

THE CORPORATION OF THE TOWN OF FORT SMITH

BYLAW # 713

A BY-LAW OF THE CORPORATION OF THE TOWN OF FORT SMITH, IN THE NORTHWEST TERRITORIES, TO ACQUIRE, HOLD AND DISPOSE OF REAL PROPERTY PASSED PURSUANT TO SECTION 131 AND 132 OF THE CITIES, TOWNS AND VILLAGES ACT BEING CHAPTER C-8 OF THE REVISED STATUTES OF THE NORTHWEST TERRITORIES 1988.

WHEREAS, the Council of the Corporation of the Town of Fort Smith, in the Northwest Territories, deems it to be in the public interest to lease land described hereunder;

NOW THEREFORE, the Council of the Town of Fort Smith, at a duly assembled meeting enacts as follows:

That the Mayor and Senior Administrative Officer are hereby authorized on behalf of the Town of Fort Smith to enter into a lease agreement with the Government of the Northwest Territories to lease the land as described below:

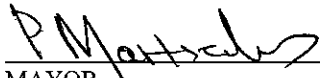
The whole of Lot Fifty Four (54) Remainder and the whole of Lot Fifty-Five (55) Remainder, excepting out all those portions of lots shown as a surveyed road right of way, in the Town of Fort Smith in the Northwest Territories, according to a plan of survey filed in the Land Titles Office for the Northwest Territories under number 14,


That the said land shall be leased for the purpose of a Boat Launch for an annual rental of One Dollar (\$1.00) per year.

READ A FIRST TIME THIS 28 DAY OF August, 2003 A.D.

READ A SECOND TIME THIS 28 DAY OF August, 2003 A.D.

READ A THIRD TIME THIS 14 DAY OF October, 2003 A.D.


MAYOR


SENIOR ADMINISTRATIVE OFFICER



Northwest
Territories Canada

LEASE

L-70078T

File No.: 100-54 & 55

THIS LEASE made this _____ day of _____, 2003.

BETWEEN

THE COMMISSIONER OF THE NORTHWEST TERRITORIES,

hereinafter called "the Commissioner"
OF THE FIRST PART,

AND

THE MUNICIPAL CORPORATION OF THE TOWN OF FORT SMITH, in the
Town of Fort Smith,

hereinafter called "the Lessee"
OF THE SECOND PART,

WITNESSETH that in consideration of the rents, covenants and agreements herein reserved and contained on the part of the Lessee to be paid, observed and performed, and subject to the Commissioner's Land Act and the Commissioner's Land Regulations, the Commissioner demises and Leases unto the Lessee all those certain parcels or tracts of land situate, lying and being in the Northwest Territories and being composed of

the whole of Lot Fifty Four (54) Remainder and the whole of Lot Fifty-Five (55) Remainder, excepting out all those portions of lots shown as a surveyed road right of way, in the Town of Fort Smith in the Northwest Territories, according to a plan of survey filed in the Land Titles Office for the Northwest Territories under number 14,

hereinafter called "the land" subject to the reservations and exceptions contained in the Commissioner's Land Act and the Commissioner's Land Regulations and to the following reservations:

- a) all mines and all minerals whether solid, liquid or gaseous which may be found to exist within, upon or under the land together with the full powers to work the same and for the purpose to enter upon, use and occupy the land or so much thereof and to such an extent as may be necessary for the effectual working and extracting of the said minerals;
- b) the rights of the recorded holders of mineral claims and any other claims or permits affecting the land;
- c) all timber that may be on the land excepting what must be removed for the purpose of landscaping or the construction of improvements;
- d) the rights to enter upon, work and remove any rock outcrop required for public purposes;
- e) such rights of way and of entry as may be required under regulations in force in connection with construction, maintenance and use of works for the conveyance of water for use in mining operations; and
- f) the right to enter upon the land for the purpose of installing and maintaining any public utility.

INITIALS...*PM*.....*S*..

TO HAVE AND TO HOLD for and during the term of Thirty (30) years, commencing on the 1st day of September, 2003.

YIELDING AND PAYING THEREFOR yearly and every year in advance a rental of One (\$1.00) dollar or such rental as may be fixed by the **Deputy Minister** pursuant to Clause # 14 below.

THE PARTIES COVENANT AND AGREE AS FOLLOWS:

DEFINITION

1. In this Lease "**Deputy Minister**" means the **Deputy Minister** of the **Department of Municipal and Community Affairs** and any person authorized in writing by the **Commissioner** to act on behalf of the **Deputy Minister**.

2. In this Lease "**Environmental Protection Statutes**" means all Federal and Territorial Environmental Statutes, regulations, guidelines and codes of practice, thereto and appropriate Municipal or local environmental protection by-laws applicable to the Lands and Lessee's use and occupation of the Lands.

3. In this Lease "**Contaminants**" shall include all substances that fall within the definition of "Air Contaminant, Air Pollution, Substance or Toxic Substances" in the **Canadian Environmental Protection Act**, or any similar Territorial legislation or guidelines, whichever is the most onerous. In addition the word "**Contaminants**" shall include all substances that come to fall within the aforementioned definitions and designations (or terms used in their stead in any legislation enacted in replacement thereof) or which fall within the meaning of Section 11 of the **Canadian Environmental Protection Act**, and for greater certainty means any substance which is deleterious or hazardous to persons, animals, fish, plants, soil, water, property or the environment, and for the purposes hereof includes only those substances arising from or associated with the **Lessees** use or occupation of the Land and includes but is not limited to:

- a) radioactive materials;
- b) explosives;
- c) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water to the extent that it is detrimental to its use by a person or by any animal, fish or plant;
- d) any solid, liquid, gas or odor or combination of any of them that, if emitted into the air, would create or contribute to the creation of a condition of that air that:
 - i) endangers the health, safety or welfare of persons or the health of animal life,
 - ii) interferes with normal enjoyment of life or property, or
 - iii) causes damage to plant life or to property; and

substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any federal, territorial, municipal or local government authority having jurisdiction over the **Lessee**, the Land or associated facilities.

INDEMNITY

4. The **Lessee** shall at all times hereafter indemnify and hold harmless the **Commissioner** against all claims, demands, actions or other legal proceedings by whomsoever made or brought against the **Commissioner** by reason of anything done or omitted to be done by the **Lessee**, its officers, servants, agents or employees connected with or arising out of this **Lease**. This indemnity shall survive the termination of this **Lease**.

COMPLIANCE

5. The **Lessee** agrees in all respects to abide by and comply with all applicable lawful rules, regulations and by-laws of the Federal Government, Territorial Government, Municipal Government or any other governing body whatsoever that have been or may be enacted and in any manner affect the said land.

PAYMENT

6. The **Lessee** shall during the said term, pay the said rental and all taxes, rates and assessments charged upon the land or upon the **Lessee** in respect thereof.

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LATE PAYMENT FEE

7. Where any portion of the rental herein reserved is unpaid, the Lessee shall pay a late payment fee as required by the regulations in force at the time under the Financial Administration Act on any lease payments that are in arrears for more than 90 days.

NON-COMPLIANCE

8. Without limiting any other rights and remedies of the Landlord hereunder, should the Lessee be found in breach of any of the covenants and agreements contained herein, the Deputy Minister may upon Sixty days notice in writing cancel this Lease. Said notice shall give the Lessee Sixty days to remedy the breach or to commence to remedy the breach. Should the Lessee fail to remedy or to commence to remedy the breach within the said Sixty days, this Lease is terminated.

9. Where the Lessee fails to correct a non-compliance with the terms and conditions of the Lease, the Deputy Minister may order the restoration of all or any part of such land and any expenses incurred by the Deputy Minister shall be recoverable from the Lessee as a debt due to the Commissioner.

10. Where any portion of the rental herein reserved is unpaid for more than thirty days after it is due, whether formally demanded or not, or where the Lessee fails to perform or observe any of the covenants or agreements herein contained, the Deputy Minister may by notice in writing terminate this Lease, and on the day following the mailing of the notice this Lease is terminated.

TERMINATION

11. Termination of this Lease shall not prejudice the Commissioner's right to unpaid rental or any other right with respect to a breach of any covenant or agreement herein contained.

12. Upon the termination or expiration of this Lease, the Lessee shall deliver up possession of land in as good a condition and state of repair as when the Lessee took possession of the land under this lease, or in a condition satisfactory to the Deputy Minister.

SURRENDER

13. A) Subject to the rights and interests of any third parties of which notice has been provided to the Deputy Minister, the Lessee may surrender the Lessee's interest under this Lease upon giving 60 days notice in writing to the Deputy Minister. The Deputy Minister may accept such surrender, if the Lessee:

- I. Pays all rental due under this Lease to the effective date of the surrender;
- II. Pays all property taxes, rates and assessments, including interest and penalties thereon, charged upon the land or to the Lessee to the effective date of the surrender;
- III. Restores the land to a condition satisfactory to the Deputy Minister; and
- IV. Provides the Deputy Minister with an executed Surrender of Lease in a form approved by the Deputy Minister.

B) The effective date of the surrender of the Lessee's interest under this Lease is the date the Deputy Minister accepts such surrender by executing the Surrender of Lease form.

AMENDED RENTAL

14. The Deputy Minister may at any time, not less than three months before the expiration of the first five year period of the said term, or of any subsequent five year period, notify the Lessee in writing of an amended rental payable for the following five year period and/or for the remainder of the said term of this Lease. The said amended rental is to be based upon the Pricing Policy in effect at the time of such notification, but without taking into account the value of any improvements placed thereon by the Lessee. In the event that the rental as determined by the Deputy Minister is not acceptable to the Lessee, the determination of value will be made by the Supreme Court of the Northwest Territories at the request and expense of the Lessee or as the Court may decide.

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LAND USE

15. The Lessee shall use the land for **Environmental Reserve** purposes only.

CONSTRUCTION

16. The Lessee shall construct the following improvements on the land; Boat Launch, Ramp and Dock, which shall have a market value of not less than Fifty Thousand (\$50,000.00) Dollars. Construction of the said improvements shall commence within Six (6) months of the effective date of this Lease, and shall be completed within Twenty-Four (24) months of the effective date of this Lease.

NON-CONSTRUCTION

17. The Deputy Minister may terminate this Lease for failure to commence or complete construction of the improvements within the time required by Clause #16 of this Lease or for failure to conform to local bylaws, construction standards or regulations.

REMOVAL OF IMPROVEMENTS

18. If, prior to the expiry of this Lease, the Lessee removes 50% or more of any improvements placed on the land by the Lessee or the Lessee's predecessor, the Deputy Minister may, upon 60 days written notice, terminate this Lease without compensation or refund of any equity to the Lessee.

ACCESS

19. It shall be lawful for the Deputy Minister or any person duly authorized at all reasonable times to enter upon the land for the purposes of examining the condition thereof.

20. The Deputy Minister shall have the right to enter upon the said lands for the purpose of conducting tests or other investigative measures to ensure compliance with the terms and conditions of the Lease. If the Lessee is found to be in non-compliance with the terms and conditions of the Lease, the Lessee shall pay for all costs associated with correcting the non-compliance as well as the costs of any testing or investigative measures undertaken to identify these deficiencies.

LAND FILL

21. On the expiry of this Lease, the Lessee may sever and remove from the land all structures, fixtures, and improvements, saving and excepting the following: all and any land fill, and without restricting the generality of the foregoing, in the form of soil, topsoil, sod, clay, sand, gravel, rock, crushed rock, glacial till, concrete, grout, asphalt, or any combination thereof, which during the said term were affixed or placed at the Lessee's expense on the land.

EASEMENTS

22. The Commissioner may, where the Deputy Minister deems it necessary in the public interest, establish easements through, under or over any portion of the land for any public utility purpose, but said easements shall not unreasonably interfere with the rights granted to the Lessee hereunder or with any improvements made by the Lessee on the land.

DITCHES

23. The Lessee shall permit free access at all times to the drainage ditch located on the land.

ENVIRONMENT

24. The Lessee shall accede to and comply with all **Environmental Protection Statutes**.

25. Compliance with **Environmental Protection Statutes** by the Lessee shall be at the Lessee's cost and expense and any adverse environmental condition to the land caused by **Contaminants** brought onto the land in relation to the Lessee's occupation, or arising as a result of the Lessee's use and occupation of the land shall be rectified at the cost and expense of the Lessee to return the land to a state that complies with all **Environmental Protection Statutes**.

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DISCHARGE OF WASTE

26. The Lessee shall not discharge or deposit any refuse substances or other waste materials in any lake, river, stream or creek, or on the banks thereof, which will, in the opinion of the Deputy Minister, impair the quality of the waters or the natural environment and any areas designated for waste disposal shall not be located within 30.48 metres (100 feet) of the Ordinary High Water Mark of any body of water.

FLOODING

27. The Lessee shall not be entitled to compensation, from the Commissioner, by reason of the land or any portion thereof being submerged, damaged by erosion or otherwise affected by flooding.

FLOODING LIABILITY

28. The Lessee hereby acknowledges that the subject parcel of land is located within a zone which is subject to periodic flooding. In consideration of the Commissioner and the Government of the Northwest Territories issuing permission to occupy in respect of the subject parcel of land the Lessee hereby releases and forever discharges the Commissioner and the Government of the Northwest Territories its employees, officers and agents of and from all claims, demands, damages, actions or causes of action arising or to arise by reason of the said parcel of land being subjected to floods or flooding.

SUBLEASE REQUIREMENT

29. The Lessee shall not sublet the land without the consent of the Deputy Minister in writing.

ASSIGNMENT REQUIREMENT

30. The Lessee shall not assign this Lease without the consent of the Deputy Minister in writing.

TIME

31. Time shall be of the essence in this agreement.

WAIVER

32. Unless a waiver is given in writing by the Deputy Minister, the Commissioner shall not be deemed to have waived any breach by the Lessee of any of the covenants or agreements herein contained, and a waiver relates only to the specific breach to which it refers.

IMPLICATION

33. No implied covenant or implied liability on the part of the Commissioner is created by the use of words, "demise and Lease" contained herein.

SURVIVORSHIP

34. This Lease enures to the benefit of and is binding upon the Commissioner and the Commissioner's successors, and upon the Lessee, the Lessee's heirs, executors, administrators and assigns.

INITIALS *RM*



ADDRESS FOR NOTICES

35. Wherever in this Lease it is required or permitted that notice or demand be given or served by any party to this Lease to or on the other, such notice or demand shall be given or served in writing and forwarded by registered mail, addressed as follows:

To the Deputy Minister:

Deputy Minister
Department of Municipal and Community Affairs
Government of the Northwest Territories
#500, 5201 50th Avenue
YELLOWKNIFE, NT X1A 3S9

To the Lessee at:

Town of Fort Smith
P.O. Box 147
Fort Smith, NT X0E 0P0

or to such other address as either of the parties may from time to time notify the other in writing in the manner hereinbefore provided.

IN WITNESS WHEREOF the parties have executed this agreement as of the date and year first above written.

SIGNED SEALED AND DELIVERED
by

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THE COMMISSIONER OF THE
NORTHWEST TERRITORIES

PER _____ (SEAL)

SIGNED, SEALED AND DELIVERED
by the
and by the

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PM Martindale
Lessee

of
The Municipal Corporation of the
Town of Fort Smith

Ray Settle (SEAL)
Lessee

