**GRANT OF LEASE**

**[*Lands Act*, sections 43, 50]**

Dated

BETWEEN:

**KWANLIN DÜN FIRST NATION**

(the “**Lessor**”)

AND

(the “**Lessee**”)

(together referred to as the “**Parties**”)

**BACKGROUND:**

1. The Lessor, pursuant to the *Kwanlin Dün First Nation Final Agreement,* is the owner and holder of that block of certain Category [A or B] Settlement Land referred to as follows:

Settlement Land Identifier:

Legal Description:

Civic Description: , Whitehorse, Yukon

(the “**Land**”).

1. The Land is subject to the interests identified in the *Kwanlin Dün First Nation Final Agreement* and *Kwanlin Dün First Nation Self-Government Agreement*.
2. The Lessor wishes to grant a lease of the Land to the Lessee without ceding, releasing, or surrendering its aboriginal claims, rights, titles, and interests attached to the Land.
3. The Lessee has agreed to lease the Land from the Lessor subject to the terms and conditions set out in this Lease.
4. The Lessor has the authority to lease the Land pursuant to the *Lands Act* *(Nan kay shawthan Dak'anuta ch'e),* KDFN OIC 2020-09 and regulations, the *Kwanlin Dün First Nation Final Agreement*, the *Kwanlin Dün First Nation Self-Government Agreement* and the *Kwanlin Dün Constitution*.
5. The Lessee has agreed to use and occupy the Land in accordance with this Lease.

**AGREEMENT:**

# INTERPRETATION

## The preamble recitals to this Lease are incorporated into and form part of this Lease.

## In this Lease:

### “**Applicable Laws**” means, in respect of the Land, the *Lands Act* *(Nan kay shawthan Dak'anuta ch'e),* KDFN OIC 2020-09 and regulations, the *Kwanlin Dün First Nation Final Agreement*, *Kwanlin Dün First Nation Self-Government Agreement*, *Kwanlin Dün Constitution, Yukon First Nations Land Claims Settlement Act* (S.C. 1994, c. 34), *Yukon First Nations Self-Government Act* (S.C. 1994, c. 34), *An Act Approving Yukon Land Claim Final Agreements* (RSY 2002, c. 240), *First Nations (Yukon) Self-Government Act* (RSY 2002, c. 90), and any other applicable law, statute, by-law, ordinance, regulation or lawful requirement of the federal, territorial, municipal government or authority, the First Nation or any public utility lawfully acting under statutory power, including but not limited to all zoning and development requirements applicable to the Land in accordance with the bylaws of the City of Whitehorse and the laws of the Yukon Territory, and includes any amendments to the foregoing laws.

### “**Bank of Canada Review**” means the publication so titled that is published by the Bank of Canada on a monthly basis or any similar publication that is published by the Bank of Canada on at least a monthly basis as a replacement for the Bank of Canada Review and in which the *per annum* interest rate that is charged by Canadian chartered banks to their most creditworthy commercial borrowers from time to time is published.

### “**Beneficiary**” has the same meaning as the term beneficiary defined in the *Lands Act* as amended or replaced from time to time.

### “**Citizen**” has the same meaning as the term citizen defined in the *Lands Act* as amended or replaced from time to time.

### “**Contaminant**” has the same meaning as the term contaminant defined in the *Environment Act, SY 2020, c. 13* as amended or replaced from time to time.

### **“Development Agreement”** means an agreement between the Lessee and the Lessor as described in Section 11.2.

### “**Director**” has the same meaning as the term director defined in the *Lands Act* as amended or replaced from time to time.

### “**First Nation**” means Kwanlin Dün First Nation or any successor to the Kwanlin Dün First Nation.

### “**Hazardous Substances**” means any product, substance or organism defined as a hazardous substance under the *Environment Act, SY 2020, c. 13* as amended or replaced from time to time.

### “**Improvements**” means all buildings, structures, works, facilities, services, including hard landscaping and all services and ancillary facilities, constructed on, affixed to, or appurtenant to, any part of the Land.

### “**Interested Party**” has the meaning ascribed to it in Section 19.1.

### “**Land**” has the meaning ascribed to it in Recital A.

### **“Lands and Resources Register”** means the Kwanlin Dün First Nation Lands and Resources Register.

### “**Land Titles Office**” means the Yukon Land Titles Office for the Yukon Land Registration District or its successor.

### “**Mortgagee**” means any mortgagee of the leasehold interest granted by this Lease or granted by a Sublessee of the Lessee and whose mortgage has been registered in the Land Titles Office or recorded in the Lands and Resources Register.

### “**Natural Environment**” means

### the air, land, and water,

### all organic and inorganic matter and living organisms, including biodiversity within and among species,

### the ecosystem and ecological relationships,

### and includes the cultural and aesthetic values associated with i, ii, and iii.

### “**Prime Rate**” means, for any particular calendar month the *per annum* interest rate that is charged by Canadian chartered banks to their most creditworthy commercial borrowers in effect upon the last Wednesday of the month as the rate is ascertained and published for the month in the Bank of Canada Review, or if more than one rate is published for the last Wednesday of the month, the average of all rates or if another day or other days are substituted for the last Wednesday of the month in the Bank of Canada Review, the rate or the average of all rates published for the day or days substituted for the last Wednesday of the month.

### “**Rent**” means the rent described in Section 4.

### “**Settlement Land**” has the meaning ascribed to it in the *Kwanlin Dün First Nation Final Agreement*.

### “**Subdivision**” means the creation, adjustment, or realignment of a parcel of settlement land that requires registration of a legal plan of survey under the *Land Titles Act* (Yukon), a division of a parcel of settlement land by a plan of subdivision, a plan of survey, a plan made pursuant to section 6 of the *Condominium Act* (Yukon), an agreement or any instrument, including a caveat, transferring or creating an estate or interest in part of the parcel, or the creation of a new parcel from existing parcels of land.

### “**Sublessee**” means any sublessee of the Land or a subdivided portion of the Land and whose sublease has been registered in the Land Titles Office or recorded in the Lands and Resources Register.

### “**Term**” means the 125-year period beginning on and expiring on .

## This Lease is granted pursuant to and is to be interpreted in a manner that is consistent with the *Lands Act*.

## Notwithstanding section 1.3, if this Lease is registered in the Land Titles Office, this Lease is to be interpreted in a manner that is consistent with both the *Lands Act* and the *Land Titles Act* (Yukon).

# lease, TERM and registration

## In consideration of the Rent, promises, conditions and agreements set out herein, the Lessor hereby demises and leases the Land to the Lessee for the Term, subject to:

### any right-of-way, easement, reservation, exception, restriction, or “Special Condition” as defined or provided by the *Kwanlin Dün First Nation Final Agreement* or the *Kwanlin Dün First Nation Self-Government Agreement*; and

### upon registration of this Lease in the Land Titles Office, the restrictions, interests, reservations and exceptions, if any, described in the certificate of title for the Land issued by the Land Titles Office.

## Without limiting the generality of the foregoing and for further clarity, the Lessor demises and leases the Land to the Lessee without ceding, releasing or surrendering its aboriginal claims, rights, titles and interests attached to the Land.

## For further clarity, the Lessor and the Lessee acknowledge and agree that though the First Nation has not ceded, released or surrendered its aboriginal claims, rights, titles and interests attached to the Land, upon registration of this Lease in the Land Titles Office, this Lease is subject to the *Yukon Settlement Lands Regulation*, YOIC 2016/11, as amended.

# Renewal

## Subject to section 3.2, the Parties may, by mutual written agreement, renew this Lease for a Term not exceeding 125 years.

## The Lessee or the Lessor may request a renewal of this Lease. The party is requesting the renewal must give notice of the request to the other party at least 12 months prior to the earlier of

## the expiry of the Term; or

## the date on which the requesting party wishes the renewal to take effect.

## The parties agree that the party to whom a request for renewal is made is under no obligation to agree to renew this Lease.

# RENT

## The Lessee has paid as Rent for the entire Term, the sum of $125.00 plus GST and other good and valuable consideration.

## The Lessor acknowledges receipt of payment of the Rent in accordance with Section 4.1 and confirms that no other rent of any kind will be payable by the Lessee for the Land during the Term.

## The Lessee acknowledges that other monies which may become payable by the Lessee to the Lessor under this Lease, if any, while not constituting Rent, will be collectable by the Lessor with all remedies available for the collection of Rent, including remedies available to the Lessor if the Lessee defaults in its obligations under this Lease.

# RESIDENCY ON SETTLEMENT LAND

## The Lessee must, upon written request by the Lessor, provide to the Lessor a list of names of all persons lawfully residing on the Land.

## The Lessee must inform any person lawfully residing on the Land of the requirement to indicate on that person’s annual income tax return to the Canada Revenue Agency that that person is resident on Settlement Land.

# exemptions from REgulations

## The following sections of the *Lands Regulations*, as amended or replaced, do not apply to this Lease: 9, 12, 13, 16, 17 and18.

# UTILITIES

## The Lessee is responsible for providing, at its expense, all services and facilities required by it for use of the Land.

## Without limiting the generality of the foregoing, the Lessee shall pay or cause to be paid when due all charges for services and facilities for use of the Land such as all water, gas, telephone, light, power, heat, air-conditioning, sewer and garbage disposal.

## No interruption of any service or facility provided to the Land will be deemed to be a disturbance of the Lessee’s enjoyment of the Land or render the Lessor liable for injury to or in damages to the Lessee or relieve the parties from their obligations under this Lease.

# TAXES

## The Lessee will pay or cause to be paid when due all applicable taxes, trade licences, rates, levies, duties and assessments of any kind lawfully imposed by any competent authority, that apply to this Lease, the Land or the use of the Land.

## Without in any way relieving or modifying the obligation of the Lessee to comply with Section 8.1 the Lessee may at its expense, contest or appeal the validity or amount of any tax, trade licence, rate, levy, duty or assessment, provided that the Lessee commences any proceedings to contest or appeal the validity or amount promptly and continues with the proceedings with reasonable diligence.

## The Lessee will, upon written request by the Lessor, provide the Lessor with copies of official receipts of the competent authority or other proof satisfactory to the Lessor, acting reasonably, evidencing payment of taxes, trade licences, rates, levies, duties or assessments that payable with respect to the Land.

# USE OF LAND

## The Land may only be used for any lawful purpose in accordance with Applicable Laws.

# Subdivision of land

## The Lessee must not subdivide the Land without the consent of the Lessor, such consent not to be unreasonably withheld.

# IMPROVEMENTS AND PERMISSION TO CONSTRUCT

## This Lease authorizes the Lessee to construct Improvements on the Land in compliance with Applicable Laws.

## The Lessee must comply with any Development Agreement it has entered into with the Lessor.

## The Lessee shall be solely responsible, in compliance with Applicable Laws and subject to any Development Agreement, for the construction of any Improvements on the Land and for the condition, operation, repair, replacement and maintenance of the Improvements.

## The Lessee shall maintain, or shall cause to be maintained, any Improvements in a manner similar to the manner in which a prudent owner would maintain such Improvements.

# REINSTATEMENT OF DAMAGED LAND

## Where the Lessee determines to restore or repair damage to the Improvements or to the Land, that restoration or repair will be carried out in good and workmanlike manner and with reasonable diligence and in compliance with Applicable Laws.

## The Lessee, prior to commencing any work of restoring, rebuilding or replacing the Improvements, in whole or in part, will remove or screen unsightly rubble and debris resulting from damage or destruction and will keep the Land in safe and secure condition. If the Lessee fails to perform its obligations under this Section 12 in any respect, the Lessor may, at the Lessee’s expense, by the Lessor’s officers, employees, agents or contractors and subcontractors, undertake the performance of any necessary work in order to complete those obligations of the Lessee, but having commenced that work, the Lessor will have no obligation to the Lessee to complete that work.

# OWNERSHIP and Removal OF IMPROVEMENTS AND CHATTELS

## Subject to section 13.3, ownership of any Improvements made upon or to the Land by or for the Lessee will vest in the Lessee or any Sublessee, licencee or permittee of the Lessee, as the case may be, for and during the Term, notwithstanding any rule or law to the contrary.

## Any Improvements remaining on the Land at the expiration of the Term or the termination of this Lease become the absolute property of the Lessor.

## Notwithstanding Section 13.2, the Lessee, at its expense, upon written notice from the Lessor, given on or before the 90th day prior to the expiration of the Term or termination of the Lease, shall expeditiously remove from the Land any or all of the Improvements as the Lessor requires and leave the Land in good and substantial repair and condition and free from all debris to the reasonable satisfaction of the Lessor. This section shall survive the expiration of the Term or termination of this Lease.

## The Lessee shall pay all costs and expenses incurred in the removal and disposal of the Improvements and in making good all damage caused to the Land by the removal of the Improvements promptly upon demand.

## The Lessor shall not be responsible to the Lessee or any Sublessee for any loss suffered by the Lessee or Sublessee as a result of the removal or the disposal of any Improvements which the Lessee fails to remove in accordance with this Lease.

## If any Improvements required to be removed under Section 13.3 are not removed, the Lessor may remove and dispose of them in its discretion. The Lessor’s expenses under the section shall be recoverable from the Lessee.

## The Lessee shall pay all costs and expenses incurred in the removal or disposal of chattels and in making good all damage caused to the Land by the removal of the chattels promptly upon demand. The Lessor will not be responsible to the Lessee or Sublessee for any loss suffered by the Lessee or Sublessee as a result of the removal or the disposal of any chattels which the Lessee fails to remove in accordance with this Lease.

# COMPLIANCE WITH LAWS

## The Lessee, acting reasonably and at its expense, will observe and perform all of its obligations and all matters and things necessary or expedient to be observed or performed by it in connection with the Land in accordance with Applicable Laws.

## Without in any way relieving or modifying the obligation of the Lessee to comply with Section 14.1, the Lessee may at its expense, contest or appeal the enforceability or validity of any of the Applicable Laws, provided that the Lessee commences any proceedings to contest or appeal the enforceability or validity of the Applicable Laws or any associated cost promptly and continues with the proceedings with reasonable diligence.

# Quiet Enjoyment

## Subject to the terms and conditions of this Lease, the Lessee, paying the Rent and performing or observing its obligations under this Lease, shall and may peaceably hold and enjoy the Land during the Term without interruption or disturbance by the Lessor or any person lawfully claiming under it.

# Transfer or ASSIGNMENT

## Unless this Lease is registered in the Land Titles Office, this Lease may not be assigned.

## If this Lease is registered in the Land Titles Office, the Lessee may transfer or assign this Lease without the consent of the Lessor.

## If this Lease is registered in the Land Titles Office, a Sublessee may be permitted to assign its sublease without the consent of the Lessor.

## An assignment of this Lease by the Lessee is of no force or effect as against the Lessor unless

## the proposed assignee enters into a written agreement with the Lessor whereby the assignee covenants and agrees to observe and perform all of the covenants and agreements to be observed or performed by the Lessee under this Lease, and

## the Lessee sells or transfers the Improvements concurrently with the assignment of this Lease.

## The assignment of this Lease by the Lessee will not relieve and discharge the Lessee from its obligations or liabilities under this Lease except to the extent those obligations are assumed in writing by the assignee.

## In the event of conflict between the terms of this Lease and the terms of an assignment, the terms of this Lease will prevail.

## If any interest in this Lease is transferred or assigned in compliance this Lease that assignment or transfer is of no force or effect as against the Lessor unless a transfer or assignment of the interest is registered in the Land Titles Office.

# SUBLEases

## If this Lease is registered in the Land Titles Office, the Lessee may sublease the Land without the consent of the Lessor.

## If this Lease is registered in the Lands and Resources Register, the Lessee must not sublease the Land without the consent of the Lessor.

## Any sublease of the Land:

### may be for any period up to one day before the expiration of the Term, and not beyond;

### will be expressly subject and subordinate to this Lease and to the rights of the Lessor under this Lease, and will terminate upon termination of this Lease;

### will oblige the Sublessee not to do anything in contravention of this Lease;

### must be registered in the Land Titles Office, if the sublease is for three or more years and the Lease is registered in the Land Titles Office;

### must be recorded in the Lands and Resources Register if the Lease is registered in the Lands and Resources Register; and

### must contain the following:

#### a recital that the underlying property is Settlement Land of the Kwanlin Dün First Nation and subject to the *Kwanlin Dün First Nation Final Agreement*, the *Kwanlin Dün First Nation Self-Government Agreement*, and Kwanlin Dün First Nation legislation;

#### a covenant from the Sublessee that the Sublessee will inform any person lawfully residing on the Land subleased to the Sublessee of the requirement to indicate on that person’s annual income tax return to the Canada Revenue Agency that that person is resident on Settlement Land;

#### consent from the Sublessee authorizing the Lessee to disclose to the Kwanlin Dün First Nation the Sublessee’s name and address for the purpose of compiling a list of taxpayers who are resident on Settlement Land; and

#### a covenant that the Sublessee must, upon written request by the Lessee, provide to the Lessee a list of names of all persons lawfully residing on the Land subleased to the Sublessee.

## If this Lease is registered in the Land Titles Office, a Sublessee may sublease its interest in this Lease and mortgage a sublease without the consent of the Lessor.

## The sublease of the Lessee’s interest in this Lease will not relieve or discharge the Lessee from any of its obligations or liabilities under this Lease.

# MORTGAGE

## The Lessee may mortgage its interest in this Lease by any means without the consent of the Lessor. The Lessor confirms that any Mortgagee may enforce its security to the fullest extent and acquire the Lessee’s leasehold interest in any lawful way and, by its representative or a receiver, as the case may be, and subject to Section 18.2, take possession of and manage the Land and transfer, assign, or sublease the leasehold interest in the Land without prior notice to the Lessor and without the necessity of obtaining any consent from the Lessor.

## Notwithstanding anything else in this Lease, any mortgage will be subject to the following conditions:

### if the Mortgagee takes possession of the Land or acquires the Lessee’s equity of redemption then the Mortgagee will perform and observe all the Lessee’s covenants and agreements under the Lease while in possession of the Land and until the Lease is transferred or assigned as provided in Section 18.2(b) or (c);

### if the Lease is registered in the Land Titles Office, the Mortgagee of the Lease will cause any transferee or assignee of the leasehold interest to agree in writing to assume, perform and observe all the Lessee’s covenants and agreements under the Lease, and upon registration of the transfer or assumption agreement in the Land Titles Office and upon delivery of the transfer or assumption agreement to the Lessor, the Mortgagee will be deemed to be released from any and all obligations under this Lease;

### if the Lease is registered in the Land and Resources Register, the Mortgagee of the Lease will cause any transferee of the leasehold interest to agree in writing to assume, perform and observe all the Lessee’s covenants and agreements under the Lease, and upon registration of the transfer agreement in the Land and Resources Register and upon delivery of the transfer agreement to the Lessor, the Mortgagee will be deemed to be released from any and all obligations under this Lease;

### the Mortgagee (excluding a Mortgagee of a Sublessee’s leasehold interest) will not disturb a Sublessee’s rights once a sublease is registered in the Land Titles Office or recorded in the Lands and Resources Register.

## The mortgage of the Lessee’s leasehold interest by the Lessee will not relieve or discharge the Lessee from any of its obligations or liabilities under this Lease.

## Throughout any period of time during which, as a result of proceedings for default under a Mortgage including transfer of title under the *National Housing Act,* Canada Mortgage and Housing Corporation holds leasehold title to this Lease:

## The Lessor waives, as against the Mortgagee and Canada Mortgage and Housing Corporation and their successors and assigns, all rent and additional rent and interest accruing and otherwise required to be paid under this Lease, but for the purposes of this waiver, rent and additional rent do not include taxes and utility charges required to be paid by the Lessee, and the actual costs of construction, maintenance and repair of damages that are the responsibility of the Lessee; and

## The consent of the Lessor shall not be required with respect to any vacancy of or removal of goods from the Premises.

## If at any time the Improvements are damages or destroyed to the extent of 25% or more of their full replacement cost, then the Mortgagee or Canada Mortgage and Housing Corporation or a successor may elect to require that the insurance proceeds not be applied toward the repair or rebuilding or restoration of the Improvements, and in the event of such an election the insurance proceeds shall be applied, in priority:

## First, but only if and to the extent required by the Lessor or the Lessee, toward clearing and restoring the Land as nearly as possible to their condition prior to the commencement of construction;

## Second, towards payment of all moneys owing on the Mortgage;

## Third, towards payment of all moneys payable to the Lessor under this Lease; and

## Fourth, in payment to the Lessor and the Lessee in accordance with their interests therein,

## and the Lessee shall not be obligated to repair or rebuild or restore.

## There shall be no obligation on Canada Mortgage and Housing Corporation to arrange or maintain any insurance.

## Where Canada Mortgage and Housing Corporation makes the election specified in Section 18.5 and there exists no or insufficient proceeds, as a result of Canada Mortgage and Housing Corporation not having arranged or maintained insurance, Canada Mortgage and Housing Corporation shall not be required to do more than clear and restore the Land, as nearly as possible, to its condition prior to the commencement of construction, and shall be entitled to apply to that end whatever insurance proceeds may be available.

## There shall be no obligation on Canada Mortgage and Housing Corporation to indemnify the Lessor except where Canada Mortgage and Housing Corporation would be so obligated apart from the terms of this Lease.

## In the case of any arbitration or any other dispute resolution process, the Lessee must give timely notice of such proceedings to the Canada Mortgage and Housing Corporation and any Mortgagee. The Canada Mortgage and Housing Corporation and any Mortgagee may participate fully in the proceedings of any arbitration or any other dispute resolution process, if in their respective reasonable opinions, the outcome of those proceedings may affect their respective security.

1. NON-DISTURBANCE

## The Lessor covenants to and in favour of the Lessee and to and in favour of and for the benefit of every Sublessee, Mortgagee, licencee, permittee or holder of any other interest in the Lessee’s leasehold interest or in any interest derived from this Lease (each called an “**Interested Party**”), that if this Lease is terminated for any reason whatsoever before the expiration of the Term or if any rights of the Lessee under this Lease are terminated, suspended or interfered with for any reason whatsoever, the Lessor will not disturb or interfere with the possession, interest or rights of any Interested Party in respect of the Land during the Term provided that the Interested Party observes and performs for and in favour of the Lessor, its covenants and obligations contained in its sublease, mortgage, licence, permit or other instrument under which that Interested Party’s interest in respect of the Land arises subject to the proviso that the covenants and obligations cannot be inconsistent with the covenants and obligations of the Lessee under this Lease to the Lessor or which create a liability or payment obligation (i.e. property taxes, utilities, insurance) on the Lessor.

## The Lessor will sign non-disturbance agreements as may be reasonably requested by an Interested Party to confirm the Lessor’s agreements under this Section 19 but subject always to payment without delay of the Lessor’s reasonable legal and consulting costs.

## Notwithstanding anything to the contrary in this Lease, if this Lease is registered in the Land Titles Office and the Lessor is in a position to terminate this Lease pursuant to the provisions of Section 27, the Lessee will, upon the written request of a Mortgagee of this Lease, execute a transfer or an assignment of this Lease for the unexpired Term of the Lease to a Mortgagee of the Lease or its assignee, and the Mortgagee will execute any documentation to give effect to that transfer or assignment of this Lease and further will attend to the immediate registration of the transfer or assignment of this Lease despite any act, omission or default of the Lessee under this Lease, subject to the following conditions:

### the Mortgagee of this Lease is the mortgagee of a mortgage registered against the Leasehold interest in the Land; and

### all the monies due and payable pursuant to this Lease are paid in full to the date of the transfer or assignment of this Lease to a Mortgagee of this Lease.

## Notwithstanding anything to the contrary in this Lease, the Lessor hereby covenants to and in favour of and for the benefit of every Sublessee, if this Lease is not otherwise transferred or assigned to a Mortgagee of this Lease pursuant to Section 18, upon the cancellation of this Lease for any reason prior to the expiry of the Term, the Lessor may require a Sublessee to enter into a lease or a Sublessee may request from the Lessor a new lease and the Lessor will grant a new lease or will cause a new sublease to be offered to that Sublessee on the same terms as contained in any sublease held by that Sublessee in the Land, provided:

### the default in respect of which the Lease is cancelled has been cured in relation to that part of the Land comprised by the sublease held by that Sublessee;

### the covenants and obligations contained in the new lease to be issued are not inconsistent with the covenants and obligations of the Lessee to the Lessor as they relate to the subleased Land;

### the terms of the new lease contain arrangements as are reasonably required to ensure that the new leases make appropriate arrangements for the use, maintenance and payment for all common parts and facilities, or infrastructure required for the use and occupation of the Land demised by the new leases;

### any new lease granted is subject to the interests of any Mortgagee of that sublease to reflect the interests, and rights of the Mortgagee of that sublease prior to the termination of this Lease or the request for the grant of the new lease as appropriate;

### the reasonable legal and consulting costs of the Lessor required to issue a lease are payable by the Sublessee to whom the new lease is to be granted.

## The Lessor makes the covenants and agreements in this Section 19 with the intention that they are enforceable by any Interested Party for whom the covenant or agreement is expressed to be for the benefit of and are fully enforceable by any Interested Party notwithstanding that Interested Party is not a party to the terms of the Lease. The Lessor will not do anything or make any argument to prevent or obstruct whether directly or indirectly any Interested Party in taking the benefit of and enforcing the provisions of the Lease expressed to be for the benefit of any Interested Party based upon the fact that the Interested Party is not a party the Lease.

# NUISANCE

## The Lessee will not cause, permit, or suffer any nuisance on the Land.

## Without limiting Section 20.1, the Lessee will, upon written notice from the Lessor, use reasonable efforts to abate any nuisance within its control and arising directly or indirectly out of the use or occupation of the Land by the Lessee or someone else for whom the Lessee is responsible in law.

## The normal carrying on at any time by the Lessee of a lawful use as contemplated in Section 9 to the standards required of it under any provision of this Lease will not be considered a nuisance for the purposes of this Section 20.

# INSURANCE

## The Lessee must obtain and maintain, at its expense, personal liability insurance with protection in an amount not less than $1,000,000.00 per occurrence against claims for bodily injury (including death) and personal injury occurring at or about the Land.

## The Lessee must obtain and maintain or cause to be obtained or maintained any other insurance that the Lessor reasonably requires.

## The Lessee will obtain and maintain, at its expense, property insurance insuring the Improvements against loss or damage by fire and other perils under in an amount at least equal to their full replacement value.

## Notwithstanding any other provisions of this Lease, a Mortgagee shall have no obligation to obtain or maintain any insurance for the Land by reason of default of the Lessee.

## The Lessee will not do, permit, or suffer anything to be done on the Land which might cause any policy of insurance required by this Lease to be invalidated or cancelled, and the Lessee will comply promptly with every lawful notice in writing from the Lessor or any insurer requiring the execution of works or discontinuance of any use of the Land in order to avoid invalidation or cancellation of any insurance.

## The Lessee releases the Lessor, its officers, employees, agents and contractors from all liability for any injury, death, loss, expense or damage caused by or resulting from any of the perils or injury against which it has covenanted in this Lease to insure, except if the loss, damage or injury may arise out of the gross negligence or malicious or willful misconduct of the Lessor, its officers, employees, agents or contractors, and even though the Lessee has failed to so insure.

## The Lessee will, upon request, deliver certificates of the insurance evidencing every policy of insurance that is required by this Lease immediately after the insurance is affected and will, upon request, deliver a certificate of renewal that the insurance has been renewed or replaced at least 10 days before the expiry of any policy of insurance in force.

## The Lessee will, upon written request, deliver a certified copy of every insurance policy taken out by the Lessee with respect to the Land.

## The insurance required under this Lease must comply with the following:

## in the case of property insurance, the Lessor must be listed as an additional insured, with loss payable to the Lessor and the Mortgagee, if any, as their respective interests may appear and the insurance must include a waiver of any subrogation rights that the Lessee’s insurer may have against the Lessor and those for the Lessor is responsible in Law, whether or not the damage is caused by the Lessor’s act, omission or negligence and the Lessee must waive its rights of subrogation against the Lessor;

## in the case of liability insurance, the Lessor must be listed as an additional insured and the insurance must contain cross-liability coverage and a severability of interest endorsement, and

## in the case of all insurance, the insurance

## must be obtained from an insurer that is licensed in Yukon,

## must be primary, non-contributing with, and not in excess of, any other insurance available to the Lessor,

## must not be invalidated with respect to the interests of the Lessor by reason of any breach of any warranties, representations or conditions contained in the policies, and

## must include a provision or bear an endorsement that the insurer will give the Lessor 30 days written notice of any change or cancellation of the policy.

## If the Lessee does not pay (or cause to be paid) any insurance premiums when they become due, the Lessor may pay the premiums (or obtain and maintain any insurance the Lessor wants, in the Lessor’s discretion) and the Lessor’s expenses for the payment of premiums or the obtaining and maintenance of insurance shall be recoverable from the Lessee.

# NET LEASE

## This Lease is to be a completely carefree net lease and except as otherwise set out in this Lease the Lessor is not to be responsible during the Term for any costs, charges, expenses, or outlays of any nature in respect of the Land.

## The Lessee will be responsible for prompt payment of the Lessor’s reasonable direct out of pocket expenses, including legal expenses, incurred in connection with execution and delivery of further and other documents when required under or in connection with this Lease.

# WARRANTIES

## Except as otherwise set out in this Lease, no representations, warranties, or conditions have been made to the Lessee under this Lease by the Lessor or its officers, employees, agents, and contractors in respect of the Land.

## The Land is leased “as is” and no representations or warranties have been made about the Land (including the application of Applicable Laws, compliance with Applicable Laws, including uses allowed under any zoning bylaws or regulations, the Land’s condition, title, encumbrances, or the suitability of the Lessee.

## The Lessor warrants that there is legal access to the Land by public or private road or right of way and the Lessee’s obligations under this Lease are subject to access remaining available during the Term.

## To the best of the Lessor’s knowledge there are no environmental, heritage or cultural prohibitions to development of the Land.

## The Lessee represents the following:

## The Lessee conducted all inspections of the Land that it considers necessary; and

## The Land is suitable for the Lessee’s intended use.

# CERTIFICATE

## The Lessor will from time to time, upon not less than 30 days prior request by the Lessee, execute and deliver to the Lessee or to any other addressee as requested by the Lessee, a statement in writing prepared by the Lessee and certifying to the extent true:

### that this Lease is unmodified and in full force and effect or if modified, identifying any modifications, and confirming that the Lease is in full force and effect as modified,

### to the best of the Lessor’s knowledge that the Lessee is not in default of any provision of this Lease,

### if the Lessee is in default of any provision of this Lease, the particulars of that default, and

### any other matters related to this Lease as may be reasonably requested.

## The Lessee will reimburse the Lessor for any reasonable legal or consulting costs required for the Lessor to issue the statement required pursuant to Section 24.1.

## If the Lessor fails or refuses to deliver statements described in Section 24.1 within the time provided in this Lease, the Lessor is deemed to have certified to each addressee named in that statement that the Lessee is not in default of any provision of this Lease.

# OTHER ENCUMBRANCES

## The Lessor will grant any easement, right of way or similar charge in respect of the Land as may be reasonably required by any public utility or approving authority to enable the Lessee to develop or redevelop the Land, provided the Lessor will not be obliged to incur any costs in connection with any such charge.

## Notwithstanding Section 25.1, the Lessor shall not be required to grant an easement, right of way or similar charge in respect of the Land for a period beyond the Term of this Lease.

## The Lessee acknowledges and agrees that the Lessor may grant any easement, right of way or similar charge in respect of the Land to any public utility or approving authority, as long as the easement, right of way or similar charge has no material effect on the permitted use of Land. On being given written notice of the easement, right of way or similar charge by the Lessor, the Lessee shall promptly sign and deliver to the Lessor the necessary documentation to subordinate the Lessee’s rights under the Lease to the easement, right of way or similar charge.

## The Lessee has the right to grant without the consent of the Lessor a leasehold easement over the Lessee’s leasehold interest in the Land for any period up to one day before the expiration of the Term, and not beyond.

# INDEMNITY

## The Lessee shall indemnify and save harmless the Lessor, its officers, employees, agents, and contractors against and from all liability, loss, costs, claims, demands, expenses (including legal fees on a solicitor-client basis), actions, damages suits, and other proceedings, whatsoever, including consequential, arising in any way because of:

## a breach of any of the Lessee’s covenants or obligations under this Lease,

## any injury to, death of, any person on the Land during the Term,

## any damage to, or loss of, property by any person in any way on the Land or because of the use of the Land during the Term, and

## any action of the Lessor while exercising or enforcing its rights under this Lease.

# Default and Remedies

## If the Lessee

## fails to make any payment for which the Lessee is liable under this Lease or the *Lands Act*;

## is in actual default of a material obligation under this Lease; or

## in the case of a corporation, ceases to exist;

## then the Lessor may give the Lessee notice of default.

## If the Lessor gives the Lessee notice of default under Section 27.1 and either:

### the default is reasonably capable of being cured within sixty (60) days after the notice is given and the Lessee fails to cure the default within the sixty (60) days; or

### the default is not reasonably capable of being cured within sixty (60) days after the notice is given and the Lessee fails to commence to cure the default with reasonable diligence upon receipt of the notice and to proceed to cure it with reasonable diligence to completion;

then, subject to the provisions of this Section 27 and to the rights of the parties under Section 19, the Lessor may serve the Lessee a notice of intention to terminate this Lease.

## If the Lessor terminates the Lease, then except as otherwise expressly provided in this Lease, and subject to the rights of the parties under Section 19, or otherwise at law, this Lease and everything contained in it and the leasehold estate and Term terminates without re-entry or any other act or legal proceedings, and the Lessor may re-enter the Land and possess and enjoy them as if the Lease had not been made.

## Notwithstanding a declaration by the Lessor that this Lease is terminated, the Lessor will be entitled to recover from the Lessee the Rent then accrued or accruing 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 Section 29, subject always to the rights of the parties in Section 19.

## No notice to the Lessee under this Lease will be valid for any purpose unless a copy of that notice is also given to each Mortgagee and Sublessee. The copy of a notice may be given to the Mortgagee and Sublessee at the address specified by the Mortgagee and Sublessee and otherwise on the same terms and conditions as applicable to notices referred to in Section 39.

## Within 7 days of receipt of a notice under Section 27.5, the Mortgagee may give to the Lessor a notice in writing stating that the Mortgagee intends to take or has taken formal proceedings for the enforcement of its mortgage. A mortgagee who intends to take formal proceedings may include in a notice given under this section a statement as to the date by which it intends to commence those proceedings.

## Subject to the consent of the Mortgagee, the Lessor must not re-enter, distrain or terminate this Lease prior to the earlier of

## the expiry of time within which the Mortgagee is required to give notice to the Lessor, if no notice by the Mortgagee was received by the Lessor within that time;

## the expiry of a reasonable period of time after receiving a notice under Section 27.6, , if no formal proceedings for the enforcement of the mortgage have been commenced; or

## the conclusion of formal proceedings for the enforcement of the mortgage.

## Any curing of a default by a Mortgagee or any Sublessee will be construed as curing of that default by the Lessee. The Lessor hereby grants the Mortgagee and any Sublessee access to the Land for the purpose of curing any defaults under the Lease.

## The Lessor acknowledges that in consideration of the Rent, the Lessor will, to the fullest extent reasonably possible, seek recourse in respect of alleged material default of the Lessee under this Lease by way of a claim in law against the Lessee for debt or damages, as the case may be, recoverable against the Land or the rents derived from the Land by the Lessee, or seek an order of a court of competent jurisdiction restraining continuing breach, and will not resort to exercising a right to cancel this Lease and forfeit the leasehold estate except in respect of a serious or continuing breach of a material covenant under this Lease for which a reasonable and adequate alternate remedy has not been or cannot reasonably be obtained.

# Performance of Covenants

## All agreements, terms, conditions, provisos, duties, and obligations to be performed or observed by the Lessee under this Lease will be deemed to be Lessee’s covenants and all the Lessee’s covenants in this Lease are made with the Lessor for the Lessee and for its successors and assigns.

## Without limiting any other remedy of the Lessor under this Lease, the Lessor may request the Lessee in writing to perform the covenant, and if the Lessee does not perform it within 30 days of that order the Lessor may but will not be obligated to do whatever is reasonably necessary to perform it. The Lessee will pay to the Lessor any cost or expense reasonably incurred by the Lessor in performing the covenant promptly upon demand by the Lessor.

## Except in the case of an emergency, the Lessee will provide the Lessor, its officers, employees, agents, contractors, and subcontractors, with and without vehicles and equipment, convenient access to the Land at all reasonable times on reasonable prior written notice for the purposes of viewing the Land and otherwise determining that the Lessee’s covenants are being duly observed and performed. The Lessee may require that a representative of the Lessee be present.

## The Lessee will also provide the Lessor, its officers, employees, agents, contractors, and subcontractors with and without vehicles and equipment all reasonable and necessary access to the Land for the purpose of performing the Lessee’s covenants pursuant to Section 28.1.

# Payments Paid by Lessor Collectable on Demand

## If at any time before or after the expiration of the Term or 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, acting reasonably, elects to incur any expense including 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) and succeeds in establishing that default, then in every case the amount of damage, loss, expense or payment (including legal fees on a solicitor-client basis), together with interest as provided in Section 30.1, will be paid by the Lessee to the Lessor promptly on demand. The amount of any damage, loss, expense, or payment referred to in this Section 29 will be recoverable in the manner provided by law for the recovery of Rent in arrears.

# ARREARS TO BEAR INTEREST

## If the Rent or any other sum owing by the Lessee to the Lessor under this Lease is not paid within 30 days from the date on which it is due then it will bear interest at the Prime Rate in effect from time to time plus 4% per annum from the date the Rent or the sum is due until the date of the payment by the Lessee, but this stipulation for interest will 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.

# REMEDIES CUMULATIVE

## 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.

# SURRENDER OF LEASE

## While any Interested Party has an interest in the leasehold interest of the Lessee, the Lessor, except with the consent of all Interested Parties or upon the expiration of the Term, will not accept the surrender of, or agree to accept the surrender of, and will not terminate, or agree to terminate, this Lease except in accordance with Section 27.

## The Lessee will surrender this Lease to the Lessor at the expiration of the Term or termination of the Lease in accordance with the Lessee’s obligations under this Lease, and if this Lease is registered in the Lands Titles Office, will deliver to the Lessor, in a timely manner, a discharge of this Lease in a form acceptable for registration.

# WASTE

## The Lessee will not cause, permit, or suffer the commission of any waste on the Land.

## The Lessee will not cause, permit, or suffer the removal of any sand, gravel, topsoil, or other material constituting part of the Land except as required by construction and installations permitted by this Lease and otherwise except in compliance with Applicable Laws, in which case, removal will not constitute waste.

# LITTER

## Without limiting Section 33, the Lessee will not cause, permit, or suffer any litter or debris to be placed or left at the Land except as is reasonably necessary in accordance with the uses permitted by Section 9, by construction or installations permitted by this Lease or as permitted in writing by the Lessor acting reasonably.

# ENVIRONMENTAL STANDARDS

## Without limiting the generality of Section 15, the Lessee will at all times conduct all activities on the Land in compliance with all Applicable Laws.

## Without limiting the generality of Section 15, no Hazardous Substances or Contaminants will be used, emitted, discharged, or stored on the Land or any adjacent land by the Lessee or Sublessees except in strict compliance with all Applicable Laws. The Lessee will immediately give written notice to the Lessor of the occurrence of any event in or on the Land which might constitute a breach of or an offence under the Applicable Laws or being in breach of the Applicable Laws and, if the Lessee, alone or with others, causes or permits the happening of such event, the Lessee will, at its own expense:

### promptly remove the Hazardous Substances or Contaminants from the Land in a manner which conforms with all Applicable Laws, permits, by-laws, ordinances, regulations, notices, and orders governing the removal, movement and disposal of Hazardous Substances or Contaminants;

### provide all bonds or securities reasonably required by the Lessor or government authority having jurisdiction;

### if requested, obtain, at the Lessee’s expense from an independent consultant designated or approved by the Lessor acting reasonably, verification of the complete and proper removal of the Hazardous Substances or Contaminants from the Land or, if such is not the case, reporting as to the extent of any failure of this Section; and

### assume full responsibility for all damages to adjacent land and water caused by any discharge of Hazardous Substances or Contaminants which originated on and whose source is the Land.

## The Lessee will, at its own expense, remedy any damage to the Land caused by the performance of the Lessee’s obligations under this Section 35.

## The Lessee will implement the appropriate technology, design, or repair to mitigate anticipated or remediate actual adverse environmental impacts attributable to the Lessee’s use of the Land immediately following discovery or notice by the Lessee. Further, the Lessee will permit the Lessor’s representatives to enter onto the Land at all reasonable times and on reasonable prior written notice, to inspect and monitor the Lessee’s activities in the course of mitigation and to ensure that the Lessee has taken reasonable steps to mitigate any reasonably anticipated or actual adverse impacts attributable to the Lessee on the Natural Environment to the satisfaction of the Lessor. The Lessee may require that a representative of the Lessee be present.

## If the Lessee brings or creates upon the Land or permits the bringing or creating upon the Land any Hazardous Substances or Contaminants Land notwithstanding any rule of law to the contrary, those Hazardous Substances or Contaminants are and remain the sole and exclusive property of the Lessee and do not become the property of the Lessor notwithstanding the degree of fixation of the Hazardous Substances or Contaminants or the goods containing the Hazardous Substances or Contaminants to the Land and notwithstanding the expiry of the Term or termination of this Lease. Nothing in this Section is to be construed as permitting the Lessee to bring or create upon the Land or permit the bringing or creating upon the Land any Hazardous Substances or Contaminants.

## The obligations of the Lessee pursuant to this Section 35 will survive the expiry of the Term or termination of this Lease, save only that, to the extent that the performance of these obligations requires access to or entry upon the Land or any part of the Land after the expiration of the Term or termination of this Lease, the Lessee will be afforded reasonable entry and access for purposes at such times and upon such terms and conditions as the Lessor may from time to time reasonably specify in writing. If the Lessee, despite being afforded reasonable opportunities to perform such obligations, fails to do so, the Lessor may, at the Lessee’s expense, by the Lessor’s officers, employees, agents or contractors and subcontractors, undertake the performance of any necessary work in order to complete such obligations of the Lessee, but having commenced such work, the Lessor will have no obligation to the Lessee to complete that work.

# AMENDMENTS

## This Lease constitutes the entire agreement between the parties with respect to the subject matter of this Lease. No modification, or waiver of any provision of the Lease will be inferred from anything done or omitted by either of the parties.

## This Lease may be amended only by written instrument executed by both parties and, if this Lease is registered in the Land Titles Office or the Lands and Resources Register, such written amending instrument must also be registered in the Land Titles Office or the Lands and Resources Register.

## 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 will 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 will be inferred from anything done or omitted by the Lessor except by an express waiver in writing.

# TIME OF THE ESSENCE

## Time is of the essence in this Lease.

# SEVERABILITY

## If any part of this Lease is declared or held invalid for any reason, the invalidity of that part will not affect the validity of the remainder which will continue in full force and effect and be construed as if this Lease had been executed without the invalid portion.

# Notices

## All notices under this Lease must be given in writing and delivered in accordance with this Section 39.

## All notices will be delivered to the other party and no notice will be effective until such delivery has been made.

## The addresses for delivery are:

To the Lessor:

Kwanlin Dün First Nation

35 McIntyre Drive

Whitehorse, YT Y1A 5A5

Attention: Director, Heritage, Lands and Resources Department

To the Lessee:

NAME etc.

## Notice will be deemed to have been delivered:

### if delivered by hand, upon receipt;

### if sent by electronic transmission, the next business day after the day of transmission, excluding from the calculation weekends and holidays; or

### if sent by registered mail, four days after the mailing thereof.

## Either party may change the address shown in this Lease by informing the other party of the new address, and such change will take effect 15 days after the notice is received.

# successors

## This Lease benefits and binds each party’s heirs, executors, administrators, successors, permitted assigns, and other legal representatives.

# Further Assurances

## Each of the parties from time to time and at all times will do all further acts and execute and deliver all further deeds and documents as any other party may reasonably require in order to fully perform and carry out the provisions and the spirit and intent of this Lease.

**IN WITNESS WHEREOF** each of the parties has executed this Lease as of the date and year first above written.

**KWANLIN DÜN FIRST NATION**

Per:

Greg Thompson

Director, Heritage, Lands and Resources Department

**NAME OF LESSEE(S)**

Per: *c/s*

**AFFIDAVIT OF AUTHORITY**

**(Government Signatory(ies))**

TO THE REGISTRAR:

I, GREG THOMPSON, of the City of Whitehorse, in the Yukon Territory, SWEAR / AFFIRM THAT:

1. I am the Director of the Heritage, Lands and Resources Department, of KWANLIN DUN FIRST NATION.

2. I have authority to execute the annexed instrument on behalf of the above-named government, without using a seal.

3. The above facts are true to the best of my knowledge, information, and belief.

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| --- | --- | --- |
| SWORN / AFFIRMED BEFORE ME  at Whitehorse in Yukon  on the \_\_\_\_ day of , 2020  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *(Signature of Notary or Commissioner)*  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *(print full name)*  Notary Public in and for Yukon; or Notary Public or Commissioner for Oaths in and for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (My commission expires:\_\_\_\_\_\_\_\_\_\_\_\_\_) | )  )  )  )  )  )  )  )  )  )  )  )  ) | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  GREG THOMPSON |