



LANDS DEPARTMENT

SUMMARY OF PERIODIC LITTLE SHUSWAP LAKE BAND LEASES QUAAOUT INDIAN RESERVE #1

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This summary provides a review of the major terms and conditions of the Little Shuswap Lake Band Periodic Leases on Quaaout Indian Reserve #1. The provisions of the different Periodic Leases are the same other than paragraph 2.2 which stipulates the Term of the specific Lease. For the purposes of this Summary we have inserted a 49 year Term.

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 involved or prior to renewing the Lease from time to time.

GENERAL:

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 Lease is registered in the Indian Land Registry in Ottawa. 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.

REGISTRATION:

The registration of an Assignment of Lease or a Mortgage with respect to the Premises is a time-consuming process. The Lessee, or potential Lessee, needs to understand this 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 Premises 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 1.7 **Net Lease.** The Lease is a net Lease. The Lessee is responsible for any and all costs associated with the use of the Premises.

Article 1.8 **Governing Law.** The Lease will be interpreted in accordance with the laws of Canada and the Province of British Columbia.

Article 2.2 **Term.** The Term of the Lease is 49 years commencing on the Commencement Date of the Lease.

Article 3.1 **Use.** The use of the Premises 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 buildings associated with a single residence such as a garage or a shed. No business or commercial activities are allowed on the Premises. The Lessee is responsible to ensure that the Premises are satisfactory for their intended use of the Premises. The Improvements on the Premises on the Commencement Date of the Term are listed in Schedule E to the Lease. The number and type of buildings on the Premises is restricted to those Improvements listed in Schedule E.

Article 3.2 **Abandonment.** The Lessee cannot abandon the Premises during the Term without the prior written consent of the Band. Abandonment shall be considered to be a default of the Lease and shall allow the Band to give notice of Default in accordance with Article 10.

Article 3.3 **Access.** The Lessee is responsible to obtain or provide access to the Premises. In general the Premises are serviced by road – but the Lessee should ensure that the access they are relying on is legal.

Article 3.5 **Band's Right to Encumber the Title.** The Band has the right to grant and register additional Easements, Rights of Way or Covenants with respect to an authority or utility company against the Premises from time to time, provided that such charges do not unreasonably interfere with the Lessee's use of the Premises.

Article 3.6 **Inspection by the Band.** The Band has the right to inspect the Premises in the event of an emergency without notice, and otherwise from time to time upon provision of reasonable notice.

Article 3.7 **Existing Encumbrances.** The Lessee takes title of the Lease subject to any existing encumbrances.

Article 4.1 **Rent**

4.1.1 – the Base Rent for the Premises for the Initial Period of five years is set out in Article 4.1.1;

4.1.2 – after the first five years, the Base Rent will be adjusted to be the Market Rent for the next five year period. The Base Rent will be re-adjusted every five years thereafter. In addition, the Lessee is responsible to pay Additional Rent from time to time. Additional Rent is defined in Article 4.4 and also includes such additional payments owing by the Lessee to the Band as set out in other Articles of the Lease.

Article 4.2 – any Rent paid will not be refunded to the Lessee under any circumstances.

Article 4.3 Market Rent

4.3.1- the Market Rent shall be determined by an accredited appraiser 180 days before the expiration of the last Period. The determination of the Market Rent can be delayed for up to 180 days after the expiration of the previous Period. If the determination is delayed past the start of the new Period, the Lessee will continue to pay the Base Rent from the previous Period until such time as the Base Rent has been adjusted. Notice of the revised Base Rent shall be provided to the Lessee.

4.3.2 – once the Notice has been received – and if the Base Rent has been increased – the Lessee will pay the deficiency to the Band within 30 days.

4.3.3 – if the Base Rent has been decreased – the Band shall refund the overpayment to the Lessee within 30 days.

4.3.4 – if the Lessee wishes to dispute the valuation of the Market Rent they must pay the Rent as provided in the Notice and file a dispute within 60 days of receipt of the Notice with the Federal Court of Canada under Section 17 of the Federal Court Act.

4.3.5 – upon final determination of the revised Base Rent by the Federal Court, the party owing money to the other must pay the difference expeditiously.

4.3.6 – if an appeal of the Market Rent is not filed within the 60 days, then the Base Rent is set at the Rent set out in the Notice.

Article 4.4 **Additional Rent.** Any costs incurred by the Band, or any unpaid expenses of the Lessee, with respect to the Premises are chargeable to the Lessee 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 Premises.

Article 5.1 **Assignment of Lease.** The Lessee has the right to assign the Lease to another party subject to the Lessee 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. Upon registration of the Assignment, the Lessee will be released from any further obligations with respect to the Premises. The Lessee does remain responsible for any defaults or obligations arising during the time they held the Lease however.

It is important that the Lessee review these provisions of the Lease and obtain legal advice when assigning the Lease to ensure that their interests are protected.

Article 5.2 Sublease. The Lessee has the right to Sublease the Premises subject to the prior written consent of the Band and the conditions outlined in Article 5.2 of the Lease. This is not a very common situation and is somewhat complicated. The Lessee should make sure to read these provisions and obtain legal advice in this regard in the event they are contemplating a Sublease arrangement. **Note that the Lessee is still responsible for any defaults under the Lease while the Premises are sublet. The Lessee should also contact their insurance agent to confirm if a sublease or rental of the Premises is covered by their insurance.**

Article 5.3 Mortgages. The Lessee will not grant a Mortgage over the Premises to a Financial Institution without the prior written consent of the Band. This must be done by way of the Band's standard Mortgage Consent Agreement. Such consent shall not be unreasonably withheld by the Band. These matters are usually dealt with by the lawyer or notary acting on behalf of the Lessee's Financial Institution. The Financial Institution will require that the Premises are properly insured and the Property Taxes for the Premises 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 Lessee is in default under the terms of the Mortgage. In the event the Lessee's Mortgage is insured through CMHC the provisions of Article 5.3.5 apply and should be reviewed.

Article 5.6 Consent to Mortgage by Minister. The prior written consent of the Minister is required to an Assignment or Mortgage. The Band has forms that must be prepared by the Lessee's lawyer or notary and executed prior to the registration of an Assignment or Mortgage.

Article 5.7 Sum Payable to Band Upon Assignment. Under the provisions of the Lease, the Lessee must pay the Band the sum of \$1,000.00 as Additional Rent for an Assignment of Lease. In addition the Band has levied an additional \$1,000.00 administration fee to cover the costs of the application review and approval. The administration fee may be increased by the Band from time to time.

Article 7 Compliance with Laws. The Lessee must comply with any laws dealing with or affecting the Premises. This includes any Bylaws or Laws passed by the Band. If the Lessee receives any Notice from any lawful authority with respect to any issue involving the Premises they must provide the Band with a copy of the Notice.

Article 8 Property Taxes. The Lessee is obliged to pay property taxes with respect to the Premises each year. A Property Assessment Notice must be sent to each Lessee by December 31 of each year. The Band contracts with BC Assessment to provide the property assessment services. The Assessment provides the Lessee with the current assessed value of the Premises. Similar to BC Law, the Little Shuswap Lake Band Property Assessment Law requires the assessed value to be determined on the fair market value of the Premises 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 Lessee 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 Lessee 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 Lessee have legal or other representation. The ARB is an independent three-party panel appointed by the Band. The property taxes for the Premises are determined **annually** 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 each year. Band 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 Lessee by June 29 of each year. Property taxes for the Premises are due and payable by August 2 of each year. If the Premises constitute the principal residence of the Lessee as of August 2, the Lessee is entitled to claim a Homeowner Grant. **At this time**, 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 Lessee can appeal the Property Taxes payable to the Federal Court or under the Dispute Resolution provisions contained in Article 25 of the Lease. Unlike municipalities and regional districts where the Homeowner Grant is reimbursed to the municipality or regional district by the provincial government, First Nations fund their own Homeowner Grants and do not receive any reimbursement from the provincial or federal governments.

Article 9 Utilities. The Lessee is responsible to provide and pay for their own utilities used on the Premises. If the Premises are connected to water and sewer services provided by the Band then the cost of those utilities are payable to the Band. Any water or sewage system installed by the Lessee must be constructed and maintained in accordance with all required laws. If the Band installs its own water and/or sewer system it has the right to require the Lessee to connect to the Band's systems. The Lessee shall be responsible for any applicable connection fees.

Article 10 Environmental. The Lessee covenants to abide by all environmental laws with respect to the use of the Premises. The Lessee is responsible for any contaminants found upon the Premises and is responsible for any remediation required with respect to any such contaminants. An Environmental Assessment was done with respect to each property prior to the granting of the Lease and is attached to the Lease as Schedule G. The Lessee acknowledges having received a copy of the Environmental Assessment and being responsible for the current condition of the Premises. Eight months prior to the expiry of the Term of the Lease, the Lessee is responsible to have a new Environmental Assessment conducted of the Premises. A copy of the Environmental Assessment must be provided to the Band and the Minister no later than four months prior to the expiration of the Term. The Lessee is responsible to complete the remediation of any contaminants on the Premises which are revealed by the Environmental Assessment prior to the expiry of the Term.

Article 11 Nuisance. The Lessee covenants not to create, or allow, a nuisance on the Lands or to allow any waste or rubbish to be deposited on the Premises.

Article 12 **Specific Alterations.** The Lessee covenants to complete the specific alterations to the Premises outlined in Schedule F to the Lease before the expiry of the second year of the Term. These alterations were specific improvements agreed to by the Lessee before the Periodic Lease was entered into. The construction of these improvements was a condition of the granting of the Periodic Lease. **In general the Band has established a minimum assessed value for the Premises which must be attained and maintained. This minimum assessed value can be increased by the Band from time to time.**

Article 13 **Improvements.** Any Alterations to, or the construction of any Improvements on, the Premises 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 Lessee should contact the Band to ensure they have the current rules and Permits prior to commencing construction. A Construction Plan must be provided to the Band with respect to any such Alterations or Improvements. If the Alterations or Improvements are extensive the Band has the right, acting reasonably, to require that the Premises not be occupied during the construction process and not until an Occupancy Permit has been granted by the Band. Substantial Completion of the works will be deemed to have occurred when the Architect or Engineer of the Lessee, at the Lessee's cost, provides a certificate to the Band.

Article 14 **Construction.** All construction and work done on the Premises 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 Lessee. Failure to comply with the Construction Plan or to complete the works properly can be seen to be a default under the terms of the Lease. In the event the cost of construction of such Improvements or Alterations is in excess of \$50,000.00, the Band may oblige the Lessee to obtain a Performance Bond or other security to insure the satisfactory completion of the work. A Performance Bond is not required if CMHC has insured the Mortgage.

Article 15 **Maintenance.** The Lessee is obliged to maintain and repair the Premises, including the land, trees and fences as would a prudent and careful owner. Trees cannot be removed without the prior written consent of the Band. If ordered to remove a tree by the Band, the Lessee shall do so in a proper manner at the Lessee's cost.

Article 16 **Replacement on Destruction.** In the event of partial or complete destruction of the Premises, the Lessee is obliged to repair the damage in a proper manner within a reasonable time. The Lease shall not be terminated and the Rent will continue. If the Mortgage is insured by CMHC then the Financial Institution can elect not to rebuild in the event of a partial or complete destruction of the Premises.

Article 17 **Removal of Improvements.** The Lessee has the right to remove the Improvements from the Premises at the termination of the Term, at the cost of the Lessee, provided that the Lease is in good standing and that the Lessee provides the Band with notice in writing not less than six months prior to the expiration of the Term.

If the Lease is terminated for any reason other than the expiry of the Term, the Lessee has the right to remove the Improvements, provided the Lease is in good standing and the Lessee provides the Band with notice in writing not less than 30 days prior to the termination of the Lease. The removal of the Improvements must be done in a proper manner. If the Lessee does not give the appropriate notice and leaves the Improvements on the Premises at the expiration of the Term, the Improvements shall become the property of the Band. The Band has the right to give the Lessee notice to remove the Improvements on the termination of the Lease. Such removal will be at the cost of the Lessee. If the Improvements have not been removed following such notice from the Band, the Band shall have the right to remove the Improvements and to charge the Lessee for the cost of the removal.

Article 18 Insurance. The Lessee must maintain adequate insurance on the Premises during the Term. The Lessee 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 **\$3.0 million per occurrence;**
- b) provide property loss coverage for the Improvements in an amount equal to **the full replacement value of the Improvements;**
- c) **not** be cancellable without providing at least 30 days' notice to the Band.

The Band has the right to require that a copy of the Insurance be provided to the Band from time to time. The Band also has the right to increase the minimum amount of general liability coverage from time to time. In the event of damage to the Premises or the Improvements, the insurance proceeds **must** be used to repair and/or replace the damaged Improvements. This is to make sure that the Premises are always replaced and the value of the Premises is protected. The Band has the right, but not the obligation, to obtain insurance coverage for the Premises if the Lessee fails to do so. The cost of such insurance shall be the responsibility of the Lessee. In the event the Mortgage is insured by CMHC and CMHC has taken possession of the Premises pursuant to a default by the Lessee under the terms of the Mortgage, CMHC has the right to self-insure under the provisions of Article 5.3.3.

Article 19 Default. In the event the Lessee is in default under the provisions of the Lease the Band has the right to give the Lessee notice of such default. If:

- a) the Lessee abandons the Premises;
- b) the default is reasonably capable of being corrected within 45 days and the Lessee fails to cure the default within 45 days of receipt of the written notice; or
- c) the default is not reasonably capable of being corrected within 45 days and the Lessee fails to commence to cure the default promptly after 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 Premises with a copy of the Notice of Default. 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 re-possess the Premises and to lease the Premises to another party.

Article 20 **Surrender**. Upon the expiry of the Term, and if a new Lease has not been granted by the Band, the Lessee will turn the Premises over to the Band.

Article 21 **Holding Over**. If the Lessee remains in possession after the expiry of the Term, the tenancy shall be on a month-to-month basis. The Rent shall be determined by the Band based on the Rent for the previous Period.

Article 22 **Indemnity**. The Lessee indemnifies the Minister and the Band from any costs or liabilities arising from the Lessee's use of the Premises.

Article 23 **Warranties**. The Lessee acknowledges that the Minister or the Band have not made any representations or warranties to the Lessee with respect to the Premises, including its state of repair, its suitability for use by the Lessee or as to the presence of any Contaminants in the soil. The Lessee has agreed to take the Premises on an "as is - where is" basis. It is the obligation of the Lessee to conduct any independent investigations it considers necessary with respect to the Premises.

Article 24 **Delivery and Notice**. The requirements as to delivery of any Notice required under the Lease are set out in Article 24.

Article 25 **Dispute Resolution**. In the event of a dispute between the parties that cannot be resolved, the issue may be resolved by application to the Federal Court. 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.

THIS SUMMARY WAS PREPARED BY ROB ADKIN ON FEBRUARY 23, 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 and he and his wife have owned and lived in a house on a leasehold property at Sun Rivers in Kamloops since 2004.

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