ?aqam authorizes [Name of Lands Department personnel] to execute the attached Permit Agreement on behalf of ?aqam after

- [name of applicant] has complied with the conditions set out in this Band Council Resolution;

AND / OR

- the conditions set out in this Band Council Resolution have been added as conditions within the Permit Agreement.

OR

C. does not consent to the attached Permit Agreement because [enter reasons for denying the application]

SCHEDULE G: STANDARD FORM EASEMENT AGREEMENT

Article 1 – Definitions and Interpretation..... 606

Article 2 – Easement 608

Article 3 – Covenants of ᑭᐱᑭᐱᐱ 608

Article 4 – Covenants of Grantee 609

Article 5 – Limitations 610

Article 6 – Insurance..... 611

Article 8 – Notice 611

Article 10 – Dispute Resolution 612

Article 11 – Representations and Warranties 612

Article 12 – Miscellaneous..... 613

Schedule A: Easement Area 615

Schedule B: ᑭᐱᑭᐱᐱ Band Council Resolution Consent to Easement Agreement 616

EASEMENT AGREEMENT

THIS AGREEMENT is dated for reference [date] and is made under the *ᑭᐱᑭᐱᐱ Amended Land Code*.

BETWEEN:

ᑭᐱᑭᐱᐱ, a “band” within the meaning of section 2(1) of the Indian Act, with an office at
7470 Mission Road
Cranbrook, British Columbia
V1C 7E5

(hereinafter “ᑭᐱᑭᐱᐱ”)

AND:

[NAME OF GRANTEE – See Policy 6-2 for requirements]

[Mailing Address]

[City, Province]

[Postal Code]

(hereinafter the “Grantee”)

WHEREAS:

- A. the legal title to ᑭᐱᑭᐱᐱ lands remains vested in Her Majesty the Queen in Right of Canada;
- B. Sections 18(1)(b), 18(2)(b) and 18(3) of the *First Nation Land Management Act* provide that a First Nation that has entered into an Individual Agreement with Canada and adopted a land code has the power to grant interests or right in and licences in relation to their land in accordance with their land code and the legal capacity necessary to enter into contracts to exercise this power, and that the Council of the First Nation has the power to exercise these powers for the use and benefit of the First Nation;
- C. ᑭᐱᑭᐱᐱ signed an Individual Agreement with Canada on June 18, 2014;
- D. The members of ᑭᐱᑭᐱᐱ voted in favour of the *St. Mary’s Indian Band Land Code* at a ratification vote held on April 14-16, 2014 and the *St. Mary’s Indian Band Land Code* came into effect on July 1, 2014;
- E. In 2016, the *St. Mary’s Indian Band Land Code* was amended when the members of ᑭᐱᑭᐱᐱ voted in favour of the *ᑭᐱᑭᐱᐱ Amended Land Code* at a Meeting of Members;
- F. the Council of ᑭᐱᑭᐱᐱ may grant interests in ᑭᐱᑭᐱᐱ lands pursuant to section 32.1 of the *ᑭᐱᑭᐱᐱ Amended Land Code*;
- G. the Grantee (**choose one of the following**)
 - A. is the registered owner of that certain parcel or tract of land lying in the City of Cranbrook, in the Province of British Columbia described as follows:

[Legal Description of Grantee’s Lands];

(hereinafter called the “Dominant Tenement”)

OR

B. has lawful possession of that certain parcel or tract of land [evidenced by Certificate of Possession # XXXX] and described as follows:

[Legal Description of Grantee's Lands];
(hereinafter called the "Dominant Tenement")

H. the Grantee made an application to the ʔaᓄam Lands Department on [date] requesting an easement over a certain parcel or tract of ʔaᓄam lands described as follows:

[Legal Description of ʔaᓄam Lands – Reserve/Lot/Parcel – be as specific as possible];
(hereinafter called the "Servient Tenement")

I. the Council of ʔaᓄam, by Band Council Resolution that is attached to this Agreement and entitled "**Schedule B: ʔaᓄam Band Council Resolution Consent to Easement**", consents to this Agreement and authorizes [enter name] to execute this Agreement on behalf of ʔaᓄam; and

J. the Parties wish to set out their respective rights and obligations with respect to the Grantee's use of the Servient Tenement,

NOW, THEREFORE, in consideration of \$[amount payable ʔaᓄam] and to the terms, conditions and agreements contained herein, the Parties hereby acknowledge, covenant and agree as follows:

ARTICLE 1 – DEFINITIONS AND INTERPRETATION

Definitions

1. In this Agreement,

"Agreement" means this Easement Agreement;

"ʔaᓄam" means ʔaᓄam who is a party to this Agreement, formerly known as the St. Mary's Indian Band, within the meaning of the *Indian Act* for whose use and benefit in common ʔaᓄam lands have been set apart by Canada;

"ʔaᓄam lands" means:

(k) Kootenay Indian Reserve No. 1;

(l) Isidore's Ranch No. 4;

(m) Cassimayooks No. 5;

(n) Bummer's Flat No. 6; and

(o) lands set apart by Canada in the future as lands reserved for the use and benefit of ʔaᓄam lands, within the meaning of subsection 91(24) of the *Constitution Act, 1867* and section 2(1) of the *Indian Act*;

"Canada" means Her Majesty the Queen in Right of Canada;

“Easement Area” means [Provide a textual (metes and bounds) description of the Easement Area that refers to one or more complete parcels on a registration plan or official plan. Such description must be clear and unambiguously identify the land subject to the Easement. If the Easement is for the whole of, or a portion of a lot shown on an existing plan then the description must refer to the lot and plan. A sketch of the Easement Area is attached to this Agreement as **Schedule A: Easement Area**;

“Environmental Law” means any law, by-law or regulation of Canada or ?a?am relating to environmental matters, including the *Canadian Environmental Protection Act* and the *Canadian Environmental Assessment Act*;

“Hazardous Substances” means any contaminant, pollutant, dangerous substance, noxious substance, toxic substance, hazardous waste, flammable or explosive material, radioactive material and any other substance or material regulated or controlled under or pursuant to any Environmental Law; and

“Province” means Her Majesty the Queen in Right of the Province of British Columbia.

Interpretation

2. In this Agreement,

(m) the use of the word “must” denotes an obligation that, unless this Agreement provides to the contrary, must be carried out as soon as practicable after this Agreement comes into effect or the event that gives rise to the obligation;

(n) unless it is otherwise clear from the context, the use of the word “including” means “including, but not limited to”, and the use of the word “includes” means “includes, but is not limited to”;

(o) headings and subheadings are for convenience only, do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;

(p) a reference to a statute includes every amendment to it, every regulation made under it and any law enacted in substitution for it or in replacement of it;

(q) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular; and

(r) unless it is otherwise clear from the context, the use of the masculine includes the feminine, and the use of the feminine includes the masculine.

3. Each Schedule to and Recital in this Agreement is an integral part of, and forms part of, this Agreement.

4. Where any law or regulation of Canada or the Province or any other ?a?am law or by-law applies to any matter covered by this Agreement, compliance with this Agreement does not relieve the person from also complying with the sections of the other applicable laws, by-laws or regulations.

5. Wherever this Agreement provides that an action must be taken, a consent or approval must be obtained, or a determination must be made, ?a?am or the Grantee, as the case may be, must act reasonable in taking that action, deciding whether to provide that consent or approval, or making that determination.

6. Wherever this Agreement requires ?a?am or the Grantee to act reasonably, ?a?am or the Grantee, as the case may be, must not be required to act in a manner that is contrary to or inconsistent with any law, by-law or regulation of Canada, the Province or ?a?am.

7. Wherever this Agreement requires the Grantee to refrain from some action, the Grantee must not grant any person who enters upon or uses the Easement Area to take that action on behalf of the Grantee.

ARTICLE 2 – EASEMENT

Easement

8. On the terms and conditions set out in the Agreement, ?aqam does hereby grant in favour of the Grantee, its successors and assigns and the owners and occupants from time to time of the said Dominant Tenement the full, free and uninterrupted right and liberty, in common with ?aqam over the Easement Area, to:

(a) enter over, on, in and under the Easement Area to:

(i) conduct surveys or examinations,

(ii) dig up, remove and replace soil,

(iii) [any other specifics?]

(iv) construct, install, operate, maintain, clean, cover with soil, alter, relocate, renew, inspect and replace [enter details of what types of Works are being installed in, on or under the Easement Area] (all of which are collectively called the “Works”),

(b) for the purpose of [XXXXX – ex – a fence, parking, etc] in connection with the provision of [XXXXX – ex – what is it being provided by the easement] to the Dominant Tenement;

(c) clear the Easement Area and keep it clear of anything which in the opinion of the Grantee constitutes or may constitute an obstruction to the use of the Easement Area or the Works;

(d) to cross over the Servient Tenement for reasonable access to the Easement Area and make reasonable ancillary use of the Servient Tenement for carrying out the Works; and

(e) to do all acts which in the opinion of the Grantee are incidental to the foregoing.

9. The Parties agree that the burden of this Easement shall run with the Servient Tenement and that the grant of this Easement is appurtenant to and for the benefit of the Dominant Tenement.

ARTICLE 3 – COVENANTS OF ?AQAM

10. ?aqam must:

(a) not do or permit to be done any act or thing which in the opinion of the Grantee might interfere with, injure, impair the operating efficiency of, or obstruct access to or the use of the Easement Area or the Works;

(b) register this Agreement in the First Nations Land Register; and

(c) permit the Grantee to peaceably hold and enjoy the rights granted by this Agreement.

ARTICLE 4 – COVENANTS OF GRANTEE

Compliance with Laws

11. The Grantee must observe, abide by, and comply with all applicable laws, by-laws and regulations of Canada, the Province or ᑭᓄᓂᓂ in relation to the Easement Area and the Works, including laws, by-laws and regulations of Canada, the Province or ᑭᓄᓂᓂ relating in any way to Hazardous Substances, Environmental Laws, and human health and safety.

Use of Easement Area

12. The Grantee must:

- (a) use the Easement Area and carry out the construction and maintenance of the Works in a good and workmanlike manner in order to cause no unnecessary damage or disturbance to ᑭᓄᓂᓂ, the Servient Tenement or any improvements on the Servient Tenement;
- (b) not bury, without the prior written consent of ᑭᓄᓂᓂ, debris or rubbish in excavations or backfill;
- (c) exercise care not to damage the Servient Tenement or any improvements on the Servient Tenement and if the Grantee should cause any such damage, restore such damaged Servient Tenement lands or improvements on the Servient Tenement to as close to the pre-damaged condition as is reasonably practicable or reimburse ᑭᓄᓂᓂ for all damage the Grantee has caused but not restored; and
- (d) accept sole responsibility for keeping the Easement Area and the Works in a safe, clean and sanitary condition free of waste, rubbish, debris and other similar material, and at ᑭᓄᓂᓂ's reasonable written request, rectify any failure to comply with this covenant by making the Easement Area and the Works safe, clean and sanitary free of waste, rubbish, debris and other similar material.

Hazardous Substances

13. The Grantee must not use the Easement Area:

- (i) for the storage or disposal of a Hazardous Substance; or
- (j) in any other manner whatsoever which causes or contributes to a Hazardous Substance being added to or released on, to or under the Easement Area or into the environment from the Easement Area,

unless
- (k) such storage, disposal, release or other use does not result in the Grantee's breach of any other term of this Agreement, including the Grantee's obligation to comply with all laws relating in any way to Hazardous Substances, the environment, or human health and safety; and
- (l) ᑭᓄᓂᓂ has provided the Grantee with written consent to such storage, disposal, release or other use.

14. In the event of any spill or discharge of a Hazardous Substance upon or relating to the Easement Area caused solely or contributed to by the Grantee or its agents, servants, representatives, workers,

employees, consultants or contractors, the Grantee must as soon as practical notify ?aqam in writing setting out the:

- (i) type of Hazardous Substance that has spilled or discharged;
- (j) date, time and location of the spill or discharge of the Hazardous Substance;
- (k) circumstances surrounding the spill or discharge of the Hazardous Substance; and
- (l) Grantee's plan for complying with the requirements set out in section 19519.

15. If the event that a spill or discharge of a Hazardous Substance upon or relating to the Servient Tenement is caused solely or contributed to by the Grantee or its agents, servants, representatives, workers, employees, consultants or contractors, the Grantee must at its sole cost and expense:

- (g) remove that Hazardous Substance from the Servient Tenement and remediate the portion of Servient Tenement affected by the spill or discharge;
- (h) promptly restore the portion of the Servient Tenement affected by the spill or discharge of the Hazardous Substance to substantially the same condition that the portion of the Servient Tenement was in prior to the spill or discharge of the Hazardous Substance; and
- (i) upon the completion of the requirements in paragraphs (a) and (b), provide ?aqam with a report prepared by a qualified and independent professional who has been approved by ?aqam, as to the environmental condition of the portion of the Servient Tenement affected by the spill or discharge of the Hazardous Substance.

Historical, Anthropological, Archeological and Cultural Materials

16. Upon discovering any historical, anthropological, archeological or cultural material on or under the Easement Area, the Grantee must immediately:

- (e) stop all actions related to their operations that may disturb the historical, anthropological, archeological or cultural material; and
- (f) notify ?aqam.

17. The Grantee must not resume their operations until provided consent to do so by ?aqam.

Access to Easement Area

18. The Grantee must permit ?aqam, and ?aqam agents, servants, representatives, workers, employees, consultants or contractors to enter the Easement Area at any time to inspect the Easement Area and Works, including to test and remove soil, groundwater and other materials and substances, where the inspection is necessary or advisable in ?aqam's opinion to determine whether the Grantee has complied with this Agreement.

ARTICLE 5 – LIMITATIONS

Third Party Interests

19. The Grantee acknowledges that:

(e) other persons may hold or acquire rights to the use of the Easement Area in accordance with the *ᐱᐱᐱᐱ Amended Land Code* and that such rights may exist as of the Commencement Date or they may be granted or acquired subsequent to the Commencement Date and that they may affect the Grantee's [use/occupation/taking of resources from] the Easement Area; and

(f) the Grantee has no right to compensation from ᐱᐱᐱᐱ and releases ᐱᐱᐱᐱ from all claims, actions, causes of action, suits, debts and demands that the Grantee has, or may at any time in the future have, against ᐱᐱᐱᐱ arising out of any conflict between the Grantee's use of the Easement Area under this Agreement and any use of, or impact on the Easement Area arising from the exercise or operation of the non-exclusive interests, rights and privileges that Council may grant to a person in accordance with the *ᐱᐱᐱᐱ Amended Land Code*.

Ownership of Works

20. All chattels, equipment, supplies, fixtures or other materials comprising the Works or otherwise installed by the Grantee over, on, in or under the Easement Area are and shall remain the property of the Grantee, any rule of law or equity to the contrary notwithstanding.

ARTICLE 6 – INSURANCE

21. The Grantee must:

(m) maintain Commercial General Liability Insurance in an amount not less than [\$2,000,000.00], inclusive per occurrence, insuring against liability for personal injury, bodily injury (including death) and property damage, including coverage for all accidents or occurrences on the Easement Area or the Improvements. Such insurance policy must include a cross liability clause, provision to provide ᐱᐱᐱᐱ with thirty (30) days written notice of any material change or cancellation of the policy, and name ᐱᐱᐱᐱ as an additional insured;

(n) ensure that all insurance required under paragraph (a) that is maintained by the Grantee is primary insurance and does not require the sharing of any loss by any of ᐱᐱᐱᐱ' s insurers;

(o) within ten (10) business days of the Commencement Date, provide ᐱᐱᐱᐱ evidence of the insurance required under paragraph (a) in the form of a completed "Province of British Columbia Certificate of Insurance";

(p) within ten (10) business days from the date that the insurance policy required under paragraph (a) is set to expire or is cancelled, provide ᐱᐱᐱᐱ evidence of a new policy or a renewal of the policy that meets the insurance requirements under paragraph (a) in the form of a completed "Province of British Columbia Certificate of Insurance";

(q) at ᐱᐱᐱᐱ' s request, provide ᐱᐱᐱᐱ with a certified copy of the insurance policy required under paragraph (a); and

(r) maintain and pay for any additional insurance that the Grantee is required by law to carry.

ARTICLE 8 – NOTICE

22. All notices or other communications required under this Agreement will be made in writing and delivered by way of registered mail to the addresses set forth below:

(e) if to ʔaḡam:

[Name of Contact]
ʔaḡam
7470 Mission Road
Cranbrook, BC V1C 7E5

(f) if to Grantee:

[Name of Contact]
[Name of Grantee]
[Address]
[City, Province] [Postal Code]

and any such notice will be deemed to be received if delivered, on the day of delivery, and if mailed, 5 business days after the time of mailing.

23. A party may change their address for notice by giving notice to the other party of such change.

ARTICLE 10 – DISPUTE RESOLUTION

24. If a dispute arises under this Agreement, the Parties will make all reasonable efforts to resolve the dispute through informal discussions, mediation or negotiation within thirty (30) days of the dispute arising, and the Parties will provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.

25. If a dispute under this Agreement cannot be resolved under section 24, either Party may refer the dispute for resolution to the Office of the Adjudicator in accordance with Part 8 of the *ʔaḡam Amended Land Code*.

ARTICLE 11 – REPRESENTATIONS AND WARRANTIES

26. ʔaḡam has not made, and the Grantee does not rely upon, any representation or warranty from ʔaḡam as to:

(m) the suitability of the Easement Area for any particular use, including the uses permitted by this Agreement;

(n) the condition of the Easement Area (including surface and groundwater), environmental or otherwise;

(o) the general condition and state of utilities or other systems on or under the Easement Area which serve the Easement Area;

(p) the application of any laws or regulations of Canada or the Province that apply to the Easement Area.

27. The Grantee has been provided a reasonable opportunity to inspect the Easement Area and investigate those matters set out in section 26, and as of the Commencement Date is satisfied in relation to those matters.

28. ʔaᓄam is under no obligation to provide access or services to the Easement Area or to improve existing access roads to and from the Easement Area.

ARTICLE 12 – MISCELLANEOUS

Time of the Essence

29. Time is of the essence in this Agreement.

Indemnity

30. The Grantee indemnifies and saves harmless ʔaᓄam and ʔaᓄam's servants, employees, representatives and agents from and against all claims, causes of action, liabilities, demands, losses, damages, costs and expenses including fees of solicitors and other professional advisors, made against or incurred, suffered or sustained by ʔaᓄam where the same or any of them are based upon or arise out of or from one or more of the following:

(g) any breach, violation or non-performance by the Grantee of a provision of this Agreement;

(h) any conflict between the Grantee's [use / occupation / taking of resources from] the Easement Area under this Agreement and the lawful use of the Easement Area by another person;

(i) any personal injury, bodily injury (including death) or damage to property occurring on ʔaᓄam lands as a result of the entry upon, use or occupation of the Easement Area by the Grantee its agents, servants, representatives, workers, employees, consultants or contractors.

Termination and Expiry

31. This Agreement may only be terminated by written agreement between the Parties.

32. In the event this Agreement is terminated, the Grantee will ensure that a Phase 1 Environmental Site Assessment is completed and comply with any remediation measures that are recommended in that Assessment and are related to the Grantee's operations or occupancy.

33. If the Grantee fails to abide by section 32, ʔaᓄam has a right to complete a Phase 1 Environmental Site Assessment on behalf of the Grantee, and the Grantee has an obligation to pay to ʔaᓄam the costs of completing such conditions. If the Grantee fails to pay such costs to ʔaᓄam, ʔaᓄam may recover such costs from the Grantee as a breach of this contract.

Waiver

34. Neither Party shall be deemed to have waived the other Party's compliance with any provision of this Agreement unless such waiver is made in writing and delivered to the other Party.

35. No waiver made with respect to any specific instance respecting a provision of this Agreement will be deemed to be a waiver with respect to any other provision or instance.

Severability

36. If any provision of this Agreement is held invalid by a court of competent jurisdiction, the invalid provision must be severed from and must not affect the remaining provisions of this Agreement.

Entire Agreement

37. This Agreement is the entire agreement between the Parties and supersedes and cancels all previous negotiations, agreements, commitments and writings in respect of the subject-matter in this Agreement and there are no understandings, representations, conditions made or assumed by the Parties, other than those expressly contained in this Agreement.

Amendment

38. This Agreement must not be modified except by a subsequent written agreement between the Parties.

Execution in Counterparts

39. This Agreement may be executed in any number of counterparts with the same effect as if both Parties had signed the same document. All counterparts will be construed together and will constitute one in the same original Agreement.

IN WITNESS WHEREOF this Agreement has been duly executed by the Parties on the [] day of [], [20].

ʔaḳam _____

[Name of Authorized Signatory]

[Name of Grantee] _____

[Name of Authorized Signatory]

Schedule A: Easement Area

[Insert Map of ʔaḡam lands with the Easement Area outlined in bold red ink]

Schedule B: ᑭᐱᑦᐱᑦᐱᑦ BAND COUNCIL RESOLUTION CONSENT TO EASEMENT AGREEMENT

WHEREAS in 1996 fourteen First Nations and Canada signed the *Framework Agreement on First Nation Land Management (Framework Agreement)*, which established a process by which each of these communities could consider the option of assuming control over their reserve lands and resources by developing a Land Code and a community approval process, concluding an Individual Agreement with Canada, and ratifying the Land Code and Individual Agreement through a vote of the eligible members;

AND WHEREAS in 1999 Canada passed the *First Nations Land Management Act* to ratify the *Framework Agreement*;

AND WHEREAS in 2001 the fourteen First Nations and Canada agreed to amend the *Framework Agreement* to make it possible for additional First Nations to become signatories of the *Framework Agreement*;

AND WHEREAS ᑭᐱᑦᐱᑦ signed an Individual Agreement with Canada on June 18, 2014;

AND WHEREAS the members of ᑭᐱᑦᐱᑦ voted in favour of the *St. Mary's Indian Band Land Code* at a ratification vote held on April 14-16, 2014 and the *St. Mary's Indian Band Land Code* came into effect on July 1, 2014;

AND WHEREAS the members of ᑭᐱᑦᐱᑦ voted in favour of amendments to the *St. Mary's Indian Band Land Code* at a Meeting of Members vote held in accordance with section 48.1 and 13.1 to 13.9 of the *St. Mary's Indian Band Land Code* on January 7, 2016, which has become the *ᑭᐱᑦᐱᑦ Amended Land Code, 2016*;

AND WHEREAS the Council of ᑭᐱᑦᐱᑦ has authority pursuant to section 32.1 of the *ᑭᐱᑦᐱᑦ Amended Land Code* to grant interests in ᑭᐱᑦᐱᑦ community lands and to grant licences and permits to take resources from ᑭᐱᑦᐱᑦ community lands;

AND WHEREAS the Council of ᑭᐱᑦᐱᑦ has considered the appropriateness of the grant of an easement and the terms of the easement;

THEREFORE BE IT RESOLVED THAT the Council of ᑭᐱᑦᐱᑦ (***choose from one of the following options***)

A. consents to the attached Easement Agreement that grants to [Name of the Grantee], a right to use the Easement Area for the purpose of [enter details regarding the purpose of the Easement].; and

FURTHER IT BE RESOLVED THAT the Council of ᑭᐱᑦᐱᑦ authorizes [Name of Lands Department personnel] to execute the attached Easement Agreement on behalf of ᑭᐱᑦᐱᑦ.

OR

B. does not consent to the attached Easement Agreement that grants to [Name of the Grantee], a right to use the Easement for the purpose of [enter details regarding the purpose of the Easement].

SCHEDULE H: STANDARD FORM RIGHT-OF-WAY AGREEMENT

Article 1 – Definitions and Interpretation.....	619
Article 2 – Right of Way and Term	622
Article 3 – Fees and Taxes.....	624
Article 4 – Covenants of Grantee	624
Article 5 – Limitations	627
Article 6 – Insurance.....	627
Article 7 – Assignment and Transfer	628
Article 8 – Termination	628
Article 9 – Notice	629
Article 10 – Dispute Resolution	629
Article 11 – Representations and Warranties	629
Article 12 – Miscellaneous.....	630
Schedule A: Right of Way Area.....	633
Schedule B: ʔaᑭam Band Council Resolution Consent to Right of Way Agreement...	634

RIGHT OF WAY AGREEMENT

THIS AGREEMENT is dated for reference [date] and is made under the *ᑭᐱᑭᐱᐱ Amended Land Code*.

BETWEEN:

ᑭᐱᑭᐱᐱ, a “band” within the meaning of section 2(1) of the *Indian Act*, with an office at
7470 Mission Road
Cranbrook, British Columbia
V1C 7E5

(hereinafter “ᑭᐱᑭᐱᐱ”)

AND:

[NAME OF GRANTEE – See Policy 6-2 for requirements]

[Mailing Address]

[City, Province]

[Postal Code]

(hereinafter the “Grantee”)

WHEREAS:

- A. the legal title to ᑭᐱᑭᐱᐱ lands remains vested in Her Majesty the Queen in Right of Canada;
- B. Sections 18(1)(b), 18(2)(b) and 18(3) of the *First Nation Land Management Act* provide that a First Nation that has entered into an Individual Agreement with Canada and adopted a land code has the power to grant interests or right in and licences in relation to their land in accordance with their land code and the legal capacity necessary to enter into contracts to exercise this power, and that the Council of the First Nation has the power to exercise these powers for the use and benefit of the First Nation;
- C. ᑭᐱᑭᐱᐱ signed an Individual Agreement with Canada on June 18, 2014;
- D. The members of ᑭᐱᑭᐱᐱ voted in favour of the *St. Mary’s Indian Band Land Code* at a ratification vote held on April 14-16, 2014 and the *St. Mary’s Indian Band Land Code* came into effect on July 1, 2014;

- E. In 2016, the *St. Mary's Indian Band Land Code* was amended when the members of ʔaąam voted in favour of the *ʔaąam Amended Land Code* at a Meeting of Members;
- F. the Council of ʔaąam may grant interests in ʔaąam lands pursuant to section 33.1 of the *ʔaąam Amended Land Code*;
- G. the Grantee made an application to the ʔaąam Lands Department on [date] requesting the non-exclusive use of the Right of Way Area for the purpose of [enter purpose];
- H. the Council of ʔaąam, by Band Council Resolution that is attached to this Agreement and entitled "**Schedule B: ʔaąam Band Council Resolution Consent to Right of Way**", consents to this Agreement and authorizes [enter name] to execute this Agreement on behalf of ʔaąam;
- I. the Parties wish to set out their respective rights and obligations with respect to the Grantee's use of ʔaąam lands,

NOW, THEREFORE, in consideration of the Terms, conditions and agreements contained herein, the Parties hereby acknowledge, covenant and agree as follows:

ARTICLE 1 – DEFINITIONS AND INTERPRETATION

Definitions

1. In this Agreement,

"adjacent area" means the whole of the area that is within 6 metres of any part of the Works;

"Agreement" means this Right of Way Agreement;

"ʔaąam" means ʔaąam who is a party to this Agreement, formerly known as the St. Mary's Indian Band, within the meaning of the *Indian Act* for whose use and benefit in common ʔaąam lands have been set apart by Canada;

"ʔaąam lands" means:

- (p) Kootenay Indian Reserve No. 1 (07422);
- (q) Isidore's Ranch No. 4 (07423);
- (r) Cassimayooks No. 5 (07424);
- (s) Bummer's Flat No. 6 (07425);
- (t) St. Mary's Indian Reserve No. 1 (XXXXX) ; and
- (u) lands set apart by Canada in the future as lands reserved for the use and benefit of ʔaąam lands, within the meaning of subsection 91(24) of the Constitution Act, 1867 and section 2(1) of the Indian Act;

“Canada” means Her Majesty the Queen in Right of Canada;

“Commencement Date” means that date referenced on page 1 of this Agreement;

“ᑭᓄᓄᓄ community lands” means those ᑭᓄᓄᓄ lands in which all ᑭᓄᓄᓄ members have a common interest;

“Environmental Law” means any law, by-law, regulation or policy of Canada or ᑭᓄᓄᓄ relating to environmental matters, including: the *Canadian Environmental Protection Act*, *Species at Risk Act*, *Fisheries Act*, *Migratory Birds Convention Act*, and the ᑭᓄᓄᓄ Environmental Management Plan;

“Fees” means the fees set out in Article 3 of this Agreement;

“Hazardous Substances” means any contaminant, pollutant, dangerous substance, noxious substance, toxic substance, hazardous waste, flammable or explosive material, radioactive material and any other substance or material regulated or controlled under or pursuant to any Environmental Law;

“Improvement” means any building, fixture, structure or similar thing constructed, placed or affixed on, in or to the Right of Way Area or on, in or to another Improvement and included a manufactured home;

“Person” includes a corporation, partnership, society, First Nations Indian Band or Tribal Council and the personal or other legal representatives of that person;

“Province” means Her Majesty the Queen in Right of the Province of British Columbia;

“Right of Way Area” means that part or those parts of ᑭᓄᓄᓄ lands described as [enter description of lands] and shown outlined by a bold red line on Schedule A to this Agreement entitled “**Schedule A: Right of Way Area**”;

“Taxes” means all taxes imposed, levied, assessed or assessable under the *St. Mary’s Indian Band Property Taxation Law, 2008* , and all penalties, interest and costs added to taxes under that Law; and

“Term” means the period of time set out in Article 2 of this Agreement;

“Works” means all things and components, using any type of technology, necessary or convenient for the purposes of [purpose of the Works] on, over, under, across, and through the Works Area, in whole or in part, by any means, including:

- (a) [List....] in whole or in part;
- (b) underground [List....] of every kind;
- (c) underground [List....], together with all ancillary appliances and fittings; and
- (d) above ground or underground [List....],

but does not include [List....];

“Works Area” means all parts of the Right of Way Area reasonably required for:

- (a) those Works existing on the Commencement Date;
 - (b) any additional Works constructed along the sides of or across any roads from time to time existing on the Right of Way Area;
 - (c) any additional Works constructed on lands adjacent to any such roads provided that such additional Works are required to provide services to those adjacent lands; and
 - (d) any Works constructed in other portions of the Right of Way Area and consented to by ᐱᐱᐱ,
- and the bold blue line on Schedule A: Right of Way Area reasonably outlines the location of the Works existing on the Commencement Date.

Interpretation

2. In this Agreement,
 - (s) the use of the word “must” denotes an obligation that, unless this Agreement provides to the contrary, must be carried out as soon as practicable after this Agreement comes into effect or the event that gives rise to the obligation;
 - (t) unless it is otherwise clear from the context, the use of the word “including” means “including, but not limited to”, and the use of the word “includes” means “includes, but is not limited to”;
 - (u) headings and subheadings are for convenience only, do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any section of this Agreement;
 - (v) a reference to a statute includes every amendment to it, every regulation made under it and any law enacted in substitution for it or in replacement of it;
 - (w) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular; and
 - (x) unless it is otherwise clear from the context, the use of the masculine includes the feminine, and the use of the feminine includes the masculine.
3. Each Schedule to and Recital in this Agreement is an integral part of, and forms part of, this Agreement.
4. Where any law or regulation of Canada or the Province or any other ᐱᐱᐱ law or by-law applies to any matter covered by this Agreement, compliance with this Agreement does not relieve the person from also complying with the sections of the other applicable laws, by-law or regulations.
5. Wherever this Agreement provides that an action must be taken, a consent or approval must be obtained, or a determination must be made, ᐱᐱᐱ or the Grantee, as the case may be, must act reasonable in taking that action, deciding whether to provide that consent or approval, or making that determination.

6. Wherever this Agreement requires ?a?am or the Grantee to act reasonably, ?a?am or the Grantee, as the case may be, must not be required to act in a manner that is contrary to or inconsistent with any law, by-law or regulation of Canada, the Province or ?a?am.
7. Wherever this Agreement requires the Grantee to refrain from some action, the Grantee must not permit any person who enters upon or uses the Right of Way Area to take that action on behalf of the Grantee.

ARTICLE 2 – RIGHT OF WAY AND TERM

RIGHT OF WAY

8. On the Terms and conditions set out in this Agreement, ?a?am authorizes the Grantee to have the non-exclusive use of the Right of Way Area for the Term, in relation to the Works, the Works Area and activities related to the Works and Works Area, as follows:
 - (a) on the Works Area, the Grantee may:
 - (i) excavate for, construct, install, erect, abandon, replace, extend, upgrade, operate, maintain, remove, and repair the Works on, over, under, across, and through the Works Area;
 - (ii) clear the Right of Way Area and keep it cleared (including trimming or removing) of any trees or growth; and
 - (iii) do any other act or thing that may be reasonably necessary or incidental to the previous subparagraphs,
 - (iv) but may not place any Improvements not described in the definition of Works on the Right of Way Area without the prior written consent of ?a?am, which consent may be withheld; and
 - (b) on the adjacent area, the Grantee may:
 - (i) enter, work, pass, and repass upon, on, and along it;
 - (ii) clear it and keep it cleared of all or any part of any obstruction, Improvement, or other thing which, in the reasonable opinion of the Grantee, might interfere with or endanger the Works or cause a disruption in service to the Grantee' customers;
 - (iii) trim or remove trees or growth if, in the reasonable opinion of the Grantee those trees could damage the Works or cause a hazard to the Works or persons, provided that, except in the event of an emergency, the Grantee makes reasonable efforts to inform ?a?am of the proposed activity; and
 - (iv) conduct vegetation management, provided that the Grantee will not apply herbicides or pesticides without the prior written consent of ?a?am, which consent may be withheld.

9. The Grantee must compensate ᑭᓄᓂ for the removal any obstruction, Improvement, or other thing removed under subparagraph 8(b)(ii) that was in existence before the Commencement Date.
10. Before constructing any new Works, the Grantee must perform an encumbrance check in the First Nation Land Register to determine if there are any records indicating any interest holders who will be affected.
11. The Grantee must not construct any new Works after the Commencement Date on lands of affected interest holders without first obtaining the consent of those affected interest holders.
12. In carrying out its rights and obligations under this Agreement, the Grantee may pass and repass over existing roads on the Right of Way Area. If existing roads do not provide reasonably suitable access, the Grantee may use other ᑭᓄᓂ community lands to access the Works Area or adjacent area, so long as those ᑭᓄᓂ community lands are not already being used or occupied under a lease, and in such cases the Grantee must first obtain the permission of the lessee to pass and repass over the lands subject to their lease.
13. The Grantee must not fence any part of the Works Area [except ...].
14. The Grantee must not remove any merchantable timber from the Right of Way Area without a Permit from ᑭᓄᓂ to do so.
15. The Grantee must accommodate the reasonable requests of ᑭᓄᓂ to relocate, within a reasonable time, portions of the Works to other suitable parts of the Right of Way Area, provided that:
 - (a) the requested relocation is technically feasible and practicable;
 - (b) the agreement rights will be in full force after the relocation on the new part of the Right of Way Area; and
 - (c) all costs (internal or third-party) associated with any relocation, including design, construction, and other costs for the new Works, as well as decommissioning and other costs for the old Works, are paid by ᑭᓄᓂ.
16. Subject to compliance with the provisions of this Agreement, the rights granted under this Agreement may be exercised by the Grantee, or on the Grantee's behalf by its agents, servants, representatives, workers, employees, consultants or contractors.

Term

17. The Term of this Agreement commences on the Commencement Date and expires on the earlier of:
 - (a) [date]; or
 - (b) the date that one of the Parties terminates this Agreement pursuant to Article 8.

ARTICLE 3 – FEES AND TAXES

18. **(Choose one of the following)**

The Fee for the Term is \$[XXXXX], the receipt of which ?aqam acknowledges.

OR

The Fee for the Term is \$[XXXXX] and ?aqam acknowledges the receipt of \$[XXXX] from the Grantee. The Grantee must pay, when due, the remainder of the Fee to ?aqam by cheque delivered by hand or registered mail to the ?aqam Lands Department at the address set out in this Agreement for notice, as follows:

- (a) \$[XXXX] due on [Date];
- (b) \$[XXXX] due on [Date];
- (c) \$[XXXX] due on [Date]; and
- (d) \$[XXXX] due on [Date].

19. The Grantee must

- (a) pay, when due, all Taxes to ?aqam;
- (b) pay, when due, all charges for electricity, gas, water and other utilities supplied to the Right of Way Area for use by the Grantee;
- (c) deliver to ?aqam, immediately and upon demand, receipts or other evidence of the payment of charges required to be paid under this Agreement.

ARTICLE 4 – COVENANTS OF GRANTEE

Compliance with Laws

20. The Grantee must observe, abide by, and comply with all applicable laws, by-laws and regulations of Canada, the Province or ?aqam in relation to the Grantee's use of the Right of Way Area, including laws, by-laws and regulations of Canada, the Province or ?aqam relating in any way to Hazardous Substances, Environmental Laws, and human health and safety.

Maintenance of Right of Way Area

21. The Grantee must, in respect of the use of the Right of Way Area by the Grantee or any person who enters upon the Right of Way Area as a result of the Grantee's use of the Right of Way Area, keep

the Right of Way Area and the Works and Improvements in a safe, clean and sanitary condition free of waste, rubbish, debris and other similar material, and at ?aqam's written request, must rectify any failure to comply with this covenant by making the Right of Way Area and the Works and Improvements safe, clean and sanitary free of waste, rubbish, debris and other similar material.

22. The Grantee must not commit any damage to the Right of Way Area and where the Grantee does commit damage to the Right of Way Area, the Grantee must repair such damage at the cost of the Grantee.

Hazardous Substances

23. The Grantee must not use the Right of Way Area:

- (a) for the storage or disposal of a Hazardous Substance; or
- (b) in any other manner whatsoever which causes or contributes to a Hazardous Substance being added to or released on, to or under the Right of Way Area or into the environment from the Right of Way Area,

unless

- (c) such storage, disposal, release or other use does not result in the Grantee's breach of any other Term of this Agreement, including the Grantee's obligation to comply with all laws relating in any way to Hazardous Substances, the environment, human health and safety; and
 - (d) ?aqam has provided the Grantee with written consent to such storage, disposal, release or other use.
24. In the event of any spill or discharge of a Hazardous Substance upon or relating to ?aqam lands caused solely or contributed to by the Grantee or its agents, servants, representatives, workers, employees, consultants or contractors, the Grantee must as soon as is practical notify ?aqam in writing setting out the:
- (a) type of Hazardous Substance that has spilled or discharged;
 - (b) date, time and location of the spill or discharge of the Hazardous Substance;
 - (c) circumstances surrounding the spill or discharge of the Hazardous Substance; and
 - (d) Grantee's plan for complying with the requirements set out in section 25.
25. In the event that a spill or discharge of a Hazardous Substance upon or relating to ?aqam lands is caused solely or contributed to by the Grantee or its agents, servants, representatives, workers, employees, consultants or contractors, the Grantee must immediately and at its sole cost:
- (a) remove that Hazardous Substance from ?aqam lands and remediate the portion of ?aqam lands affected by the spill or discharge;

- (b) restore the portion of ᐱᐱᐱ lands affected by the spill or discharge of the Hazardous Substance to substantially the same condition that the portion of ᐱᐱᐱ lands was in prior to the spill or discharge of the Hazardous Substance; and
- (c) upon the completion of the requirements in paragraphs (a) and (b), provide ᐱᐱᐱ with a Phase II Environmental Site Assessment prepared by a qualified and independent professional who has been approved by ᐱᐱᐱ.

26. The Grantee must:

- (a) on the expiry of this Agreement; and
- (b) at any time requested by ᐱᐱᐱ following a breach of this Agreement related to Hazardous Substances,

promptly remove from the Right of Way Area all Hazardous Substances stored, or disposed of, on the Right of Way Area, or which have otherwise been added or released on, to or under the Right of Way Area:

- (a) by the Grantee; or
- (b) as a result of the Grantee's use of the Right of Way Area,

save and except only to the extent that ᐱᐱᐱ has given a prior written approval expressly allowing specific Hazardous Substances to remain on the Right of Way Area following the expiry of the Term.

Historical, Anthropological, Archeological and Cultural Materials

27. Upon discovering any historical, anthropological, archeological or cultural material on or under the Right of Way Area, the Grantee must immediately:

- (a) stop all actions related to their operations that may disturb the historical, anthropological, archeological or cultural material; and
- (b) notify ᐱᐱᐱ.

28. The Grantee must not resume their operations until provided consent to do so by ᐱᐱᐱ.

Access to Right of Way Area

29. The Grantee must permit ᐱᐱᐱ and ᐱᐱᐱ's agents, servants, representatives, workers, employees, consultants and contractors to enter the Right of Way Area at any time to inspect the Right of Way Area, Works and Improvements, including to test and remove soil, groundwater and other materials and substances, where the inspection is necessary or advisable in ᐱᐱᐱ's sole opinion to determine whether the Grantee has complied with this Agreement.

ARTICLE 5 – LIMITATIONS

Third Party Interests and Licences

30. The Grantee acknowledges that:

- (a) other persons may hold or acquire rights to the use of the Right of Way Area in accordance with the *ᐱᐱᐱᐱ Amended Land Code* and that such rights may exist as of the Commencement Date or they may be granted or acquired subsequent to the Commencement Date and that they may affect the Grantee's use of the Right of Way Area; and
- (b) the Grantee has no right to compensation from ᐱᐱᐱᐱ, and releases ᐱᐱᐱᐱ from all claims, actions, causes of action, suits, debts and demands that the Grantee has, or may at any time in the future have, against ᐱᐱᐱᐱ arising out of any conflict between the Grantee's use of the Right of Way Area under this Agreement and any use of, or impact on the Right of Way Area arising from the exercise or operation of the non-exclusive interests, rights and privileges that ᐱᐱᐱᐱ may grant to a person in accordance with the *ᐱᐱᐱᐱ Amended Land Code*.

ARTICLE 6 – INSURANCE

31. The Grantee must:

- (a) maintain Commercial General Liability Insurance in an amount not less than [\$2,000,000.00], inclusive per occurrence, insuring against liability for personal injury, bodily injury (including death) and property damage, including coverage for all accidents or occurrences on the Right of Way Area or the Works or Improvements. Such insurance policy must include a cross liability clause, provision to provide ᐱᐱᐱᐱ with 30 days written notice of any material change or cancellation of the policy, and name ᐱᐱᐱᐱ as an additional insured;
- (b) ensure that all insurance required under paragraph (a) that is maintained by the Grantee is primary insurance and does not require the sharing of any loss by any of ᐱᐱᐱᐱ' s insurers;
- (c) within 10 business days of the Commencement Date, provide ᐱᐱᐱᐱ evidence of the insurance required under paragraph (a) in the form of a completed "Province of British Columbia Certificate of Insurance";
- (d) within 10 business days from the date that the insurance policy required under paragraph (a) is set to expire or is cancelled, provide ᐱᐱᐱᐱ evidence of a new policy or a renewal of the policy that meets the insurance requirements under paragraph (a) in the form of a completed "Province of British Columbia Certificate of Insurance";
- (e) at ᐱᐱᐱᐱ' s request, provide ᐱᐱᐱᐱ with a certified copy of the insurance policy required under paragraph (a); and
- (f) maintain and pay for any additional insurance that the Grantee is required by law to carry.

ARTICLE 7 – ASSIGNMENT AND TRANSFER

32. The Grantee must not assign or transfer this Agreement, or permit any person to use, occupy or take resources from Ḥaqām lands, without Ḥaqām's prior written consent, which consent Ḥaqām may withhold.
33. The grant of an assignment or transfer of this Agreement does not release the Grantee from any obligation to observe and perform all the provisions of this Agreement on the Grantee's part to be observed and performed.
34. This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.

ARTICLE 8 – TERMINATION

35. If:

(a) the Grantee:

- (i) defaults on, or fails to comply with, a condition or obligation under this Agreement and such default or failure to comply continues for more than 30 days after Ḥaqām gives the Grantee written notice of the default or failure to comply;
- (ii) in the opinion of Ḥaqām, fails to make diligent use of the Right of Way Area for the purposes set out in this Agreement, and this failure continues for more than 30 days after Ḥaqām gives the Grantee written notice of the failure;
- (iii) fails to maintain good standing with Ḥaqām in relation to any other land interest;
- (iv) becomes insolvent or bankrupt; or
- (v) has a change in legal capacity, or

(b) Ḥaqām requires the Right of Way Area for its own use and in Ḥaqām's opinion it is in Ḥaqām's interest to cancel this Agreement and Ḥaqām has provided the Grantee with 180 days written notice of such opinion,

this Agreement will, at the option of Ḥaqām and on written notice to the Grantee, terminate and the Grantee's right to use the Right of Way Area will cease.

36. If Council determines this Right of Way has been issued by fraud, Council may unilaterally cancel this Agreement in accordance with section 32.2 of *Ḥaqām Amended Land Code* and Policy 7-1: Correcting and Cancelling Interests and Licences Granted In Error, by Mistake, or by Fraud.
37. If Council unilaterally cancels this Agreement pursuant to section 33, Ḥaqām will not be liable to any third party to whom the Grantee has granted a subsidiary interest in this Agreement.

38. The Grantee may cancel this Agreement by providing *ᓃᓱᓱᓄ* with 180 days written notice of such cancellation and obtaining consent from *ᓃᓱᓱᓄ* to the cancellation.

ARTICLE 9 – NOTICE

39. All notices or other communications required under this Agreement will be made in writing and delivered either in person or by way of registered mail to the addresses set forth below:

(a) if to *ᓃᓱᓱᓄ*:

[Name of Contact]

ᓃᓱᓱᓄ

7470 Mission Road

Cranbrook, BC V1C 7E5

(b) if to Grantee:

[Name of Contact]

[Name of Grantee]

[Address]

[City, Province] [Postal Code]

and any such notice will be deemed to be received if delivered in person, on the day of delivery, and if mailed, 5 business days after the time of mailing.

40. A party may change their address for notice by giving notice to the other party of such change.

ARTICLE 10 – DISPUTE RESOLUTION

41. If a dispute arises under this Agreement, the Parties will make all reasonable efforts to resolve the dispute through informal discussions, mediation or negotiation within 30 days of the dispute arising, and the Parties will provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.

42. If a dispute under this Agreement cannot be resolved under section 41, either Party may refer the dispute for resolution to the Office of the Adjudicator in accordance with Part 8 of the *ᓃᓱᓱᓄ Amended Land Code*.

ARTICLE 11 – REPRESENTATIONS AND WARRANTIES

43. ?aqam has not made, and the Grantee does not rely upon, any representation or warranty from ?aqam as to:
- (a) the suitability of the Right of Way Area for any particular use, including the use permitted by this Agreement;
 - (b) the condition of the Right of Way Area (including surface and groundwater), environmental or otherwise;
 - (c) the general condition and state of utilities or other systems on or under the Right of Way Area which serve the Right of Way Area; or
 - (d) the application of any laws or regulations of Canada or the Province that apply to the Right of Way Area.
44. The Grantee has been provided a reasonable opportunity to inspect the Right of Way Area and investigate those matters set out in section 43, and as of the Commencement Date is satisfied in relation to those matters.
45. ?aqam is under no obligation to provide access or services to the Right of Way Area or to improve existing access roads to and from the Right of Way Area.

ARTICLE 12 – MISCELLANEOUS

Time of the Essence

46. Time is of the essence in this Agreement.

Indemnity

47. The Grantee indemnifies and saves harmless ?aqam and ?aqam's servants, employees, representatives and agents from and against all claims, causes of action, liabilities, demands, losses, damages, costs and expenses including fees of solicitors and other professional advisors, made against or incurred, suffered or sustained by ?aqam where the same or any of them are based upon or arise out of or from one or more of the following:
- (a) any breach, violation or non-performance by the Grantee of a provision of this Agreement;
 - (b) any conflict between the Grantee's use of the Right of Way Area under this Agreement and the lawful use of the Right of Way Area by another person;
 - (c) any personal injury, bodily injury (including death) or damage to property occurring on ?aqam lands as a result of the entry upon, use or occupation of the Right of Way Area by the Grantee its agents, servants, representatives, workers, employees, consultants or contractors.

Expiry

48. At the expiry of this Agreement, the Grantee will at the Grantee's cost:

- (a) ensure that the Grantee and its agents, servants, representatives, workers, employees, consultants and contractors leave the Right of Way Area and all Works and Improvements in a safe, clean and sanitary condition free of waste, rubbish, debris and other similar material;
- (b) within 90 days, ensure any Works or Improvements that ʔaḳam has provided written consent or direction to the Grantee to remove are removed;
- (c) ensure that any Works and Improvements in the Right of Way Area are not removed if the Grantee is in default of this Agreement, unless ʔaḳam provides written consent for the Grantee to remove the Works or Improvements despite that default;
- (d) ensure the Right of Way Area is restored substantially to the condition that it was in on the Commencement Date; and
- (e) ensure that a Phase 1 Environmental Site Assessment is completed and comply with any further assessments or remediation measures that are recommended in that Assessment and are related to the Grantee's operations or occupancy;
- (f) [you may wish to add additional terms here]

49. If the Grantee fails to abide by one of the conditions set out in section 48, ʔaḳam has a right to complete such conditions on behalf of the Grantee, and the Grantee has an obligation to pay to ʔaḳam the costs of completing such conditions. If the Grantee fails to pay such costs to ʔaḳam, ʔaḳam may recover such costs from the Grantee as a breach of this contract.

Waiver

50. Neither Party shall be deemed to have waived the other Party's compliance with any provision of this Agreement unless such waiver is made in writing and delivered to the other Party.

51. No waiver made with respect to any specific instance respecting a provision of this Agreement will be deemed to be a waiver with respect to any other provision or instance.

Severability

52. If any provision of this Agreement is held invalid by a court of competent jurisdiction, the invalid provision must be severed from and must not affect the remaining provisions of this Agreement.

Entire Agreement

53. This Agreement is the entire agreement between the Parties and supersedes and cancels all previous negotiations, agreements, commitments and writings in respect of the subject-matter in this

Agreement and there are no understandings, representations, conditions made or assumed by the Parties, other than those expressly contained in this Agreement.

Amendment

54. This Agreement must not be modified except by a subsequent written agreement between the Parties.

Execution in Counterparts

55. This Agreement may be executed in any number of counterparts with the same effect as if both Parties had signed the same document. All counterparts will be construed together and will constitute one and the same original Agreement.

IN WITNESS WHEREOF this Agreement has been duly executed by the Parties on the _____ day of _____, [20__].

ʔaḳam _____

[Name of Authorized Signatory]

[Name of Grantee] _____

[Name of Authorized Signatory]

Schedule A: Right of Way Area

[Insert Map of ?aqam Lands with the Right of Way Area outlined in bold red ink and all existing Works outlined in bold blue ink]

Schedule B: ᑭᐱᑦᐱᑦᐱᑦ BAND COUNCIL RESOLUTION CONSENT TO RIGHT OF WAY AGREEMENT

WHEREAS in 1996 fourteen First Nations and Canada signed the *Framework Agreement on First Nation Land Management (Framework Agreement)*, which established a process by which each of these communities could consider the option of assuming control over their reserve lands and resources by developing a Land Code and a community approval process, concluding an Individual Agreement with Canada, and ratifying the Land Code and Individual Agreement through a vote of the eligible members;

AND WHEREAS in 1999 Canada passed the *First Nations Land Management Act* to ratify the *Framework Agreement*;

AND WHEREAS in 2001 the fourteen First Nations and Canada agreed to amend the *Framework Agreement* to make it possible for additional First Nations to become signatories of the *Framework Agreement*;

AND WHEREAS ᑭᐱᑦᐱᑦ signed an Individual Agreement with Canada on June 18, 2014;

AND WHEREAS the members of ᑭᐱᑦᐱᑦ voted in favour of the *St. Mary's Indian Band Land Code* at a ratification vote held on April 14-16, 2014 and the *St. Mary's Indian Band Land Code* came into effect on July 1, 2014;

AND WHEREAS the members of ᑭᐱᑦᐱᑦ voted in favour of amendments to the *St. Mary's Indian Band Land Code* at a Meeting of Members vote held in accordance with section 48.1 and 13.1 to 13.9 of the *St. Mary's Indian Band Land Code* on January 7, 2016, which has become the *ᑭᐱᑦᐱᑦ Amended Land Code, 2016*;

AND WHEREAS the Council of ᑭᐱᑦᐱᑦ has authority pursuant to section 33.1 of the *ᑭᐱᑦᐱᑦ Amended Land Code* to grant interests in ᑭᐱᑦᐱᑦ community lands and to grant licences and permits to take resources from ᑭᐱᑦᐱᑦ community lands;

THEREFORE BE IT RESOLVED THAT the Council of ᑭᐱᑦᐱᑦ (***choose from one of the following options***)

A. consents to the attached Right of Way Agreement that grants to [Name of the Grantee], a right to use the Right of Way Area for the purpose of [enter details regarding the purpose of the Right of Way].; and

FURTHER IT BE RESOLVED THAT the Council of ᑭᐱᑦᐱᑦ authorizes [Name of Lands Department personnel] to execute the attached Right of Way Agreement on behalf of ᑭᐱᑦᐱᑦ.

OR

B. does not consent to the attached Right of Way Agreement that grants to [Name of the Grantee], a right to use the Right of Way for the purpose of [enter details regarding the purpose of the Right of Way].

