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**NEKANEET TREATY LAND ENTITLEMENT
SETTLEMENT AGREEMENT**

This Agreement made this 23rd day of September, 1992

AMONG:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
as represented by the Minister of Indian Affairs and
Northern Development, (hereinafter referred to as
"Canada")**

AND:

**NEKANEET BAND OF INDIANS OF
SASKATCHEWAN, as represented by the Chief and
Councillors of the Nekaneet Band (hereinafter referred to as
the "Band")**

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF
SASKATCHEWAN, as represented by the Minister
responsible for the Indian and Metis Affairs Secretariat,
(hereinafter referred to as "Saskatchewan").**

NEKANEET TREATY LAND ENTITLEMENT
TABLE OF CONTENTS

Settlement Agreement

Schedule 1 - Mineral Revenue Sources

**Schedule 2 - Ratification Vote Guidelines
and Procedures**

**Schedule 3 - Agreed Form of Amendments to
*Natural Resources Transfer Agreement***

Schedule 4 - Trust Agreement

**Schedule 5 - Terms and Conditions of Entitlement
Reserve Creation**

Appendix 1 - Replacement Public Utility Easements

TABLE OF CONTENTS

RECITAL

ARTICLE 1

DEFINITIONS AND INTERPRETATION

- 1.01 DEFINITIONS
- 1.02 SCHEDULES
- 1.03 APPENDIX

ARTICLE 2

LAND QUANTUM

- 2.01 ADJUSTED DATE OF FIRST SURVEY POPULATION
- 2.02 EQUITY QUANTUM
- 2.03 SHORTFALL ACRES
- 2.04 CURRENT POPULATION

ARTICLE 3

ENTITLEMENT MONIES

- 3.01 ENTITLEMENT MONIES
- 3.02 DEPOSIT OF ENTITLEMENT MONIES
- 3.03 TREATY LAND ENTITLEMENT TRUST
- 3.04 SASKATCHEWAN NOT LIABLE FOR OPERATION OF TRUST
- 3.05 STATUS OF MONIES
- 3.06 PAYMENT OF ENTITLEMENT MONIES

ARTICLE 4

LAND ACQUISITION

- 4.01 PURPOSE OF ENTITLEMENT MONIES
- 4.02 LIMITATIONS ON USE OF TRUST MONIES
- 4.03 UPPER LIMIT ON PURCHASE PRICE OF LAND
- 4.04 DEEMED PURCHASE EXPENDITURES
- 4.05 PRINCIPLE UNDERLYING SALE OF CROWN LANDS
- 4.06 SALE OF CROWN LAND

- 4.07 RESTRICTION ON THE SALE OF CERTAIN PROVINCIAL CROWN LAND
- 4.08 CONSENT OF OCCUPANTS OF CROWN LAND
- 4.09 CONTINUATION OF FREEZE POLICY

ARTICLE 5

MINERALS

- 5.01 SHORTFALL ACRES TO INCLUDE ALL MINERALS
- 5.02 LAND EXCEEDING SHORTFALL ACRES
- 5.03 CERTAIN CROWN OWNED MINERALS
- 5.04 TRANSFER OF CERTAIN MINERALS BY SASKATCHEWAN AND CANADA WITHOUT COMPENSATION
- 5.05 SURFACE ACCESS
- 5.06 VALUATION OF MINERALS
- 5.07 NON-CONSENT OF A DISPOSITION HOLDER
- 5.08 TRANSFER OF PROVINCIAL CROWN MINERALS IN CERTAIN CIRCUMSTANCES
- 5.09 EXISTING SURFACE OR MINERAL LEASES
- 5.10 JOINT PRODUCTION AGREEMENTS
- 5.11 OIL AND GAS/MINING
- 5.12 PURCHASE OF FREEHOLD AND FEDERAL CROWN MINERALS ONLY

ARTICLE 6

WATER

- 6.01 WHOLLY ENCLOSED WATERBODIES
- 6.02 TRANSFER OF BEDS AND SHORES IN CERTAIN CIRCUMSTANCES
- 6.03 RESERVE BOUNDARIES
- 6.04 RIPARIAN RIGHTS
- 6.05 NON-ENFORCEMENT OF RIPARIAN RIGHTS IN CERTAIN CASES
- 6.06 ENVIRONMENTAL ASSESSMENTS AND CONSIDERATION OF INDIAN USE
- 6.07 AGREEMENT AMONGST PARTIES
- 6.08 CO-MANAGEMENT AGREEMENT
- 6.09 CO-MANAGEMENT BOARD
- 6.10 MINISTER'S CONSENT MAY BE REQUIRED
- 6.11 NO EFFECT ON TREATY RIGHTS

ARTICLE 7

PROVINCIAL ROADS

- 7.01 TRANSFER SUBJECT TO AGREEMENT
- 7.02 PRINCIPLES OF AGREEMENT
- 7.03 LAND CEASING TO BE A PROVINCIAL ROAD
- 7.04 LAND NOT PART OF SHORTFALL ACRES OR EQUITY QUANTUM
- 7.05 AGREEMENT AMONGST AFFECTED PARTIES
- 7.06 ACKNOWLEDGMENTS PURSUANT TO COST SHARING AGREEMENT
- 7.07 POST-RESERVE CREATION AGREEMENTS
- 7.08 NO EFFECT ON CERTAIN MATTERS

ARTICLE 8

THIRD PARTY INTERESTS

- 8.01 ENTITLEMENT RESERVE UNENCUMBERED
- 8.02 THIRD PARTY INTERESTS TO BE REMOVED AT THE TIME OF PURCHASE
- 8.03 THIRD PARTY INTERESTS TO BE DEALT WITH SUBSEQUENT TO PURCHASE - PUBLIC UTILITY EASEMENTS
- 8.04 THIRD PARTY INTERESTS AFTER SHORTFALL ACRES ATTAINED
- 8.05 SURRENDER PURSUANT TO AGREEMENT
- 8.06 PRINCIPLES OF SURRENDER AGREEMENT
- 8.07 THE BAND'S RESPONSIBILITY
- 8.08 ACKNOWLEDGEMENT BY THE BAND
- 8.09 CANADA'S RESPONSIBILITY
- 8.10 FUTURE APPLICATION OF THIS ARTICLE

ARTICLE 9

URBAN RESERVES

- 9.01 AGREEMENT REQUIRED WITH URBAN MUNICIPALITY AND SCHOOL DIVISION
- 9.02 ADDITIONAL REQUIREMENTS
- 9.03 NO COMPENSATION PAYABLE
- 9.04 NO EFFECT ON TUITION AGREEMENTS
- 9.05 TERM OF CERTAIN PROVISIONS

ARTICLE 10

RATIFICATION AND APPROVAL

- 10.01 RATIFICATION AND IMPLEMENTATION
- 10.02 COMING INTO FORCE
- 10.03 UNDERTAKING RESPECTING CERTAIN INFORMATION

ARTICLE 11

PROCEDURES FOR RESERVE CREATION

- 11.01 SHORTFALL ACRES TO BE ACQUIRED
- 11.02 LANDS ELIGIBLE FOR RESERVE STATUS
- 11.03 PRE-ACQUISITION REQUIREMENTS
- 11.04 MINISTERIAL DISCRETION
- 11.05 COMPENSATION PAID BY CANADA
- 11.06 ADDITIONAL RESERVES
- 11.07 CANADA COSTS
- 11.08 PAYMENT OF TAXES
- 11.09 TRANSFER BY SASKATCHEWAN OF RESIDUAL INTERESTS
- 11.10 POST RESERVE UNDERTAKING
- 11.11 PROCESS REVIEW
- 11.12 TERM OF ENTITLEMENT RESERVE CREATION PROCEDURES
- 11.13 NEGOTIATION AND ACQUISITION COST COMPENSATION:

ARTICLE 12

TAX LOSS COMPENSATION

- 12.01 CANADA'S COMPENSATION - RURAL MUNICIPALITIES
- 12.02 SASKATCHEWAN'S COMPENSATION - RURAL MUNICIPALITIES
- 12.03 PAYMENTS SUBJECT TO COST SHARING AGREEMENT
- 12.04 CANADA'S COMPENSATION - SCHOOL DIVISIONS
- 12.05 SASKATCHEWAN COMPENSATION - SCHOOL DIVISIONS
- 12.06 PAYMENTS SUBJECT TO CERTAIN LIMITATIONS
- 12.07 INTEREST ON ARREARS
- 12.08 NO EFFECT ON TUITION AGREEMENTS
- 12.09 NOTICE RESPECTING TRANSFER OF TAXABLE LAND
- 12.10 NO ADDITIONAL COMPENSATION PAYABLE BY THE BAND

ARTICLE 13

TAXATION

- 13.01 TAXATION OF TRUST PROPERTY
- 13.02 GOODS & SERVICES TAX REMISSION
- 13.03 TAXATION OF PUBLIC UTILITY COMPANIES

ARTICLE 14

EXISTING AND FUTURE PROGRAMS

- 14.01 PROGRAMS UNAFFECTED
- 14.02 EXISTING PROGRAMS
- 14.03 NO EFFECT ON CERTAIN MATTERS

ARTICLE 15

BAND RELEASE, INDEMNITY, AND FINALITY

- 15.01 RELEASE OF CANADA BY THE BAND
- 15.02 BAND INDEMNITY
- 15.03 INDEMNITY PROCEDURES
- 15.04 FULL AND FINAL SATISFACTION
- 15.05 FINALITY - CANADA AND THE BAND
- 15.06 NO RELIANCE ON RELEASE, INDEMNITY OR FINALITY IN CERTAIN CIRCUMSTANCES
- 15.07 NO ADMISSION
- 15.08 NO EFFECT ON FUTURE VARIATION

ARTICLE 16

CANADA AND ENTITLEMENT BANDS FINALITY OF SETTLEMENT
RESPECTING SASKATCHEWAN

- 16.01 FINALITY - CANADA AND SASKATCHEWAN
- 16.02 RELEASE BY CANADA AND THE BAND

ARTICLE 17

OTHER INDIAN BANDS

- 17.01 NO PREJUDICE
- 17.02 NO CREATION OF RIGHTS
- 17.03 OTHER NEGOTIATIONS

ARTICLE 18

SHARED ENTITLEMENT MONIES

- 18.01 SHARED ENTITLEMENT MONIES

ARTICLE 19

ARBITRATION

- 19.01 ARBITRATION BOARD
- 19.02 MATTERS FOR ARBITRATION
- 19.03 COMPENSATION AND COSTS
- 19.04 CONFIDENTIALITY
- 19.05 DELIVERY OF WRITTEN COMMUNICATIONS
- 19.06 GOVERNING LEGISLATION
- 19.07 AGREEMENT RESPECTING THE COMMERCIAL
ARBITRATION CODE
- 19.08 ARBITRATION BINDING

ARTICLE 20

GENERAL PROVISIONS

- 20.01 ENUREMENT
- 20.02 AUTHORITY
- 20.03 MEMBERS OF SENATE AND HOUSE OF COMMONS
- 20.04 MODIFICATION OR WAIVER
- 20.05 ASSIGNMENT
- 20.06 EXPANDED MEANINGS
- 20.07 HEADINGS AND TABLE OF CONTENTS
- 20.08 APPLICABLE LAW
- 20.09 STATUTORY REFERENCES
- 20.10 CURRENCY
- 20.11 AMENDMENT
- 20.12 ENTIRE AGREEMENT
- 20.13 CURRENT DOLLARS
- 20.14 AMBIGUITIES
- 20.15 OBLIGATIONS SEVERAL AND NOT JOINT AND SEVERAL
- 20.16 PLACE OF DELIVERY
- 20.17 EFFECTIVE DATE OF NOTICE
- 20.18 LEGISLATION

20.19	COURT PROCEEDINGS
20.20	NO EFFECT ON MEMBERSHIP
20.21	NO CREATION OF TREATY OBLIGATION
20.22	CONSTITUTIONAL OR LEGISLATIVE CHANGES

ARTICLE 21

BEST EFFORTS

21.01	BEST EFFORTS
21.02	SPECIFIC UNDERTAKINGS OF CANADA
21.03	SPECIFIC UNDERTAKINGS OF SASKATCHEWAN
21.04	SPECIFIC UNDERTAKINGS OF THE BAND

ARTICLE 22

COMING INTO FORCE

22.01	COMING INTO FORCE
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SIGNATURES

This Agreement made this 23rd day of September, 1992.

AMONG:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of Indian Affairs and Northern Development, (hereinafter referred to as "Canada")

AND:

NEKANEET BAND OF INDIANS OF SASKATCHEWAN, as represented by the Chief and Councillors of the Nekaneet Band (hereinafter referred to as the "Band")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF SASKATCHEWAN, as represented by the Minister responsible for the Indian and Metis Affairs Secretariat, (hereinafter referred to as "Saskatchewan")

RECITALS

WHEREAS:

- A. Canada has entered into Treaty Number Four made and concluded on the 15th day of September, 1874, and to which the Band adhered;
- B. Treaty Number Four provides, *inter alia*, that:
 - " . . . Her Majesty the Queen hereby agrees . . . to assign reserves for said Indians, such reserves to be selected by officers of Her Majesty's Government of the Dominion of Canada appointed for that purpose, after conference with each band of the Indians, and to be of sufficient area to allow one square mile for each family of five, or in that proportion for larger or smaller families";
- C. The Band has not received reserves of sufficient area to fulfil the requirements of Treaty Number Four;

- D. Existing treaty rights are recognized and affirmed by section 35 of the *Constitution Act, 1982* being Schedule B of the *Canada Act, 1982* (U.K.), 1982, c.11;
- E. Canada has an unfulfilled land obligation to the Band under Treaty Number Four and is desirous of ensuring that the land obligations be fulfilled;
- F. By the Saskatchewan *Natural Resources Transfer Agreement*, executed on the 20th day of March, 1930, Canada transferred to Saskatchewan all Crown Lands, Mines and Minerals, and other natural resources within the Province of Saskatchewan, subject to certain exclusions, terms, and conditions;
- G. Paragraph 10 of the *Natural Resources Transfer Agreement*, *inter alia*, provides as follows:
- ". . . the Province will, from time to time, upon the request of the Superintendent General of Indian Affairs, set aside, out of the unoccupied Crown lands hereby transferred to its administration, such further areas as the said Superintendent General may, in agreement with the appropriate Minister of the Province, select as necessary to enable Canada to fulfil its obligations under the treaties with the Indians of the Province, and such areas shall thereafter be administered by Canada in the same way in all respects as if they never passed to the Province under the provisions hereof;"
- H. The *Natural Resources Transfer Agreement* was confirmed by section 1 of the *Constitution Act, 1930* which provides as follows:
- "The agreements set out in the Schedule to this Act are hereby confirmed and shall have the force of law notwithstanding anything in the *Constitution Act, 1867*, or any Act amending the same, or any Act of the Parliament of Canada, or in any Order in Council or terms or conditions of union made or approved under any such Act as aforesaid."
- I. Saskatchewan has an obligation to provide unoccupied Crown lands to Canada under the terms of paragraph 10 of the *Natural Resources Transfer Agreement*;
- J. The Office of the Treaty Commissioner issued a "Report and Recommendations on Treaty Land Entitlement" dated May 1990 with respect to Treaty land entitlement in Saskatchewan;

- K. Canada and the Band have agreed that, inter alia, Canada's outstanding Treaty land obligation in respect to the Band shall be fulfilled in accordance with the terms and conditions set out in this Agreement;
- L. Canada and Saskatchewan have agreed that in consideration of the financial and other contributions to be made by Saskatchewan pursuant to this Agreement Saskatchewan's obligations to provide unoccupied Crown Land and Minerals to Canada under paragraph 10 of the *Natural Resources Transfer Agreement* in relation to the Band shall also be fulfilled.
- M. By ratification vote held on the 31st day of August, 1992, the voters of the Band have assented to and ratified the terms of this Agreement and authorized and directed the Chief and Councillors of the Band to sign this Agreement and related documents.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

ARTICLE I

DEFINITIONS AND INTERPRETATION

1.01 DEFINITIONS:

In this Agreement and the Appendices and Schedules attached hereto, the following capitalized terms shall have the meanings hereafter ascribed to them, namely:

- (1) "Acquisition Costs" means the costs incurred in relation to the Purchase of Land, Minerals or Improvements by or on behalf of the Band (other than the Price paid to the vendor in respect thereof), and includes, without limitation, legal fees, applicable taxes and tax adjustments, land titles registration and search costs, appraisal costs, surveyor certificate costs and real estate commissions and all reasonable costs associated directly with and incurred by the Band or the Trustees in relation to site identification and approval, and also includes, without duplication, the cost of satisfying the obligations set forth in section 8.02 and the cost of discharging other Third Party Interests in relation to Entitlement Land;
- (2) "Act", "Chief", "Council of a Band", "Indian", "Member of a Band", "Minister", and "Reserve" and any other words herein which are used or defined in the ***Indian Act*** R.S.C. 1985, c. I-5, shall have the same meaning as they have in the ***Indian Act*** R.S.C. 1985, c. I-5, and the regulations made thereunder, and a reference to the ***Indian Act*** means the ***Indian Act***, R.S.C. 1985, c. I-5, as amended or replaced from time to time, or any reference to a section of the ***Indian Act*** shall include that section as amended or replaced from time to time;
- (3) "Additions to Reserves Policy" means, unless a contrary indication is evidenced, Canada's "Additions to Reserves Policy" in effect as at the Execution Date;
- (4) "Adjusted Date of First Survey Population" means the population of the Band on the Date of First Survey as negotiated and finally agreed upon as between Canada and the Band being 150 persons;
- (5) "Agreement", "this Agreement", "hereto", "hereof", "herein", "hereunder", "hereby" and similar expressions, refer, unless otherwise expressly stated, to this agreement, including the recitals, the Schedules and the Appendix attached hereto, and not to any particular article, section, subsection, subparagraph or other subdivision hereof or thereof;

- (6) "Agreement to Purchase" means a written agreement containing covenants granting a purchaser the right and obligation to purchase Land, Minerals or improvements and, for greater certainty, may include a written agreement granting an option to purchase the same;
- (7) "Approval in Principle" has the meaning ascribed thereto in the Terms and Conditions of Entitlement Reserve Creation attached hereto as Schedule 5;
- (8) "Arbitration Board" has the meaning ascribed thereto in Article 19;
- (9) "Band Account" means the account of the Band established by the Chief and Council of the Band at the Institution;
- (10) "Band Council Resolution" means a duly executed written resolution of the Council;
- (11) "Band Development" means the investment and utilization of Trust Property by the Trustees on behalf of the Band for the purpose of Business, acquisition of Land, Minerals or Improvements (including Entitlement Land), or any project for the use, development, advantage or benefit of the Band or Members of the Band;
- (12) "Business" means an activity or undertaking for profit involving the production, growth, mining, creation, manufacture, fabrication, improvement, packaging, preservation, construction or transportation, in whole or in part, of any goods, services, real estate or anything in Canada and includes an activity or undertaking for profit that solicits orders or offers goods, services, real estate or anything for sale in Canada directly or indirectly where the contract, transaction or development is to be completed or situated within Canada;
- (13) "Claim" means any submission to the Minister made on behalf of the Band requesting fulfilment of outstanding Treaty land entitlement of the Band, or its predecessors, and includes all written representations made in respect thereof;
- (14) "Cost Sharing Agreement" means the agreement entered into by Canada and Saskatchewan on the 13th day of September, 1991, as amended or any agreement substituted therefor which establishes, *inter alia*, the Rural Municipal Compensation Fund or the School Division Compensation Fund;
- (15) "Current Population" means the population of the Band on 31 March, 1991, as such number has been negotiated and finally agreed upon by Canada and the Band being 243 persons;

- (16) "Date of First Survey" means the date upon which a reserve was first set apart for the use and benefit of the Band being Reserve No. 160A set apart by Order-in-Council P.C. 2004 dated August 2, 1913;
- (17) "Department" means the federal Department of Indian Affairs and Northern Development and includes its Saskatchewan regional office;
- (18) "Department of Justice" means the federal Department of Justice;
- (19) "Discernible Surface Outlet" means a defined and ascertainable channel through which water normally flows for not less than seven (7) consecutive days each year;
- (20) "Entitlement Band" means any Band whose Chief is a signatory to the Framework Agreement;
- (21) "Entitlement Land" means Land, Minerals or Improvements in Saskatchewan hereafter Purchased by the Band and which are intended to be set apart as Entitlement Reserve pursuant to the provisions of this Agreement and the Trust Agreement;
- (22) "Entitlement Monies" means the monies due to the Band and paid to the Trust Account pursuant to section 3.02 to be used by the Band for the purposes set out in section 4.01 of this Agreement;
- (23) "Entitlement Purposes", when used in relation to the acreage of Reserve Land which has, prior to the Execution Date, been set apart by Canada for the Band to fulfil Treaty land entitlement obligations, means all Reserve land set apart for such purposes, but excludes lands set apart for the purpose of replacing Reserve land that had been surrendered by the Band;
- (24) "Entitlement Reserve" means Entitlement Land which is set apart by Canada as a Reserve for the use and benefit of the Band in accordance with this Agreement;
- (25) "Environmental Review" and "Environmental Screening" have the meanings ascribed thereto in Schedule 5;
- (26) "Equity Quantum" means the maximum area of Land expressed in acres, which the Band is entitled to Purchase or have Purchased on its behalf to be set apart as Entitlement Reserve in accordance with the terms of this Agreement, and which Canada and the Band have agreed is 27,327 acres;
- (27) "Execution Date" means the date upon which Canada, Saskatchewan and the Band have executed this Agreement;

- (28) "Fee Simple Mineral Owner" means any Person who is the legal owner of the estate in fee simple, or a share or interest of the estate in fee simple, of any Minerals, and further includes Canada or Saskatchewan, where applicable;
- (29) "Forest Management Licence Agreement" means an agreement whereby Saskatchewan has granted any Person the exclusive right to harvest timber upon certain provincial Crown Lands;
- (30) "Framework Agreement" means the agreement among Canada, Saskatchewan and the Entitlement Bands, dated the 22nd day of September, 1992, dealing with fulfilment of Treaty Land entitlement claims;
- (31) "Improvements" means all buildings or structures erected or placed on, over or under Land and, unless otherwise expressly provided herein, includes, without limitation, anything affixed to or incorporated therein, the plant and equipment of any oil or gas well or mine, any pipeline on or under Land, fencing, and any dugouts or other alterations to Land designed to facilitate the collection and retention of water;
- (32) "Institution" means the Peace Hills Trust Company, being the party of the Third Part to the Trust Agreement;
- (33) "Interest Rate" means the effective rate, from time to time, of interest paid by Canada at the immediately preceding weekly auction for three month Canada treasury bills or, alternatively, in the event the basis for such rate is not ascertainable because Canada has not sold such treasury bills, such other reasonable substitute basis rate as may be agreed to between Canada, Saskatchewan and the Band.
- (34) "Interest of a Mineral Disposition Holder" means the legal interest of any Person in a Mineral Disposition and includes such an interest in all renewals, conversions, substitutions and replacements of the Mineral Disposition and any new Mineral Dispositions to which the Mineral Disposition Holder is entitled either by the terms of the Mineral Disposition, provincial or federal legislation, or the policy of Saskatchewan;
- (35) "Joint Production Agreement" means any contract, agreement, covenant or arrangement, whether voluntarily entered into or imposed by legislation, under the terms of which a Fee Simple Mineral Owner or a Mineral Disposition Holder agrees to, or is required to share in, the benefits, costs, or obligations associated with the recovery of Minerals from within, upon or under any Lands, and includes all pooling and unitization agreements and orders, provided that any of the foregoing are in force immediately prior to the Purchase of Entitlement Land or, thereafter, at any time prior to the transfer of Entitlement Land to Canada;

- (36) "Land" or "Lands" means real property, chattels real, or any interests therein or in the nature thereof and, unless the context otherwise requires, excludes Minerals and Improvements;
- (37) "Member" means a member of the Band within the meaning of the Act but shall include all registered Indians recorded on the Department's Indian Register in respect of the Band;
- (38) "Mineral Disposition" means any rights granted by the Fee Simple Mineral Owner under a lease or any other instrument pursuant to which any Person has obtained the right to explore for, drill for, produce or otherwise extract any Mineral, and includes any right to a share or interest in the proceeds of the production of any Minerals, whether those rights have been granted by the Fee Simple Mineral Owner or not, and any right to compensation pursuant to sections 23 and 23.1 of ***The Crown Minerals Act***, S.S. 1984-85-86, c. C-50.2, provided that any of such rights were in force immediately prior to the Purchase of Land or, thereafter, at any time prior to the transfer of Entitlement Land to Canada, but shall be deemed to exclude Third Party Interests and any security interest, mortgage or similar financing arrangements and to also exclude those beneficial interests in Minerals referred to in subparagraph 5.04(c)(iii) of this Agreement;
- (39) "Mineral Disposition Holder" means any Person who has an interest in a Mineral Disposition and includes the heirs, executors, administrators, personal representatives, agents, successors and assigns thereof;
- (40) "Minerals" means any non-viable substance formed by the processes of nature, irrespective of chemical or physical state, and includes such substances both before and after extraction, or any interest in the same, and further includes any interest or improvement in the nature of a mine but does not include any surface or ground water, agricultural soil, sand or gravel;
- (41) "Municipal Taxes" means all applicable taxes levied by a Rural Municipality for municipal purposes (which, for greater certainty and without limitation, excludes School Taxes and any taxes collected by a Rural Municipality not for the use and benefit of the Rural Municipality) in respect of land, improvements and businesses within the Rural Municipality, and includes business taxes levied pursuant to sections 286 and 330 of ***The Rural Municipality Act, 1989***, S.S. 1989-90, c. R-26.1, grants-in-lieu of taxes paid to Rural Municipalities pursuant to federal or provincial government policy, or taxes for municipal purposes levied by a Rural Municipality upon occupants of such Lands in respect of such occupation;
- (42) "***Natural Resources Transfer Agreement***" means the *Saskatchewan Natural Resources Transfer Agreement*, as confirmed by ***The Saskatchewan Natural***

Resources Act, S.S. 1929-30, c. 87, The Saskatchewan Natural Resources Act, S.C. 1930, c. 41 and the Constitution Act, 1930;

- (43) "Occupant of Crown Land" means any Person who has a statutory or legally enforceable right to occupy or use a particular parcel of Crown Land vested in Saskatchewan or Canada, to the exclusion of members of the public, and is deemed to include any Person with a valid and subsisting lease, licence or a permit granted by Saskatchewan or Canada or with a permanent allocation in a pasture but, for greater certainty, does not include a Fee Simple Mineral Owner or a Mineral Disposition Holder;
- (44) "Person" means any individual, proprietor, corporation, partnership, trust, joint venture, unincorporated organization, Indian band, union or a governmental body (other than Canada and Saskatchewan) and their respective heirs, legal representatives, successors and assigns;
- (45) "Price" means the projected cost of acquiring Entitlement Land and shall include, without limitation, the purchase price thereof after all applicable adjustments (including, without limitation, tax adjustments, insurance, rents and other income and outgoings);
- (46) "Provincial Highway" means a provincial highway as defined by **The Highways and Transportation Act**, R.S.S. 1978, c. H-3, as illustrated on the official highway map for the Province of Saskatchewan by distinctive lines and listed in the road classification thereof as a "divided", "paved" or "gravel" provincial highway;
- (47) "Provincial Mineral Revenues" means all royalties, taxes and rents in respect of a given Mineral (from the sources relating to such Mineral indicated in Schedule 1) and any royalties, taxes and rents that may be imposed in substitution therefor;
- (48) "Provincial Road" means any road, street, lane, alley, trail or path, other than a divided or paved Provincial Highway, the title to which is vested in Her Majesty the Queen in Right of Saskatchewan or set aside for such purposes under **The Northwest Territories Act**, R.S.C. 1886, c. 50, or any statute of the Province of Saskatchewan, and includes a bridge, culvert, drain or public improvement erected upon or in connection with the same and which is intended for or used by the general public for the passage of vehicles;
- (49) "Public Purposes" means the utilization or conservation of Minerals for the benefit of the general public of the Province of Saskatchewan, or a substantial portion thereof, as distinguished from purposes which concern particular individuals or estates in Land or Minerals but, for greater certainty, does not include the purpose of earning current, or protecting future, royalties, taxes or other revenues on behalf of Saskatchewan;

- (50) "Public Purposes Plan" means a written plan, document or any other material evidencing an intention respecting the planned utilization or conservation by Saskatchewan of Minerals for Public Purposes;
- (51) "Public Utility Companies" means, collectively, Saskatchewan Power Corporation, Saskatchewan Telecommunications, SaskEnergy Incorporated and TransGas Limited, and their successors and assigns and "Public Utility Company" means any one of such companies;
- (52) "Public Utility Easement" means a registered easement or right of way, or an unregistered statutory easement or right of way, held by one or more of the Public Utility Companies; in respect of a transmission line, distribution line or similar facility which affects Entitlement land;
- (53) "Purchase" or "Purchased" means a purchase of Land, Minerals or Improvements by the Trustees or an agent of the Band in accordance with the requirements of the Trust Agreement and this Agreement, and may include the acquisition of ownership rights by means other than a transaction of purchase and sale;
- (54) "Ratification Vote Guidelines and Procedures" means those guidelines and procedures for conducting ratification votes set forth as Schedule 2;
- (55) "Replacement Mineral Disposition" means a permit, lease, licence or other disposition issued, made or granted under the *Indian Oil and Gas Regulations*, the *Indian Mining Regulations* or other applicable federal legislation, in replacement of, or in substitution for, a Mineral Disposition;
- (56) "Replacement Public Utility Easement" means those easement and permit agreements (in the form and substance agreed to among Canada, Saskatchewan, the Public Utility Companies and the Band) and annexed as Appendix 1, which easement and permit agreements are to be registered in replacement of existing Public Utility Easements as contemplated in section 8.03;
- (57) "Revenue Trust Account" means the account established by the Trustees at the Institution pursuant to the Trust Agreement;
- (58) "Road Allowance" means land held by Saskatchewan which was at any time intended for use by the general public for the passage of vehicles, whether actually used for that purpose or not;
- (59) "Rural Municipal Compensation Fund" means the fund so titled to be established pursuant to the Cost Sharing Agreement and administered by the Saskatchewan Association of Rural Municipalities for the purpose of receiving compensation payments from Canada and Saskatchewan and for disbursing such compensation to a Rural Municipality which experiences a

reduction in Taxable Land as a result of Entitlement Land being set apart as an Entitlement Reserve;

- (60) "Rural Municipality" means a "Rural Municipality" as defined by *The Rural Municipality Act, 1989*, S.S. 1989-90, c. R-26.1;
- (61) "School Division" means, except where otherwise expressly provided herein, a "division" as defined by *The Education Act*, R.S.S. 1978 (Supp.), c. E-0.1.;
- (62) "School Division Compensation Fund" means the fund established pursuant to the Cost Sharing Agreement and administered by Saskatchewan for the purpose of receiving compensation payments from Canada and Saskatchewan and for disbursing compensation to School Divisions which have experienced a reduction in Taxable Land as a result of Entitlement Land being hereafter set apart as an Entitlement Reserve;
- (63) "School Taxes" means all applicable taxes levied by a School Division for education purposes (which, for greater certainty and without limitation, excludes Municipal Taxes or any taxes collected by a School Division not for the use and benefit of the School Division) in respect of land, improvements and businesses, and includes business taxes referred to in section 291 of *The Education Act*, R.S.S. 1978, c. E-0.1 (Supp.), grants-in-lieu of taxes paid pursuant to federal or provincial government policy or taxes for educational purposes levied by a School Division upon the occupants of such Land in respect of such occupation;
- (64) "Shore Land" means all Crown Lands within fifty (50) meters of the ordinary high water mark of:
 - (a) a lake with a surface area of more than one thousand (1,000) acres;
or
 - (b) a river identified on the list of rivers published in the *Canada Gazette* by the Canadian Permanent Committee on Geographical Names with a width, at any point adjacent to the Crown Land in question, of twenty (20) meters or more;
- (65) "Shortfall Acres" means the area of Land (including all existing Minerals in respect thereof) expressed in acres other than the Band's existing Reserve that is, as of the date of execution hereof, to be set apart as Entitlement Reserve pursuant to Treaty Number Four where area expressed in acres is determined by reference to the right to the surface of the Land, and which the parties agree in section 2.03 is 16,160 acres;
- (66) "Shortfall Acres Acquisition Date" means the date upon which Entitlement Land (including all existing Minerals in respect thereof), in an aggregate area

at least equal to the Shortfall Acres, has hereafter been transferred to Canada in accordance with the terms of this Agreement and is set apart as an Entitlement Reserve or Entitlement Reserves;

- (67) "SIMAS" means the Saskatchewan Indian and Metis Affairs Secretariat and its successors from time to time;
- (68) "Surface Lease" means any grant, conveyance, lease, license, order, or permit which provides the right of entry upon the surface of any Land, or the right to use, occupy or take the surface of any Land or any interest therein, required for the purpose of exploring for, drilling for, producing, recovering or otherwise extracting any Mineral, and includes a Mineral Disposition to the extent such rights are included in the Mineral Disposition, provided the same is in force immediately prior to the Purchase of Land or, thereafter, at any time prior to the transfer of Entitlement Land to Canada;
- (69) "Taxable Land" means land located within a Rural Municipality in respect of which Municipal Taxes and School Taxes are payable to such Rural Municipality and a School Division;
- (70) "Terms and Conditions of Entitlement Reserve Creation" means those terms and conditions applicable to the creation of Entitlement Reserves, a copy of which is attached as Schedule 5;
- (71) "Third Party Interest" means the legal interest of any Person, other than a party hereto, in Land, Minerals or Improvements and, without in any way limiting the generality of the foregoing, includes the interest held by an Occupant of Crown Land, leases, mortgages, charges, encumbrances, registered builders' liens, writs of execution, easements (including Public Utility Easements), rights of way, restrictive covenants, party wall agreements, building restriction caveats and other caveats, provided the same are in force immediately prior to the Purchase of the Land, Minerals or Improvements or, thereafter, at any time prior to the transfer of the same to Canada, but shall, for greater certainty, exclude an interest in a Mineral Disposition;
- (72) "Third Party Interest Holder" means a Person holding a Third Party Interest (including an Occupant of Crown land) but excludes Canada, Saskatchewan or any Person acting for or on behalf of the Band which has Purchased the Entitlement Land;
- (73) "Treaty" means Treaty Number Four made and concluded on the 15th day of September, 1874, by Canada and to which the Band adhered;
- (74) "Trust Account" mean the account established by the Trustees at the Hobbema, Alberta branch of the Institution to which Canada is to deposit Entitlement Monies pursuant to section 3.02 of this Agreement;

- (75) "Trust Agreement" means the trust agreement referred to in section 3.03(a) of this Agreement entered into by the Band, the Trustees, and the Institution and dated the 19th day of September, 1992;
- (76) "Trust Property" means the Entitlement Monies deposited by Canada to the Trust Account, and includes all monies now or hereafter on deposit in the Trust Account or the Revenue Trust Account (which for greater certainty includes any and all Investment Instruments in which the monies in the Trust Account or the Revenue Trust Account may from time to time be invested by the Trustees as specified in the Trust Agreement), as well as any additions or accruals thereto and also includes, without limitation, all interest revenue and other income realized thereon, the net proceeds of sale of all Land sold and all sums repaid to the Trustees pursuant to subsections 4.01(f) and 5.01(d) of the Trust Agreement;
- (77) "Trustees" means collectively those individuals that from time to time are appointed to act as a Trustee on behalf of the Band pursuant to the Trust Agreement, including individuals named therein as Trustees and any individual hereafter appointed, substituted or replaced as Trustee, and "Trustee" means any one of such Trustees;
- (78) "Undeveloped Road Allowance" means a Road Allowance upon which no highway, road, street, lane, trail, path or alley has ever been constructed or, if constructed, is no longer being maintained in a condition for use by, or is being used by, the general public for that purpose;
- (79) "Undisposed Minerals" means, subject to subsections 5.04(b) and (c), any Minerals in respect of which there are no Mineral Dispositions;
- (80) "Urban Municipality" means an "urban municipality" as defined by *The Urban Municipality Act*, 1984 S.S. 1983-84, c. U-11;
- (81) "Waterbody" means any river, stream, lake, pond, swamp, marsh, or other body of water; and
- (82) "Water Project" means:
- (a) any drain, dyke, dam or other work that is proposed to divert or impound water, or any alteration, addition to, or elimination of, any such drain, dyke, dam or other work;
 - (b) any act which results in the emission of water or other substance into a Waterbody; or
 - (c) any use of water;

that affects, or if constructed or carried out could reasonably be anticipated to affect, the existing quantity, quality or rate of flow, in a discernible way, of water in a Waterbody and which, if constructed or carried out on lands subject to the jurisdiction of Saskatchewan, would require a licence or other approval under the laws of Saskatchewan.

1.02

SCHEDULES:

The following are the Schedules annexed to and incorporated in this Agreement by reference to their respective numbers as given below and which are deemed to be part hereof:

1. Mineral Revenue Sources
2. Ratification Vote Guidelines and Procedures
3. Agreed Form of Amendment to ***Natural Resources Transfer Agreement***
4. Trust Agreement
5. Terms and Conditions of Entitlement Reserve Creation

1.03

APPENDICES:

The following are the Appendices annexed to and incorporated in this Agreement which contemplate execution by the parties named therein:

1. Replacement Public Utility Easements

ARTICLE 2

LAND QUANTUM

2.01 **ADJUSTED DATE OF FIRST SURVEY POPULATION:**

Canada and the Band agree that the Adjusted Date of First Survey Population of the Band is 150 persons.

2.02 **EQUITY QUANTUM:**

Canada and the Band agree the equity Quantum is 27,327 acres.

2.03 **SHORTFALL ACRES:**

Canada and the Band agree the Shortfall Acres is 16,160 acres.

2.04 **CURRENT POPULATION:**

Canada and the Band agree that the Current Population of the Band is 243 persons.

ARTICLE 3

ENTITLEMENT MONIES

3.01 ENTITLEMENT MONIES:

Canada and the Band agree that the Entitlement Monies of the Band is the sum of Seven Million Nine Hundred Sixty-Three Thousand Nine Hundred and Ninety-Three (\$7,963,993.00) Dollars.

3.02 DEPOSIT OF ENTITLEMENT MONIES:

Canada shall, and the Band hereby authorizes and directs Canada to, deposit the Entitlement Monies in the amount of Seven Million Nine Hundred Sixty-Three Thousand Nine Hundred and Ninety-Three (\$7,963,993.00) Dollars due to the Band into the Trust Account at the Institution for the purpose and with the intention stated in Section 4.01 of this Agreement.

3.03 TREATY LAND ENTITLEMENT TRUST:

- (a) It is the intention of the Band and it is the Band's understanding that the Entitlement Monies due to the Band and deposited pursuant to section 3.02 of this Agreement are to be properly invested for the future use and benefit of the Band for the purposes set out in section 4.01 of this Agreement in a trust established by the Band and administered by Trustees appointed by the Band on terms and conditions set forth in a trust agreement in form and substance substantially similar to the Trust Agreement annexed hereto as Schedule 4, and the Band agrees that the trust established will be in accordance with the terms and conditions set forth in this Agreement.
- (b) The Band and members of the Band for themselves and each of their respective heirs, successors and assigns hereby acknowledge and confirm, that the request and direction to Canada to have the Entitlement Monies paid into the Trust Account pursuant to section 3.02 of this Agreement and not paid directly to the Band's revenue, capital or other account under the Act or otherwise is based upon independent legal advice received from the Bands advisors and that the consequences of Canada making the deposit of the Entitlement Monies to the Trust Account to be administered by the Trustees in accordance with the terms of the Trust Agreement have been fully explained and are understood by the Chief, members of Council and Members of the Band.
- (c) In the event the trust referred to in section 3.03(a) of this Agreement terminates for any reason and the Trust is transferred pursuant to the terms of

the Trust Agreement, the Band and members of the Band for themselves and each of their respective heirs, successors and assigns, hereby acknowledge and agree that the Trust Property so transferred shall be utilized for purposes not inconsistent with the terms of this Agreement.

- (d) Canada shall not deposit the Entitlement Monies to the Trust Account pursuant to section 3.02 of this Agreement unless the Band, the Trustees and the Institution have executed the Trust Agreement and none of the Trust Property may be transferred to or deposited with another financial institution unless the Band, the Trustees and that other financial Institution have entered into a written agreement in accordance with subparagraph 11.01(a)(i) of the Trust Agreement.
- (e) None of the Trust Property shall be withdrawn or transferred except in accordance with the procedures specified in the Trust Agreement.
- (f) The Band agrees that the Trust Property vests in the Trustees as specified in section 2.05 of the Trust Agreement only for the purpose of administration of the Trust Property but Canada and the Band agree that ownership of the Trust Property shall, for all purposes remain in the Band subject only to the terms of this Agreement and the Trust Agreement.
- (g) Subject to subparagraph 3.01(b)(iv) of the Trust Agreement, the Band agrees that the Trust Property shall not be used directly or indirectly for per capita distribution by the Trustees or Council to Members of the Band.
- (h) The Band agrees that Council shall appoint Trustees so that at all times:
 - (i) there shall be three Trustees in office;
 - (ii) one Trustee may be either the Chief or a Councillor of the Band;
 - (iii) the remaining Trustees shall be Members of the Band.
- (i) The mailing address, head office and all administration functions of the Trust shall be on the Nekanee Band Reserve.
- (j) Prior to deposit of the Entitlement Monies by Canada pursuant to section 3.02 hereof, the Institution and the Trustees shall open the Trust Account and the Revenue Trust Account and the Trustees shall deliver to the Institution all such documents specified in section 17.03 of the Trust Agreement and such other certificates, instruments and other documents as may reasonably be required by the Institution for the operation of the Trust Account and Revenue Trust Account.
- (k) Prior to deposit of the Entitlement Monies by Canada pursuant to Section 3.02 hereof, the Institution and the Band shall open the Band Account as

specified in section 17.01 of the Trust Agreement, and make such arrangements governing banking procedures relative to the Band Account as the Band deems advisable.

- (l) Council shall submit to the Department copies of financial statements for each fiscal year respecting the Trust Property prepared in accordance with Canadian generally accepted accounting principles consistently applied, an auditors report issued in respect of the financial statements prepared for each fiscal year, and, quarterly progress reports in a form satisfactory to the Department respecting the administration of the Trust Property.
- (m) Council agrees to and will take all reasonable measures to ensure that the Trustees shall permit and provide any authorized representative of the Department reasonable access and a copy of any ledger, register, document or recording of any transaction affecting or evidencing the Trust Property.

3.04

SASKATCHEWAN NOT LIABLE FOR OPERATION OF TRUST:

The parties acknowledge and agree that Saskatchewan shall have no liability for or in respect to the administration of the Trust described in section 3.03 hereof.

3.05

STATUS OF MONIES:

Canada and the Band agree that none of the monies payable by Canada pursuant to the terms of this Agreement are, or shall be deemed to be "Indian Monies" within the meaning of the Act.

3.06

PAYMENT OF ENTITLEMENT MONIES:

- (a) Subject to subsection 3.06(c) Canada agrees to deposit the Entitlement Monies in accordance with section 3.02 hereof upon the complete satisfaction and occurrence of each condition precedent specified in subsection 10.02(a) hereof, or within 30 days of the satisfaction and occurrence of the last of the conditions precedent specified in subsection 10.02(a) hereof required to be satisfied.
- (b) Notwithstanding the provisions of subsection (a), nothing in the Agreement shall obligate Canada to pay the Entitlement Monies prior to the Execution Date.
- (c) In the event the deposit of the Entitlement Monies is not made by Canada on the Execution Date, Canada shall pay interest on the Entitlement Monies from the Execution Date at the Interest Rate calculated to and until the date the deposit of the Entitlement Monies pursuant to section 3.02 is made and the

Band hereby authorizes Canada to deposit all such interest due to the Band hereunder into the Trust Account at the Institution for the purpose and with the intention stated in section 4.01 of this Agreement.

ARTICLE 4

LAND ACQUISITION

4.01 **PURPOSE OF ENTITLEMENT MONIES:**

- (a) Entitlement Monies deposited to the Trust Account shall be utilized by the Trustees on behalf of the Band:
 - (i) prior to the Band's Shortfall Acres Acquisition Date, only for the Purchase of Entitlement Land (including all existing Minerals and Improvements in respect thereof) in accordance with the terms of this Agreement, the Band Specific Agreement and the Trust Agreement; and
 - (ii) from and after the Shortfall Acres Acquisition Date, for the Purchase of additional Entitlement Land, for other Band Development purposes, or for the payment to Elders in accordance with the Trust Agreement.

4.02 **LIMITATIONS ON USE OF TRUST MONIES:**

Prior to the Band's Shortfall Acres Acquisition Date the Trustees shall not mortgage, pledge, hypothecate or in any way encumber that portion of the Trust Property in the Trust Account or any interest therein, for any purpose whatsoever and, except as may be specifically authorized in the Trust Agreement, the Trustees shall not lend, invest, release, distribute or advance the Trust Property.

4.03 **UPPER LIMIT ON PURCHASE PRICE OF LAND:**

No Purchase of Entitlement Land (which, for greater certainty, must include all Minerals and Improvements) shall be made prior to the Shortfall Acres Acquisition Date if the average Price per acre (including all amounts required to Purchase the associated Minerals and Improvements and to pay related Acquisition Costs) for that Purchase would exceed the amount of the Entitlement Monies divided by the Shortfall Acres, which Canada and the Band agree is \$485.85 per acre.

4.04 **DEEMED PURCHASE EXPENDITURES:**

- (a) Trust Property which is expended on Acquisition Costs, the Purchase of Land, Minerals or Improvements, the satisfaction or accommodation of Occupants of Crown Land, Mineral Disposition Holders and Third Party

Interest Holders, together with the costs of conducting feasibility studies, appraisals and environmental assessments (other than those costs to be incurred by Canada in accordance with subsection 11.07(a) hereof) shall be deemed for the purposes of section 4.03 and the Trust Agreement to have been spent for the Purchase of Land, Minerals and Improvements.

- (b) Notwithstanding subsection (a) above, to the extent Acquisition Costs have been paid by the Band from its Revenue Trust Account, or with other monies not drawn on, or to be reimbursed from, its Trust Account, then such Acquisition Costs shall be deemed, for the purposes of section 4.01 and the Trust Agreement, not to have been spent for the Purchase of Land, Minerals and Improvements.

4.05

PRINCIPLE UNDERLYING SALE OF CROWN LANDS:

- (a) Canada, Saskatchewan and the Band agree that, except as otherwise specifically provided herein, transactions involving the sale by Canada or Saskatchewan of federal or provincial Crown Lands (including federal or provincial Crown Improvements in respect thereof) shall be governed by the principle of "willing seller/willing buyer".
- (b) If the Band indicates in writing that it wishes to Purchase any provincial or federal Crown Land or Crown Improvements pursuant to this Agreement, Canada and Saskatchewan agree to advise the Band as soon as reasonably possible, but in any event within ninety (90) days of receipt of a written request containing a description that identifies the subject property, whether or not they are prepared to sell the said Crown Lands or Crown Improvements, and to identify any conditions precedent that must be satisfied by the Band prior to the sale being finalized.
- (c) If Canada or Saskatchewan agree to sell any federal or provincial Crown Lands or Crown Improvements as aforesaid, then for a period of eighteen (18) months following delivery by Canada or Saskatchewan of a notification to the Band confirming their intention to sell, the identified Crown Lands or Crown Improvements shall be available for sale to the Band, subject only to an agreement (or a determination hereunder) respecting the purchase price and satisfaction of any applicable conditions precedent.
- (d) During the eighteen (18) month period referred to in subsection (c), neither Canada nor Saskatchewan shall (other than for the benefit of the Band) permit the sale of such federal or provincial Crown Lands or Crown Improvements, or grant any Third Party Interests in respect thereof without the prior written consent of the Band, except:
 - (i) any interests which any existing Third Party Interest Holder is entitled to pursuant to the terms of a contractual arrangement with

Saskatchewan or Canada, pursuant to provincial legislation or pursuant to the policy of Saskatchewan;

- (ii) Public Utility Easements; or
 - (iii) any new Third Party Interest with a term not exceeding one (1) year.
- (e) Subject to subsection (j) below, in the event that Canada or Saskatchewan have agreed to sell any Crown Lands or Crown Improvements to the Band, the same may be purchased by the Band, and the purchase price shall be equal to the fair market value of the Crown Lands or Crown Improvements as determined by an independent appraiser.
- (f) The cost of an appraisal under subsection (e) shall be borne by the two parties equally.
- (g) Failing agreement between the parties as to the selection of an independent appraiser within thirty (30) days, the independent appraiser shall be appointed by the Chairperson of the Arbitration Board upon application by one or both of the parties.
- (h) In the event that the fair market value of Crown Lands or Crown Improvements has been determined by an independent appraiser, the purchase price as so determined shall be binding on the parties and, unless otherwise agreed in writing, the Band shall have a period of sixty (60) days from the date of the appraisal to conclude such transaction of purchase and sale based on such determination.
- (i) In the event that the Band elects not to purchase the Crown Lands or Crown Improvements at the price determined by the appraiser, then the Band shall be obligated to forthwith cover all of the appraised costs incurred.
- (j) Where:
- (i) the Band has entered into an Agreement to Purchase certain lands;
 - (ii) the vendor thereof is also an Occupant of Crown Lands which have been leased from Saskatchewan for farming or ranching purposes in association with the lands of the vendor that the Band has agreed to purchase;
 - (iii) the vendor has consented to the sale of the leased lands to the Band; and
 - (iv) Saskatchewan has agreed to sell the leased lands to the Band;

the purchase price of the leased Crown lands shall be the fair market value of the Crown Lands (excluding any Improvements) determined in accordance with this Article less fifteen percent (15%).

- (k) Notwithstanding subsections (e) to (j) inclusive, the parties may agree on a purchase price without an appraisal.

4.06 SALE OF CROWN LAND:

Subject to applicable law, each of Canada and Saskatchewan agrees to give favourable consideration to offers from the Band to purchase federal or provincial Crown Land, including federal or provincial Crown Improvements thereon, and not to unreasonably withhold acceptance of the same, provided that nothing in this Agreement (with the exception of subsection 4.05(c)) shall be interpreted as requiring Canada or Saskatchewan to sell or transfer any specific parcel of federal or provincial Crown Land (including Crown Improvements thereon) to, or for the benefit of, the Band.

4.07 RESTRICTION ON THE SALE OF CERTAIN PROVINCIAL CROWN LAND:

Notwithstanding section 4.06, provincial Crown Lands that are designated as the following, at the time the Band indicates in writing to Saskatchewan its interest in Purchasing the said Lands, will only be sold by Saskatchewan under exceptional circumstances:

- (a) critical wildlife habitat lands under *The Wildlife Habitat Protection Act*, S.S. 1992, c. W-13.2;
- (b) heritage property under *The Heritage Property Act*, S.S. 1979-80, c. H 2.2;
- (c) provincial parks, protected areas, recreation sites, historic sites and park land reserves under *The Parks Act*, S.S. 1986, c. P-1.1, or lands proposed for such designation;
- (d) ecological reserves under *The Ecological Reserves Act*, S.S. 1979-80, c. E-0.01, or lands proposed for such designation;
- (e) dedicated lands under *The Planning and Development Act 1983*, S.S. 1983-84, c. P-13.1; and
- (f) Provincial Highways which are "divided" or "paved".

4.08

CONSENT OF OCCUPANTS OF CROWN LAND:

- (a) Notwithstanding any other provision of this Agreement, but subject to subsections 4.08(b) and (c), occupied Crown Lands will not normally be made available for sale to the Band unless the Occupants of Crown Land have given their written consent (or such other form of consent as may be acceptable to the owner of the Crown Lands) to the sale or transfer.
- (b) Canada and Saskatchewan agree with the Band that in circumstances where the Band is seeking to Purchase pastures established pursuant to the *Prairie Farm Rehabilitation Act*, R.S.C. 1985, c. P-17 ("P.F.R.A. Pastures"), or provincial community pastures, and:
 - (i) at least seventy-five (75%) percent of such Occupants of Crown Land have consented to the sale; and
 - (ii) the Band has evidenced its willingness to act reasonably and in good faith to fairly compensate all of the occupants for the value of their interest or, alternatively, to enter into a binding agreement (subject to applicable federal legislation) with such Occupants of Crown Land to honour their interests;

then Canada (in the case of P.F.R.A. Pastures under its sole administration and control), Canada and Saskatchewan (in the case of P.F.R.A. Pastures administered and controlled by Canada but in respect of which Saskatchewan has a reversionary interest), and Saskatchewan (in the case of provincial community pastures) may approve of the sale of the pasture to the Band. Nothing in this section shall be deemed to preclude Canada from selling P.F.R.A. Pastures (which are owned, administered and controlled solely by Canada and in respect of which Saskatchewan has no reversionary interest) in the event that less than seventy-five (75%) percent of the affected Occupants of Crown Land have consented to such a sale.

- (c) Saskatchewan agrees that where the Band wishes to purchase provincial Crown Land that is covered by a Forest Management Licence Agreement, the purchase price shall be determined in accordance with subsection 4.05 and the consent of the licensee will not be required where Saskatchewan can, pursuant to the terms of the Forest Management Licence Agreement, withdraw the Lands from the area covered by a Forest Management Licence Agreement without the consent of the licensee provided that:
 - (i) where Saskatchewan can withdraw the Lands without cost, no additional compensation shall be payable by the Band;
 - (ii) where Saskatchewan can withdraw the Lands without cost, other than the cost of providing alternate Land to the licensee where

satisfactory alternate Land is available, no additional compensation shall be payable by the Band; and

- (iii) where Saskatchewan cannot withdraw the Lands without paying compensation to the licensee, the Band has agreed to pay all compensation required to be paid to the licensee pursuant to the terms of such Forest Management Licence Agreement.

4.09 CONTINUATION OF FREEZE POLICY:

- (a) Saskatchewan, Canada and the Band acknowledge that the Band has, prior to the Execution Date, made certain selections of provincial Crown Lands (which Crown Lands shall, for the purposes of this section, be deemed to include all associated Crown Minerals and Crown Improvements) with the intention of having the same transferred to Entitlement Reserve status.
- (b) Saskatchewan acknowledges that it has, with respect to such selections of provincial Crown Land, implemented a freeze policy pursuant to which it has not generally permitted the sale of the same, or granted any Third Party Interests or Mineral Dispositions in respect thereof.
- (c) Saskatchewan agrees that with respect to all Crown Lands which are subject, as at the Execution Date, to the freeze policy, it will not, for a period of one (1) year from the Execution Date, permit the sale of such Lands, or grant any Third Party Interests or Mineral Dispositions in respect thereof, without the written consent of the Band, save and except for:
 - (i) such interests as any existing Third Party Interest Holder or Mineral Disposition Holder may now be entitled to pursuant to the terms of its contractual arrangement with Saskatchewan, provincial legislation or the policy of Saskatchewan;
 - (ii) Public Utility Easements; or
 - (iii) any new Third Party Interest with a term not exceeding one (1) year.
- (d) The Band agrees to notify Saskatchewan in writing, within one (1) year of the Execution, Date, which of the Lands subject to the freeze policy (on behalf of such Band) the Band wishes to Purchase from Saskatchewan, to the extent only of the Band's Equity Quantum and the provisions of sections 4.05 and 5.03 apply with respect to the Purchase of Land, Minerals and Improvements after the notification to Saskatchewan.
- (e) The Band agrees that Canada has not yet determined whether any of the current selections of Entitlement Land (including Minerals and Improvements) made by the Band are, or will hereafter be, eligible for

Reserve or Entitlement Reserve status, and further agrees that in the event of any dispute between an Entitlement Band and the Band as to availability of any Land, Minerals or Improvements now or hereafter selected, resolution of such disputes shall be determined solely by the Entitlement Band involved and the Band.

ARTICLE 5

MINERALS

5.01 **SHORTFALL ACRES TO INCLUDE ALL MINERALS:**

- (a) The Band agrees that subject to subsection (b), prior to their Shortfall Acres Acquisition Date, all Entitlement Land Purchased shall include all Minerals and shall be free and clear of all Mineral Dispositions and, in the case of Land in respect of which all the underlying Minerals are owned by the provincial or federal Crown, such Minerals shall not, in the case of provincial Crown Minerals, be the subject of any Public Purposes Plan.
- (b) Prior to the Band's Shortfall Acres Acquisition Date, the surface of Land that is not situate within an Urban Municipality may be Purchased without acquiring all, or any, of the underlying Minerals, provided, however:
 - (i) eligibility of such Land for creation as an Entitlement Reserve shall be subject to and in accordance with the terms and conditions of this Agreement, and further, none of such Land shall be set apart as Entitlement Reserve until after the Band's Shortfall Acres Acquisition Date;
 - (ii) the portion of the Trust Property at the time of such Purchase on deposit in the Trust Account (which includes, for greater certainty, the funds invested in investment instruments purchased utilizing monies from the Trust Account and all accrued interest thereon) less the purchase price of the surface of such Land to be Purchased, must exceed, the result obtained by multiplying the average Price per acre paid for all Entitlement Land Purchased that includes all Minerals, by, the number of acres that is equal to the difference between the Shortfall Acres and the area of Land expressed in acres that has at the time of such Purchase been set apart as Entitlement Reserve or Entitlement Reserves, by, one and one-half;
 - (iii) in any event, the aggregate surface area of all Land Purchased without acquiring all, or any, of the underlying Minerals prior to the Shortfall Acres Acquisition Date shall not exceed 640 acres.

5.02 **LAND EXCEEDING SHORTFALL ACRES:**

From and after the Band's Shortfall Acres Acquisition Date, the surface of Land may be Purchased without acquiring all, or any, of the underlying Minerals, provided, however, eligibility of such Land for creation as an Entitlement Reserve shall be subject to the terms and conditions of this Article and Article 11.

5.03

CERTAIN CROWN OWNED MINERALS:

- (a) Canada and Saskatchewan agree to give favourable consideration to offers from or on behalf of the Band to Purchase federal or provincial Crown Minerals which are subject to a Mineral Disposition, provided that each Mineral Disposition Holder consents to such Purchase.
- (b) The method of payment, availability of Minerals for Purchase and the disposition of such Minerals by Canada or Saskatchewan shall be governed by the provisions of this Article and, for greater certainty, the provisions of sections 5.07 and 5.08 shall apply to Minerals in respect of which Canada is the Fee Simple Mineral Owner, subject to such changes to sections 5.07 and 5.08 as are necessary in the circumstances to accommodate Canada's ownership interest. Nothing herein (except in subsection 5.03(d)) shall be interpreted as requiring Canada or Saskatchewan to sell any Crown Minerals.
- (c) If the Band indicates in writing that it wishes to Purchase any provincial or federal Crown Minerals pursuant to this Agreement, Canada and Saskatchewan agree to advise the Band as soon as reasonably possible, but in any event within ninety (90) days of receipt of such a written request containing a description that identifies the subject property, whether or not they are prepared to sell the said Crown Minerals and to identify any conditions precedent that must be satisfied by the Band prior to the sale being finalized;
- (d) If Canada or Saskatchewan agree to sell any Crown Minerals as aforesaid, then for a period of eighteen (18) months following delivery by Canada or Saskatchewan of a notification to the Band confirming their intention to sell, the identified Crown Minerals shall be available for sale to the Band subject to an agreement (or a determination under this Agreement) respecting the purchase price and the satisfaction of any identified conditions precedent.
- (e) During the period referred to in subsection (d), Canada and Saskatchewan agree that they shall not (other than for the benefit of the Band) sell or transfer any interest in, grant any Mineral Disposition, or establish any Public Purpose, in respect of any such Crown Minerals without the Band's prior written consent, except any interests which any existing Mineral Disposition Holder is entitled to pursuant to the terms of the Mineral Disposition or provincial legislation.
- (f) In the event that Canada or Saskatchewan have agreed to sell any Crown Minerals to the Band, the purchase price of such Minerals shall be determined by an independent appraiser in accordance with section 5.06.

- (g) Each of the Band and the vendor of the Crown Land shall be entitled to submit any relevant information to the independent appraiser to assist in the determination of the purchase price of the Crown Minerals.
- (h) The cost of an appraisal under subsection (f) shall be borne by the two parties equally.
- (i) Failing agreement between the parties as to the selection of an independent appraiser to determine the purchase price within thirty (30) days, the independent appraiser shall be appointed by the Chairperson of the Arbitration Board upon application by one or both of the parties.
- (j) In the event that the purchase price of Crown Minerals has been determined by an independent appraiser, the purchase price as so determined shall be binding upon the parties and, unless otherwise agreed in writing, the transaction of purchase and sale shall be concluded based on such determination within sixty (60) days of the date such appraisal is completed unless the Band elects not to complete such Purchase at the price determined, in which case the Band shall be obligated to forthwith cover all of the appraisal costs incurred.
- (k) Notwithstanding subsections (f) and (j) the parties may agree on a price without an appraisal.

5.04

TRANSFER OF CERTAIN MINERALS BY SASKATCHEWAN AND CANADA WITHOUT COMPENSATION:

- (a) In respect of all Entitlement Land up to and including the Band's Equity Quantum:
 - (i) where Saskatchewan is the Fee Simple Mineral Owner of any Undisposed Minerals underlying such Entitlement Land, Saskatchewan shall, without compensation, transfer such Undisposed Minerals to Canada for the benefit of the Band effective upon creation of the Entitlement Reserve;
 - (ii) where Saskatchewan at any time becomes the Fee Simple Mineral Owner of any Undisposed Minerals underlying an Entitlement Reserve, Saskatchewan shall, without compensation, promptly transfer the same to Canada for the benefit of the Band;
 - (iii) notwithstanding subparagraph (i), but subject to subparagraph (iv), where Saskatchewan is the Fee Simple Mineral Owner of any Undisposed Minerals underlying Entitlement Land which are required

for Public Purposes, Saskatchewan shall not be required to transfer such Undisposed Minerals to Canada for the benefit of the Band;

- (iv) where Saskatchewan is the Fee Simple Mineral Owner of any Minerals which were, as at the date that such Entitlement Land was Purchased, withheld by Saskatchewan for Public Purposes but any of such Minerals have subsequently ceased to be necessary for Public Purposes, Saskatchewan shall, without compensation, promptly transfer such Minerals to Canada for the benefit of the Band;
- (v) Saskatchewan shall, upon a written request from the Band, advise the Band of the existence (or non-existence) of a Public Purposes Plan in respect of any particular Undisposed Minerals as soon as reasonably possible, but in any event within thirty (30) days of receipt by Saskatchewan of such a request;
- (vi) In the event of a dispute between Saskatchewan and the Band as to whether any Undisposed Minerals underlying Land were the subject of a Public Purposes Plan:
 - (A) as of the date that Saskatchewan received written notice from the Band that the Land was the subject of an Agreement to Purchase with a third party; or
 - (B) in the case of provincial Crown Lands, as of the date that the Band has made a request to Saskatchewan pursuant to subparagraph 5.04(a)(v);

shall be referred to the Arbitration Board for resolution in accordance with Article 19; and

- (vii) where Canada is, or at any time becomes, the Fee Simple Mineral Owner of any Undisposed Minerals underlying Entitlement Land, Canada agrees to set apart such Undisposed Minerals as part of the Entitlement Reserve without compensation.
- (b) Crown Minerals which are, or were, the subject of a Mineral Disposition shall be deemed to be Undisposed Minerals in the following circumstances:
- (i) when the Disposition Holder does not exercise, within the time frame permitted pursuant to the Mineral Disposition, any available option to renew the Mineral Disposition;
 - (ii) when the Mineral Disposition Holder abandons the Mineral Disposition;

- (iii) if the Mineral Disposition Holder fails to produce or extract the Mineral which is the subject of the Mineral Disposition for a period of time which would, under the terms of the Mineral Disposition, permit Saskatchewan or Canada to terminate the Mineral Disposition or refuse to renew the same; or
 - (iv) the term of the Mineral Disposition, including all renewals, has expired.
- (c) Notwithstanding subsection (b), Minerals shall be deemed not to be Undisposed Minerals in the following circumstances:
 - (i) where the Mineral Disposition Holder has surrendered the Mineral Disposition pursuant to an agreement, contract, undertaking or informal understanding between such Mineral Disposition Holder and the Band and/or Canada, on the basis that a Replacement Mineral Disposition is to be granted or entered into at a future date under applicable federal legislation;
 - (ii) in the case of provincial Crown Minerals, where the Mineral Disposition Holder has defaulted under the terms of the Mineral Disposition in which case Saskatchewan shall have five (5) years from the date of default in which to grant a further Mineral Disposition in respect of such Mineral on terms and conditions generally available in the industry at such time (including renewals thereunder), failing which the Mineral shall be deemed to be an Undisposed Mineral;
 - (iii) Saskatchewan is the Fee Simple Mineral Owner of the Minerals in question and the same are the subject of an existing trust agreement or trust certificate; or
 - (iv) any provincial Crown Minerals subject to a gas storage agreement.
- (d) In any case where Minerals are deemed not to be Undisposed Minerals through the operation of subparagraph (c)(ii), the same shall be made available for Purchase by the Band pursuant to section 5.03.
- (e) Saskatchewan agrees that it will, upon the request of the Band, transfer to Canada for the benefit of the Band, all those provincial Crown Minerals underlying the Entitlement Reserve:
 - (i) for which a title can lawfully be issued;
 - (ii) that are not subject to a Mineral Disposition provided that the legally enforceable existing rights, obligations and priorities of any Mineral

Disposition Holder with an interest in any other Minerals underlying the Entitlement Reserve are maintained;

- (iii) that are not required for Public Purposes; and
- (iv) that are not subject to a gas storage agreement.

5.05

SURFACE ACCESS:

The Band agrees that, from and after their Shortfall Acres Acquisition Date, where Entitlement Land has been Purchased and all Minerals have not been Purchased or all Mineral Dispositions have not been removed, or arrangements satisfactory to Canada, the Band and the Mineral Disposition Holder have not been made for the surrender of the Mineral Disposition and recreation thereof pursuant to applicable federal legislation prior to the date upon which such Entitlement Land is to be set apart as an Entitlement Reserve, the parties agree that the following conditions will apply in respect of any such Minerals or Mineral Dispositions, namely:

- (a) the Entitlement Land will not be set apart as an Entitlement Reserve until:
 - (i) where there is a Surface Lease, the Band has, subject to the requirements of the Act and any other applicable federal legislation, entered into an agreement to honour the same;
 - (ii) where such Mineral Disposition consists of an interest held by a Fee Simple Mineral Owner or Disposition Holder but there are no existing Surface Leases granting surface access, the Band has, pursuant to applicable federal legislation, entered into an agreement with any Fee Simple Mineral Owners or Mineral Disposition Holders to provide surface access to such Persons and their duly authorized servants and agents;
 - (iii) where any Fee Simple Mineral Owner or Mineral Disposition Holder cannot, after reasonable efforts by the Band, be located or, having been located, indicates unwillingness to enter into an agreement with respect to surface access then, subject to applicable federal legislation, the Band shall execute and deliver to Canada a binding agreement or undertaking (together with a Band Council Resolution approving the same) which permits issuance by the Minister, after the creation of the Entitlement Reserve, of an appropriate permit or other right under federal legislation to ensure surface access to such Mineral Disposition Holder or Fee Simple Mineral Owner.
- (b) subject to applicable federal legislation, the provisions of section 5.05 shall no longer be applicable if Canada enacts legislation to provide for mechanisms which ensure surface access to a Fee Simple Mineral Owner or a

Mineral Disposition Holder in respect of Entitlement Reserves on terms and conditions similar to those contained in *The Surface Rights Acquisition and Compensation Act*, R.S.S. 1978, c. S-65; and

- (c) notwithstanding subsections 5.05(a) and (b), but subject to applicable federal legislation, the Band may enter into any binding agreement with a Mineral Disposition Holder or any Fee Simple Mineral Owner respecting surface access which meets the needs and objectives of the parties.

5.06

VALUATION OF MINERALS:

- (a) The independent appraiser selected or appointed pursuant to section 5.03 shall determine the purchase price of Crown Minerals which Saskatchewan has agreed to sell to the Band by determining the net present day value to Saskatchewan of the Provincial Mineral Revenues that Saskatchewan would have earned if not for the transfer of the Minerals to the Band.
- (b) The independent appraiser shall determine the projected production of the provincial Crown Minerals and the projected price of those Crown Minerals by reference to standards accepted by the industry involved in the extraction of that particular Mineral.
- (c) The independent appraiser shall apply a discount factor equivalent to the cost of borrowing of Saskatchewan or the rate of return upon investments made by Saskatchewan, at the time of the determination, whichever more appropriately reflects the loss of Provincial Mineral Revenues that Saskatchewan will incur as a result of the transfer of the provincial Crown Minerals to the Band.
- (d) In the event of a determination by the independent appraiser in respect of any federal Crown Minerals, the purchase price shall, unless otherwise agreed, be equal to the fair market value thereof.

5.07

NON-CONSENT OF A DISPOSITION HOLDER:

- (a) Notwithstanding subsection 5.03(a), where Saskatchewan is the Fee Simple Mineral Owner of Minerals underlying Entitlement Lands which it does not hold in trust pursuant to an existing trust agreement or trust certificate for any Person, but a Mineral Disposition Holder does not consent to the sale of such Minerals to the Band, Saskatchewan agrees that it will give favourable consideration to the Purchase of its interest notwithstanding the lack of consent by the Mineral Disposition Holder provided an Agreement to Purchase has first been entered into among Canada, Saskatchewan and the Band containing the following terms and conditions, together with others that the parties may agree upon:

- (i) the purchase price for the said Minerals shall, unless otherwise agreed, be paid to Saskatchewan upon the signing of the Agreement to Purchase the same;
 - (ii) Saskatchewan will agree to transfer the Minerals to Canada for the benefit of the Band forthwith upon the expiration or termination of the interest held by the Mineral Disposition Holder that failed or refused to consent to the sale of the Minerals to the Band;
 - (iii) Saskatchewan will pay to the Band (or to Canada in the event the surface of the Entitlement Land is held in the name of Canada) for the use and benefit of the Band, all Provincial Mineral Revenues actually paid to Saskatchewan in respect of the said Minerals between the date of the signing of the agreement referred to in subparagraph 5.07(a)(i) and the date of the transfer of Minerals referred to in subparagraph 5.07(a)(ii), minus an agreed-upon fee for administration not to exceed five (5%) percent of such Provincial Mineral Revenues; and
 - (iv) in the event of a default by the Mineral Disposition Holder, Saskatchewan agrees to take all reasonable steps, to collect any unpaid Provincial Mineral Revenues owing by such Mineral Disposition Holder to Saskatchewan pursuant to the terms of the Mineral Disposition.
- (b) In any case where subsection (a) is applicable, Canada agrees that any Provincial Mineral Revenues transferred to Canada for the benefit of the Band pursuant to subsection, 5.07(a) will not be considered to be revenues of Saskatchewan for the purpose of calculating any entitlement which Saskatchewan might have to equalization payments or for the purposes of other federal-provincial fiscal arrangements whatsoever.

5.08

TRANSFER OF PROVINCIAL CROWN MINERALS IN CERTAIN CIRCUMSTANCES:

- (a) Where Saskatchewan is the Fee Simple Mineral Owner of any Minerals underlying Entitlement Lands which it does not hold in trust pursuant to an existing trust agreement or trust certificate for any Person which are subject to a Mineral Disposition and the Band indicates that it wishes to Purchase the Minerals and to pay for the Minerals out of the future revenue to be earned from those Minerals, Saskatchewan will transfer the Minerals to Canada, unencumbered, effective upon the Entitlement Reserve creation provided:
- (i) the Mineral Disposition Holder has agreed to surrender its Mineral Disposition and accept a Replacement Mineral Disposition; and

- (ii) Canada agrees to take all necessary steps to create a Replacement Mineral Disposition and, pursuant thereto, to remit to Saskatchewan, from those amounts received by Canada from the Mineral Disposition Holder, an amount equivalent to the Provincial Mineral Revenues which would have otherwise been payable to Saskatchewan (based upon actual production by such Mineral Disposition Holder) had the Minerals which are the subject of the Replacement Mineral Disposition not been transferred to Canada.
- (b) In the event that the Mineral Disposition Holder defaults under the terms of the Replacement Mineral Disposition, Canada and the Band agree:
 - (i) to immediately advise Saskatchewan of the default;
 - (ii) to take all reasonable steps to collect the amounts due from the Mineral Disposition Holder and to pay therefrom an amount up to (but not exceeding) the Provincial Mineral Revenues owing by Canada to Saskatchewan pursuant to subparagraph 5.08(a)(ii) to the date the Replacement Mineral Disposition is terminated; and
 - (iii) upon request of Saskatchewan, to take steps to cancel the Replacement Mineral Disposition if the default has not been remedied prior to receipt of such request from Saskatchewan.
- (c) In the event that the Replacement Mineral Disposition is terminated as a result of the default by the Mineral Disposition Holder, any of Canada, Saskatchewan or the Band may arrange for a new Replacement Mineral Disposition and Canada agrees to grant the new Replacement Mineral Disposition on terms and conditions generally available in the industry at the time and for a period of time, including associated rights of renewal, similar to those that had been contained in the original Mineral Disposition. In such an event, Canada agrees to take all necessary steps to create a new Replacement Mineral Disposition and thereafter the obligations of Canada, as outlined under subsections 5.08(a) and (b), shall thereafter continue in respect of the new Replacement Mineral Disposition.
- (d) In the event that arrangements for a new Replacement Mineral Disposition have not been made within five (5) years from the date of termination of a Replacement Mineral Disposition as provided under subsection (b), no further payments shall be required to be made by Canada to Saskatchewan in respect thereof and Saskatchewan shall forthwith cease to have any rights or beneficial interest in respect of the affected Minerals or potential revenues derived therefrom.
- (e) Saskatchewan agrees to promptly notify Canada of any changes from time to time in the royalties, taxes and rents which form the basis for the calculation of Provincial Mineral Revenues unless, pursuant to applicable federal

legislation, such changes are deemed to apply to the Replacement Mineral Disposition without notice.

- (f) The terms of any Replacement Mineral Disposition shall include, unless otherwise agreed among Canada, Saskatchewan and the Band, provisions which:
 - (i) to the extent reasonably possible coincide with the term of the Mineral Disposition including all available renewals;
 - (ii) automatically increase the amounts otherwise payable by the Mineral Disposition Holder pursuant to the Replacement Mineral Disposition in accordance with any increases in the royalties, taxes and rents which form the basis for calculation of the Provincial Mineral Revenues; and
 - (iii) automatically terminate the Replacement Mineral Disposition not more than sixty (60) days following any default in payment of any amounts due to be paid by the Disposition Holder to Canada pursuant to the terms thereof.
- (g) In the event that Canada is entitled, pursuant to the terms of the Replacement Mineral Disposition, to receive amounts which exceed the Provincial Mineral Revenues, then such excess amounts, if any, shall be received by Canada for the use and benefit of the Band.

5.09

EXISTING SURFACE OR MINERAL LEASES:

- (a) During the period when Entitlement land is held in the name of Canada until such Entitlement Land becomes Entitlement Reserve the Band and Canada agree that, save and except for any amounts payable to Saskatchewan as contemplated in section 5.08, it is their common intention and understanding that the revenues received by Canada pursuant to any Surface Lease or Mineral Disposition shall be utilized by Canada for the use and benefit of the Band.
- (b) Canada agrees that it will honour the terms of all Surface Leases or Mineral Dispositions affecting Entitlement Land during the period when such Entitlement Land is held in the name of Canada until the same is set apart as an Entitlement Reserve.

5.10

JOINT PRODUCTION AGREEMENTS:

- (a) In any case where Minerals which are subject to a Mineral Disposition are Purchased, Canada agrees that it shall not set apart the Entitlement Land as

an Entitlement Reserve until the Band has, subject to the requirements of applicable federal legislation, entered into an agreement to honour the terms of all Joint Production Agreements.

- (b) Notwithstanding the foregoing, the Band may, subject to the requirements of the Act, enter into an agreement with all parties to existing Joint Production Agreements which meets the needs and objectives of all parties thereto.

5.11

OIL AND GAS/MINING:

- (a) Subject to subsection (b), Canada and the Band agree that they will not authorize or permit the production or disposition of oil or gas underlying an Entitlement Reserve except in accordance with the requirements of section 4 of the ***Indian Oil and Gas Regulations***, C.R.C. 1978, c. 963.
- (b) If the requirements of section 4 of the said ***Indian Oil and Gas Regulations*** are amended or repealed, in whole or in part, then, subject to enactment of amending or replacement federal legislation relating to the production of oil and gas situate on Entitlement Reserve land, Canada, Saskatchewan, and the Band agree to enter into good faith negotiations to alter the obligations of Canada and the Band under subsection (a).
- (c) Subject to subsection (d), Canada and Band agree that they will not authorize or permit the production or disposition of Minerals (other than oil or gas) underlying an Entitlement Reserve except in accordance with the requirements of section 4 of the ***Indian Mining Regulations***, C.R.C. 1978, c. 956.
- (d) If the requirements of section 4 of the said ***Indian Mining Regulations*** are repealed, in whole or in part, then subject to enactment of amending or replacement federal legislation relating to the extraction of Minerals located on Entitlement Reserve land, Canada, Saskatchewan, and the Band agree to enter into good faith negotiations to alter the obligations of Canada and the Band under subsection (c).

5.12

PURCHASE OF FREEHOLD AND FEDERAL CROWN MINERALS ONLY:

The parties agree that, from and after the Band's Shortfall Acres Acquisition Date, freehold or federally held Minerals, or any interest therein, may be Purchased without the Band having to Purchase the surface of the Land. In such an event, the Band agrees that such Minerals, or any interest therein, shall not be set apart as an Entitlement Reserve unless ownership of all accompanying Land has been acquired in the form required pursuant to this Agreement.

ARTICLE 6

WATER

6.01 **WHOLLY ENCLOSED WATERBODIES:**

- (a) If a surface or subsurface Waterbody is wholly enclosed within the boundaries of any Entitlement Lands and has no Discernible Surface Outlet beyond the boundaries of the Entitlement Lands, Saskatchewan shall, without compensation, transfer to Canada all water, beds and shores of that Waterbody, effective upon creation of the Entitlement Reserve with respect to those Entitlement Lands.
- (b) For the purposes of this Article, ownership of Road Allowances intersecting a Waterbody shall not be considered in determining whether or not a Waterbody is wholly enclosed within Entitlement Land.

6.02 **TRANSFER OF BEDS AND SHORES IN CERTAIN CIRCUMSTANCES:**

Saskatchewan agrees to give favourable consideration to offers from the Band to Purchase the beds and shores of any Waterbody adjacent to Entitlement Land. Nothing in this Agreement shall be interpreted as requiring Saskatchewan to sell the beds and shores of such Waterbodies.

6.03 **RESERVE BOUNDARIES:**

Where Entitlement Land adjacent to a Waterbody is set apart as an Entitlement Reserve, the parties agree that:

- (a) the boundary of the Entitlement Reserve shall be the ordinary high water mark for such Waterbody;
- (b) the Entitlement Reserve shall not include within its boundaries any portion of the bed or the shore of the Waterbody below the ordinary high water mark unless Saskatchewan has expressly agreed to transfer the beds and shores in accordance with section 6.02; and
- (c) subject to compliance with the *Navigable Waters Protection Act*, R.S.C. 1985 c. N.-22, the Band shall have the right to place a dock, wharf or pier on the bed of the Waterbody along the boundary of any such Waterbody which is adjacent to an Entitlement Reserve, without needing to obtain any licence or to pay any fee or compensation whatsoever.

6.04

RIPARIAN RIGHTS:

The Band shall, immediately upon creation of an Entitlement Reserve, have full common law riparian rights with respect to the use and occupation of that Entitlement Reserve adjacent to a Waterbody, but, for greater certainty, the principle of *ad medium filium aquae* shall be inapplicable unless the affected beds and shores have otherwise been acquired by the Band under section 6.02.

6.05

NON-ENFORCEMENT OF RIPARIAN RIGHTS IN CERTAIN CASES:

- (a) Where an Entitlement Reserve is established adjacent to a Waterbody, the Band agree with Canada and Saskatchewan that the common law riparian rights referred to in section 6.04 shall be unenforceable by injunction, mandamus, prohibition, or similar prerogative writ for the purposes of preventing or delaying any Water Project provided that:
 - (i) Canada and the Band whose common law riparian rights have been affected were notified at least six (6) months in advance of any decision in relation to the approval of any Water Project; and
 - (ii) the Band whose common law riparian rights have been affected by any such Water Project shall have been afforded active and meaningful participation in any decision by a decision making authority concerned with the approval or operation of any such Water Project.
- (b) The parties agree that nothing in this section limits the right of the Band to seek or obtain monetary compensation from Saskatchewan (including costs associated with obtaining such compensation) for damages suffered as the result of any interference with, loss of, or damage to, the Band's common law riparian rights.

6.06

ENVIRONMENTAL ASSESSMENTS AND CONSIDERATION OF INDIAN USE:

- (a) Where any Water Project may, in the opinion of the Band, reasonably be expected in a discernible way to adversely affect the Band's common law riparian rights, the Band and Canada and/or Saskatchewan, as the case may be, agree to jointly review or, if applicable, jointly conduct any environmental impact assessments or other studies concerning the effects, or possible effects, of any Water Project as may be statutorily required.
- (b) Canada and/or Saskatchewan, as the case may be, agree to jointly review or, if applicable, jointly conduct the same with the Band in a manner which takes due consideration of the Bands' riparian rights and usage of any affected

Waterbody by the Band, or the Members of the Bands, for hunting, fishing, trapping, gathering or other traditional uses.

6.07 **AGREEMENT AMONGST PARTIES:**

Notwithstanding any other provision of this Article, but subject to applicable legislation, Saskatchewan and the Band may enter into a Co-Management Agreement concerning the management and use of all or any portion of a particular Waterbody adjacent to an Entitlement Reserve (including its water, bed and shore) affecting the Band's common law riparian rights, which meets the needs and objectives of all parties.

6.08 **CO-MANAGEMENT AGREEMENT:**

- (a) The Co-Management Agreement shall address matters affecting, in a discernible way, the quantity, quality, or rate of flow of waters in a Waterbody in respect of which the Band has riparian rights and may provide for any matters related to the use, management or development. of the Waterbody. In particular, such an agreement may provide for the following:
 - (i) the establishment of a process for the exchange of information and consultations between the Band and Saskatchewan (and, where necessary, Canada) with respect to those Waterbodies and Water Projects;
 - (ii) the establishment of a process for the active and meaningful participation by the Band in the decision making process with respect to the approval or disapproval of Water Projects; and
 - (iii) the establishment of a Co-Management Board to make binding decisions with respect to Waterbodies and Water Projects.
- (b) In no event shall the entering into of a Co-Management Agreement be a condition precedent to the sale of any Crown Land, Minerals or Improvements hereunder.

6.09 **CO-MANAGEMENT BOARD:**

In the event that the Band and Saskatchewan agree pursuant to a Co-Management Agreement that a Co-Management Board be established, the following principles shall apply:

- (a) the Band and Saskatchewan shall be represented on the Co-Management Board by an equal number of members except in cases where the interest of

the Band vis-a-vis the interest of other users of the water does not warrant equal representation, in which case the respective representation of the Band and Saskatchewan on the Co-Management Board shall be agreed upon by the Band and Saskatchewan;

- (b) in the event that there is no agreement on the representation of the Band and Saskatchewan on the Co-Management Board, it shall be referred to the Arbitration Board; and
- (c) the Co-Management Board shall have the authority to review and either approve, wholly or on terms and conditions, or disapprove, of any Water Project within its jurisdiction.

6.10

MINISTER'S CONSENT MAY BE REQUIRED:

Subject to applicable legislation, each of the Band and Saskatchewan acknowledge that the Minister's consent may be required pursuant to the Act to give effect to any Co-Management Agreement. To the extent such consent is required, the Band and Saskatchewan agree that such consent shall be obtained prior to execution and delivery of any Co-Management Agreement.

6.11

NO EFFECT ON TREATY RIGHTS:

Any provision of this Article which is found by a court of competent jurisdiction to conflict with or derogate from Treaty rights of the Band or its Members shall, to the extent of such conflict or derogation, be deemed to be null and void and of no further force or effect whatsoever.

ARTICLE 7

PROVINCIAL ROADS

7.01 **TRANSFER SUBJECT TO AGREEMENT:**

The parties agree that the transfer of administration and control of Provincial Roads from Saskatchewan to Canada to be set apart as an Entitlement Reserve shall in all cases be the subject of a separate agreement among the Band, Saskatchewan, Canada and the Rural Municipality or Urban Municipality within which the Provincial Road is located.

7.02 **PRINCIPLES OF AGREEMENT:**

Subject to section 7.05 hereof, where the parties agree to enter into an agreement pursuant to section 7.01, the following principles will be applicable to such an agreement:

- (a) Where only one side of a Provincial Road is immediately adjacent to an Entitlement Reserve, it will not normally be transferred.
- (b) Where a Provincial Road is bounded on both sides by a Reserve and/or an Entitlement Reserve and will be used primarily to provide access to locations within an Entitlement Reserve or Entitlement Land, Saskatchewan will, upon request, transfer administration and control of that portion of the Provincial Road to Canada to be set apart as an Entitlement Reserve provided:
 - (i) there is an agreement outlining the compensation, if any, to be paid to Saskatchewan by the Band in respect of such portion of the Provincial Road;
 - (ii) where necessary, an arrangement has also been made (pursuant to applicable federal legislation where necessary) to ensure a continued right of public passage in respect of such Provincial Road.
- (c) Where an Undeveloped Road Allowance is bounded on both sides by Reserve and/or Entitlement Reserve Land, Saskatchewan shall, upon request and without compensation, transfer the administration and control of Undeveloped Road Allowances to Canada to be set apart as an Entitlement Reserve on the following conditions:
 - (i) that if Saskatchewan requests the return of any such Undeveloped Road Allowance for use by the general public as a road, or for a transmission line, distribution line or similar facility on behalf of a Public Utility Company, the Undeveloped Road Allowance, or such interest in it as is necessary to enable Saskatchewan to fulfil any such

purpose, shall be returned to Saskatchewan without compensation and the Band agrees that, upon Canada's request, it will promptly provide its consent;

- (ii) where a re-transfer of any Undeveloped Road Allowance referred to in subparagraph (c)(i) above cannot be complied with because Improvements have been placed on all or a portion of the Undeveloped Road Allowance, or are located immediately adjacent thereto, and the said Improvements cannot easily be relocated, the Band agrees that alternate Land suitable for the requirements of Saskatchewan shall be provided to Saskatchewan and that such alternate Land shall, with the Governor-In-Council's consent if required, be transferred to Saskatchewan without compensation and the Band agrees that, upon Canada's request, it will promptly provide its consent to the transfer;
- (iii) notwithstanding subparagraphs (c)(i) and (ii) above, in the event the Undeveloped Road Allowance has been improved or developed as a road at the expense of Canada and/or the Band, the same shall only be transferred to Saskatchewan upon payment by Saskatchewan of fair market value compensation to Canada and/or the Band in respect of such improvements or developments;
- (iv) failing agreement between the parties, the determination as to:
 - (A) whether Improvements located on or immediately adjacent to an Undeveloped Road Allowance can be easily relocated; and/or
 - (B) the fair market compensation to be paid to Canada and/or an Band in respect of Improvements or developments respecting an Undeveloped Road Allowance;

the same shall be determined respectively, by the Arbitration Board and, failing agreement between the parties as to an independent appraiser, by an independent appraiser to be appointed by the Chairperson of the Arbitration Board in accordance with Article 19.

7.03

LAND CEASING TO BE A PROVINCIAL ROAD:

Where a Provincial Road which is used primarily to provide access to locations within an Entitlement Reserve ceases to be used as a Provincial Road, it shall be dealt with as an Undeveloped Road Allowance under this Article.

7.04

LAND NOT PART OF SHORTFALL ACRES OR EQUITY QUANTUM:

The Band agrees that the area of any Undeveloped Road Allowance or Provincial Road which has been transferred to Canada under this Article shall not be used in determining whether the Band has attained its Shortfall Acres or Equity Quantum for the purposes of this Agreement.

7.05 **AGREEMENT AMONGST AFFECTED PARTIES:**

Notwithstanding any other provision of this Article, but subject to applicable law, Saskatchewan, the Band, Canada and the Rural Municipality or Urban Municipality in which a Provincial Road or Undeveloped Road Allowance is located may enter into any agreement concerning any particular Provincial Road or Undeveloped Road Allowance which meets the needs and objectives of all parties.

7.06 **ACKNOWLEDGMENTS PURSUANT TO AMENDED COST SHARING AGREEMENT:**

- (a) The parties agree that the Rural Municipal Compensation Fund was established by Canada and Saskatchewan for the purpose of paying tax loss compensation for the benefit of Rural Municipalities which experience a reduction of Taxable Land as the result of the creation of Entitlement Reserves. Each of the parties agrees that:
 - (i) the tax loss compensation payable by Saskatchewan and Canada to the Rural Municipal Compensation Fund pursuant to the terms of the Cost Sharing Agreement is in full satisfaction of any tax loss which a Rural Municipality may experience as a result of the establishment of an Entitlement Reserve within the Rural Municipality and for the purpose of enabling and requiring Rural Municipalities to continue to maintain Provincial Roads and Road Allowances for which such Rural Municipalities are responsible located within, adjacent to or providing access to Entitlement Reserves at the ordinary standard established for other roads of the same classification within the Rural Municipality; and
 - (ii) payments by Canada and Saskatchewan to the Rural Municipal Compensation Fund are not intended as compensation to a Rural Municipality for additional costs which may be incurred by such Rural Municipality as the result of substantial unanticipated increases relating to the capital funding or operational costs associated with the upgrading of Provincial Roads or Road Allowances within such Rural Municipality for which such Rural Municipality is responsible, whether in respect of Provincial Roads or Road Allowances. within, adjacent to or providing access to Entitlement Reserves.

7.07

POST-RESERVE CREATION AGREEMENTS:

The Band agrees that where Saskatchewan requires additional Land or interests in Land for the purpose of constructing, maintaining or upgrading a Provincial Road or Provincial Highway for use by the general public which is located:

- (i) immediately adjacent to an Undeveloped Road Allowance in respect of which Saskatchewan has requested the return to its administration and control in accordance with this Article 7; or
- (ii) within an Entitlement Reserve which is located adjacent to a Provincial Road which has not been transferred to Canada under an agreement contemplated by this Article 7;

the Band agrees to give favourable consideration to making such Land, or interests in Land, available to Saskatchewan and, if the same is made available, to promptly provide the Band's consent in writing as may be required pursuant to applicable federal legislation to permit Canada to transfer the Land or any interest therein to Saskatchewan, subject to reversion where required, upon the payment of compensation at fair market value to be paid to Canada for the use and benefit of the Band.

7.08

NO EFFECT ON CERTAIN MATTERS:

- (a) Canada and the Band agree that where a Provincial Road is transferred and set apart as an Entitlement Reserve pursuant to section 7.02, regular program funding will be made available to the Band for the operation and maintenance of such Provincial Road.
- (b) Canada shall be under no obligation to set apart any Provincial Road as an Entitlement Reserve under this Article, unless the Land, Minerals and Improvements are otherwise eligible to be set apart pursuant to this Agreement.

ARTICLE 8

THIRD PARTY INTERESTS

8.01 ENTITLEMENT RESERVE UNENCUMBERED:

Subject to section 8.04, but otherwise notwithstanding any other provision hereof, the Band agrees that all Entitlement Land to be set apart as an Entitlement Reserve must be free and clear of all Third Party Interests or, alternatively, arrangements satisfactory to Canada, all affected Third Party Interest Holders and the Band for the surrender of such Third Party Interests and the subsequent recreation thereof under applicable federal legislation must have been agreed to in accordance with sections 8.03, 8.05 and 8.06.

8.02 THIRD PARTY INTERESTS TO BE REMOVED AT THE TIME OF PURCHASE:

Prior to the Shortfall Acres Acquisition Date, the Band agrees that appropriate legal arrangements for discharge of the following Third Party Interests must be made at the time of completion of the Purchase of Entitlement Land:

- (a) registered mortgages, debentures and other similar charges;
- (b) registered caveats evidencing:
 - (i) mortgage renewals;
 - (ii) mortgage amendments;
 - (iii) mortgage extensions;
 - (iv) equitable mortgages; or
 - (v) any other pledge or charge of any interest in or affecting such Entitlement Land;
- (c) registered writs of execution;
- (d) notices registered pursuant to *The Personal Property Security Act*, S.S. 1979-80, c. P-6.1;
- (e) all registered or registrable tax liens and outstanding taxes (including, without limitation, all liability for property or business taxes levied or capable of being levied as against the Entitlement Land up to and including the closing date of the transaction in respect thereof);

- (f) caveats evidencing agreements for sale of, or options in respect of, all or any portion of the Entitlement Land;
- (g) caveats evidencing homestead claims;
- (h) notations, registrations or instruments evidencing, or purporting to evidence, any trust or interest in the nature of a trust;
- (i) Lis Pendens or any notice thereof or any certificate of a registrar evidencing commencement of an action;
- (j) any enforceable claim for, or in the nature of, an order of foreclosure or similar proceeding;
- (k) registered builders liens, mechanics liens or any other similar statutory or common law liens or encumbrances;
- (l) registered maintenance orders and any other court orders; and
- (m) any other instrument providing an underlying right to acquire title or any proprietary interest in Land.

8.03

THIRD PARTY INTERESTS TO BE DEALT WITH SUBSEQUENT TO PURCHASE - PUBLIC UTILITY EASEMENTS:

The parties agree that in any case where Entitlement Land has been Purchased and is encumbered by a Public Utility Easement (whether registered or unregistered), the following shall apply:

- (a) the Band shall provide Canada with a Band Council Resolution consenting to Canada's execution and registration of all applicable Replacement Public Utility Easements as contemplated in subparagraph 11.03(l)(b)(ii);
- (b) a written notice that an unconditional Approval in Principle has been granted in respect of identified Land shall be delivered by the Department to SIMAS in accordance with subparagraph 11.03(3)(b)(i);
- (c) within forty-five (45) days receipt by SIMAS of any such notice, Saskatchewan shall ensure that the Public Utility Companies direct to the attention of the Department of Justice in Saskatoon, in trust, a registrable discharge of any registered Public Utility Easement held by such Public Utility Company together with duly executed Replacement Public Utility Easements in respect of all registered or unregistered Public Utility Easements;
- (d) upon receipt, Canada shall hold such documents in trust on condition that Canada shall execute any such Replacement Public Utility Easements and

shall submit the same, together with the registrable discharge of any registered Public Utility Easement and the federal Order in Council setting the land apart as an Entitlement Reserve, in accordance with subsection (e);

- (e) subject to the completion of the foregoing, Canada agrees to cause all such Replacement Public Utility Easements to be registered on its Indian land registry system and, where available, under the applicable provincial land registry system. Thereafter, Canada further agrees to provide any affected Public Utility Company with a true copy of such registration under the Indian land registry and a certified copy of any registration made pursuant to applicable provincial legislation. Registration in the provincial land registry system in respect of any Entitlement Reserve is not, nor shall it be construed, as any admission herein by Canada that use of such system by Canada is legally required or has the effect of making any such registration legally enforceable, and such provincial land registry system is being utilized by Canada for any reason except for convenience;
- (f) the Replacement Public Utility Easement shall be recreated without further compensation being payable to the Band beyond that compensation, if any, which is actually payable to, and is received by, Canada from the Public Utility Company under the terms of the Replacement Public Utility Easement;
- (g) the Band further agrees that where, at some future time, a Public Utility Easement Company requires an interest in Entitlement Land for a Public Utility Easement, the Band will give favourable consideration to making such interests in Land available and, if the same is made available, to promptly provide the Band's consent in writing as may be required pursuant to applicable federal legislation to permit Canada to transfer the Land or any interest therein, subject to reversion where required, upon the payment of compensation at fair market value to be paid to Canada for the use and benefit of the Band;
- (h) Saskatchewan agrees that it is acting in the capacity of an agent for the Public Utility Companies for the purposes of this section; and
- (i) in the event that the documents referred to in subsection (d) are not utilized within a period of two (2) years from their receipt by the Department of Justice, the same shall, unless otherwise agreed, be returned to the relevant Public Utility Company.

8.04

THIRD PARTY INTERESTS AFTER SHORTFALL ACRES ATTAINED:

- (a) Notwithstanding section 8.01 hereof but subject to Article 9, in each case with the prior written direction and consent of the Band (such direction and consent to be evidenced by a Band Council Resolution), the Minister agrees to recommend to the Governor-In-Council that, from and after the Band's

Shortfall Acres Acquisition Date, Entitlement Land be set apart as an Entitlement Reserve subject only to the following Third Party Interests:

- (i) party wall agreements;
 - (ii) airport zoning regulations; and
 - (iii) a lease (other than a Surface Lease, or a residential lease affecting Land located in an Urban Municipality unless the same is the subject of an agreement among the affected tenant, Canada and the Band) in respect of the use or occupation of Entitlement Land (or in respect of the use or occupation of any Improvement located upon all or any portion of the Entitlement Land), provided that Canada, acting reasonably, is satisfied that the remaining term of such lease (including any renewal thereof) is less than three (3) years from the date that Canada has taken title to the Entitlement Land.
- (b) The Band and Canada agree that, save and except for those Third Party Interests permitted in subsection 8.04(a) above, Entitlement Land which is subject to any Third Party Interest shall not be eligible to be set apart as an Entitlement Reserve unless arrangements satisfactory to Canada, all affected Third Party Interest Holders and the Band for the absolute surrender of such Third Party Interests or the surrender and subsequent recreation thereof under applicable federal legislation have first been made.
- (c) Canada and the Band agree that where Entitlement Land is set apart as an Entitlement Reserve subject to a Third Party Interest referred to in subsection 8.04(a) above, all rights of the Third Party Interest Holder, as they existed prior to the setting apart of the Entitlement Land as an Entitlement Reserve, shall be preserved and the same shall be fully enforceable in respect of the affected Entitlement Land except where the Band, at its expense, negotiates with a Third Party Interest Holder a binding agreement to amend the terms and conditions of the Third Party Interest (or Canada does so at the Band's request and expense) in which case the Third Party Interest, as so amended, shall be fully enforceable as aforesaid.

8.05

SURRENDER PURSUANT TO AGREEMENT:

In the event that a Third Party Interest (other than a Public Utility Easement) is to be surrendered prior to creation of an Entitlement Reserve, the parties agree that the surrender of the Third Party Interest shall be the subject of an agreement between the Band, Canada and the Third Party Interest Holder.

8.06

PRINCIPLES OF SURRENDER AGREEMENT:

- a) Subject to subsection (b), the parties further agree that the following principles will be applicable to any agreement referred to in section 8.05:
- (i) where the Third Party Interest is to be surrendered and not subsequently recreated under applicable federal legislation, the Third Party Interest Holder shall be compensated by the Band for the fair market value thereof;
 - (ii) where the fair market value of the Third Party Interest cannot be agreed upon then, subject to agreement between the Band and the Third Party Interest Holder, the fair market value thereof shall be established by a jointly appointed independent appraiser;
 - (iii) where the Third Party Interest is to be surrendered and subsequently recreated under applicable federal legislation, Canada shall, with such consent of the Band as is required by law, recreate such Third Party Interest without further compensation to the Band beyond that compensation, if any, which is actually payable by and received from the Third Party Interest Holder under the terms of the Third Party Interest and Canada shall, where required under applicable federal legislation, authorize the creation of any replacement instrument in respect of the interest which is to be surrendered and recreated and obtain any necessary Band consent.
- (b) The Band, Canada, and the Third Party Interest Holder may enter into any agreement concerning the disposition, surrender or recreation of a Third Party Interest that meets the needs and objectives of all parties.

8.07

THE BAND'S RESPONSIBILITY:

Notwithstanding subsections 8.04(a) and (c), where an Entitlement Reserve is subject to a Third Party Interest which, at the request of the Band, Canada has permitted in accordance with subsection 8.04(a), the Band agrees to be responsible for and to indemnify and hold Canada harmless from and against any suit, action, cause of action, claim, demand, liability or damage which may arise or be incurred as the result of, in any way arising from, or in any way related to, the setting apart of Entitlement Land as an Entitlement Reserve or the subsequent administration by the Band, or by Canada, subject to such Third Party Interest. Provided, however, this indemnification shall not apply to the negligent actions of Canada or of any agent of Canada, nor shall the Band be liable in respect of damages arising from Canada's failure to register such Third Party Interest on the Indian land registry in the manner agreed upon by Canada and such Third Party Interest Holder, or in respect of any damages arising from Canada's failure to maintain and enforce the affected Third Party Interest in a manner agreed upon between Canada and such Third Party Interest Holder.

8.08**ACKNOWLEDGEMENT BY THE BAND:**

Notwithstanding subsections 8.04(a) and (c), where an Entitlement Reserve is subject to a Third Party Interest which, at the request of the Band, Canada has permitted in accordance with subsection 8.04(a), the Band agrees with Canada that Canada shall have no fiduciary obligation to the Band relative to the exercise of any power, discretionary or otherwise, associated with the administration of such Third Party Interest except to the extent of Canada's obligations which are directly attributable to its agreement with the Band and such Third Party Interest Holder to register such Third Party Interest on the Indian land registry in the manner agreed upon among Canada, the Band and such Third Party Interest Holder, or damages arising directly from Canada's failure to maintain and enforce the affected Third Party Interest in a manner agreed upon amongst Canada, the Band and such Third Party Interest Holder.

8.09**CANADA'S RESPONSIBILITY:**

Where a Third Party Interest Holder has surrendered its interest pursuant to an agreement to which Canada is a party, and such agreement provides that the Third Party Interest will be recreated pursuant to applicable federal legislation subsequent to Entitlement Reserve creation, either in whole or in part, Canada shall be responsible for any failure to recreate such Third Party Interest in accordance with such agreement and shall be required to compensate the Band or Third Party Interest Holder for any damages which result directly from such failure to recreate the Third Party Interest under the agreement except in any case where the Band or the Third Party Interest Holder is at fault.

8.10**FUTURE APPLICATION OF THIS ARTICLE:**

In the event that:

- (a) a court of competent jurisdiction, after all available appeals have been completed, hereafter determines that all or any portion of the requirements set forth in sections 8.01 to 8.06 of this Article are inapplicable or unnecessary for the purposes of fulfilling Canada's treaty obligations to the Band and maintaining the enforceability of Third Party Interests subsequent to Reserve creation; or
- (b) the parties agree in writing to waive or vary the application of any section of this Article; or
- (c) federal legislation is enacted which alters or removes the necessity for all or any portion of this Article;

then, to such extent, the provisions of such sections shall be deemed to no longer be of any force or effect.

ARTICLE 9

URBAN RESERVES

9.01

AGREEMENT REQUIRED WITH URBAN MUNICIPALITY AND SCHOOL DIVISION:

- (a) Notwithstanding any other provision of this Agreement, but subject to subsection 9.01(b) hereof, Lands and Improvements Purchased by the Band within the boundaries of an Urban Municipality will not be set apart as an Entitlement Reserve until an agreement has been entered into between the Band, and the affected Urban Municipality or School Division respecting the following matters:
 - (i) the provision of and payment for compensation to the Urban Municipality for loss of taxes, levies or grants-in-lieu, which, but for the setting apart of the Entitlement Reserve, could reasonably have been expected to have been received by the Urban Municipality for its own purposes by the substitution of one of the following:
 - (A) a servicing agreement between the Band and the Urban Municipality, whereby the Urban Municipality would agree to provide municipal services in consideration for a fee to be paid by the Band; or
 - (B) a one time lump sum payment, or periodic payments, or some other formula negotiated between the parties, provided, however, the amount of such compensation will not necessarily be equal to the amount of such taxes, levies or grants-in-lieu;
 - (ii) compensation for the affected School Division for loss of taxes, levies or grants-in-lieu which, but for the setting apart of the Entitlement Reserve, could reasonably have been expected to have been received by the affected school division; provided, however, the amount of such compensation will not necessarily be equal to the amount of such taxes, levies or grants-in-lieu but may be based on a one time lump sum payment or periodic payments or some other formula negotiated between the parties. It is acknowledged by the parties that if the Band will not be receiving any direct service or benefit from the affected School Division in consideration for such payment or has entered, or will enter, into a tuition agreement, the same shall be a factor in determining the amount of any such payment;
 - (iii) to the extent reasonably necessary, compatible municipal and band bylaws and their application and enforcement; and

- (iv) an appropriate dispute resolution mechanism for resolving matters of mutual concern.
- (b) The parties agree that:
 - (i) in the event that the Band and any affected Urban Municipality or affected School Division jointly elect not to enter into any agreement referred to in subsection 9.01(a) or enter into an agreement that covers some, but not all, of the matters referred to in subsection 9.01(a) then, to such extent, that subsection shall be inapplicable and, for greater certainty, the affected parties may enter into any agreement which meets the needs and objectives of the parties; and
 - (ii) in the event that any required agreement has not been entered into as between the Band and one or more of the other affected parties within five (5) months of any request by the Band to such other party to enter into such an agreement, Canada may, subject to clause (d), set apart such Entitlement Land as an Entitlement Reserve without such an agreement where the Band is prepared to enter into a reasonable and adequate agreement in respect of the reasonable concerns raised by the affected Urban Municipality or affected School Division (relating to those matters referred to in subsection 9.01(a)), but the other party is unwilling to respond to the Band's request reasonably and in good faith.
- (c) In the event of a dispute involving the question of whether, in fact, a particular Urban Municipality or any affected School Division is acting reasonably and in good faith, or whether the Band is proposing a reasonable and adequate agreement in respect of the concerns of the other party, any of Canada, Saskatchewan or the affected Band may refer the matter to the Arbitration Board and the affected Urban Municipality and any affected School Division shall, upon request, have standing before the Arbitration Board.
- (d) Where a dispute is referred to the Arbitration Board under subsection (c), Canada will not set apart an Entitlement Reserve under subparagraph (b)(ii) until the matter has been disposed of by the Arbitration Board.

9.02

ADDITIONAL REQUIREMENTS:

- (a) Canada and the Band agree that, with respect to the creation of urban Entitlement Reserves:
 - (i) in addition to the other provisions of this Article, Canada may require the Band to also comply with such provisions of the Additions to

Reserves Policy as Canada, acting reasonably, deems necessary including, without limitation, the following:

- (A) subsection 9.1.3 (excluding the third paragraph thereof);
 - (B) subsections 9.2.1 and 9.2.9.2 (including contiguous and non-contiguous communities); and
 - (C) subsection 9.3.1.
- (b) For greater certainty, subsection 9.3.2.2 of the Additions to Reserves Policy shall be inapplicable, except to the extent that any proposal for Entitlement Reserve creation may require review by the Department's "Headquarters Additions to Reserve Committee" and the Department's Assistant Deputy Minister of Lands, Revenues and Trusts.

9.03 **NO COMPENSATION PAYABLE:**

The Band agrees with Canada and Saskatchewan that neither Saskatchewan nor Canada shall be required to compensate any Urban Municipality (or any affected School Division) or any other authority on whose behalf taxes are levied with respect to any loss of taxation revenues or grants-in-lieu of taxes experienced by such Urban Municipality or affected School Division except on Taxable Land and that any arrangement for compensation shall be the sole responsibility of the Band.

9.04 **NO EFFECT ON TUITION AGREEMENTS:**

The Band agrees with Canada and Saskatchewan that nothing in this Article, or Article 9 of the Cost Sharing Agreement, affects any tuition agreements entered into between Canada or the Band and any School Division.

9.05 **TERM OF CERTAIN PROVISIONS:**

- (a) The provisions set forth in section 9.01 of this Article shall, unless otherwise agreed to in writing among Canada, Saskatchewan and the Band, be in effect for a period of at least fifteen (15) years from the Execution Date.
- (b) As soon as reasonably possible following the fourteenth (14th) anniversary of the Execution Date, the parties agree to enter into good faith negotiations to determine what additional period of time, if any, the provisions of section 9.01 shall continue to be effective and what amendments, if any, are required thereto.

- (c) In the event that the parties are unable to agree upon an extension of the applicable time period or any required amendments on or before the expiration of the fifteen (15) year period referred to in subsection (a), the provisions of section 9.01 shall continue to be applicable thereafter for a further period of three (3) years, at which time, unless otherwise agreed among the parties, Canada's then current policy on Reserve creation shall thereafter be substituted as the procedure for Entitlement Reserve creation in Urban Municipalities.

ARTICLE 10

RATIFICATION AND APPROVAL

10.01 **RATIFICATION AND IMPLEMENTATION:**

The parties agree that to give effect to any payment by Canada of Entitlement Monies to the Trust Account, this Agreement must first be executed by the Chief and Councillors of the Band (on behalf of the Band and all Members of the Band) and the Trust Agreement, in a form satisfactory to Canada, executed by all the parties thereto, be ratified in accordance with the provisions of this Article, and this Agreement be delivered to Canada for execution. Provided, however, no payment of Entitlement Monies by Canada shall be made unless a duly executed Band Council Resolution, an executed original copy of this Agreement and an original executed Trust Agreement have been delivered by the Band to Canada on the Execution Date and following the acceptance and ratification thereof, as evidenced by an affirmative vote of the majority of the Members on the Band eligible to vote, with such ratification vote to be conducted in accordance with the procedures set out in the Ratification Vote Guidelines and Procedures.

10.02 **COMING INTO FORCE:**

- (a) This Agreement shall be binding upon the parties hereto upon execution, however, Canada, Saskatchewan, and the Band hereby acknowledge and agree the following events are conditions precedent to any obligation by Canada to make any payment pursuant to this Agreement, namely:
 - (i) ratification of this Agreement by the Band and execution of this Agreement by the authorized representatives of the Band, following affirmative vote of the majority of the Members of the Band eligible to vote in accordance with the provisions of section 10.01;
 - (ii) delivery to Canada of the Trust Agreement executed by the parties thereto that is in form and substance satisfactory to Canada;
 - (iii) execution of this Agreement by Saskatchewan;
 - (iv) execution of this Agreement by Canada;
 - (v) the issuance and delivery to Canada by legal counsel for the Band of a certificate as of the date of execution of this Agreement that the terms and provisions of this Agreement were fully explained to the Members of the Band present at information meetings and that the Members and the Chief and Council appeared to understand the legal nature and

effect of the provisions of this Agreement, an interpreter being present and available if required;

- (b) This Agreement may be signed by the Minister on behalf of Canada after the necessary government approvals, including the approval of the Governor-in-Council, have been obtained with respect to this Agreement.

10.03

UNDERTAKING RESPECTING CERTAIN INFORMATION:

- (a) The Band agrees to provide Canada with information concerning the methods utilized by the Band to inform eligible voters, prior to ratification, of the content and effect of this Agreement (including the Trust Agreement and Public Utility Easement Agreements).
- (b) Without limiting the generality of subsection (a), the Band agrees to advise Canada in writing as to:
 - (i) the structure, timing and location of, and the agenda for, all Band information sessions;
 - (ii) the number of eligible voters in attendance at such sessions;
 - (iii) the extent of information made available to such prospective voters; and
 - (iv) the names and professional qualifications of those legal, financial and other advisors present thereat, to assist the Band in its efforts to inform eligible voters as aforesaid.

ARTICLE 11

PROCEDURES FOR RESERVE CREATION

11.01 **SHORTFALL ACRES TO BE ACQUIRED:**

The Band agrees (and acknowledges that Canada is specifically relying upon such agreement) that the Band shall use its best efforts to reach their Shortfall Acres Acquisition Date on or before the twelfth (12th) anniversary of the Execution Date by having:

- (i) Purchased Entitlement Land (including all Minerals and Improvements in respect thereof) with a surface area at least equivalent to their respective Shortfall Acres;
- (ii) caused such Entitlement Land to be eligible to be granted Entitlement Reserve status pursuant to this Agreement; and
- (iii) delivered to Canada all necessary transfers, discharges and other instruments (in registerable form) required by Canada in order to permit Canada to take unencumbered title to such Entitlement Land in accordance herewith.

11.02 **LANDS ELIGIBLE FOR RESERVE STATUS:**

Canada agrees that the Minister will recommend that Entitlement Land up to, but not exceeding, the Band's Equity Quantum shall be set apart as Entitlement Reserve subject to the following:

- (a) the acquisition of the Entitlement Land has been approved by the Chief and Council of the Band;
- (b) title to all Entitlement Land is in form and in substance satisfactory to Canada;
- (c) the Terms and Conditions of Entitlement Reserve Creation have been complied with and, in any case where Article 9 is applicable, such additional requirements of Article 9 as are applicable have also been complied with;
- (d) the Land, Minerals and Improvements have been determined to be environmentally suitable to be set apart as an Entitlement Reserve after the completion of an Environmental Screening or, where applicable, an Environmental Review, in accordance with the process set out in the Terms and Conditions of Entitlement Reserve Creation; and

- (e) save and except for those Environmental Screening and outer boundary survey costs to be paid by Canada pursuant to subsection 11.07(a), the Band has made all required payments in respect of the relevant Entitlement Land including, where applicable:
 - (i) the purchase Price for the acquisition of the Entitlement Land (including any improvements and Minerals in respect thereof;
 - (ii) Acquisition Costs;
 - (iii) the satisfaction or accommodation of all Occupants of Crown Land;
 - (iv) the satisfaction or accommodation of all Interests in a Mineral Disposition and Third Party Interests; and
 - (v) the costs of conducting feasibility studies, appraisals and Environmental Reviews (excluding the costs associated with Environmental Screening).

11.03

PRE-ACQUISITION REQUIREMENTS:

- (1) Prior to the acquisition of Entitlement Land, the Council, acting through the Trustees, shall:
 - (a) obtain appropriate and correct legal searches of title respecting the Land, Minerals and Improvements, all Third Party Interests, ownership of Minerals and Mineral Dispositions relating thereto;
 - (b) notify the Department, by Band Council Resolution ("BCR"), that the searches under subparagraph (a) above have been completed and cause to be delivered complete copies of all search results and other documentation in accordance with Stage 1 of Schedule 6. The BCR shall clearly indicate, following enquiries with the owner of such Land, Minerals or Improvements (including in the case of Crown Land, Minerals or Improvements those enquiries contemplated in Articles 4 and 5) that:
 - (i) the Land (including, where required, all Minerals and Improvements) is available for Purchase; and
 - (ii) the Band consents to the execution and registration by Canada of all applicable Replacement Public Utility Easements which may affect the subject property pursuant to section 8.03; and

- (iii) the Band intends to Purchase the same and thereafter transfer title to all, or any clearly identified portion, of the Entitlement Land to Canada; or
 - (iv) the Band intends to have Canada assist the Band by agreeing to accept the direct transfer of such Land, Minerals or Improvements from the current owner to Canada.
- (2) Upon Canada receiving the BCR and other documentation referred to in subsection (1) above, the following shall (unless otherwise agreed in writing between the parties) take place:
 - (a) the Department shall, as soon as reasonably possible, but in any event within fourteen (14) days, of receipt thereof from the Band, cause the BCR to be registered by its Saskatchewan Regional Office on a central registry system. The Department and SIMAS shall co-operate to promptly determine whether the legal descriptions and related searches are sufficient for SIMAS to proceed or whether, in addition, a treaty land entitlement selection map is also required by SIMAS;
 - (b) the Saskatchewan Regional Office shall, as soon as reasonably possible, but in any event within fourteen (14) days if no selection map is required by SIMAS (or within thirty (30) days in the event a selection map is required), forward a copy of the BCR and any accompanying documents to SIMAS requesting:
 - (i) information respecting the existence and location of any registered or unregistered Public Utility Easements;
 - (ii) Saskatchewan's best available information respecting the existence and location of any Waterbody affecting the identified Land (other than a wholly enclosed Waterbody referred to in section 6.01); and
 - (iii) any other information required in accordance with the Terms and Conditions of Entitlement Reserve Creation (including provincial considerations in respect of the proposed Entitlement Reserve);

and such information shall be delivered by SIMAS to the Department as soon as reasonably possible but, in any event:

- (iv) within forty-five (45) days in the event that the identified Lands, Minerals or Improvements are provincial Crown assets which Saskatchewan has agreed to sell pursuant to section 4.05 or section 5.03; or

- (v) with in ninety (90) days in respect of any other property;
 - (c) if the information provided by Saskatchewan in subparagraph (b) identifies the existence and location of any Waterbody affecting the Land which is not wholly enclosed therein (and in respect of which Saskatchewan has not agreed to transfer the related beds and shores), Saskatchewan agrees as soon as reasonably possible and at its expense to supply to the Band and to Canada a correct and registerable legal description (only in respect of any land which is, at that time, surveyed land administered under *The Land Titles Act*, R.S.S. 1978, L-5) for such Waterbody and any available information with respect to the acreage of each such identified Waterbody.
- (3) Upon completion of the requirements set forth in subsections (1) and (2) above, the parties agree that the following will take place:
- (a) upon the finalization of the submission pursuant to Schedule 5 (including, where required, any approval by BCR) and its delivery by the Department to both the Regional Additions to Reserves Committee and the Department of Justice, Canada, through the Department's Regional Director General ("R.D.G."), the R.G.D. shall (unless otherwise agreed between the Department and the Band) notify the Band in writing, in accordance with the time frames set forth in Schedule 5, that:
 - (i) the Entitlement Land has been unconditionally recommended by the Regional Additions to Reserves Committee to the R.D.G. for Approval in Principle and the R.D.G. has granted an unconditional Approval in Principle for Entitlement Reserve status; or
 - (ii) a conditional Approval in Principle has been recommended by the Regional Additions to Reserves Committee and a conditional Approval in Principle has been granted by the R.D.G. clearly listing the conditions which remain to be met before an unconditional Approval in Principle will be granted; or
 - (iii) the proposed Entitlement Land has been rejected for Entitlement Reserve status by either the Regional Additions to Reserves Committee or the R.D.G., and the reasons for such rejection have been clearly identified in writing to the Band by the Department; or
 - (iv) in the event of a rejection of a submission by the Regional Additions to Reserves Committee or the R.D.G., the Band, acting reasonably, may request in writing that the R.D.G. and

any appropriate officials of the Department (including, where necessary, the members of the Regional Additions to Reserves Committee) agree to meet with the appropriate officials of the Band to further clarify or explain the basis for the rejection, and compliance with such request shall not be unreasonably withheld.

- (b) where a conditional Approval in Principle is granted by the R.D.G., the Department shall use its best efforts to advise SIMAS thereof and to identify in writing the affected Land, Minerals and Improvements. Upon unconditional Approval in Principle being granted by the R.D.G. (or all necessary conditions relating to a conditional Approval in Principle having been fulfilled), the following shall take place:
- (i) the Department shall notify SIMAS that an unconditional Approval in Principle has been granted and identify in writing the affected Lands, Minerals and/or Improvements;
 - (ii) if the affected Land has been determined to be subject to any registered or unregistered Public Utility Easement, Saskatchewan agrees that it will, at no cost to the Band, cause to be provided to Canada a Replacement Public Utility Easement respecting all unregistered or registered Public Utility Easements together with any applicable registrable discharges in accordance with section 8.03 and Canada shall, at no cost to the Band or to the Public Utility Companies, cause any registered Public Utility Easements to be discharged and all Replacement Public Utility Easements to be registered in accordance with section 8.03;
 - (iii) the Band may, if they have not already done so, promptly proceed (unless otherwise agreed with Canada) to Purchase the Entitlement Land within fifteen (15) months of the Approval in Principle, (failing which the same shall at Canada's option, be null and void) and following such Purchase Canada shall accept such transfer of title in accordance with this Agreement and the Band Specific Agreement;
 - (iv) following Purchase of the Entitlement Land and following transfer of title to Canada (acceptance of which transfer of title shall be conditional upon compliance of the property with the terms hereof and that no additional and unresolved Third Party Interests or Mineral Dispositions having arisen subsequent to the Approval in Principle), Canada shall, at its cost, as soon as reasonably possible subject to prevailing weather conditions, carry out any required outer boundary surveys; and

- (v) once such surveys are complete or once an acceptable and registrable legal description has been obtained, the Minister shall recommend to the Governor-In-Council that such Entitlement Land be set apart as an Entitlement Reserve, and Canada will further cause to be prepared by the Department, the necessary submission to the Governor In Council to give effect to such recommendation and shall notify Saskatchewan within thirty (30) days of the date that such Entitlement Land was set apart as an Entitlement Reserve.
- (4) If Canada or Saskatchewan fail to comply in any material way with the time frames contained herein, then Canada or Saskatchewan (except to the extent any delay has been caused by the failure of the Band to promptly and accurately comply in any material way with its obligations pursuant to this Agreement or the Trust Agreement) shall provide compensation to the Band or the Trustees for all direct costs or losses suffered by the Band or the Trustees as the result of any such failure by Canada or Saskatchewan to comply with the terms of this Article for which they are responsible.

11.04

MINISTERIAL DISCRETION:

- (a) The parties agree that, subject to compliance by the Band and its Trustees with the terms and conditions of its Trust Agreement and this Agreement (and in particular sections 4.01 to 4.04, inclusive, 5.01 and 8.02 hereof), Entitlement Land may at any time be Purchased from a third party without the prior consent or involvement in any way of Canada or Saskatchewan. Approval for the transfer of title to Canada shall, however, be subject to the terms of this Agreement and, without limitation, this Article and Schedule 5.
- (b) In the event Entitlement Land has not been Purchased by the Band in strict compliance with the provisions of this Agreement, and the Trust Agreement and, in particular, Schedule 5 and sections 11.02 and 11.03 hereof, the Minister may, in any event, in the Minister's sole and unfettered discretion, recommend to the Governor-In-Council that the Entitlement Land be accepted in the name of Canada and be set apart as an Entitlement Reserve.
- (c) Notwithstanding any other provision of this Agreement, it is hereby expressly acknowledged and agreed by the Band that Canada shall have no obligation whatsoever to accept any Entitlement Land (including an assignment of the Purchaser's interest under an Agreement to Purchase) that has not been acquired in strict compliance with the provisions of this Agreement or to exercise an option to purchase such Land or acquire title to such Land, and the Minister shall, in any such case, be under no obligation whatsoever to make such recommendation or request to have such Entitlement Land set apart as an Entitlement Reserve.

- d) Without limiting the generality of the foregoing, any loss occasioned by the Band or its Trustees as the direct or indirect result of any failure to acquire Entitlement Land in strict compliance herewith shall be borne exclusively by the Band and/or its Trustees.

11.05 **COMPENSATION PAID BY CANADA:**

- (a) In the event the Band has:
 - (i) Purchased Entitlement Land, the title to which has been accepted by and transferred to Canada; and
 - (ii) the same is eligible to be set apart as an Entitlement Reserve pursuant to the terms of this Agreement;

and such Entitlement Land is not set apart by the Governor-In-Council notwithstanding recommendation by the Minister to do so, then the provisions of subsections (b) or (c) and the provisions of subsections (d), (e) and (f), shall, unless otherwise agreed between Canada and the Band, apply;

- (b) If the consent of the Governor-In-Council is denied prior to the Band's Shortfall Acres Acquisition Date:
 - (i) the Band shall forthwith confirm to Canada by means of a Band Council Resolution that none of the Band, its Members or Trustees wish to retain any interest whatsoever (whether legal, beneficial or otherwise) in respect of the Entitlement Land in question;
 - (ii) upon receipt of such notification Canada agrees, within one hundred and twenty (120) days, to reimburse the Band and its Trustees for all reasonable Acquisition Costs incurred and paid by the Band or its Trustees in respect of the Purchase of the said Entitlement Land;
 - (iii) Canada further agrees, within one hundred and twenty (120) days to promptly reimburse the Band for the purchase price of the affected Entitlement Land paid by the Band or its Trustees; and
 - (iv) all amounts paid by Canada pursuant to subparagraphs (ii) and (iii) above shall be deposited to the Band's Trust Account and shall, notwithstanding any other provision of this Agreement, or the Trust Agreement, be thereafter dealt with in the same manner as any other funds administered by the Trustees on behalf of the Band prior to the Band's Shortfall Acres Acquisition Date until the Band has actually achieved its Shortfall Acres Acquisition Date;

- (c) If the consent of the Governor-In-Council is denied after the Shortfall Acres Acquisition Date, the Band shall, for a period of six (6) months following receipt by the Band of written notification from Canada that the Entitlement Land in question shall, notwithstanding the recommendation of the Minister, not be set apart as an Entitlement Reserve, have the option to either:
- (i) have Canada, after receipt of a notification from the Band of the type contemplated in subparagraph (b)(i), prior to the expiration of the six (6) month period aforesaid, reimburse the Band for those amounts referred to in subparagraphs (b)(ii) and (iii), and to pay such amounts to the Band's Trust Account within the time frames referred to therein; or
 - (ii) have the Entitlement Land re-transferred, at Canada's cost, to the Band, without any further compensation payable by Canada to the Band in any respect;

and in the event that the Band fails to elect to exercise its rights under subparagraph (c)(i) within six (6) months, the Band shall be deemed to have elected to retain the property and, subject only to a re-transfer thereof from Canada, shall not be entitled to any further compensation whatsoever.

- (d) for greater certainty, in the event that Canada has been required to reimburse the Band for the Acquisition Costs and the purchase price in respect of Entitlement Land in the manner contemplated by subsections (b) or (c), the Band agrees that Canada shall be entitled to deal with the Entitlement Land in any manner whatsoever, including the right to dispose of the same and to retain the proceeds of any sale thereof, without any claim, legal or beneficial interest of the Band, its Trustees or Members being applicable in any manner whatsoever thereto.
- (e) In the event of a dispute between Canada and the Band respecting the amount of reasonable Acquisition Costs, or the purchase price incurred and paid by the Band or its Trustees to Purchase the affected Entitlement Land, the same shall be referred, at the option of either party, to the Arbitration Board.
- (f) In the event of a reimbursement under this section, Canada agrees to pay the Band, at the time of reimbursement, an amount equivalent to the interest accrued on such reasonable Acquisition Costs and the purchase price, calculated at the Interest Rate, from the date Canada has received title to the affected Entitlement Land.

If Land in excess of the Band's Equity Quantum is Purchased, such Land may be set apart as a Reserve at the sole discretion of Canada under its Additions to Reserves Policy as amended from time to time.

11.07 **CANADA COSTS:**

Canada agrees, notwithstanding any other provision in this Agreement with respect to costs, to be responsible for the payment of outer boundary survey costs required for the establishment of Entitlement Reserves, and reasonable costs associated with any Environmental Screening in accordance with Steps 1-3 of Stage 2 of Schedule 5.

11.08 **PAYMENT OF TAXES:**

- (a) The Band agrees that the Trustees shall be responsible for the payment of all taxes lawfully levied against Lands, Minerals and Improvements or the occupants thereof Purchased pursuant to this Agreement from the date of Purchase by the Trustees until the date that the same are transferred to Canada.
- (b) Subject to subsection (c), the Band agrees to pay all taxes lawfully levied against Entitlement Land or the occupants thereof (or grants-in-lieu of such taxes from the date the Entitlement Lands are transferred to Canada) until the date the same is set apart as an Entitlement Reserve.
- (c) In the event that the creation of an Entitlement Reserve does not occur within seventy-five (75) days of the latter of the following dates:
 - (i) the date that the Entitlement Land is eligible to be transferred to Canada hereunder for creation as an Entitlement Reserve;
 - (ii) the date that the Band has requested in writing that such Entitlement Land be transferred to and accepted by Canada; and
 - (iii) the date of receipt by Canada of all registerable documents, in registerable form, necessary to effect the transfer of title to the Entitlement Land to Canada in the form required hereby (including all necessary discharges, replacement instruments, provincial Orders in Council, and all other associated interests in respect thereof);

Canada agrees to pay to the Trustees an amount equivalent to the taxes levied against the said Entitlement Land which the Trustees have paid and which relate to any period following such seventy-five (75) day period.

11.09

TRANSFER BY SASKATCHEWAN OF RESIDUAL INTERESTS:

Saskatchewan agrees to transfer to Canada, without compensation, in respect of all Entitlement Land which Canada sets apart as an Entitlement Reserve pursuant to this Agreement, the administration and control of all residual interests held by the Crown in right of Saskatchewan including, without limitation:

- (a) all right, title and interest in respect of such Entitlement Land vested in Saskatchewan;
- (b) any right and reservation in respect of such Entitlement Land vested in Saskatchewan by virtue of any statute of the Province of Saskatchewan;

and Saskatchewan shall not retain any reservation, express or implied, whether such Entitlement Land was Purchased from Saskatchewan or any Person, and such transfer shall be effective upon creation of the Entitlement Reserve.

11.10

POST RESERVE UNDERTAKING:

In the event Entitlement Land is set apart as an Entitlement Reserve adjacent to an Urban Municipality the Band agrees to give favourable consideration to establishing compatible zoning by-laws consistent with those in place, from time to time, in any adjoining portion of the Urban Municipality.

11.11

PROCESS REVIEW:

The parties to this Agreement agree that a review will take place within three (3) years from the Execution Date to determine if the provisions in sections 11.02 to 11.04, inclusive, and Schedule 5 require adjustment or amendment and, where agreed upon, such required changes shall be made, and such adjustments as are subsequently agreed upon shall thereafter be made from time to time with the agreement in writing of the affected parties.

11.12

TERM OF ENTITLEMENT RESERVE CREATION PROCEDURES:

- a) The procedures set forth in Schedule 5 and in sections 11.02 to 11.04 inclusive (in this section the "Entitlement Reserve Creation Procedures") shall, unless otherwise agreed to in writing by Canada, Saskatchewan and the Band, be in effect for a period of at least fifteen (15) years from the Execution Date.
- (b) As soon as reasonably possible following the fourteenth (14th) anniversary of the Execution Date, the Parties agree to enter into good faith negotiations to determine what additional period of time, if any, the Entitlement Reserve

Creation Procedures shall continue to be effective and what amendments, if any, are required thereto.

- (c) In the event that the parties are unable to agree in writing upon an extension of the applicable time period or any required amendments on or before the expiration of the fifteen (15) year period referred to in subsection (a), the Entitlement Reserve Creation Procedures shall continue to be applicable thereafter for a further period of three (3) years, at which time, unless otherwise agreed in writing amongst the parties, Canada's then current policy on Reserve creation shall thereafter be substituted as the procedure for Entitlement Reserve creation.

11.13 NEGOTIATION AND ACQUISITION COST COMPENSATION:

Canada shall pay an additional sum of Three Hundred and Fifty-five Thousand (\$355,000) Dollars on account of:

- (a) the Band's expenditures and disbursements incurred in the negotiation and settlement of the Claim and the Band hereby authorizes and directs Canada to withhold from such additional sum the amount of One Hundred Thousand (\$100,000) Dollars as payment in full for all advances and loans provided to the Band by Canada under the Loans to Native Claims Program, and
- (b) Acquisitions Costs, Environment Screening, surveys and ratification costs that will be incurred by the Band pursuant to this Agreement;

and, Canada is hereby directed to pay the balance of such additional sum to the Band Account.

ARTICLE 12

TAX LOSS COMPENSATION

12.01 CANADA'S COMPENSATION - RURAL MUNICIPALITIES:

Canada and Saskatchewan agree that, within ninety (90) days of the date upon which Taxable Land which had been situated within a Rural Municipality is set apart as an Entitlement Reserve, Canada shall pay to the Rural Municipal Compensation Fund seventy (70%) percent of a sum that is equivalent to ninety (90%) percent of twenty-five (25) times the Municipal Taxes which had been levied in respect of such Taxable Land in the calendar year immediately prior to the said date.

12.02 SASKATCHEWAN'S COMPENSATION - RURAL MUNICIPALITIES:

Canada and Saskatchewan agree that, within ninety (90) days of the date upon which Taxable Land which had been situated within a Rural Municipality is set apart as an Entitlement Reserve, Saskatchewan shall pay to the Rural Municipal Compensation Fund thirty (30%) percent of a sum that is equivalent to ninety (90%) percent of twenty-five (25) times the Municipal Taxes which had been levied in respect of such Taxable Land in the calendar year immediately prior to the said date.

12.03 PAYMENTS SUBJECT TO AMENDED COST SHARING AGREEMENT:

Canada and Saskatchewan agree that the amounts payable to the Rural Municipal Compensation Fund pursuant to section 12.01 and section 12.02, shall be subject to the expenditure limitation set forth pursuant to section 8.2 of the Cost Sharing Agreement.

12.04 CANADA'S COMPENSATION - SCHOOL DIVISIONS:

Canada and Saskatchewan agree that, within ninety (90) days of the date upon which Taxable Land which had been situated within a Rural Municipality is set apart as an Entitlement Reserve, Canada shall pay to the School Division Compensation Fund seventy (70%) percent of a sum that is equivalent to seventy (70%) percent of twenty-five (25) times the School Taxes which had been levied in respect of such Taxable Land in the calendar year immediately prior to the said date.

12.05 SASKATCHEWAN'S COMPENSATION - SCHOOL DIVISIONS:

Canada and Saskatchewan agree that, within ninety (90) days of the date upon which Taxable Land which had been situated within a Rural Municipality is set apart as an Entitlement Reserve, Saskatchewan shall pay to the School Division Compensation Fund thirty (30%) percent of a sum that is equivalent to seventy (70%) percent of twenty-five (25) times the School Taxes which had been levied in respect of such Taxable Land in the calendar year immediately prior to the said date.

12.06 **PAYMENTS SUBJECT TO CERTAIN LIMITATIONS:**

Canada and Saskatchewan agree that the amounts payable to the School Division Compensation Fund pursuant to section 12.04 and section 12.05, respectively, shall be included within the expenditure limitations set forth pursuant to section 9.2 of the Cost Sharing Agreement.

12.07 **INTEREST ON ARREARS:**

Arrears of any sums payable by Saskatchewan or Canada to the Rural Municipal Compensation Fund or the School Division Compensation Fund shall bear interest at the Interest Rate.

12.08 **NO EFFECT ON TUITION AGREEMENTS:**

The parties agree that nothing in this Article shall be deemed to affect tuition agreements entered into or to be entered into between Canada, the Band or any School Division.

12.09 **NOTICE RESPECTING TRANSFER OF TAXABLE LAND:**

- (a) Canada shall use its best efforts to give Saskatchewan appropriate prior notice of the date upon which it is intended that any Taxable Land is to be set apart as an Entitlement Reserve.
- (b) Saskatchewan shall use its best efforts to ensure that the Saskatchewan Association of Rural Municipalities ("SARM") receives appropriate prior notice in respect of the proposed creation of an Entitlement Reserve following receipt of notice to such effect from Canada as aforesaid, and that SARM determines, on or before the date such Taxable Land is set apart as an Entitlement Reserve, the Municipal Taxes and School Taxes which had been levied in respect of such Taxable Land in the calendar year immediately prior to the said date.

- (c) In the event of any dispute as to the appropriate amount of tax loss compensation payable to the Rural Municipal Compensation Fund or the School Division Compensation Fund, the same shall be the subject of Arbitration pursuant to Article 19 and SARM shall have standing before the Arbitration Board.

12.10

NO ADDITIONAL COMPENSATION PAYABLE BY THE BAND:

It is hereby agreed by Saskatchewan that no compensation shall be payable by the Band to any Rural Municipality or School Division to compensate any such Rural Municipality or School Division for the loss of Municipal Taxes or School Taxes, on Taxable Land respectively, in respect of either the Purchase of Entitlement Land or the setting apart by Canada of such Entitlement Land as an Entitlement Reserve.

ARTICLE 13

TAXATION

13.01 TAXATION OF TRUST PROPERTY:

Canada and Saskatchewan acknowledge that the Entitlement Monies deposited into the Trust Account, are monies given to the Band under this Agreement in fulfilment of Canada's Treaty land entitlement obligation in respect of the Band.

13.02 GOODS & SERVICES TAX REMISSION:

- (a) Canada agrees to obtain on behalf of the Band a remission order respecting tax otherwise payable pursuant to Part IX of the *Excise Tax Act*, R.S.C. 1985, c.E-15 ("Goods and Services Tax"), as the same relates to the purchase price incurred in acquiring Entitlement Lands, Minerals or Improvements up to, but not exceeding, the Band's Equity Quantum.
- (b) Canada further agrees that, pursuant to the Technical Information Bulletin issued by the Department of National Revenue, Customs and Excise, regarding the Goods and Services Tax ("GST") Administrative Policy applicable to Indians (known as B-039 dated January 4, 1991), Acquisition Costs such as accounting, legal, consulting, appraisal and other related costs associated with the acquisition of real property by the Band are relieved of the GST.

13.03 TAXATION OF PUBLIC UTILITY COMPANIES:

Canada and the Band agree that, pursuant to the terms of the Replacement Public Utility Easements, no Public Utility Company shall be required to pay any taxes, duties, tolls, imposts or levies of any kind or nature howsoever charged, imposed or assessed by Canada, the Band or any federal authority in respect of the distribution lines, transmission lines or other works installed upon Entitlement Reserve land, save and except:

- (a) such existing taxes, duties, tolls, imposts or levies, if any, including any future increases related thereto, which are, as at the Execution Date, charged, imposed or assessed by Canada or any federal authority; and
- (b) any other taxes, duties, tolls, imposts or levies of general application, if any, which are hereafter lawfully charged, imposed or assessed by Canada, the Band or any federal authority, both on and off Reserve lands, and which the Public Utility Companies would otherwise be required to pay.

ARTICLE 14

EXISTING AND FUTURE PROGRAMS

14.01 **PROGRAMS UNAFFECTED:**

Canada agrees with the Band that federal programs and services shall continue to apply to the Band on the same basis as to other Indian bands in Canada, in accordance with the criteria established from time to time for the application of program funding.

14.02 **EXISTING PROGRAMS:**

- (a) The Band agrees with Canada that the execution of this Agreement shall not entitle the Band to any funding per capita in addition to the existing program funding from the Department for the development of infrastructure or capital expenditure for any improvement to Reserve and/or Entitlement Reserve Lands, provided that the Band shall be entitled to apply on a per capita basis for existing or any future program funds.
- (b) The Band agrees with Canada that any application for additional program funding for the development of infrastructure or capital expenditure shall be made separate and apart from any submission for Entitlement Reserve creation.
- (c) The parties agree that nothing in this Agreement is intended, nor shall it be construed in any way, to represent the payment or allocation to the Band by Canada or Saskatchewan of any existing or future program funding otherwise available to the Band.

14.03 **NO EFFECT ON CERTAIN MATTERS:**

Pursuant to *An Act to Amend the Indian Act*, R.S.C. 1985, c.32 (1st Supp.), provision was made for certain individuals to apply for registration as Indians. In respect of any such individuals who were entitled to be registered Indians pursuant to the Act as of March 31, 1991, but were not registered as of April 15, 1992, the terms and conditions of this Agreement (and in particular Article 15) shall not apply. Nothing in this section shall be deemed to be an admission, confirmation or denial by Canada of any rights or obligations in respect of such individuals or the Band, that any of such individuals who are not included as members of the Band are entitled to any Band membership rights, or any existing or future Band funding or programs.

ARTICLE 15

BAND RELEASE, INDEMNITY, AND FINALITY

15.01 RELEASE OF CANADA BY THE BAND:

Subject to the provisions of sections 15.06 and 15.08, in consideration of the execution of this Agreement by the parties and in consideration of the covenants contained herein and in particular in consideration of the covenant of Canada to deposit Entitlement Monies to the Trust Account set out in section 3.02 hereof the Band and each member of the Band does hereby:

- (a) cede, relinquish and abandon to Canada any claim, right, title and interest which the Band and any of the Band's Members and each of their respective heirs and successors which past, present or future Members ever had, now have, or may hereafter have by reason of, or in any way arising out of or relating to land entitlement pursuant to Treaty No. 4;

- (b) release and forever discharge Canada, Her servants, agents and successors from all obligations imposed on, and all promise, undertaking or representation made by Canada under Treaty No. 4 relating to land entitlement and waives any right, action or cause of action, claim, demand, damage, cost, expense, liability and entitlement of whatever nature and kind whether known or unknown which the Band or any of the Band's Members and each of their respective heirs and successors which past, present or future Members ever had, now have, or may hereafter have against Canada by reason of or in any way arising out of Treaty No. 4 relating to land entitlement in the following part of the said Treaty:

And her Majesty the Queen hereby agrees, through the said commissioners, to assign reserves for said Indians, such reserves to be selected by officers of Her majesty's Government of the Dominion of Canada appointed for that purpose, after conference with each band of the Indians, and to be of sufficient area to allow one square mile for each family of five, or in that proportion for larger or smaller families;

Furthermore it is understood by the parties that this Agreement and in particular the covenants contained herein, represent full and final satisfaction of any and all obligation or undertaking of Canada relating to land entitlement contained in Treaty No. 4 and all manner of costs, legal fees, travel and expenses incurred by the Band or its representatives in negotiations relating to this Agreement;

- (c) notwithstanding subsections (a) and (b) above, but for greater certainty, nothing herein is intended, nor shall it be construed, as affecting any right, action or claim of the Band (other than in respect of outstanding Treaty land

entitlement) including any right, claim or action in respect of any improper surrender, alienation, or other disposition by Canada of Reserve lands, claims relating to traditional Indian lands (unrelated to outstanding Treaty land entitlement), or any other right, action or claim (unrelated to outstanding Treaty land entitlement) which may now or hereafter arise and be governed by Canada's specific claims policy. Provided, however, nothing in this section shall be interpreted as any admission or denial by Canada respecting the validity of any such actions or claims.

15.02

BAND INDEMNITY:

- (a) Subject to the provisions of section 15.06, the Band agrees:
- (i) to indemnify and forever save harmless Canada from and to be responsible for any and all manner of suits, actions, causes of action, claims, demands taken or initiated against Canada, and all damages, costs, expenses or liabilities incurred by Canada whether by settlement or as a result of a decision of a court, and whether now known or unknown, related to or arising out of or in respect of its Treaty land entitlement which any entity or person, including Members of the Band or any of the Band's past, present or future Members, and all of those persons eligible to participate in this settlement or any of their respective heirs, successors and assigns, ever had, now have or may hereafter have against Canada in such respect, and, subject to section 14.03, any present or future claim, liability or demand based, in whole or in part, on membership (or the lack of recognition thereof by the Band) in the Band; and
 - (ii) to indemnify and forever save harmless Canada from and to be responsible for any and all manner of suits, actions, causes of action, claims or demands taken or initiated against Canada, and all damages, costs, expenses or liabilities incurred by Canada, whether by settlement or as a result of a decision of a court, whether now known or unknown, related to or arising out of or in respect of the deposit of the Entitlement Monies to the Trust Account, the administration of the Trust Property, or for the expenditure or administration of any amount paid or administered pursuant to this Agreement or the Trust Agreement, which any entity or person, including Members of the Band or any of the Band's past, present or future Members, and all of those persons eligible to participate in this settlement, any of their respective heirs, successors or assigns, ever had, now have or may hereafter have against Canada and, subject to section 14.03 including any present or future claim, liability or demand based, in whole or in part, on membership (or the lack of recognition thereof by the Band) in the Band.

15.03

INDEMNITY PROCEDURES:

- (a) Canada shall use all reasonable efforts to notify the Band of a claim or possible claim for indemnification hereunder within a reasonable time following the date that facts, events or circumstances exist and are known to Canada of the basis of a claim in respect of which indemnification hereunder exists or is likely to arise, provided that the Band shall not be entitled to avoid liability for indemnification by reason of Canada's failure to give timely notice except to the extent that the Band can prove it has been actually prejudiced thereby.
- (b) With respect to any claim for indemnification under section 15.02 arising out of any legal proceedings instituted or any claim or demand asserted by any third party, Canada shall assume and thereafter control the defence of such proceedings, claim or demand and any negotiations in respect thereof and the Band and its counsel shall have the right, at the Band's option and expense, to collaborate therein. To that end, the Band shall be entitled to have knowledge (on a strictly confidential basis) of the steps being taken in respect of such proceedings, claim or demand and to make suggestions as to the conduct of the defence to Canada and its counsel and no settlement shall be entered into without the written consent of the Band (which shall not be unreasonably withheld). The parties shall endeavour to jointly instruct counsel in the defence of such proceedings, claim or demand, and any negotiations towards settlement thereof.
- (c) In the event that Canada is prepared to settle any claim or action and the Band is not prepared to do so, then provided the Band provides satisfactory security (or, at Canada's option, other evidence of an ability to adequately honour its indemnity hereunder) Canada shall continue to defend any such claim or action, and instruct counsel in respect of such, claim or action.
- (d) The parties agree to act in good faith and upon the advice of counsel and to co-operate fully with each other in connection with the defence, negotiation or settlement of any third party legal proceedings, claim or demand relating to an indemnified matter hereunder including providing access to all books, records and documents as are reasonably necessary to collaborate in or control, as the case may be, the defence of the legal proceedings, claim or demand.
- (e) In the event Canada should be held to be liable as a result of any claim or action contemplated hereunder (including in respect of any claim or action based on the deposit of any Entitlement Monies to the Trust Account, or in respect of any claim, demand or other liability relating to the administration of Trust Property or the expenditure or administration of any amount paid or administered pursuant to this Agreement or the Trust Agreement) as a result of a judgment obtained in a legal action taken by the Band or by any other entity or persons whomsoever, the Band acknowledges that Canada may, in

enforcing the provisions of section 15.03 elect to utilize subsection 4(2) of the *Act* (in respect of section 89 of the *Act*) for the purpose of recovering from the Band any agreed upon settlement amount or resulting judgment in favour of Canada against the Band.

15.04 **FULL AND FINAL SATISFACTION:**

Subject to sections 15.06 and 15.08, the Band agrees that this Agreement is intended to and does give effect to the full and final satisfaction of any and all obligation or undertaking of Canada relating to Treaty land entitlement in respect of the Band including, without limitation, all manner of costs, legal fees, travel expenses and other costs incurred by the Band or their representatives in negotiations relating to this Agreement or otherwise and that Canada, by carrying out its obligations pursuant thereto, shall be deemed to have completely fulfilled, and thereby extinguished, the Treaty land entitlement rights of the Band and the Treaty land entitlement obligations of Canada to the Band.

15.05 **FINALITY - CANADA AND THE BAND:**

Subject to subsection 15.01(c) and section 15.08, the Band agrees that this Agreement sets forth, in full and complete manner, the actions necessary to implement and fulfil the terms of their respective Treaties in respect of land entitlement and, by carrying out its obligations under this Agreement, Canada's Treaty land entitlement obligations shall be fulfilled.

15.06 **NO RELIANCE ON RELEASE, INDEMNITY OR FINALITY IN CERTAIN CIRCUMSTANCES:**

(a) Notwithstanding sections 15.01 to 15.04, inclusive, Canada agrees that it shall not rely on the provisions thereof in respect of the Band in the event that Canada has failed, and is continuing to fail, in any material way, to comply with the following covenants in favour of the Band, namely:

- (i) Canada's obligation to pay the Entitlement Monies in accordance with the provisions for payment set forth in Article 3; or
- (ii) prior to the earliest of:
 - (A) the Shortfall Acres Acquisition Date; or
 - (B) the twelfth (12th) anniversary of the Execution Date;

Canada's obligation to set apart Land as an Entitlement Reserve in accordance with the provisions hereof (subject always to compliance

by the Band with the terms hereof and, in particular, the provisions set forth in Articles 4 to 9, Article 11 and Schedule 5 of this Agreement);

and, for greater certainty, Canada further agrees that, prior to the earliest of the dates referred to in subparagraphs (a)(ii)(A) and (B), if any damages are incurred by the Band as the direct result of any default by Canada in fulfilling its other monetary obligations hereunder (including, without limitation any failure by Canada to honour any of its obligations as set forth in subsection 11.07(a) hereof), the provisions of sections 15.01 to 15.04, inclusive, shall, unless such damages have been paid by Canada to the Band, be ineffective as against any action based on Treaty land entitlement commenced by the Band, but only to the extent of such actual and unpaid damage.

- (b) Canada further agrees that it will not rely upon the provisions of sections 15.01 to 15.04, or subparagraph 15.06(a)(ii)(B), in the event that the Band has otherwise complied with the terms hereof and the cause for the Band's failure to reach its Shortfall Acres Acquisition Date has been as a direct result of Canada's failure to create Entitlement Reserves pursuant to this Agreement as opposed to any non-creation of Entitlement Reserves which has been caused by the failure of any other party to honour its obligations hereunder.

15.07

NO ADMISSION:

Nothing in this Article shall be deemed or construed to be an admission by the Band or Canada of the extent of their respective Treaty land entitlement rights and obligations. Nothing in this section shall be deemed to be, or interpreted as, any presumption, intention or expectation that any variation or amendment of any Treaty is actually contemplated or required.

15.08

NO EFFECT ON FUTURE VARIATION:

In the event that at any time hereafter any variation or amendment of Treaty affecting the Band is agreed to by Canada and formally concluded, then, except as may be agreed upon at such time, this Agreement shall not be interpreted as affecting, precluding, or derogating from any such variation or amendment. Nothing in this section shall be deemed to be, or interpreted as, any presumption, intention or expectation that any variation or amendment of any Treaty is actually contemplated or required.

ARTICLE 16

CANADA AND ENTITLEMENT BANDS FINALITY OF SETTLEMENT RESPECTING SASKATCHEWAN

16.01 **FINALITY - CANADA AND SASKATCHEWAN:**

- (a) Canada, Saskatchewan and the Band agree that the financial and other contributions to be made by Saskatchewan pursuant to this Agreement and this Agreement are a means by which Saskatchewan shall fulfil its obligations under paragraph 10 of the *Natural Resources Transfer Agreement* with respect to the Treaty land entitlement of the Band.
- (b) Canada and Saskatchewan acknowledge that an agreement to be entered into between Canada and Saskatchewan (as set out in Schedule 3) provides for the release and discharge of the obligations of Saskatchewan under paragraph 10 of the *Natural Resources Transfer Agreement* and that Canada and Saskatchewan agree to recommend to the Parliament of Canada and the Legislative Assembly of Saskatchewan, respectively, enactment of statutes ratifying and confirming the agreement.

16.02 **RELEASE BY CANADA AND THE BAND:**

- (a) Canada and the Band hereby agree that after ratification, execution and delivery of this Agreement, as long as Saskatchewan is paying to Canada the amounts required to be paid by Saskatchewan in respect of the Band in accordance with this Agreement, and Saskatchewan has not failed, in any material way, to comply with its other obligations hereunder
 - (i) the Superintendent General of Indian Affairs shall not request Saskatchewan to set aside any land pursuant to paragraph 10 of the *Natural Resources Transfer Agreement* to fulfil Canada's obligations under the Treaties in respect of the Band; and
 - (ii) the Band shall not make any claim whatsoever that Saskatchewan has any obligation to provide land pursuant to paragraph 10 of the *Natural Resources Transfer Agreement*.
- (b) Notwithstanding subparagraph (a) Canada and the Band further agree to forever release and discharge Saskatchewan, Her heirs, servants, agents and successors from all claims, obligations, promises, undertakings or representations made by Saskatchewan to Canada relating to Saskatchewan's obligations to assist Canada in fulfilling the Treaty land entitlement of the

Band, or their predecessors in title, pursuant to paragraph 10 of the *Natural Resources Transfer Agreement* from and after the earlier of:

- (i) the date upon which the Band reaches its Shortfall Acres Acquisition Date; or
- (ii) the fifth (5th) anniversary of the date that Canada, Saskatchewan and the Nekaneeet Band formally execute the Nekaneeet Settlement Agreement.

ARTICLE 17

OTHER INDIAN BANDS

17.01 **NO PREJUDICE:**

Nothing in this Agreement shall be interpreted in a manner so as to prejudice:

- (a) the rights or obligations of Canada in respect of any Indian band not a party to this Agreement; or
- (b) the rights of any Indian band not party to this Agreement;

including, without limitation, any Indian band in respect of which Canada may hereafter accept for negotiation a claim for treaty land entitlement.

17.02 **NO CREATION OF RIGHTS:**

Nothing in this Agreement shall be interpreted in a manner so as to create or expand upon rights or confer any rights upon, or to the benefit of, any Indian band not a party to this Agreement.

17.03 **OTHER NEGOTIATIONS:**

Canada and Saskatchewan agree that nothing in this Agreement shall prejudice the ability of other Bands whose claim has been accepted from concluding separate arrangements with Canada to settle their outstanding land entitlement.

ARTICLE 18

SHARED ENTITLEMENT MONIES

18.01 SHARED ENTITLEMENT MONIES

Canada and Saskatchewan agree to apportion the Entitlement Monies in accordance with the following formula:

- (a) Canada shall contribute the sum of Five Million, Five Hundred and Seventy-four Thousand, Seven Hundred and Ninety-five Dollars and Ten Cents (\$5,574,795.10), being 70% of the Entitlement Monies;
- (b) Saskatchewan agrees to pay to Canada on the Execution Date the sum of Two Million, Three Hundred and Eighty-nine Thousand, One Hundred and Ninety-seven Dollars and Ninety Cents (\$2,389,197.90), being Saskatchewan's share of the Entitlement Monies.

ARTICLE 19

ARBITRATION

19.01 **ARBITRATION BOARD:**

- (a) An arbitration tribunal (the "Arbitration Board") may be established to adjudicate upon the disputes contemplated in section 19.02 of this Agreement.
- (b) The membership of the Arbitration Board shall be as contemplated in subsections 19.07(c) and (d). There shall be a permanent and independent chairperson of the Arbitration Board (the "Chairperson") who shall be appointed by agreement amongst the parties for a term to also be agreed upon.
- (c) If either of the independent arbitrators (including the Chairperson) referred to in subsections 19.07(c) and (d) are unable to act, the parties shall agree upon a replacement within twenty (20) days.
- (d) In the absence of an agreement within the period mentioned in subsection (c), the remaining arbitrators shall determine a replacement.
- (e) Notwithstanding these provisions, the parties may agree to adopt the Arbitration Board and the Chairman established pursuant to the Framework Agreement to adjudicate upon disputes contemplated in Section 19.02 of this Agreement.

19.02 **MATTERS FOR ARBITRATION:**

- (a) Canada, Saskatchewan and the Band further agree that should a dispute arise between any of them with respect to the following matters, that the dispute may be referred to the Chairperson for resolution:
 - (i) selection of the independent appraiser to determine the value of Crown Lands or Crown Improvements that either Canada or Saskatchewan have agreed to sell to the Band;
 - (ii) selection of the independent appraiser to determine the value of Crown Minerals that either Canada or Saskatchewan have agreed to sell to the Band;
 - (iii) selection of the independent appraiser to determine the fair market value compensation to be paid to Canada and/or the Band in respect

of Improvements or developments pursuant to subparagraph 7.02(c)(iv)(B);

- (iv) the determination of any payment required to be made by Canada or Saskatchewan to the Rural Municipal Compensation Fund or the School Division Compensation Fund pursuant to Article 12;
 - (v) the determination of any other matter which has been indicated herein as being the subject of any determination by the Chairperson; and
 - (vi) the selection of an independent appraiser with respect to any other matter which has been indicated herein as being subject to determination by an independent appraiser.
- (b) Canada, Saskatchewan and the Band agree that should a dispute arise between any of them with respect to the following matters, the dispute may be referred to the Arbitration Board for resolution:
- (i) whether a particular Waterbody is, or will be, wholly enclosed within an Entitlement Reserve and has no Discernible Surface Outlet;
 - (ii) the appropriate representation of the Band on a Co-Management Board;
 - (iii) whether a Provincial Road is used primarily to provide access to locations within an Entitlement Reserve;
 - (iv) whether Improvements have been placed upon an Undeveloped Road Allowance or immediately adjacent thereto and whether those Improvements can easily be relocated;
 - (v) whether any of the lands, properties, sites or areas referred to in subsection 4.07(b) are so designated, or proposed to be so designated, at the time the Band indicates in writing that it wished to Purchase such land;
 - (vi) the determination as to whether any particular parcel of land is the subject of the freeze policy pursuant to section 4.09;
 - (vii) resolution of any dispute with respect to the existence of a Public Purposes Plan arising pursuant to subparagraph 5.04(a)(vi);
 - (viii) determination of any matter relating to the relocation of Improvements as contemplated in subparagraph 7.02(c)(iv)(A);
 - (ix) determination of any dispute respecting the creation of any urban Reserve referred to in subsection 9.01(c);

- (x) the determination of any dispute respecting the amount of any Provincial Mineral Revenues for the purposes of sections 5.07 or 5.08; and
 - (xi) the determination of any other matter which has been indicated herein as being the subject of any determination by the Arbitration Board.
- (c) The parties, or any of them, may agree to submit any other dispute between them to either the Chairperson or the Arbitration Board.

19.03 **COMPENSATION AND COSTS:**

The Arbitration Board (or, where applicable, the Chairperson) shall, in addition to adjudicating on the merits of the dispute presented, determine, at their (or the Chairperson's) discretion, the liability among the parties to any arbitration in respect of the compensation payable by any of such parties to the arbitrator(s) and relating to the cost of the arbitration. The costs of the arbitration to the parties and the compensation payable to the arbitrators shall, subject to the Arbitration Board's (or, where applicable, the Chairperson's) discretion, be awarded, allocated and shall be payable commensurate with the relative success of the parties to the arbitration with respect to the issues considered in the arbitration.

19.04 **CONFIDENTIALITY:**

The parties to an arbitration shall use all reasonable efforts to ensure that the Arbitration Board and any arbitrator appointed to the Arbitration Board pursuant to this Article shall keep confidential all information received in connection with the arbitration, except for disclosure of such information to the parties pursuant to the arbitration.

19.05 **DELIVERY OF WRITTEN COMMUNICATIONS:**

All written communications shall be delivered to Canada, Saskatchewan and the Band at the addresses set forth in Article 20 hereof, and in any case a party may change or amend its address, in accordance with the terms of Article 20.

19.06 **GOVERNING LEGISLATION:**

- (a) Subject to the terms of this Agreement, or unless otherwise agreed by the parties, each arbitration pursuant to this Agreement shall be governed by and conducted pursuant to the Commercial Arbitration Code (the "Code") being a schedule to the *Commercial Arbitration Act*, R.S.C. 1985, c.-17 (2nd Supp.) and all regulations made and, from time to time; in force under that Act.

- (b) Except as otherwise provided herein, the Arbitration Board shall determine its own procedure and all questions relating to the conduct of the arbitration.

19.07

AGREEMENT RESPECTING THE COMMERCIAL ARBITRATION CODE:

The parties, with respect to the Code, agree as follows:

- (a) **Article 1:** For the purpose of Article 1 of the Code, the matters subject to arbitration herein shall constitute a "commercial arbitration";
- (b) **Article 7:** For the purpose of Article 7 of the Code, this Article shall constitute the "Arbitration agreement";
- (c) **Article 10:** Pursuant to Article 10 of the Code, the number of arbitrators comprising the Arbitration Board, unless otherwise agreed by the parties, shall be three (3) in the event the disagreement involves only two parties to this Agreement and shall be five (5) in the event the disagreement involves all three parties.
- (d) **Article 11:** Pursuant to Article 11(2) of the Code, but subject to subsection (c), each of the parties to this Agreement involved in a dispute shall have the right to appoint one (1) arbitrator, with the Chairperson and, if required for a five (5) member board, any remaining arbitrator (collectively the "independent arbitrators") to be appointed by the arbitrators appointed by the parties;
- (e) **Article 20:** Pursuant to Article 20 of the Code, each arbitration pursuant to this agreement shall be conducted at Regina, Saskatchewan, or at such other place in Saskatchewan as the parties may agree;
- (f) **Article 22:** Pursuant to Article 22 of the Code, the language used in all arbitral proceedings shall be English;
- (g) **Article 28:** Pursuant to Article 28 of the Code, the rules of law applicable to any disagreement before the Arbitration Board shall, be:
 - (i) the laws of Saskatchewan;
 - (ii) the laws of Canada; and
 - (iii) where not inconsistent or incompatible with the foregoing, such other legally enforceable laws;

which are applicable in Saskatchewan and in effect at the time the disagreement arose;

- (h) **Article 34:** Reference in Article 34 of the Code to a court shall be interpreted as meaning a reference to the Federal Court (Trial Division) or, where applicable, any Court of Appeal therefrom in the event that Canada is a party to the disagreement and, in any other case, shall mean the Saskatchewan Court of Queen's Bench, and any Court of Appeal therefrom.

19.08

ARBITRATION BINDING:

- (a) Subject to the provisions of the *Commercial Arbitration Act* and the Code, the decision of the Arbitration Board shall be final and binding, except in relation to a ruling by the Chairperson or by the Arbitration Board with respect to the Chairperson's or the Arbitration Board's own jurisdiction hereunder.
- (b) All decisions of the Arbitration Board shall be made by a majority. Nothing in this subsection (b) shall be interpreted as preventing any arbitrator from submitting an individual dissenting opinion.

ARTICLE 20

GENERAL PROVISIONS

20.01 **ENUREMENT:**

This Agreement shall enure to the benefit of and be binding upon Canada and Saskatchewan, and their respective heirs, successors and assigns and, subject to the provisions of Article 22, upon the Band, and the Band's Members, and each of their respective heirs, successors, legal representatives and permitted assigns.

20.02 **AUTHORITY:**

The Band agrees that the majority of the members of the Band eligible to vote have, by ratification vote held in accordance with section 10.01, duly authorized the Chief and Councillors of the Band to execute and deliver this Agreement and to act for and on behalf of the Members of the Band in executing such documents and taking such further measures as may be reasonable or necessary to carry out and implement the terms, intent and meaning of this Agreement.

20.03 **MEMBERS OF SENATE AND HOUSE OF COMMONS:**

To the extent required by the *Parliament of Canada Act*, R.S.C. 1985, c. P-1, no member of the House of Commons or Senate of Canada shall be admitted to any share or part of this Agreement or to any benefit not enjoyed by any other member of the public which may arise out of it.

20.04 **MODIFICATION OR WAIVER:**

No modification or waiver of this Agreement shall be binding upon any of the affected parties unless the modification or waiver is in writing and has been executed by the parties so affected, with the same formality as the execution of this Agreement.

20.05 **ASSIGNMENT:**

The parties agree that the rights and obligations of the parties hereto may not be assigned or otherwise transferred without the prior written consent of the other parties.

20.06**EXPANDED MEANINGS:**

Unless the context otherwise necessarily requires, the following provisions shall govern the interpretation of this Agreement:

- (a) words used herein importing the singular number only shall include the plural and vice versa, and words importing the use of any gender shall include all genders;
- (b) the terms "in writing" or "written" include printing, typewriting, or any electronic means of communication by which words are capable of being visually reproduced at a distant point of reception, including by telecopier or telex; and
- (c) references herein to any agreement, including this Agreement, shall be deemed to be references to the agreement, as varied, amended, modified, supplemented or replaced from time to time.

20.07**HEADINGS AND TABLE OF CONTENTS:**

The division of this Agreement into articles, sections, subsections, subparagraphs and other subdivisions, the provision of a table of contents, and the insertion of headings are for convenience of reference only and shall not affect or be utilized in the construction or interpretation hereof.

20.08**APPLICABLE LAW:**

This Agreement shall be governed by and construed in accordance with all applicable legislation including, without limitation, the laws of Saskatchewan and the laws of Canada applicable therein.

20.09**STATUTORY REFERENCES:**

All references herein to statutes of either Canada or Saskatchewan shall include, unless a contrary intention is expressed, any such statute as the same may be amended, reenacted or replaced from time to time and, in respect of any defined term derived from such statute referred to herein, includes any subsequent definition contained in any statute enacted in substitution therefor, or in modification thereof.

20.10**CURRENCY:**

All references in this Agreement to dollars are expressed and shall be payable in Canadian currency.

20.11 **AMENDMENT:**

This Agreement shall not be varied, modified, amended, supplemented or replaced except by written agreement executed by the parties hereto.

20.12 **ENTIRE AGREEMENT:**

- (a) This Agreement shall constitute the entire agreement between the parties relating to the settlement of outstanding Treaty land entitlement claim of the Band, and supersedes and cancels any and all pre-existing agreements and understandings relating thereto including, without in any way limiting the generality of the foregoing, any alleged understanding among the parties commonly known as the "1976 Agreement" or the "Saskatchewan Formula".
- (b) No preliminary drafts or prior versions of this Agreement, whether signed or unsigned, and none of the documents, letters, memoranda of position, minutes or other written material delivered or released by any party on a "without prejudice" basis shall be utilized or relied on by any party (save and except for the party which produced, released or delivered the same) to construe the terms or affect the validity or interpretation of this Agreement.
- (c) No representation, inducement, promise, understanding, condition or warranty not set forth herein has been made or relied upon by any party.

20.13 **CURRENT DOLLARS:**

All dollar amounts specified herein refer to dollars of Canada determined in the year of expenditure, without adjustment for inflation.

20.14 **AMBIGUITIES:**

There shall be no presumption that any ambiguity in this Agreement should be interpreted in favour of the interests of any of the parties.

20.15 **OBLIGATIONS SEVERAL AND NOT JOINT AND SEVERAL:**

In this Agreement, reference to an acknowledgement or agreement by a given party is intended by the parties to be an acknowledgement or agreement by each such party individually, as opposed to an acknowledgement or agreement that is made jointly, or jointly and severally.

20.16

PLACE OF DELIVERY:

The address for delivery of any notice or other written communication required or permitted to be given pursuant to this Agreement, including any notice advising another party of any change of address, shall be as follows:

(a) **TO CANADA:**

The Regional Director General
Saskatchewan Regional Office
Department of Indian Affairs and Northern Development
2110 Hamilton Street
Regina, Saskatchewan
S4P 4K4

With a Copy to:

Associate Deputy Minister
Department of Indian Affairs and Northern Development
Les Terrasses de la Chaudiere
10 Wellington Street
Hull, Quebec
K1A 0H4

(b) **TO SASKATCHEWAN:**

Indian and Metis Affairs Secretariat
3rd Floor, 1870 Albert Street
Regina, Saskatchewan
S4P 3V7

Attention: Deputy Minister

(c) **TO THE BAND:**

The Chief and Councillors
Nekaneet Band No. 160A
P.O. Box 548
Maple Creek, Saskatchewan
S0N 1N0

20.17 **EFFECTIVE DATE OF NOTICE:**

Any notice or communication shall be sufficient if delivered personally, or if delivered by registered mail, postage prepaid shall be deemed to be effective on the latter of the following dates:

- (a) the date stated in the notice as the effective date of such notice; and
- (b) if mailed by prepaid registered mail, that date five (5) business days after mailing; and
- (c) if delivered personally, on the date of such delivery.

During an actual or anticipated postal disruption or stoppage, postal delivery shall not be used by any party.

20.18 **LEGISLATION:**

In addition to legislation required to vary or amend the ***Natural Resources Transfer Agreement*** contemplated in Article 16, the parties acknowledge that certain other amendments to federal and provincial legislation are required to give full effect to certain provisions of this Agreement. As such, Canada and Saskatchewan agree to present legislation to the Parliament of Canada and the Legislative Assembly of Saskatchewan, respectively, with respect to the following matters:

- (a) **Statutes of Saskatchewan:**
 - (i) the ability of Saskatchewan to transfer water and the beds and shores of Waterbodies to or for the benefit of the Band as contemplated in sections 6.01 and 6.02;
 - (ii) the transfer of Minerals to or for the benefit of the Band as contemplated in sections 5.03, 5.04, 5.07 and 5.08;
 - (iii) the transfer of residual interests to or for the benefit of the Band as contemplated by section 11.09;
 - (iv) the authority of Saskatchewan or, where applicable, the Saskatchewan Water Corporation to enter into Co-Management Agreements with the Band concerning the matters referred in sections 6.07 and 6.08 and, in particular, to ensure that such agreements are binding upon the Saskatchewan, or where applicable the Saskatchewan Water Corporation according to the terms thereof;

- (v) the authority of Urban Municipalities, and School Divisions to enter into agreements with the Band with respect to the matters contemplated in section 9.01 and section 11.10 and to ensure that those agreements are binding upon such Urban Municipalities and School Divisions in accordance with the terms thereof;
 - (vi) the binding effect of a determination by arbitration of the Purchase Price for schools located in Northern Municipalities;
 - (vii) the requirement that Rural Municipalities maintain roads in the manner contemplated in subparagraph 7.06(a)(i); and
- (b) **Statutes of Canada:**
- (i) the non-enforceability of the common law riparian rights of the Band by injunction, mandamus, prohibition or other similar prerogative writ in circumstances contemplated in subsection 6.05(a);
 - (ii) subject to section 6.10 where applicable, the authority of the Band to enter into Co-Management Agreements with Saskatchewan, and where applicable, the Saskatchewan Water Corporation concerning the matters referred to in section 6.07 and section 6.08 and, in particular, to ensure that such agreements are binding upon the Band (including, where applicable, their members) according to the terms thereof;
 - (iii) the authority of the Band to enter into agreements with Urban Municipalities and School Divisions, with respect to the matters contemplated in section 9.01 and section 11.10 and to ensure that those agreements are binding upon the Band (including, where applicable, their members) according to the terms thereof;
- (c) In the event that either Parliament or the Legislative Assembly do not enact the required legislation referred to in subsections (a) or (b) on or before the 1st day of July, 1993, the parties agree to forthwith enter into good faith negotiations with respect to the relevant provisions of this Agreement requiring legislation to give full effect thereto and, if necessary, to determine alternate ways to fulfill its spirit and intent. In such an event, any party to this Agreement shall have the right to seek compensation for damages sustained as a result of any failure to enact such legislation, which damages, if any, shall be recoverable from whichever of Canada or Saskatchewan has not enacted the required legislation.

Notwithstanding Article 19, save and except for those questions to which arbitration has been agreed to in section 19.02, in the event the parties concerned are unable to agree on any matter, including a question of interpretation of any term, covenant, condition or provision of this Agreement, the determination of any such disagreement, and the enforcement thereof, shall be within the exclusive jurisdiction of the Federal Court of Canada.

20.20 **NO EFFECT ON MEMBERSHIP:**

Canada and the Band agree that, notwithstanding the definition of "Member" utilized for the purposes of this Agreement, nothing in this Agreement shall be interpreted or construed in any way as:

- (a) affecting the Band's right to now, or at any time hereafter, determine its membership in accordance with applicable law; or
- (b) any offer or admission by the Band respecting the availability of membership to any individual or group of individuals;

and, for greater certainty, such definition is being utilized by the Band and Canada only for the purposes of this Agreement.

20.21 **NO CREATION OF TREATY OBLIGATION:**

Each of the parties agrees that nothing in this Agreement is intended, nor shall it be interpreted or construed in any way:

- (a) as confirming, acknowledging or creating any obligation under any treaty as between Saskatchewan and any Band; or
- (b) as any admission on the part of Saskatchewan that it now has, ever had, or may hereafter have, any direct or indirect obligation to provide land or money to any Person whatsoever (other than its obligations to provide unoccupied Crown Land to Canada) pursuant to the *Natural Resources Transfer Agreement*.

20.22 **CONSTITUTIONAL OR LEGISLATIVE CHANGES:**

Where any amendment not contemplated by this Agreement is enacted to the Constitution of Canada, the Act or to any other legislation, the result of which amendment is a material change in the legal rights or obligations of the parties and which, in turn, materially affects the implementation, operation or effect of this Agreement, the parties agree to enter into good faith negotiations designed to

determine and implement any necessary amendments to this Agreement required to remedy or alleviate the effect of such constitutional or legislative changes.

ARTICLE 21

BEST EFFORTS

21.01 **BEST EFFORTS:**

Canada, Saskatchewan and the Band agree that they will, in good faith, employ their best efforts to fulfil the terms of this Agreement according to its true spirit and intent and that they will negotiate in good faith any further agreement or agreements that are required in order to do so.

21.02 **SPECIFIC UNDERTAKINGS OF CANADA:**

In particular, Canada agrees:

- (a) to expedite the preparation and passage of all Orders-in-Council and Ministerial approvals required for the establishment of an Entitlement Reserve;
- (b) to perform or cause to be performed all surveys and assessments required to be performed by Canada for the establishment of an Entitlement Reserve as contemplated herein;
- (c) to promptly provide Saskatchewan with all information required by Saskatchewan to fulfil its obligations to Canada to transfer land for the establishment of an Entitlement Reserve;
- (d) to comply, on a priority basis, with the requirements of all laws, policies, procedures and requirements for the establishment of an Entitlement Reserve;
- (e) to commit sufficient personnel to promptly and efficiently co-ordinate and facilitate the compliance by Canada with its obligations hereunder (including the creation of Entitlement Reserves) and to satisfy and resolve disputes respecting this Agreement;
- (f) as soon as reasonably possible, to recommend to the Parliament of Canada that the legislation contemplated in subsection 20.18(b) be enacted;

21.03 **SPECIFIC UNDERTAKINGS OF SASKATCHEWAN:**

In particular, Saskatchewan agrees:

- (a) to provide timely responses to the Band to any inquiries concerning the availability for sale of any provincial Crown Land, Minerals or Improvements;

- (b) to expedite the process required to secure all necessary departmental approval for the sale of provincial Crown Land;
- (c) to provide information within the knowledge of Saskatchewan to the Band with respect to all Third Party Interest Holders and Mineral Disposition Holders that have interests in any provincial Crown Land that Saskatchewan has agreed to sell as soon as practically possible;
- (d) to prepare on an expedited basis any release documentation required by Saskatchewan from any Third Party Interest Holder or Mineral Disposition Holder that has an interest in any provincial Crown Land that Saskatchewan has agreed to sell;
- (e) to expedite the preparation and passage of all Orders-in-Council required to transfer provincial Crown Lands, provincial Crown Minerals, the water, beds or shores of any Waterbody, or any other interest in Land, Minerals or Improvements which Saskatchewan has agreed to transfer hereunder to Canada in order that the Entitlement Land may be promptly set apart as an Entitlement Reserve;
- (f) to provide, on a priority basis, all other information within the control of Saskatchewan that is reasonably required by Canada or the Band with respect to the acquisition of lands pursuant to this Agreement;
- (g) to provide all possible priority with respect to the registration of any documents under provincial laws that are necessary for the establishment of an Entitlement Reserve;
- (h) to commit sufficient personnel to promptly and efficiently co-ordinate and facilitate the compliance by Saskatchewan with its obligations hereunder and to satisfy and resolve disputes respecting this Agreement; and
- (i) as soon as reasonably possible, to recommend to the Legislative Assembly of Saskatchewan that the legislation contemplated in subsection 20.18(a) be enacted.

21.04

SPECIFIC UNDERTAKINGS OF THE BAND:

In particular, the Band agrees:

- (a) to promptly and accurately supply any information, Band Council Resolutions and other documentation or information required to be supplied to Canada or Saskatchewan pursuant to this Agreement;
- (b) to promptly comply with any reasonable requests made by Canada and Saskatchewan for more accurate or complete information, Band Council

Resolutions and other documentation or information relating to the selection and acquisition of Lands, Minerals or Improvements or otherwise affecting Entitlement Land or a proposed Entitlement Reserve;

- (c) to use all reasonable efforts to reach their Shortfall Acres Acquisition Date as promptly as is reasonable in the circumstances prior to the expiration of twelve (12) years from the Execution Date; and
- (d) to take appropriate steps to ensure compliance by their Trustees and other Band representatives with the spirit and intent of this Agreement and Trust Agreement.

ARTICLE 22

COMING INTO FORCE

22.01 COMING INTO FORCE:

This Agreement shall come into force on the Execution Date.

IN WITNESS WHEREOF the parties hereto have hereunder set their hands on the date and year first above written:

SIGNED AND DELIVERED
in the presence of

HER MAJESTY THE QUEEN IN RIGHT
OF CANADA

Original signed by _____
Witness

Original signed by Tom Siddon _____
as represented by the Minister of Indian
Affairs and Northern Development
The Honourable Tom Siddon

SIGNED AND DELIVERED
IN THE PRESENCE OF

HER MAJESTY THE QUEEN IN RIGHT
OF SASKATCHEWAN

Original signed by Marv Hendrickson _____
Witness

Original signed by Robert Mitchell _____
as represented by the Minister responsible
for the Indian and Metis Affairs Secretariat
The Honourable Robert Mitchell, Q.C.

THE NEKANEET BAND OF INDIANS

Original signed by Chief Roland Crowe _____
Witness

Original signed by Gordon Oakes _____
Chief of the Nekaneet Band

Original signed by Chief Roland Crowe _____
Witness

Original signed by John Oakes _____
Councillor of the Nekaneet Band

Original signed by Chief Roland Crowe _____
Witness

Original signed by Larry Oakes _____
Councillor of the Nekaneet Band