



## LANDS DEPARTMENT

### PREPAID LITTLE SHUSWAP LAKE BAND LEASES – SUMMARY

#### SCOTCH CREEK I.R. #4

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REVISED February 11, 2022

#### SUMMARY OF PREPAID LITTLE SHUSWAP LAKE BAND LEASES – SCOTCH CREEK I.R.#4.

This summary provides a review of the major terms and conditions of the Little Shuswap Lake Band Prepaid Leases on Scotch Creek I.R.#4. The provisions of the different Prepaid Leases are the same other than the Term which is defined in the Definitions Section in Schedule A of the Lease.

#### DISCLOSURE:

**This summary is not intended to be a complete analysis of the terms of the Lease nor to provide legal advice as to the interpretation of the terms of the Lease. Parties are advised to review the Lease in detail and obtain independent legal advice as to the provisions of their Lease prior to accepting an Assignment of Lease for the Property or prior to renewing the Lease from time to time.**

#### LEGAL AND APPROVAL AUTHORITY:

The Lease is between Her Majesty the Queen as represented by the Minister of Indian Affairs and Northern Development on behalf of the Government of Canada (now Indigenous Services Canada). The Minister holds the Lease in trust for the Little Shuswap Lake Band. Any documentation dealing with the Lease – such as an Assignment of the Lease or a Mortgage of the Lease - must first be presented to the Band for their approval. Once approved by the Band, the documentation is forwarded to Indigenous Services Canada (“ISC”) in Vancouver for their review and then for final registration in the Indian Land Registry in Ottawa.

#### GENERAL INFORMATION

The registration of an Assignment of Lease or a Mortgage with respect to the Property is a time-consuming process. The Tenant, or potential Tenant, needs to understand this in order to allow for sufficient time to complete the Assignment or the Mortgage. It is difficult to predict the timing of final registration of the documentation in the Indian Land Registry.

#### TITLE INSURANCE

Title insurance provides protection against risk and potential issues that could arise between the time funds are advanced for the Assignment of a Lease and/or the registration of security against the title of the Property. The use of Title Insurance can expedite sales and alleviate some of the problems caused by uncertainty prior to registration.

Specifically, Title Insurance allows the parties to proceed with the completion of the payout on an Assignment of the Lease on the date the Assignment is submitted to the Band. This eliminates the waiting period from the date of submission to the Band to the date of registration in the Indian Land Registry. Where there is a Mortgage, Title Insurance also allows the Financial Institution to advance the proceeds of the Mortgage on the same date the Mortgage is submitted to the Band for registration. By

purchasing Title Insurance, the parties can move ahead with the possession of the Property by the Purchaser in an Assignment on a specific date rather than waiting for final registration in the Indian Land Registry. The same applies if the party is applying for a new Mortgage. Lawyers and Notaries that are familiar with Leasehold Assignments are very familiar with the concept and use of Title Insurance. Most Financial Institutions require that any transaction involving a Leasehold interest on Reserve be completed with the use of Title Insurance. The cost of Title Insurance can vary but is usually in the range of \$500.00 to \$1,000.00.

## **MAJOR PROVISIONS OF THE LEASE**

**Article 2.1.1 Term.** The Property is leased to the Tenant for the Term which is defined in Schedule A to the Lease.

**Article 2.1.2 Access.** The Tenant is responsible to obtain or provide access to the Property. In general the Property is serviced by road – but the Tenant should ensure that the access they are relying on is legal.

**Article 2.1.3 Use.** The use of the Property is restricted to single family residential. In the absence of anything to the contrary in the Lease, this would generally mean one residential building and any buildings associated with a single residence such as a garage or a shed. The “Background” section of the Lease on page 1 specifically states what buildings were located on the Property at the commencement of the Lease. The buildings outlined in that section of the Lease have been acknowledged by the Band and should therefore be allowed during the Term. No business or commercial activities are allowed on the Property.

**Article 2.1.4 Nuisance.** The Tenant covenants not to create, or allow, a nuisance on the Lands.

**Article 2.1.5 Waste.** The Tenant covenants not to cause or allow any waste or rubbish on the Property.

**Article 2.1.6 Abandonment.** The Tenant cannot abandon the Property during the Term without the prior written consent of the Band which consent can be withheld by the Band at their absolute discretion.

**Article 2.1.7 Archeological.** The Tenant must advise the Band if they find a burial site, human remains or Indian artifact of archeological or cultural interest on the Property. The Tenant must comply with the requirements set out in the Heritage Conservation Act of British Columbia with respect to any such findings.

**Article 2.1.8 Survey Monuments.** The Tenant must not disturb any survey monuments on the Property. In the event one is disturbed – the Tenant is required to have it replaced by a qualified land surveyor.

**Article 2.1.9 Billboards.** The Tenant must not construct or allow a billboard or other large scale advertising device to be constructed on the Property.

**Article 2.2 Bands Utilities.** If the Band provides any utilities, including water and sewer, to the Property, the Tenant is obliged to connect to the Bands Utility and discontinue the use of their existing comparable utilities. The Tenant shall be responsible for any applicable connection fees and development cost charges related to the Bands Utility. The Tenant shall pay the Band for the Utilities provided to the Property from time to time.

**Article 2.3 Representations About Property and Uses.** The Tenant acknowledges that the Minister or the Band have not made any representations or warranties to the Tenant with respect to the Property, including its state of repair or suitability for use by the Tenant. The Tenant has agreed to take the Property on an “as is - where is” basis. It is the obligation of the Tenant to conduct any independent investigations it considers necessary with respect to the suitability of the Property. The Tenant confirms that its intended use is within the scope of the permitted uses for the Property.

**Article 2.4 Band’s Right to Encumber the Title.** The Band has the right to register additional Easements or Rights of Way with respect to an authority or utility company against the Property from time to time. The Tenant agrees to execute such documentation as is reasonably required by the Band to subordinate their rights under the Lease to such Easement or Right of Way.

**Article 2.5 Mineral Rights.** The Band reserves all mineral rights with respect to the Property. The Band has the right to authorize a party to enter onto the Property to prospect for, drill for, or remove any minerals from the Property, provided that such activity does not materially adversely affect the permitted use of the Property.

**Article 2.6 Trees.** The Tenant shall preserve all trees on the Property and will not allow them to be removed or damaged without the prior written consent of the Band. If ordered to remove a tree by the Band, the Tenant shall do so in a proper manner at the Tenant’s cost.

**Article 3.2 Prepaid Rent.** The Prepaid Rent for the Property is set out in Article 3.2 and is prepaid for the Term of the Lease. GST is payable on the Prepaid Rent and any Additional Rent. The Tenant shall pay the Prepaid Rent to the Receiver General for Canada on behalf of the Band for the benefit of the Band or the Locatee. The Prepaid Rent will not be refunded to the Tenant under any circumstances.

**Article 3.3 Additional Rent.** In addition, the Tenant is responsible to pay Additional Rent from time to time to the Band. Additional Rent is defined in the Definitions set out in Schedule A to the Lease. Any costs incurred by the Band, or any unpaid expenses of the Tenant, with respect to the Property, are chargeable to the Tenant as Additional Rent. These would include any costs incurred by the Band as a result of any default of a provision of the Lease – for example, the obligation to insure the Property.

**Article 3.4 Interest.** Interest is payable on any overdue Rent or Additional Rent.

**Article 4.1 to 4.4 Construction.** Before commencing any alterations to existing buildings or constructing a new building, the Tenant must submit a Construction Plan to the Band. The consent of the Band must be obtained prior to the commencement of construction. The construction must be done in accordance with any Laws or Bylaws affecting such work. The Little Shuswap Buildings Bylaw No. 1981-01 and Building Policy BP No. 2017-01 are in place and govern the construction process on the Reserve. Any Building Permits required by the Band must be obtained prior to the commencement of such construction. A Permit shall not be unreasonably withheld by the Band. The Building Bylaw and Building Policy can be amended by the Band from time to time, so the Tenant should contact the Band to ensure they have the current rules and Permits prior to commencing construction. Construction must be completed within 18 months, or such other reasonable time as the Band decides, of commencement. All construction and work done on the Property must be done in a good and workmanlike manner in accordance with local industry standards and in a timely fashion. The approval of the Construction Plan or the granting of a Building Permit by the Band shall not make the Ministry or the Band responsible for

the quality of construction completed by the Tenant. The Band might require “As-Built” plans from the Tenant.

Article 4.5 **Construction Insurance.** The Tenant must obtain and maintain construction insurance from the commencement of construction until the construction is substantially completed. The Tenant should provide their insurance company with a copy of the insurance provisions contained in Article 4.5.1 to ensure that they have complied with the insurance requirements of the Lease.

Article 4.6 **Occupation of Buildings.** The buildings on the Property must not be occupied until they are substantially complete and an Occupancy Permit has been obtained. Buildings may be occupied in stages or phases. Substantial Completion of the works will be deemed to have occurred when the Architect or Engineer of the Tenant, at the Tenant’s cost, provides a certificate to the Band.

Article 4.9 **Maintenance.** The Tenant is obliged to maintain and repair the Property, including the land, trees and fences in the condition that a prudent owner acting reasonably would maintain it.

Article 4.10 **Utilities.** The Tenant is responsible for the provision of, and connection to all services required for the use of the Property, including water, access and sanitation.

Article 4.11 **Ownership of Buildings.** Title of the Buildings remains with the Tenant during the Term. The Tenant cannot remove the Buildings from the Property during the Term without the prior written consent of the Band, which consent may be withheld in the sole discretion of the Band.

Article 4.12 **Replacement on Destruction.** In the event of partial or complete destruction of the Property, the Tenant is obliged to notify the Band. The damage must be repaired within a reasonable time frame and to the satisfaction of the Band. The standard of construction and material must be to at least as high a standard as existed before the damage. The Term shall continue and there shall not be any abatement of the Rent. If the Tenant has a Mortgage that is insured by CMHC the Tenant should review the provisions of Article 4.12.3 in detail.

Article 5.1 to 5.4 **Insurance.** The Tenant must maintain adequate insurance on the Property during the Term. The Tenant should provide their insurance provider with a copy of the Insurance provisions in the Lease to ensure that the coverage provided meets the requirement of the Lease. The Insurance shall:

- a) cover general liability in the minimum amount of **\$2.0 million per occurrence;**
- b) cover “all risks” property loss coverage for the Buildings in an amount equal to **the full replacement value of the Buildings;**
- c) **not** be cancellable without providing at least 30 days’ notice to the Band;
- d) the Ministry and/or Band must be listed as an additional insured.

The Band also has the right to increase the minimum amount of general liability coverage from time to time.

Article 5.5 **Proceeds of Property Insurance.** In the event of damage to the Property or the Buildings, the insurance proceeds **must** be used to repair and/or replace the damaged Buildings. This is to make sure that the Property is always replaced and the value of the Property is protected. If the Tenant has a Mortgage, the insurance proceeds must be payable to the Financial Institution to be applied to the repair or replacement of the damaged Buildings. If the damages are not repaired within a reasonable

time, the Band has the right to complete the repairs. In this event the insurer must pay the insurance proceeds to the Band to reimburse their costs.

**Article 5.6 Cancellation of Insurance.** The Tenant must notify the Band promptly if their insurance is cancelled. The Tenant is obliged to take such steps as are necessary to prevent or correct any condition or problem that might possibly cause the cancellation of their insurance.

**Article 5.7 Certificates and Policies.** The Tenant shall provide the Band with a copy of their insurance coverage each year. The Tenant shall provide the Band with any other information or confirmations reasonably required with respect to their insurance coverage.

**Article 5.8 Indemnity of Band.** The Tenant indemnifies the Band against any claim against the Band for any injury, death, loss or expense incurred with respect to any claim for which insurance is to be obtained.

**Article 5.9 Payment of Insurance.** The Band has the right, but not the obligation, to obtain insurance coverage for the Property if the Tenant fails to do so. The cost of such insurance shall be the responsibility of the Tenant.

**Article 6.1.1 to 6.1.2 Compliance with Laws.** The Tenant must comply with any laws dealing with or affecting the Property. This includes any Bylaws or Laws passed by the Band. If the Tenant receives any Notice from any lawful authority with respect to any issue involving the Property, they must provide the Band with a copy of the Notice. Upon the issue being resolved the Tenant shall provide the Band with reasonably satisfactory evidence of the resolution.

**Article 6.1.3 Property Taxes and Property Transfer Tax.** The Tenant is obliged to pay property taxes for the Property each year. A Property Assessment Notice must be sent to each Tenant by December 31 of each year. The Band contracts with BC Assessment to provide the property assessment services. The Assessment provides the Tenant with the current assessed value of the Property. Similar to BC Law, the Little Shuswap Lake Band Property Assessment Law requires the assessed value to be determined based on the fair market value of the Property as if the Land and/or Improvements were fee simple title property. The valuation is done the same as properties not on the Reserve and is determined using the sale price of similar sized improvements on lands of a similar size in the same general area over the past year. The Tenant has the right to appeal the Assessment to the Assessment Review Board of the Band ("ARB"). The process is essentially the same as with fee simple properties under the provincial system. The appeal process is set out on the reverse side of the Assessment Notice. The Tenant has 21 days to file this appeal. The party appealing should go online and review the values of similar properties and be prepared to argue the Assessment before the ARB. This is a formal process but is conducted in a manner that does not necessarily require that the Tenant have legal or other representation. The ARB is an independent three-party panel appointed by the Band. The property taxes for the Property are determined later by the Band pursuant to the provisions of the Little Shuswap Lake Band Property Taxation Law. The Band is obliged to pass a new Property Taxation Law and Annual Expenditure Law each year. This follows the same general principals as employed by municipalities and regional districts in the province. The annual rates and expenditure laws give the Band the authority to change their tax rates and fulfill their obligation to disclose their planned expenditures with the tax revenues each year. The Band's Council must set the rate of tax for the various categories of properties on the Reserve by May 29 of each year. A Tax Notice must be mailed to each Tenant by June 29 of each year. Property

taxes for the Property are due and payable by August 2 of each year. If the Property constitutes the principal residence of the Tenant as of August 2, the Tenant is entitled to claim a Homeowner Grant. The Homeowner Grant is the same as is available to homeowners of fee simple titles off Reserve. A penalty is charged if the Property Taxes are not paid on time – the same as properties off Reserve. Under Article 8.2 of the Lease, the Tenant can appeal the amount of Property Taxes payable, to the Federal Court or under the Dispute Resolution provisions contained in Article 14 of the Lease. Unlike municipalities and regional districts where the Homeowner Grant is reimbursed to the municipality or regional district by the provincial government, Bands fund their own Homeowner Grants and do not receive any reimbursement from the provincial or federal governments.

The Band does not have a Property Transfer Tax in place at this time. In the event the Band enacts a Property Transfer Tax in the future the Lease provides that upon the assignment of the Lease to a third party, Property Transfer Tax would be payable to the Band by the purchaser of the Property.

**Article 6.1.4 Utilities.** The Tenant is responsible to pay for their own utilities used on the Property, including gas, electricity, water, sanitation, cable and telephone.

**Article 7 Environmental.** The Tenant covenants to abide by all environmental laws with respect to the use of the Property. The Tenant is responsible for any contaminants found upon the Property and is responsible for any remediation required with respect to any such contaminants. An Environmental Assessment was done with respect to the Property prior to the granting of the Lease and is attached to the Lease as Schedule C. The Tenant acknowledges having received a copy of the Environmental Assessment and being responsible for the current condition of the Property. In the event the Tenant receives notice of the Property being exposed to a contaminant, the Tenant must promptly advise the Band. If the exposure occurred during the Term then the Tenant must contain the contaminant and take steps to remediate the contamination in a reasonable time frame. Upon completion of the remediation the Tenant must provide the Band with certification of such remediation from an independent body. Not less than 90 days prior to the expiry of the Term of the Lease, the Tenant is obliged to have a new Environmental Assessment conducted of the Property. A copy of the Environmental Assessment must be provided to the Band and the Minister. The Tenant is responsible to complete the remediation of any contaminants on the Property which are revealed by the Environmental Assessment prior to the expiry of the Term unless the Tenant can prove, at the Tenant's cost, that such contamination was on the Property prior to the commencement of the Term. Contamination on the Property shall, at no time, become the property of the Band. The Tenant indemnifies the Band against any liability arising as a result of any exposure to the Property or any person of a contaminant on the Property.

**Article 8 Inspection and Advertising.** The Band has the right to inspect the Property in the event of an emergency without notice, and otherwise from time to time upon provision of reasonable notice. In the event the inspection is required due to a default under the provisions of the Lease, the Band's reasonable expenses with respect to such inspection shall be the responsibility of the Tenant as Additional Rent. During the last 12 months of the Term the Band shall be entitled to:

- a) display signs on the Property advertising it for lease;
- b) upon reasonable notice being provided to the Tenant, allow prospective tenants access to the Property to view it.

Article 9.1 and 9.2 **Assignment of Lease.** The Tenant has the right to assign the Lease to another party subject to the Tenant and Assignee executing such documentation as required by the Band and to the Band consenting to such Assignment. This Assignment cannot be unreasonably withheld by the Band. The Tenant is not released from any further obligations with respect to the Property unless the Tenant receives a specific release from the Band. Typically, the Band would agree to a release from any obligation arising after the date of the Assignment. The Tenant does remain responsible for any defaults or obligations arising during the time they held the Lease however. It is important that the Tenant review these provisions of the Lease and obtain legal advice when assigning the Lease to ensure that their interests are protected.

Article 9.3 **Sublease.** The Tenant has the right to Sublease the Property subject to the prior written consent of the Band and the conditions outlined in Article 9.3.2 of the Lease. This is not a very common situation and is somewhat complicated. **The Tenant is still responsible for any defaults under the Lease while the Property is sublet.** The Tenant should make sure to read these provisions and obtain legal advice in this regard in the event they are contemplating a Sublease arrangement. **The Tenant should also contact their insurance agent to confirm if a sublease or rental of the Property is covered by their insurance.**

Article 10 **Mortgages.** The Tenant has the right to grant a Mortgage over the Property to a Financial Institution subject to the Tenant and Lender executing such documentation as required by the Band and to the Band consenting to such Mortgage. These matters are usually dealt with by the lawyer or notary acting on behalf of the Tenant's Financial Institution. The Mortgage must be registered in the Indian Land Registry. The Financial Institution will require that the Property is properly insured and the Property Taxes for the Property are current prior to a new Mortgage being registered. These sections also allow the Financial Institution to exercise their rights to enforce the Mortgage and eventually foreclose on the title of the Mortgage if the Tenant is in default under the terms of the Mortgage. If the Mortgage is insured by CMHC, the Band grants prior consent to the Mortgage provided that the Financial Institution executes the documentation required by the Band. There are some additional provisions with respect to CMHC Mortgages outlined in Article 10.3.9 which should be reviewed by the legal advisor of the Tenant.

Article 11 **Bankruptcy and Insolvency.** In the event of a bankruptcy or insolvency, the provisions of Article 11 will apply. These provisions basically protect the position of the Financial Institution.

Article 12.1 and 12.2 **Default.** In the event the Tenant is in default under the provisions of the Lease the Band has the right to give the Tenant notice of such default. If:

- a) the Tenant is in default with respect to the payment of the Prepaid Rent or Additional Rent and the Tenant has defaulted three times or more;
- b) the default is reasonably capable of being corrected within 30 days and the Tenant fails to cure the default within 30 days of receipt of the written notice; or
- c) the default is not reasonably capable of being corrected within 30 days and the Tenant fails to commence to cure the default within 30 days of receipt of the written notice;

the Band has the right to terminate the Lease. The Band must provide any Financial Institution holding a Mortgage over the Property with a copy of the Notice of Default under the provisions of Article 10.3.2 of the Lease. This is to protect the position of the Financial Institution. The Financial Institution shall have

the right to cure the default if it chooses to do so. Upon termination of the Lease, the Band has the right to repossess the Property and to lease the Property to another party. The Band has the right, but not the obligation to cure any default of the Tenant.

**Article 12.3 Termination of Lease.** At the expiry of the Term or sooner termination of the Lease, the Tenant shall surrender the Property to the Band. Any Buildings on the Property on the termination – except those required to be removed in accordance with Article 12.3.3, shall become the property of the Band, free and clear of any encumbrances. The Band has the right to give the Tenant written notice to remove all Buildings from the Property and repair any damage caused by such removal. The removal of the Buildings must be done in a proper manner and in accordance with all applicable Laws. Such removal will be at the cost of the Tenant. If the Buildings have not been removed, or any damage to the Property is not repaired following such notice from the Band, the Band shall have the right to remove the Buildings and conduct such repairs and to charge the Tenant for the costs of such work.

**Article 12.4 Monies Owning at the End of the Lease.** Any Prepaid Rent, Additional Rent or other monies owing to the Band by the Tenant must be paid to the Band at the end of the Lease.

**Article 12.7.1 Holding Over.** If the Tenant remains in possession after the expiry of the Term, the tenancy shall be on a month-to-month basis. The Rent shall be determined in accordance with the formula set out in Article 12.7.1.

**Article 13.1 Indemnity.** The Tenant indemnifies the Band from any losses or expenses arising from:

- a) any injury, death, loss or expense on the Property unless such injury, death, loss or expense results from the wilful or negligent acts or omissions of the Band;
- b) the removal by the Band of any Buildings or other improvements under the provisions of Article 12.3.4;
- c) the curing of any default of any provision of the Lease by the Band.

**Article 14 Dispute Resolution.** In the event of a dispute:

- a) involving the government of Canada on behalf of the Band and such dispute is not resolved by negotiation, then it shall be referred to the Federal Court of Canada. If the Federal Court refuses to deal with the issue it may be resolved by application to such other court of competent jurisdiction – which would likely be the Supreme Court of British Columbia;
- b) not involving the government of Canada – the dispute resolution process set out in Article 14.2.1 shall be followed. This involves a process of negotiation, mediation and arbitration which must be carried out in good faith.

**Article 15.1 Delivery and Notice.** The requirements as to delivery of any Notice required under the Lease are set out in Article 15.1.

**Article 15.2 Entire Agreement.** The Lease represents the complete agreement between the parties and supersedes any discussions, letters of intent or offers to lease. Any modification to the Lease must be in writing.

**Article 15.3 Net Lease.** The Lease is a net Lease. The Tenant is responsible for any and all costs associated with the use of the Property.



Article 15.4 **Governing Law.** The Lease will be interpreted in accordance with the laws of Canada and the Province of British Columbia.

**THIS SUMMARY WAS PREPARED BY ROB ADKIN ON FEBRUARY 10, 2022.** Rob is a retired lawyer with over 38 years of experience in corporate, commercial, real estate and First Nations matters in the Kamloops area. He has extensive experience dealing with First Nations leasing in particular, the Little Shuswap and Kamloops First Nations. He and his wife have owned and lived in a house on a leasehold property at Sun Rivers in Kamloops since 2004.