

KEY FIRST NATION PELLY HAYLANDS TRUST AGREEMENT

DATED THE __ DAY OF _____, 2006.

AMONG:

KEY FIRST NATION,
represented by its duly elected Chief and Councillors
(hereinafter referred to as the "**First Nation**")

OF THE FIRST PART

AND:

CIBC TRUST CORPORATION
(hereinafter referred to as the "**Trustee**")

OF THE SECOND PART

WHEREAS:

- A. The First Nation entered into The Cote, Key and Keeseekoose First Nations Pelly Haylands Settlement Agreement (the "Settlement Agreement") with Canada, the Cote First Nation and the Keeseekoose First Nation, containing, among other things, terms and conditions pursuant to which Canada addresses Canada's breach of its lawful obligation to the First Nations by alienating the Pelly Haylands Reserve in 1899 and 1905 without a surrender as required by the *Indian Act*, the Pelly Haylands having been set aside for the use and benefit of the Indians of the Fort Pelly District by virtue of an 1893 Order in Council;
- B. In accordance with the Settlement Agreement, the First Nation agreed to establish a Trust, and Canada, on behalf of the First Nation, has agreed to make certain payments into the Trust, which monies are to be for the benefit of the First Nation;
- C. The First Nation desires to establish the Trust, to be known as the Key First Nation Pelly Haylands Trust, pursuant to which the monies which are payable by Canada to the First Nation under the provisions of the Settlement Agreement are to be managed; and
- D. By a Ratification Vote held on the __ day of February, 2006, the members of the First Nation assented to and approved the terms and conditions of this Trust Agreement and authorized and directed the Chief and Council, on behalf of the First Nation, to sign this Trust Agreement and all related documents.

NOW, THEREFORE, in consideration of the premises and of the respective covenants and agreements hereinafter set out, the parties covenant and agree as follows:

1. DEFINITIONS

1.01 In this Agreement, the following capitalized terms shall have the following meanings, namely:

- (1) **“Acquisition Costs”** means the costs incurred in relation to the Purchase of Land or Improvements by or on behalf of the First Nation other than the Price paid to the vendor in respect thereof, and includes, without limitation:
 - (a) Applicable taxes and tax adjustments required to be paid under an Agreement to Purchase;
 - (b) Land titles registration and search costs;
 - (c) Appraisal costs, legal fees, surveyor costs and real estate commissions;
 - (d) All reasonable costs associated directly with and incurred by the First Nation in relation to site identification and approval including, if established, the reasonable costs of a board or committee established by the First Nation to carry out the work of identifying land to be acquired; and
 - (e) All costs of discharging any Third Party Interests or addressing any environmental concerns;
- (2) **“Agreement”, “this Agreement”, “hereto”, “hereof”, “herein”, “hereunder”, “hereby”** and similar expressions refer, unless otherwise expressly stated, to this agreement, including the recitals and the Schedules attached hereto, and not any particular article, section, subsection or other subdivision hereof or thereof;
- (3) **“Agreement to Purchase”** means a written agreement containing covenants granting the First Nation or the Holding Corporation, as agent for the First Nation, the right and obligation to Purchase Land or Improvements and includes an option to purchase Land;
- (4) **“Auditor”** means a chartered accountant or firm of chartered accountants authorized to practice in the Province of Saskatchewan, independent of the Chief and Council and the Trustee and retained by the First Nation to audit the Trust Account for a Fiscal Year;
- (5) **“Authorized Expense Account”** means the account established by the Chief and Council on behalf of the First Nation at any bank, trust company or credit union for the specific purposes required under this Agreement;

- (6) **“Authorized Expenses”** means the expenses reasonably incurred by the First Nation in carrying out the terms of this Agreement including, without limitation, the following:
- (a) Reasonable salaries, wages, fees or remuneration of any elder(s), employee, agent or independent contractor retained by the Chief and Council in carrying out the terms of this Agreement;
 - (b) Reasonable fees, remuneration, disbursements and expenses of any advisors hired by the First Nation including, without limitation, legal counsel, accountants, auditors, bookkeepers and investment advisors hired by the First Nation to assist the First Nation in carrying out the terms of this Agreement;
 - (c) Reasonable costs of holding a meeting(s) of the Members required under the terms of this Agreement;
 - (d) Acquisition Costs;
 - (e) Property taxes and other reasonable expenses incidental to the ownership of Land and Improvements, including costs of improving or renovating houses and other Improvements, until such time as the Land and Improvements are placed into Reserve status, including the incorporation and maintenance of the Holding Corporation;
 - (f) Any reasonable costs associated with having Land that is Purchased set apart as Reserve lands;
 - (g) Any reasonable costs of training required under sections 9.04 and 15.03; and
 - (h) Any reasonable costs incurred by the First Nation in carrying out the terms of this Agreement;
- (7) **“Authorized Investments”** means any of those instruments, notes, bonds or other securities which the Trustee, in accordance with the terms of this Agreement, is authorized to purchase with the Trust Property, and which authorized forms of investment are more particularly set forth in Schedule "A";
- (8) **“Band Account”** means the account of the First Nation to be established by the Chief and Council on behalf of the First Nation at a financial institution for the specific purposes required under this Agreement;
- (9) **“Band Account Development Direction”** means the direction, in the form attached hereto as Schedule “E”, which is to be prepared and signed by the Chief

and Council in respect of the release of, or payment of, monies from the Band Account for Band Development purposes as contemplated in this Agreement;

- (10) **“Band Banking Certificate”** means the certificate to be provided, from time to time, by the Chief and Councillors of the First Nation to the Trustee certifying the names of the then current Chief and Councillors of the First Nation and evidencing their signatures;
- (11) **“Band Council Resolution”** means a written resolution of the Chief and Council passed at a duly convened meeting of the Chief and Council held in accordance with the procedures prescribed by the *Indian Act*, as amended or replaced from time to time, and signed by at least a quorum of the members of the Chief and Council;
- (12) **“Band Development”** means the investment and/or utilization of money in the Band Account for the following purposes:
- (a) Business;
 - (b) Acquisition of Land or Improvements; or
 - (c) Any socio-economic benefit, or any other program, service or project which is for the use, development, advantage or benefit of the First Nation or a Member, excluding, however, per capita distributions to the Members and payments to the First Nation to cover any shortfall in operating funding of the First Nation other than those specifically provided for in this Agreement;
- (13) **“Band Development Request”** means a request in writing from the Chief and Council or a Member or Members of the First Nation in the form set out in Schedule “B”, with amendments as necessary, for a distribution of funds from the Band Account for Band Development purposes, which shall:
- (a) Contain at least the following information:
 - (i) a detailed description of the Band Development for and in respect of which the distribution is requested including any equity that the Member or Members are prepared to contribute to the Band Development;
 - (ii) the Projected Cost and profit, if expected, of the Band Development;
 - (iii) a schedule of the date or dates when the funds requested will be required; and

- (iv) a statement declaring any conflict of interest on the part of a member of the Chief and Council;
- (b) Be signed by at least a quorum of the Chief and Council or Member or Members of the First Nation making the request;
- (14) **“Base Capital Amount”** means the aggregate of the Settlement Monies deposited to the Trust Account by Canada less the maximum amount available for distribution under subsections 4.01(b), (c), (d), (e) and (f) hereof;
- (15) **“Beneficiary”** means, for the purposes of this Agreement, the First Nation, including all Members of the First Nation on a collective and undivided basis;
- (16) **“Birthday”** means the date of birth of a Child as indicated on a list to be provided to the Trustee by the First Nation as soon as is reasonably possible after the execution of this Agreement, and any such Children added to the list thereafter;
- (17) **“Business”** means an economic development project, activity or undertaking with the primary objective of providing goods, services, programs or capital assistance to Members of the First Nation or any activity or undertaking to make profit by either a Member or Members of the First Nation or the First Nation itself;
- (18) **“Canada”** means Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian Affairs and Northern Development;
- (19) **“Chief”** means, in respect of the First Nation, “chief” as referred to in the *Indian Act*;
- (20) **“Child”** or **“Children”** means all those Members of the First Nation under the age of 18 years living on the Effective Date of the Settlement Agreement, as that term is defined therein, and more particularly described on a list of children to be provided to the Trustee by the First Nation as soon as is reasonably possible after the execution of this Agreement, and any such children added to the list thereafter;
- (21) **“Contribution Amount”** means the amount, in cash, determined by the Chief and Council and/or Trustee to be contributed to the Trust Account for each Fiscal Year as provided for in section 10.02 hereof, to ensure that the Base Capital Amount grows net of inflation, so as to meet the purpose of the Key First Nation Pelly Haylands Trust as set out in section 2.07;
- (22) **“Council”** means, in respect of the First Nation, the “council of the band” within the meaning of the *Indian Act* and “Councillor” refers to each member of the Council of the First Nation individually;
- (23) **“Dissolution Date”** means the later of:

- (a) The 18th Birthday of the last surviving Child; or
- (b) Seven years after the 18th Birthday of the youngest of any Children who have reached their 18th Birthday, cannot be found or remain unaccounted for or refuse to accept or claim a cheque issued pursuant to subsection 6.02(h);

(24) **“Eligible Member”** means a person:

- (a) Whose name appears on the Membership List or whose name does not so appear but who has submitted an application to have his or her name so entered and that application has been approved;
- (b) Who is at least 18 years of age; and
- (c) Who has not been found mentally incompetent or otherwise unable to manage his or her own affairs by a court of competent jurisdiction;

as of the date of any vote of the Eligible Members referred to in this Trust Agreement;

(25) **“First Nation”** means the Key First Nation, as represented by its duly elected Chief and Council;

(26) **“Fiscal Year”** means the 12 month period commencing on January 1 and ending December 31 in each calendar year unless otherwise established by the Trustee, provided that the initial Fiscal Year shall be the period from the date the Trust is constituted in accordance with Article 2 until December 31 of that same calendar year;

(27) **“Holding Corporation”** means a non-profit corporation the sole member of which is the First Nation, represented by its duly elected Chief and Councillors, to be incorporated under *The Non-Profit Corporations Act* of Saskatchewan, as amended or replaced from time to time, by the Chief and Council on behalf of the First Nation, who shall be the directors, for the sole purpose of holding the freehold title to any Land that is Purchased in accordance with the Settlement Agreement and this Agreement;

(28) **“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;

(29) **“Income Tax Act”** means the *Income Tax Act*, R.S.C. 1985 c.1 (5th Suppl.) and its regulations as amended or replaced from time to time;

- (30) **“Indian Act”** means the *Indian Act*, R.S.C. 1985, I-5 and its regulations as amended or replaced from time to time;
- (31) **“Inflation Adjusted Capital Amount”** means, at the end of the first Fiscal Year, the Base Capital Amount indexed by the Inflation Factor for that Fiscal Year, and in subsequent Fiscal Years means the Inflation Adjusted Capital Amount from the previous Fiscal Year indexed by the Inflation Factor for the Fiscal Year;
- (32) **“Inflation Factor”** means the percentage increase in average prices in Canada for the past Fiscal Year, as measured by the national all-items consumer price index, or its replacement from time to time, as determined by the Government of Canada;
- (33) **“Investment Instruments”** means a certificate, instrument, document or other written material that evidence Authorized Investments;
- (34) **“Investment Consultant Agreement”** means an agreement between the First Nation and an Investment Consultant for the provision, on a fee for service basis, of investment consulting services, which shall include any or all of the following:
- Investment training;
 - Assistance and advice with the development and amendment from time to time of the Investment Policy;
 - Assistance with the selection of an Investment Manager(s);
 - Assistance with the monitoring of the Investment Manager(s); and
 - Any other assistance requested from time to time by the Chief and Council;
- (35) **“Investment Consultant”** means an individual or firm whose business includes providing advice on investment policy, and in particular are trained to provide investment consulting services and have acquired educational training as a Chartered Financial Analyst, or similar designation, who shall not be entitled to sell, broker or in any way arrange for the purchase of any Authorized Investment from any entity that is in any way related to or associated with the Investment Consultant, and shall not be entitled to benefit from the sale or purchase of any Authorized Investment;
- (36) **“Investment Management Agreement”** means an agreement between the Trustee and an Investment Manager whereby the Trust Property or a portion of the Trust Property is placed in a managed fund(s) to be invested by an Investment

Manager in Authorized Investments in accordance with this Agreement and the Investment Policy;

- (37) **“Investment Manager”** means a firm that is registered with the Saskatchewan Securities Commission, as an investment counsel/portfolio manager and has been so registered for at least the past five years with any provincial or territorial Securities Commission;
- (38) **“Investment Policy”** means the written statement of investment policies and procedures in respect of the investments of the Trust Property, including, but not limited to the following:
- (a) Investment objectives, including investment and risk philosophy, spending policy and benchmarks;
 - (b) Categories of permitted and prohibited investments, including the use of derivatives;
 - (c) Diversification of the investment portfolio;
 - (d) Asset mix and rate of return expectations;
 - (e) Liquidity of investments, including minimum quality requirements and maximum quantity restrictions;
 - (f) The lending of cash or securities;
 - (g) The retention or delegation of voting rights acquired through investments;
 - (h) The method of, and basis for, the valuation of investments that are not regularly traded at a public exchange;
 - (i) Permitted related party transactions and the criteria to be used to establish whether a transaction is nominal or immaterial to the portfolio;
 - (j) Monitoring and control of the Trust Property and of Investment Manager performance; and
 - (k) Administrative matters respecting the Trust Property;

having regard to all factors that may affect the funding and solvency of the Trust and the ability of the Trust to meet its financial obligations;

- (39) **“Key First Nation Pelly Haylands Trust”** or **“Trust”** means the trust created pursuant to the terms of this Agreement, to be administered by the Trustee for the benefit of the Beneficiary;

- (40) **“Land”** means real property, chattels real, or any interests therein or in the nature thereof including any interest in the mines and minerals within, upon or under real property and any Improvements;
- (41) **“Member”** means a person whose name appears on the Membership List;
- (42) **“Member Resolution”** means a resolution of the Eligible Members following a vote held in accordance with Article 27, in the form set out in Schedule “C”, signed by a quorum of the Chief and Council;
- (43) **“Membership List”** means the list of persons maintained by the First Nation as its “Band List” in accordance with section 10 of the *Indian Act* under the *Key First Nation No. 65 Membership Code*, as amended or replaced from time to time;
- (44) **“New Acres”** means 4,266.7 acres of Land which may be Purchased by the First Nation anywhere within the Province of Saskatchewan, which, if Purchased, is to be placed into Reserve status in accordance with the Settlement Agreement and this Agreement;
- (45) **“Person”** means any individual, proprietor, corporation, partnership, trust, joint venture or unincorporated organization;
- (46) **“Price”** means the purchase price as set out in an Agreement to Purchase after all applicable adjustments including, without limitation, adjustments for property taxes, property insurance, rents and other incomings and outgoings, but for greater certainty does not include Acquisition Costs;
- (47) **“Projected Cost”** means the expected price to acquire, or the expected cost to establish or undertake a Band Development, which shall include, without limitation:
- (a) In respect of a Business, any related acquisitions, particulars of all costs incidental and ancillary to the acquisition or the establishment of the Business and the financing of its operations, together with an aggregate total of all such costs; and
 - (b) In respect of the Purchase of Land, the Price, Acquisition Costs and the cost of discharging any Third Party Interest in respect thereof;
- (48) **“Purchase”, “Purchased” or “Purchasing”** means to purchase or otherwise obtain title to Land in accordance with the requirements of the Settlement Agreement and/or this Agreement, and may include the acquisition of ownership rights by means other than a transaction of purchase and sale;

- (49) **“Release Direction”** means the direction, in the form attached hereto as Schedule “I”, to be delivered to the Trustee in respect of the sale or release of Authorized Investments purchased by the Trustee on behalf of the Trust as contemplated in this Agreement;
- (50) **“Reserve”** means the tracts of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty, from time to time, for the use and benefit of the First Nation;
- (51) **“Revenues Earned”** means the income of the Key First Nation Pelly Haylands Trust for a Fiscal Year as such income is computed in accordance with the *Income Tax Act*, but without reference to subsections 75(2), 82(1)(b) and 104(6) of the *Income Tax Act*;
- (52) **“Revenues Realized”** means the net amount of revenue or income that is actually realized for a Fiscal Year from the Trust Property, including any capital gains and losses realized;
- (53) **“Schedule”** means a schedule to this Agreement;
- (54) **“Settlement Agreement”** means The Cote, Key and Keeseekoose First Nations Pelly Haylands Settlement Agreement, entered into between the First Nation and Canada, the Cote First Nation and the Keeseekoose First Nation dated, for reference, the __ day of _____, 2006;
- (55) **“Settlement Monies”** means the amount of the Compensation in the total amount of twenty-one million, seven hundred and three thousand, three hundred and twenty six dollars (\$21,703,326.00) to be deposited into the Trust Account pursuant to Article 2 of the Settlement Agreement;
- (56) **“Substituted Trustee”** has the meaning ascribed thereto in Article 11;
- (57) **“Terminally III”** means being in the last stages of a fatal disease or illness, certified in a written report of a member in good standing of the College of Physicians and Surgeons of a province of Canada or a similar body located outside of Canada;
- (58) **“Third Party Interest”** means the legal interest of any Person, other than a party hereto, in Land and Improvements and, without in any way limiting the generality of the foregoing, includes 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 Land or, thereafter, at any time prior to the transfer of the same to Canada;

- (59) **“Trust Account”** means the account to be established by the Trustee pursuant to Article 3 and to which Canada, pursuant to the Settlement Agreement, is to deposit the Settlement Monies;
- (60) **“Trust Account Direction”** means any one of the Trust Account First Nation Use Direction, the Trust Account Investment Direction or the Trust Account Land Acquisition Direction to be executed from time to time by the Chief and Council and delivered to the Trustee that is required in order to effect, as the case may be, the transfer, investment or payment of monies from the Trust Account;
- (61) **“Trust Account First Nation Use Direction”** means the direction, in the form attached hereto as Schedule “F”, which is to be delivered to the Trustee in respect of the release of, or payment of, monies from the Trust Account for use by the First Nation for the purposes as contemplated in 4.01(b), 4.01(c), 4.01(d) and 4.01(e) of this Agreement;
- (62) **“Trust Account Investment Direction”** means the direction, in the form attached hereto as Schedule “G”, which is to be delivered to the Trustee in respect of the release of, or payment of, monies from the Trust Account for investment purposes as contemplated in this Agreement;
- (63) **“Trust Account Land Acquisition Direction”** means the direction, in the form attached hereto as Schedule “H”, which is to be delivered to the Trustee in respect of the release of, or payment of, monies from the Trust Account for acquisition of Land as contemplated in this Agreement;
- (64) **“Trust Fee Agreement”** means the agreement entered into between the First Nation and the Trustee from time to time for the payment of the fees, reimbursement and other compensation to the Trustee as compensation for its acting as Trustee of and under this Agreement. The said Trust Fee Agreement shall be valid and binding in all respects to fix the compensation payable to the Trustee as though the Trust Fee Agreement was expressly embodied in this Agreement;
- (65) **“Trust Property”** means all monies now or hereafter on deposit in the Trust Account and all Authorized Investments, including all Investment Instruments, in which the monies in the Trust Account may from time to time be invested as well as any additions or accruals thereto and also includes, without limitation, all revenue and other income realized thereon;
- (66) **“Trustee”** means CIBC Trust Corporation, or any other corporate trustee from time to time thereafter appointed or substituted therefore, which is duly incorporated and licenced pursuant to federal or provincial legislation to carry on business as a trustee in the Province of Saskatchewan;
- (67) **“Value of the Trust Property”** means the aggregate of the following amounts:

- (a) The amount of money on deposit in the Trust Account, excluding the amount of any Revenues Realized deposited to the Trust Account; and
- (b) The fair market value of all Authorized Investments purchased on behalf of the Trust by the Trustee (excluding any Revenues Realized or Revenues Earned or accruals on such Authorized Investments).

1.02 **Schedules**

The following are the Schedules annexed to and incorporated in this Agreement:

- A. Authorized Investments;
- B. Band Development Request;
- C. Member Resolution;
- D. Form for Notice of Meeting;
- E. Band Account Development Direction;
- F. Trust Account First Nation Use Direction;
- G. Trust Account Investment Direction;
- H. Trust Account Land Acquisition Direction; and
- I. Release Direction.

PART I

TRUST ARRANGEMENTS BETWEEN THE FIRST NATION AND THE TRUSTEE

2. CREATION OF KEY FIRST NATION PELLY HAYLANDS TRUST

- 2.01 **Trust Established:** The First Nation, being irrevocably entitled pursuant to the Settlement Agreement to the Settlement Monies, has directed Canada to deposit all of the Settlement Monies to the Trust Account. The parties agree that the Key First Nation Pelly Haylands Trust is hereby established pursuant to the terms of this Agreement and shall be effective upon the deposit of the Settlement Monies by Canada into the Trust Account. Each of the parties further acknowledge and agree that the terms and provisions contained in Part I and Part III of this Agreement are binding upon the First Nation and the Trustee. The parties further acknowledge and agree that the terms and provisions contained in Part II of this Agreement are not binding upon the Trustee.
- 2.02 **First Nation as Settlor:** The First Nation, as settlor of the Trust, has established this Trust and Canada, on behalf of the First Nation, shall deposit the Settlement Monies to the Trust Account. The First Nation and the Trustee hereby acknowledge that, whether under this Agreement or the Settlement Agreement, Canada's sole obligation and responsibility with regard to this Trust Agreement is to pay the Settlement Monies to the Trust Account on behalf of the First Nation.
- 2.03 **Assets Forming Trust Property:** The Trust Property will, initially, be the Settlement Monies paid by Canada to the Trust Account and thereafter such other monies and investments held in the Trust Account, from time to time, including, without limitation, monies invested by the Trustee pursuant to the terms of this Agreement.
- 2.04 **Trust Property Held for Benefit of Beneficiary:** The Trustee shall hold and use the Trust Property upon and subject to the trusts set forth in this Agreement for the benefit of the Beneficiary.
- 2.05 **Beneficial Ownership:** All beneficial right, title, interest and benefit in and to the Trust Property shall vest in the Beneficiary.
- 2.06 **Legal Ownership:** All legal right, title, interest and benefit in and to the Trust Property shall vest in the Trustee to the extent required for the purpose of administration of the Trust Property, and there shall be no power of revocation except as may be expressly provided for in this Agreement.
- 2.07 **Purpose of the Trust:** The Key First Nation Pelly Haylands Trust is being established for the purpose of receiving, investing and expending the Settlement Monies, the Revenues Earned and the Revenues Realized on those monies. The objective of the Trust is to establish a permanent trust fund that will provide ongoing financial benefits to the First Nation and pay out certain amounts to the First Nation from time to time. To ensure the permanence of the Key First Nation Pelly Haylands Trust subsequent to the payment

of certain amounts set out in Article 4 hereof, the overall investment objective shall be to maintain and grow the Base Capital Amount, net of inflation, while maximizing amounts that may be paid to the First Nation. The Chief and Council, Investment Consultant and Trustee shall develop an Investment Policy that includes an asset mix, investment structure and spending policy that addresses these conflicting goals of capital preservation and maximization of spending.

3. **TRUST ACCOUNT**

- 3.01 **Trust Account Opened:** Prior to the deposit of the Settlement Monies with the Trustee, the Trustee shall cause to be opened the Trust Account.
- 3.02 **Deposit of Settlement Monies:** The Settlement Monies deposited by Canada on behalf of the First Nation with the Trustee shall be deposited into the Trust Account.
- 3.03 **Documentation:** At the time of, or prior to the opening of the Trust Account, the Chief and Councillors of the First Nation shall execute and deliver to the Trustee the following in respect of the operation of the Trust Accounts:
- (a) A Band Banking Certificate; and
 - (b) Such other certificates, instruments and other documents as the Trustee may reasonably request relating to the operation of the said accounts.
- 3.04 **Withdrawals:** All Trust Property from time to time in the Trust Account shall remain in the Trust Account and may not be withdrawn except in accordance with the terms of this Agreement.

4. **USE OF TRUST PROPERTY**

- 4.01 **Trust Account:** The Trust Property on deposit in the Trust Account shall only be utilized by the Trustee for the following purposes:
- (a) **Compensation to Trustee:** The Trustee shall be entitled to receive and shall be paid out of the Trust the fees, reimbursement and other compensation provided for in the Trust Fee Agreement between the Trustee and the First Nation, subject to and in accordance with the provisions of Article 5 of this Agreement. The Trustee shall be paid firstly out of the Revenues Realized of the Trust, if available, and then out of the capital of the Trust, if necessary. The Trustee shall also be entitled to pay out of the Trust all withholding taxes, income taxes, Goods and Services Tax, and any other charges that the Trust or Trustee shall be liable to pay which may be levied under the laws of Canada or any other province or country having jurisdiction. Such amounts shall be paid firstly out of the

Revenues Realized of the Trust, if available, and then out of the capital of the Trust, if necessary;

- (b) **Per Capita Distribution:** Upon receipt of a Band Council Resolution and a Trust Account First Nation Use Direction, for the transfer or payment to the First Nation, on a one time only basis, into an account established for this purpose, of the amounts set out below for the specific purpose of completing a per capita distribution to the Members living on the Effective Date of the Settlement Agreement, as that term is defined therein, upon such rules and procedures as the Chief and Council should consider appropriate, in the total amount of \$3,000 per Member, subject to and in accordance with the provisions of Article 6 of this Agreement, as follows:
- (i) in the first Fiscal Year up to the amount of \$1,500 times the number of Members of the age of 18 years or older living on the Effective Date of the Settlement Agreement, excluding Children, such funds to be used by the First Nation to make a payment to each Member, excluding Children, of \$1,500 each;
 - (ii) subject to section 18.01, after all funds in the Band Account have been allocated for this purpose, in the second Fiscal Year up to the amount of \$1,500 times the number of Members of the age of 18 years or older living on the Effective Date of the Settlement Agreement, excluding Children, such funds to be used by the First Nation to make a further payment to each Member, excluding Children, of \$1,500 each; and
 - (iii) the Trustee is to maintain the funds which are payable to the Children, to be administered in accordance with section 6.02 of this Agreement;
- (c) **Ratification Costs:** Upon receipt of a Band Council Resolution and a Trust Account First Nation Use Direction to transfer to the First Nation up to \$100,000 from the initial payment of the Settlement Monies, for the purposes of paying costs incurred by the First Nation in settling the claim and ratifying the Settlement Agreement and this Agreement, including legal fees, subject to and in accordance with the provisions of Article 7 of this Agreement;
- (d) **Payment of Existing Debt:** On a one time only basis, upon receipt of a Band Council Resolution and a Trust Account First Nation Use Direction to transfer to the Royal Bank of Canada, Main Branch, Saskatoon, Saskatchewan, up to \$600,000 for the purposes of paying the existing debts of the First Nation, subject to and in accordance with the provisions of Article 7 of this Agreement;
- (e) **Authorized Expenses:** For the transfer to the Authorized Expense Account the following amounts to be used by the First Nation to pay Authorized Expenses, subject to and in accordance with the provisions of Article 7 of this Agreement:

- (i) upon receipt of a Band Council Resolution and a Trust Account First Nation Use Direction from time to time after the Settlement Monies are deposited to the Trust Account, up to the amount of \$250,000 from the initial payment of the Settlement Monies for the Authorized Expenses of the Trust, excluding Acquisition Costs;
 - (ii) upon receipt of a Band Council Resolution and a Trust Account First Nation Use Direction from time to time after the Settlement Monies are deposited to the Trust Account, up to the amount of \$450,000 from the initial payment of the Settlement Monies for Acquisition Costs; and
 - (iii) thereafter all Authorized Expenses and Acquisition Costs shall be paid from funds available in the Band Account, or from general First Nation funds;
- (f) **Purchase of Land:** For the payment from time to time of the Price for the Purchase of Land up to the New Acres of Land (including any Improvements), up to the maximum amount, in aggregate, of \$3,000,000, subject to and in accordance with the provisions of Article 8 of this Agreement;
 - (g) **Investment:** For the purchase of Authorized Investments, subject to and in accordance with the provisions of Article 9 of this Agreement; and
 - (h) **Transfer Revenues Realized:** For transfer in each Fiscal Year of the Revenues Realized to the Band Account and for the allocation in each Fiscal Year of any Revenues Earned which exceed the Revenues Realized, subject to and in accordance with the provisions of Article 10 of this Agreement.
- 4.02 **Prohibited Uses:** For greater certainty, and without in any way limiting the generality of the foregoing:
- (a) **No Per Capita:** Except for the amount(s) to be transferred under subsection 4.01(b), the Trust Property shall not be used for per capita distributions by the Trustee to the First Nation, the Chief or Council, or to Members of the First Nation;
 - (b) **No Borrowing:** Except as permitted in this Agreement, the Trustee shall not mortgage, pledge, hypothecate or in any way encumber the Trust Property or any interest therein, for any purpose whatsoever; and
 - (c) **No Lending:** The Trustee shall not lend, invest, release, distribute or advance in any way, including to themselves or any other Person, the Trust Property except as may be specifically authorized in the Settlement Agreement, in this Agreement or in the Investment Policy.

5. COMPENATION TO TRUSTEE

- 5.01 **Compensation to Trustee:** The Trustee shall be entitled to receive and shall be paid out of the Trust created by this Agreement, as compensation for its acting as Trustee of and under this Agreement, the fees, reimbursement and other compensation provided for in the Trust Fee Agreement between the Trustee and the First Nation and the terms of the said Trust Fee Agreement shall be valid and binding in all respects to fix the compensation payable to the Trustee as though the Trust Fee Agreement was expressly embodied in this Agreement. The Trustee shall be paid firstly out of the Revenues Realized of the Trust, if available, and then out of the capital of the Trust, if necessary.
- 5.02 **Trustee's Fees:** The Trustee shall submit a statement itemizing its fees, reimbursement and other compensation provided for in the Trust Fee Agreement to the Chief and Council on a monthly basis for review by the Chief and Council.
- 5.03 **Direction to Pay Debts and Taxes:** All withholding taxes, income taxes, Goods and Services Tax, and any other charges that the Trust or Trustee shall be liable to pay which may be levied under the laws of Canada or any other province or country having jurisdiction shall be paid firstly out of the Revenues Realized of the Trust, if available, and then out of the capital of the Trust, if necessary.

6. PER CAPITA DISTRIBUTION

- 6.01 **Per Capita Distribution:** Subject to 6.02, the Trustee shall only be responsible for and permit the release of monies from the Trust Account for payment to the First Nation as set forth in subsection 4.01(b) as follows:
- (a) The Trustee shall be in receipt of a Band Council Resolution or Band Council Resolutions requesting the Trustee to pay to the First Nation up to the maximum amount specified in subsection 4.01(b);
 - (b) The Trustee shall be in receipt of a Trust Account First Nation Use Direction directing the Trustee to pay to the First Nation up to the maximum amount specified in subsection 4.01(b), signed by at least a quorum of the Chief and Council named in the most recent Band Banking Certificate then in the Trustee's possession;
 - (c) The Trustee shall disburse the funds set out in the Trust Account First Nation Use Direction as follows, in the case of subsection 4.01(b), to the separate account established by the First Nation for the purpose of making the per capita payments; and
 - (d) Any funds, including any interest, remaining after the per capita distribution has been completed shall be re-contributed by the First Nation to the Trust Account.

6.02 **Payment to Children:** The Trustee shall only permit the release of \$3,000 from the Trust Account for payment to the Children of the First Nation as set forth in subsection 4.01(b) as follows:

- (a) Subject to the provisions of this Agreement, and in particular subsection 4.01(b), a Child shall, upon his or her 18th Birthday, be entitled to receive from the Trust Account the sum of \$3,000 as provided in this Agreement;
- (b) If the First Nation becomes aware of:
 - (i) a change in the name, whether by marriage or otherwise, of any Child; or
 - (ii) the death of any Child prior to that Child's 18th Birthday;

then the First Nation shall, forthwith, notify the Trustee in writing and provide the Trustee with certified true copies of the documents evidencing the name change or death certificate, as the case may be;

- (c) The First Nation shall confirm in writing to the Trustee the age and identity of any Child prior to that Child reaching the age of 18 years. Pending the receipt of confirmation of age and identity, the Trustee shall be under no obligation to disburse funds to or for any Child;
- (d) Upon receipt of the written information under subsection 6.02(c), and subject to subsections 6.02(e) and (f), the Trustee shall issue a cheque payable to the First Nation for payment to that Child in an amount equal to the aggregate of the per capita payment the Child is entitled to receive, together with all interest actually received on such payment, all realized net capital gain or losses on such payments and all interest accrued on such payment up to the end of the month immediately preceding the month in which the Child turns 18 years of age. It is acknowledged for greater certainty that a Child shall under no circumstances be entitled to any further interest, whether realized or accrued or any realized capital gains or losses beyond the end of the month immediately preceding the month in which the Child turns 18 years of age;
- (e) If any Child is, at his or her 18th Birthday, in the First Nation's opinion, physically or mentally disabled to the extent of being unable to manage his or her own affairs, then that Child's per capita payment, with interest, shall be transferred to such person(s) as may be identified in a document signed by the First Nation to be held and used by such person(s) for the Child's maintenance, education and advancement in life;
- (f) If any Child is, prior to his or her 18th Birthday, Terminally Ill then that Child's per capita payment, with interest, may be transferred to such person(s) as may be identified in a document signed by the First Nation to be held and used by such person(s) for the Child's benefit;

- (g) Should a Child die before reaching his or her 18th Birthday, the monies that would otherwise have been paid to that Child but calculated to the end of the month preceding the month in which the payment of the Child's entitlement is made by the Trust pursuant to this section, shall be paid to the Child's estate and shall, forthwith, be provided by the Trustee to the Department of Indian Affairs and Northern Development, Saskatchewan Regional Office, to be administered and disbursed pursuant to the terms of the *Indian Act*;
- (h) The Trustee shall issue a cheque to the First Nation for all amounts owed pursuant to this Article 6, and the First Nation shall have the sole responsibility of issuing a cheque in the appropriate amount to the appropriate payee. The First Nation shall be responsible for making all reasonable efforts to locate the payee. If the First Nation, after making all reasonable efforts and after sixty (60) days of receiving the payment from the Trustee, cannot deliver the payment to the payee because the payee cannot be found, or is unaccounted for, or refuses to accept or claim the cheque, then the First Nation shall return the payment to the Trustee, who shall retain the proceeds thereof as provided in subsection 6.02(i);
- (i) If a cheque is returned to the Trustee under subsection 6.02(h), the Trustee shall return the proceeds to the Trust Account and shall retain such funds until whichever of the following occurs first:
 - (i) the Child is located or claims the sums payable to him or her; or
 - (ii) the Dissolution Date;

If the Child is located or claims the sums payable to him or her prior to the Dissolution Date, then the provisions of subsection 6.02(h) shall be followed, it being acknowledged that the Child shall be entitled to the amount they would have otherwise been entitled to receive on their 18th Birthday, which for greater certainty does not include any interest, realized or accrued or any realized capital gains or losses beyond the end of the month immediately preceding the month in which the Child turns 18 years of age. In the event the Child is not located or does not claim the funds payable to him or her prior to the Dissolution Date then their entitlement under the terms of this Trust Agreement shall be deemed to have been disclaimed and forfeited.

- 6.03 **Chief and Council may make Rules:** The Chief and Council are entitled, but are not obligated, to make such rules and procedures as may be necessary or beneficial to distribute the per capita payments mentioned in subsection 4.01(b), including rules that allow for the payments to be made over a longer period of time so as not to conflict with any policy of any government or agency of any government and to ensure that the Members of the First Nation receive the full benefit of the per capita payment wherever possible.

7. **TRUST ACCOUNT FIRST NATION USES**

7.01 **Payment to First Nation:** The Trustee shall only permit the release of monies from the Trust Account for payment to the First Nation as set forth in subsections 4.01(c), 4.01(d) and 4.01(e), as follows:

- (a) The Trustee shall be in receipt of a Band Council Resolution or Band Council Resolutions requesting the Trustee to pay up to the maximum amounts specified in subsections 4.01(c), 4.01(d) and 4.01(e) as directed therein;
- (b) The Trustee shall be in receipt of a Trust Account First Nation Use Direction directing the Trustee to pay up to the maximum amounts specified in subsections 4.01(c), 4.01(d) and 4.01(e) as directed therein, signed by at least a quorum of the Chief and Council named in the most recent Band Banking Certificate then in the Trustee's possession; and
- (c) The Trustee shall disburse the funds set out in the Trust Account First Nation Use Direction as follows:
 - (i) in the case of subsection 4.01(c) to the First Nation;
 - (ii) in the case of subsection 4.01 (d) to the Royal Bank of Canada, Main Branch, Saskatoon, Saskatchewan; and
 - (iii) in the case of subsection 4.01(e) to the Authorized Expense Account.

8. **PURCHASING AND USE OF LAND**

8.01 **Purchase Procedure:** The following procedure shall be followed when Purchasing Land:

- (a) The Chief and Council shall consider and must approve all Purchases of Land and shall, if they choose to Purchase Land, indicate their approval by passing a Band Council Resolution in respect of the selected Land, Price and conditions, if any, upon which they are prepared to Purchase such Land. Prior to providing its approval the Chief and Council shall firstly consider all matters that a prudent purchaser of land would consider when purchasing land, and shall prepare a written statement of intention to Purchase Land and to have such Land set apart as a Reserve, which shall include but are not limited to the following:
 - (i) the legal and, where applicable, civic description of the selected Land;
 - (ii) a list of all Improvements on the Land and confirmation that such Improvements have been inspected by a qualified inspector, along with a copy of the inspector's report;

- (iii) the recommended Price to be paid for the Land;
 - (iv) confirmation that the selected Land is available for acquisition;
 - (v) any other specific terms upon which the Land is to be Purchased;
 - (vi) any potential environmental concerns; and
 - (vii) any potential problems with having the Land set apart as a Reserve;
- (b) Upon the passing of a Band Council Resolution by the Chief and Council approving the Purchase of the selected Land, and, if required under section 8.03, upon obtaining a Member Resolution evidencing the written approval of the Eligible Members to Purchase Land, the First Nation may enter into a binding Agreement to Purchase the approved Land at a Price not in excess of the approved Price;
- (c) The First Nation, upon entering into an Agreement to Purchase Land in accordance with this Article 8, shall:
- (i) arrange for the withdrawal of money from the Trust Account by means of a Trust Account Land Acquisition Direction that is not in excess of the approved Price to Purchase the selected Land;
 - (ii) arrange for placement by the Trustee of the necessary funds as detailed in the Trust Account Land Acquisition Direction into the trust account of a practicing solicitor in and for the Province of Saskatchewan in trust for the First Nation, to complete the Purchase of Land at the approved Price and in accordance with the terms of the Agreement to Purchase and the terms of this Agreement;
 - (iii) ensure that the title to the Land Purchased is transferred into the name of the Holding Corporation, which shall be incorporated by the Chief and Council for this purpose; and
 - (iv) arrange for the discharge of the Third Party Interests.

8.02 **Purchasing Land:** The Trustee shall only permit the release of monies from the Trust Account for the purpose of Purchasing Land as set out in subsection 4.01(f) as follows:

- (a) The Trustee shall be in receipt of a Band Council Resolution containing the written approval of the Chief and Council to Purchase Land and, if required under section 8.03, a Member Resolution evidencing the written approval of the Eligible Members to Purchase Land;

- (b) The Trustee shall be in receipt of a written statement of intention to Purchase Land and to have such Land set apart as a Reserve. Such written statement of intention shall contain a statement that the Chief and Council have considered all matters that a prudent purchaser of land would consider when purchasing land, which shall include but are not limited to the following:
 - (i) the legal and, where applicable, civic description of the selected Land;
 - (ii) a list of all Improvements on the Land and confirmation that such Improvements have been inspected by a qualified inspector, along with a copy of the inspector's report;
 - (iii) the recommended Price to be paid for the Land;
 - (iv) confirmation that the selected Land is available for acquisition;
 - (v) any other specific terms upon which the Land is to be Purchased;
 - (vi) any potential environmental concerns; and
 - (vii) any potential problems with having the Land set apart as a Reserve;
- (c) The Trustee shall be in receipt of a copy of the signed Agreement for Sale;
- (d) The Trustee shall be in receipt of a Trust Account Land Acquisition Direction signed by a majority of the Chief and Council named in the most recent Band Banking Certificate then in the Trustee's possession; and
- (e) The Trustee shall disburse the amount of funds set forth in the Trust Account Land Acquisition Direction from the Trust Account to the practicing solicitor (or firm of practicing solicitors) in and for the Province of Saskatchewan named in the said Trust Account Land Acquisition Direction.

8.03 **Member Approval:** In the event the Purchase of a single parcel of Land involves a Price in excess of \$50,000, involves Land in an urban municipality or involves Land that has a business located on the Land (other than a family farming operation) then prior to the Chief and Council providing their approval, the Purchase must firstly be approved by the Eligible Members in accordance with Article 27 and a Member Resolution must be provided to the Trustee evidencing such approval.

8.04 **Land Sold:** Prior to any Land that was Purchased under the terms of this article being sold by the Holding Corporation, the approval of the Chief and Council must firstly be obtained, such approval to be evidenced by a Band Council Resolution. The Chief and Council shall forthwith deposit the net proceeds from the sale of any such Land back into the Trust Account.

- 8.05 **Reserve Status:** The First Nation shall be responsible for having any Land Purchased set apart as a Reserve for the use and benefit of the First Nation in accordance with the requirements set out in the Settlement Agreement.

9. **PURCHASE OF AUTHORIZED INVESTMENTS**

- 9.01 **Investment:** The Trustee shall only permit the release of monies from the Trust Account for the purchase of Authorized Investments as set forth in subsection 4.01(g) as follows:

- (a) Monies released from the Trust Account may only be invested in Authorized Investments. Until a copy of the Investment Policy required by section 9.02 is finalized, the Trustee shall only release monies from the Trust Account for the purchase of those Authorized Investments listed in Part 1 of Schedule "A". Following the development of the Investment Policy, the Trustee shall be entitled, but only upon consultation with the Chief and Council with the assistance of an Investment Consultant or at the direction of an Investment Manager, to purchase all of those investments authorized or permitted in the Investment Policy. The Trustee shall not be entitled to purchase any Authorized Investment from any entity that is in any way related to or associated with the Investment Consultant;
- (b) Subject to section 9.03, the Trustee, before releasing funds from the Trust Account for investment purposes, must be in receipt of a Trust Account Investment Direction signed by at least a majority of the Chief and Council named in the most recent Band Banking Certificate then in the Trustee's possession;
- (c) Subject to section 9.03 and subsection (d) below, the Trustee shall only disburse the amount of funds set forth in the Trust Account Investment Direction to the Person(s) named in the said Trust Account Investment Direction;
- (d) The Trustee shall only release monies for investment purposes upon actual receipt of (or satisfactory arrangement for receipt of), and in an amount equivalent to the acquisition cost of, the certificates, instruments, documents or other evidences of Authorized Investments specified in the said Trust Account Investment Direction, plus applicable commissions, if any;
- (e) All Investment Instruments delivered to the Trustee shall be held by the Trustee, for the Trust, as a common depository for the same;
- (f) When holding Investment Instruments, the Trustee shall be bound to exercise the same degree of care it does when holding security for its own account;
- (g) Subject to section 9.03, upon the maturity of any Authorized Investment or upon receipt by the Trustee of a Release Direction from the First Nation signed by a majority of the Chief and Council named in the most recent Band Banking

Certificate in the Trustee's possession, the Trustee shall release and transfer the Investment Instruments in accordance with the Release Direction against receipt of a bank draft or certified cheque, or upon confirmed receipt by direct deposit, wire transfer or otherwise to the Trust Account, as the case may be, of the amount specified in the relevant Release Direction. The funds received as aforesaid shall be, forthwith, deposited by the Trustee to the Trust Account.

- 9.02 **Investment Policy:** The Chief and Council, with the assistance of an Investment Consultant or other qualified expert, and in consultation with the Trustee, shall develop and may amend from time to time, an Investment Policy that is consistent with this Agreement.
- 9.03 **Investment Manager:** The Trustee is authorized and empowered to delegate the ability to make decisions on the types and timing of the purchase and sale of Authorized Investments to an Investment Manager(s), approved by the First Nation, provided the Investment Policy has been developed and the Investment Manager enters into an Investment Management Agreement with the Trustee, which is consistent with the Investment Policy and this Agreement. Prior to the Trustee entering into an Investment Management Agreement the Chief and Council must firstly approve of the Investment Management Agreement. Such approval shall be evidence by a Band Council Resolution.
- 9.04 **Investment Seminars:** All incoming Chiefs and Councils shall arrange for the Investment Consultant and/or the Trustee to conduct a seminar and make a presentation to the incoming Chief and Council within one month of them taking office with respect to general investment theory and strategies, the past investment strategies of the prior Chiefs and Councils, the past market performance of the Authorized Investments, current market conditions, the current status of the Authorized Investments and any future considerations that the Chief and Council should take into account as they implement the Investment Policy in a manner consistent with this Agreement. The Trustee, in the case of the Investment Consultant conducting the seminar, and the Investment Manager(s), if retained, shall be invited to participate in the seminar and shall be given a reasonable opportunity to attend and participate in the seminar.

10. **DISTRIBUTION OF REVENUES**

- 10.01 **Transfer Procedure:** Subject to section 10.02, the Trustee is hereby authorized, instructed and empowered to carry out the Trust in respect of the distribution of Revenues Realized and the allocation of Revenues Earned from the Trust Account to the Band Account as set forth in subsection 4.01(h) of this Agreement in accordance with the following procedures:
- (a) The Trustee will estimate the Revenues Realized and Revenues Earned, on an ongoing basis, but in any event, prior to the end of each Fiscal Year. The estimate will thereafter be audited and either confirmed or adjusted for the Fiscal Year by

the Auditor. The determination of the Revenues Realized and Revenues Earned of the Trust by the Auditor will be final;

- (b) At any time in the Fiscal Year, in the absolute discretion of the Trustee, taking into account section 10.02 hereof, (but no later than December 31 of any Fiscal Year), all Revenues Realized estimated by the Trustee in that Fiscal Year and held in the Trust Account, after payment of compensation to the Trustee and other debts pursuant to subsection 4.01(a), shall be disbursed to the Band Account and any necessary adjustments shall be made once these amounts have been audited by the Auditor;
- (c) If in any Fiscal Year the Revenues Earned exceed the Revenues Realized, the Trustee shall allocate such excess to the First Nation as a payable, which is to be evidenced by a promissory note, such note to be accepted by the First Nation as absolute payment, with an effective date of no later than December 31 of each Fiscal Year and such excess must be disbursed to the Band Account once actually realized. The amount represented by such promissory note shall not, for the purposes of this Agreement, be considered part of the Band Account until the funds represented by the promissory note are deposited in the Band Account;
- (d) If, because of the nature of the Authorized Investments held immediately prior to the end of the Fiscal Year, it is not possible or in the First Nation's best interests to make the transfer of all of the Revenues Realized, the Trustee will issue an unrestricted demand promissory note to the First Nation for the amount of the shortfall. Payment of the promissory note will be effected as soon as possible after the end of the Fiscal Year. Any amount represented by the promissory note shall be accepted by the First Nation as absolute payment for the amount outstanding and must be disbursed to the Band Account when paid. The amount represented by such promissory note shall not, for the purposes of this Agreement, be considered part of the Band Account until the funds represented by the promissory note are deposited in the Band Account.

10.02 **Contribution Procedure:** In order to meet the purpose of the First Nation Pelly Haylands Trust as set out in section 2.07 hereof, and in particular to maintain and grow the balance of the monies in the Trust Account at the Base Capital Amount, net of inflation, while maximizing amounts that may be paid to the First Nation to ensure the permanence of the Trust subsequent to the payment of certain amounts set out in Article 4 hereof, for each Fiscal Year the Chief and Council will be obliged to transfer the Contribution Amount, if necessary and as calculated below, to the Trust Account in accordance with the following procedures:

- (a) Each year, as soon as is reasonably possible after December 31, the Trustee shall compute the Inflation Adjusted Capital Amount and compare it to the Value of the Trust Property and shall advise the Chief and Council of the calculation. The excess amount, if any, of the Inflation Adjusted Capital Amount over the Value of the Trust Property shall be the Contribution Amount for that Fiscal Year. For

greater certainty, if the difference between the Inflation Adjusted Capital Amount and the Value of the Trust Property is a negative amount, the Contribution Amount shall be zero for that Fiscal Year. The Trustee shall be entitled to consult with the Investment Consultant to determine an expedient way to monitor differences between the Inflation Adjusted Capital Amount and the Value of the Trust Property;

- (b) Where the Value of the Trust Property is less than the Inflation Adjusted Capital Amount, then the First Nation shall, forthwith after being notified by the Trustee of the calculation, contribute to the Trust Account the Contribution Amount to ensure that the Value of the Trust Property is at least equal to the Inflation Adjusted Capital Amount;
- (c) Where the First Nation is unable to contribute all of the Contribution Amount in a Fiscal Year and as a result the Value of the Trust Property is less than of 90% of the Inflation Adjusted Capital Amount at the end of a particular Fiscal Year, the Trustee shall consult with the Chief and Council as to the increases, if any, to the Contribution Amount for subsequent Fiscal Years and other strategies to be implemented so as to increase the Value of the Trust Property to be equal to or greater than the Inflation Adjusted Capital Amount. If the Chief and Council and the Trustee are able to agree on the increase that should be made to the Contribution Amount for subsequent Fiscal Years and/or other strategies that are to be implemented, then the Contribution Amount shall be adjusted accordingly or the other strategies implemented. Where, however, the Chief and Council and the Trustee are unable to agree on the increase that should be made to the Contribution Amount for subsequent Fiscal Years and/or on the other strategies that are to be implemented, then the Contribution Amount or other strategies that are to be implemented shall be determined by the Trustee, in its absolute discretion. In the event the Trustee determines that the Contribution Amount is to be increased in subsequent Fiscal Years then the Chief and Council shall be obligated to transfer the Contribution Amount, in the amount determined by the Trustee from the Band Account to the Trust Account. If the Contribution Amount calculated by the Trustee is not so transferred, then the Trustee shall be empowered and is obligated to withhold from transfer, pursuant to section 10.01 hereof, the amount of Revenues Realized equal to the Contribution Amount determined by the Trustee, or such other amount of the Revenues Realized in the discretion of the Trustee, as is available in the Trust Account in the current or subsequent Fiscal Years, to meet the requirements of this section;
- (d) Where the Value of the Trust Property is more than the Inflation Adjusted Capital Amount, then the First Nation will not be required to contribute any Contribution Amount to the Trust Account for that Fiscal Year;
- (e) Where the Value of the Trust Property is in excess of the Inflation Adjusted Capital Amount at the end of a particular Fiscal Year, the Trustee shall consult with the Chief and Council and the Investment Consultant as to if and when

Authorized Investments should be sold to generate Revenues Realized, so as to reduce the Value of the Trust Property to an amount closer to the Inflation Adjusted Capital Amount. In making the decision as to whether to sell Authorized Investments and transfer funds to the Band Account and the amount of the transfer, if any, the Chief and Council and Trustee shall consider, among other things, the impact, if any, on the Investment Policy and current investment strategies. If the Chief and Council and the Trustee are able to agree on whether Authorized Investments should be sold to generate Revenues Realized and on the amount that should be sold, then such transfer shall be made by the Trustee as soon as reasonably possible upon receipt of a Band Council Resolution from the First Nation. Where, however, the Chief and Council and the Trustee are unable to agree on whether Authorized Investments should be sold to generate Revenues Realized or on the amount that should be sold, then the decision shall be determined by the Trustee, in its absolute discretion;

- (f) For purposes of clarity, this section can only be amended in accordance with subsection 29.02(b) hereof.

10.03 Any Revenues Realized transferred to the Band Account shall be deemed to firstly come from any amounts realized or earned on the investment or utilization of Revenues Realized.

11. TRANSFER OF TRUST PROPERTY TO A SUBSTITUTED TRUSTEE AND RESIGNATION OF THE TRUSTEE

11.01 **Transfer Procedure:** The Trust Property must, upon thirty (30) days written notice by the First Nation to the Trustee, be transferred by the Trustee to any other corporate trustee (hereinafter referred to as the "Substituted Trustee"), provided that:

- (a) The Chief and Council firstly approve of the transfer, such approval to be evidenced by a Band Council Resolution; and
- (b) Prior to transfer of the Trust Property, the First Nation and the Substituted Trustee enter into a written agreement containing the same or substantially the same terms and conditions as Part I and Part III of this Agreement.

11.02 **Resignation of Trustee:** The Trustee may, upon ninety (90) days written notice to the First Nation, resign as Trustee and terminate its obligations under this Agreement, provided that such termination shall not affect the rights, obligations, liabilities and responsibilities of the parties hereto accruing prior to the effective date of such termination; provided that the Trustee shall do what is reasonably required or requested of it to transfer the Trust Property and all other amounts related thereto to the Substituted Trustee, upon the direction of the First Nation. Except for the purchase and sale of Authorized Investments and the transfer of Revenues Realized, upon receipt of such written notice from the Trustee, no funds shall be withdrawn or otherwise utilized in any

manner from the Trust Account until the First Nation and the Substituted Trustee enter into a written agreement containing the same or substantially the same terms and conditions as Part I and Part III of this Agreement.

12. **POWERS OF THE TRUSTEE**

12.01 **Detailed Powers:** Subject to the provisions of this Agreement, the Trustee is authorized and empowered to:

- (a) Establish the Trust Account or transfer the Trust Property to a Substituted Trustee in accordance with Article 11, and, subject to the provisions of this Agreement make such reasonable arrangements governing banking procedures as it from time to time deems advisable;
- (b) Execute all documentation reasonably necessary or incidental to the proper and effective administration of the Trust Account or the Trust Property generally; and
- (c) Do all such other acts and things as are incidental to the foregoing, and to exercise all powers which may be necessary or useful to promote or carry out any of the purposes of the Trust and to promote or carry out the provisions of this Agreement.

13. **DUTIES OF THE TRUSTEE**

13.01 **Act in Good Faith:** The Trustee owes a duty to the First Nation and the Members to act with the utmost good faith in its dealings with the Trust Property and to discharge all of its obligations and duties under this Agreement faithfully, honestly, to the best of its ability and without the purpose or result of gain, except as permitted under the terms of this Agreement.

13.02 **Maintenance of Records:** The Trustee shall maintain adequate records of all transactions affecting the Trust Property, including, without limitation, maintaining a register of all Trust Account Directions and Band Council Resolutions received.

13.03 **Monthly Statements:** The Trustee shall provide the First Nation monthly or less frequently as instructed by the Chief and Council with the following reports:

- (a) A statement setting out all transactions which have occurred in respect of the Trust Account, including the amount and date of each transaction as of the dates indicated thereon; and
- (b) A listing of all securities and cash balances forming part of the Trust Account as of the dates indicated thereon.

- 13.04 **Annual Reports and Documents:** The Trustee shall provide the First Nation with the following annual reports and documents within sixty (60) days of the end of each Fiscal Year:
- (a) An Annual Capital Gain Tax Statement or Worksheet, showing all sales transactions for the calendar year, and detailing the capital gains and losses arising from such transactions;
 - (b) An Annual Statement of Investment Income (T5) or equivalent summarizing reportable income;
 - (c) An Income Tax Worksheet that details all amounts reported; and
 - (d) Any other statement required by federal or provincial law or any other lawful jurisdiction.
- 13.05 **Tax Information:** The Trustee shall also provide other relevant tax information (including the appropriate tax slips such as T3, NR4, T5013 and IRS tax slips for U.S. source income as applicable) prepared by the Trustee or received from issuers, as soon as possible.
- 13.06 **Audited Statements:** The Trustee shall make all records available to the Auditor engaged by the First Nation pursuant to section 25.04 as requested.
- 13.07 **Information to Council:** The Trustee shall provide the Chief and Council with:
- (a) A copy of all ledgers, registers and documents or recordings of transactions affecting the Trust Property promptly as and when requested by Chief and Council;
 - (b) A copy of a report, on at least a quarterly basis, or at such other time as requested by the Chief and Council, that provides a list of investments in which the Trust Property has been invested, a summary of the performance of the investments, and, if an Investment Manager has been retained, a copy of a report from the Investment Manager that provides the comments of the Investment Manager regarding the performance of the investments and confirms the compliance of the investments to this Agreement and to the Investment Policy; and
 - (c) A written statement advising the Chief and Council of the failure on the Trustee's part or of the First Nation to adhere to the terms of this Agreement immediately upon becoming aware of such failure.
- 13.08 **Access to Records:** The Trustee shall permit any Member a reasonable opportunity to review all ledgers, registers and documents or recordings of transactions affecting the

Trust Property by appointment and in the presence and under the supervision of the Trustee or of a person authorized by the Trustee.

- 13.09 **Attendance at Meetings:** The Trustee shall attend meetings of the Members or Chief and Council when requested by Chief and Council to report on the administration of the Trust Property in relation to the purposes of the Trust. Meetings may be conducted by telephone or other facility which permits those in attendance to communicate with all others participating in the meeting.
- 13.10 **Reports to Members:** The Trustee shall provide to Chief and Council, within one hundred and fifty (150) days of the end of each Fiscal Year, a written report, in both hardcopy and electronic form, summarizing the activities of the Trust during the past Fiscal Year together with such other information as the Chief and Council deem appropriate. The report shall include a statement with respect to the compliance of the Trustee, the First Nation and the Chief and Council with their obligations under section 10.02 and 19.01 hereof.
- 13.11 **Meeting of Members:** The Chief and Council shall at least once in each Fiscal Year hold a meeting or meetings with Members at locations deemed appropriate by the Chief and Council. The Trustee shall attend such meetings and shall, in conjunction with the Chief and Council, present the written report referred to in section 13.10, the audited financial statements, details of the investment of the Trust Property and the future plans for the use and investment of the Trust Property.
- 13.12 **Responsibility for Acts:** The Trustee shall be liable for any claims, liabilities, demands or costs arising out of any fraudulent act, omission or negligence in the performance of his or her obligations and duties, fiduciary or otherwise, as a Trustee or for any breach of this Agreement resulting in the actual loss of Trust Property.

14. **MISCELLANEOUS**

- 14.01 **Reliance on Certificates:** With respect to all references herein to the Chief and Council, the Trustee, for all purposes hereunder, shall be entitled to rely upon and shall deal exclusively with the Chief and Councillors set out in the most recent Band Banking Certificate then in the possession of the Trustee. Wherever this Agreement refers to any authorizations, consent, direction, instruction, approval or other determination by the Chief and Council, the Trustee may rely, unless this Agreement otherwise provides, exclusively on any certificates, directions or other documents signed by a majority of Chief and Council.
- 14.02 **Reliance on Certain Documents:** The Trustee shall not be required in any way to determine the validity of any certificate, direction, notice or other document required to be delivered to it under this Agreement. It shall be sufficient that such certificate, direction, notice or other document shall be in apparently correct form and signed or otherwise executed by the Person or party required to sign or execute the same, and the

Trustee shall be relieved of any liability or responsibility for the sufficiency thereof as long as it purports on its face to be in such form and executed by such Person as is required by this Agreement, and so long as the Trustee has no actual notice to the contrary.

- 14.03 **Procedures to be Followed:** No monies deposited to the Trust Account or any Revenues Realized, interest or other income earned thereon shall be withdrawn for expenditure or investment except in accordance with the procedures set out in this Agreement.
- 14.04 **Conflict with Other Agreements:** The First Nation and Trustee specifically acknowledge that, if any term or provision of this Agreement conflicts with any term or provision of any other agreement or instrument executed from time to time by the First Nation or the Trustee, the terms and provisions of this Agreement shall prevail.
- 14.05 **Signing Other Documents:** The Trustee and the First Nation will sign such documents and all such things as may be necessary or desirable to give effect to and to carry out the provisions of this Agreement.

PART II
FIRST NATION AND BAND ACCOUNT AGREEMENT
AMONG THE FIRST NATION AND THE CHIEF AND COUNCIL

15. TRUSTEE NOT RESPONSIBLE AND CHIEF AND COUNCIL BOUND

- 15.01 **Application:** Notwithstanding any other provision in this Agreement, Part II of this Agreement shall only apply to and be binding on the First Nation and the Chief and Council. Funds transferred by the Trustee to the First Nation and into the Band Account, Authorized Expense Account or separate account established by the First Nation for the purpose of making the per capita distributions are not Trust Property and the Trustee has no responsibility for the funds once deposited into the accounts. The First Nation and the Chief and Council shall have the responsibility for the funds disbursed to the Band Account, to the Authorized Expense Account and to the First Nation. For greater certainty, it is agreed by the First Nation that the Trustee shall have no responsibility or liability whatsoever for how such funds are used by the First Nation or the Chief and Council.
- 15.02 **Chief and Council Bound:** The Chief and Council acknowledge and agree that the terms and provisions contained in Part I, Part II and Part III of this Agreement are binding upon the Chief and Council, and all future Chiefs and Councils.
- 15.03 **Training:** All incoming Chiefs and Band Councillors, upon being elected to their positions, shall participate in training regarding the operation of the Trust, investing, land acquisition, land management, Reserve creation and any other training determined by the Chief and Council, to allow them to fully understand and fulfill their obligations under this Agreement.

16. ACCOUNTS OPENED

- 16.01 **Accounts Opened:** As soon as is reasonably possible after the execution of this Agreement, and if possible prior to the deposit of the Settlement Monies with the Trustee, the First Nation shall cause to be opened the Band Account, the Authorized Expense Account and a separate account established by the First Nation at a financial institution for the purpose of making the per capita distributions.
- 16.02 **Deposit of Revenues Realized:** All Revenues Realized shall be transferred and deposited by the Trustee into the Band Account. To assist the Trustee the First Nation, immediately upon the opening of the Band Account, will provide the details of the account to the Trustee.

16.03 **Withdrawals:** All amounts from time to time in the Band Account, the Authorized Expense Account and the account established by the First Nation for the purpose of making the per capita distributions shall remain in the said accounts and may not be withdrawn except in accordance with the terms of this Agreement.

17. **WITHDRAWALS FROM BAND ACCOUNT**

17.01 **Authorized Withdrawals:** The First Nation and the Chief and Council shall only permit the withdrawal of monies from the Band Account for the following purposes:

- (a) **Per Capita Payment:** Firstly, for the transfer to an account established by the First Nation for the purpose of making the per capita distributions, of an amount(s), from time to time, determined by the Chief and Council, to complete the balance of the per capita payments mentioned in subsection 4.01(b), subject to and in accordance with the provisions of Article 18 of this Agreement;
- (b) **Contribution Amount:** For the contribution to the Trust Account of the Contribution Amount required to maintain and grow the Base Capital Amount, net of inflation, while maximizing amounts that may be paid to the First Nation, subject to and in accordance with the provisions of Article 19 of this Agreement;
- (c) **Authorized Expenses:** For the transfer to the Authorized Expense Account of the amounts authorized, from time to time, by the Chief and Council to pay for Authorized Expenses, subject to and in accordance with the provisions of Article 20 of this Agreement;
- (d) **Band Development:** For Band Development purposes, subject to and in accordance with the provisions of Article 22 of this Agreement;
- (e) **Authorized Investments:** For the purchase of Authorized Investments, subject to and in accordance with the provisions of Article 23 of this Agreement; and
- (f) **Other Claims:** For expenditures related to any specific claim of the First Nation in respect of any alleged improper surrender, alienation, failure to set aside or any other disposition by Canada of land of or for the First Nation, or claims relating to traditional lands, or any alleged breach of treaty rights or the fiduciary obligation of the Crown to the First Nation or its members, subject to and in accordance with the provisions of Article 24 of this Agreement.

17.02 **Prohibited Uses:** For greater certainty, and without in any way limiting the generality of the foregoing:

- (a) **No Per Capita:** Except for the amount(s) expended by the First Nation under subsections 4.01(b) and 17.01(a), the monies in the Band Account shall not be used for per capita distributions to the First Nation, the Chief or Council, or to Members of the First Nation;
- (b) **No Borrowing:** Except as permitted in this Agreement, the First Nation shall not mortgage, pledge, hypothecate or in any way encumber the funds in the Band Account or any interest therein, for any purpose whatsoever; and
- (c) **No Lending:** The First Nation shall not lend, invest, release, distribute or advance in any way, including to themselves or any other Person, the funds in the Band Account except as may be specifically authorized in this Agreement.

18. **PER CAPITA DISTRIBUTIONS**

18.01 **Use of Revenues Realized:** Revenues Realized which are paid into the Band Account in the first Fiscal Year shall be allocated firstly and specifically, to the extent necessary, for the payment of the balance of the per capita distribution referred to in subsection 4.01 (b).

18.02 **Per Capita Transfers:** The Chief and Council shall only permit the release of monies from the Band Account for the transfer to the account established by the First Nation for the purpose of making the per capita distributions in accordance with the following procedures:

- (a) The Chief and Council may transfer monies from the Band Account to the account established by the First Nation for the purpose of making the per capita distributions upon the passing of a Band Council Resolution, in an amount(s), from time to time, determined by the Chief and Council, to complete the balance of the per capita payments mentioned in subsection 4.01(b); and
- (b) The Chief and Council are entitled, but are not obligated, to make such rules and procedures as may be necessary or beneficial to distribute the per capita payments mentioned in subsection 17.01(a), including rules that allow for the payments to be made over a longer period of time so as not to conflict with any policy of any government or agency of any government and to ensure that the Members of the First Nation receive the full benefit of the per capita payment wherever possible.

19. **CONTRIBUTION AMOUNT**

19.01 **Contribution Amount:** The First Nation and the Chief and Council shall ensure that the Value of the Trust Property is at least equal to the Inflation Adjusted Capital Amount.

The First Nation is authorized and directed, from time to time, to contribute funds from the Band Account to the Trust Account to ensure compliance with section 10.02 hereof.

20. AUTHORIZED EXPENSES

20.01 **Authorized Expense Transfers:** The First Nation and the Chief and Council shall only permit the release of monies from the Band Account for the transfer to the Authorized Expense Account in accordance with the following procedures:

- (a) The Chief and Council shall prepare a written budget for the estimated Authorized Expenses for the next Fiscal Year prior to the end of each Fiscal Year; and
- (b) Once the Chief and Council have approved the budget and authorized a transfer of funds by Band Council Resolution, funds equivalent to the approved budget shall be disbursed from the Band Account to the Authorized Expense Account on a monthly basis as provided for in the approved budget, provided that any funds remaining from the prior Fiscal Year shall be taken into account when determining the amount of such funds to be transferred. These funds shall then be utilized by the First Nation to pay Authorized Expenses for the Fiscal Year. Prior to any further funds being utilized for Authorized Expenses in the Fiscal Year, the expenditure of such additional funds must firstly be approved in writing by Band Council Resolution by the Chief and Council.

21. WITHDRAWALS FROM AUTHORIZED EXPENSE ACCOUNT

21.01 **Authorized Withdrawals:** The Chief and Council shall only permit the withdrawal of monies from the Authorized Expense Account for the following purposes:

- (a) For the payment of Authorized Expenses as follows:
 - (i) according to procedures established by the Chief and Council, from time to time; and
 - (ii) according to a budget, when required, approved pursuant to section 20.01 of this Agreement;
- (b) For the purchase of Authorized Investments, subject to and in accordance with the provisions of Article 23 of this Agreement.

22. USE OF BAND ACCOUNT FOR BAND DEVELOPMENT

22.01 **Band Development Procedure:** Subject to section 22.02, the Chief and Council are hereby authorized and empowered to carry out the Trust in respect of Band Development

as set forth in subsection 17.01(d) of this Agreement in accordance with the following procedures:

- (a) The Chief and Council, a Member or Members of the First Nation shall be entitled to initiate or apply for Band Development by preparing or delivering to the Chief and Council a Band Development Request;
- (b) The Chief and Council, upon preparing or receiving the Band Development Request and being satisfied that the request for distribution is for and in respect of a Band Development, and upon being satisfied that sufficient funds are available and will not be required otherwise to meet the obligations under this Agreement and, if in the absolute discretion of the Chief and Council they consider that the request is a reasonable one, shall call a meeting of the Eligible Members by giving notice to the Eligible Members in accordance with section 27.01. Prior to the Chief and Council providing their approval, the Band Development must firstly be approved by the Eligible Members in accordance with Article 27. If the Chief and Council and Eligible Members approve of the Band Development, a Band Council Resolution and a Member Resolution must be prepared evidencing such approval. The Chief and Council shall then arrange for the withdrawal of funds from the Band Account by means of a Band Account Development Direction and the transfer of the funds in the amount referred to in the Band Development Request from the Band Account into an account of the First Nation or directly to the Member making the request. If sufficient funds are not available for the Band Development and for that reason a meeting of the Eligible Members will not be called, the Band Development Request will be deferred and reconsidered by the Chief and Council the next time the Chief and Council consider a Band Development Request;
- (c) The Chief and Council shall not disburse any funds to the First Nation from the Band Account for Band Development purposes unless the expenditure of funds has firstly been approved by the Eligible Members in accordance herewith, and the Chief and Council are in receipt of the Band Development Request, Band Council Resolution, Member Resolution and Band Account Development Direction; and
- (d) Unless the Member Resolution authorizing the Band Development states otherwise, if the Band Development to be undertaken or established is not completed within one year following the distribution of the funds, or not all of the funds distributed are required to complete the Band Development, the First Nation shall forthwith repay to the Band Account any remaining funds not utilized plus any interest earned which funds, when received, shall be forthwith deposited by the Chief and Council to the Band Account.

22.02 **Yearly Expenditure:** Notwithstanding section 22.01, and after all monies in the Band Account have been paid as otherwise required by this Agreement, the Chief and Council shall be entitled to pay, in the aggregate, up to \$20,000 per Fiscal Year from the Band

Account for Band Development without having to get approval of the Eligible Members in accordance with section 27.01.

- 22.03 **No Prejudice of Rights:** The funding of any Band Development shall not be construed as prejudicing the rights of the First Nation under Treaty nor shall such expenditures be used to replace programs normally funded by Canada under Treaty or under any other law, policy or program.

23. BAND ACCOUNT AND AUTHORIZED EXPENSE ACCOUNT INVESTMENT

- 23.01 The First Nation may at any time invest any funds in the Band Account and in the Authorized Expense Account in those Authorized Investments listed in Part I of Schedule "A" in accordance with procedures established by the Chief and Council from time to time.

24. OTHER CLAIMS PAYMENTS

- 24.01 **Other Claims Payments:** The Chief and Council shall only permit the release of monies from the Band Account for the payment of expenditures referred to in subsection 17.01 (f) related to any other claim of the First Nation upon the passing of a Band Council Resolution authorizing such expenditures.

25. USE OF FUNDS TRANSFERRED TO THE FIRST NATION

- 25.01 **Use of Funds:** The First Nation and the Chief and Council agree that all monies disbursed to the First Nation in accordance with this Agreement shall be utilized by the First Nation in accordance with the purpose for which they were transferred to the First Nation.
- 25.02 **First Nation Laws to Apply:** The expenditure of funds in the Band Account shall be governed by the laws, policies and bylaws of the First Nation in effect from time to time. If any term or provision of this Agreement conflicts or is inconsistent with any term or provision of any law, policy or bylaw of the First Nation, or any other agreement or instrument executed from time to time by the First Nation, the terms and provisions of this Agreement shall prevail.
- 25.03 **Accountability:** The First Nation shall provide annually to the Members an accounting for all funds transferred to the First Nation pursuant to the terms of this Agreement along with a Band Council Resolution which states that the funds transferred to the First Nation during the period were spent for the specific purpose the funds were provided to the First Nation.

25.04 **Audit of Trust Account:** The First Nation shall engage an Auditor to complete an audit of the Trust Account, Band Account and Authorized Expense Account, such audit to be completed and approved by the Chief and Council within one hundred and twenty (120) days of the end of each Fiscal Year. The Auditor shall prepare audited financial statements in accordance with Canadian generally accepted auditing standards. The Chief and Council shall provide a copy of the approved audited financial statements to any Member, without charge, upon request.

26. **LAND MANAGEMENT**

26.01 **Management of Land:** Subject to any land use policy developed by the First Nation, the Chief and Council shall, on behalf of and as agent for the First Nation, ensure that any Land that is Purchased, prior to it being set apart as a Reserve, is held and managed as follows:

- (a) In a provident and business-like fashion;
- (b) That all Authorized Expenses associated with the Land are paid in a timely way; and
- (c) That the Land is either operated for profit or is leased out for fair market rent, whichever in the discretion of the Chief and Council is determined to be in the best interest of the First Nation.

26.02 **Housing:** Any houses and Improvements related to the operation of a house Purchased as part of the Purchase of Land under this article shall remain the responsibility of the First Nation and shall be administered by the First Nation under the First Nation's housing policy in place from time to time. Any proceeds received by the First Nation from the houses and related Improvements shall remain the property of the First Nation.

26.03 **Revenue from Land:** Subject to section 26.02, any revenues received from the Land prior to it being set apart as a Reserve shall be collected by the Holding Corporation, on behalf of and as agent for the First Nation, shall be deposited by the Holding Corporation on behalf of the First Nation on a yearly basis into the Band Account, and shall be administered in accordance with the terms of this Agreement. For greater certainty, such revenues are not to be considered Revenues Realized.

27. **MEMBER RESOLUTIONS**

27.01 **Procedure for Meetings of Eligible Members:** Where, in accordance with any provision of this Trust Agreement, a Member Resolution is required or the approval of the Eligible Members is required, the following process will be followed:

- (a) The Chief and Council shall call a meeting of the Eligible Members by giving notice to the Eligible Members in accordance with subsection 27.01(b);
- (b) The notice referred to in subsection 27.01(a):
- (i) shall be in writing;
 - (ii) shall be posted in an area of the administrative offices of the First Nation to which the public has access;
 - (iii) shall be posted at other times and in other locations as the Chief and Council determine appropriate with the goal of ensuring that to the extent possible all Eligible Members have notice of the meeting;
 - (iv) shall be posted at least thirty (30) days in advance of the date of the meeting;
 - (v) shall be substantially in the form set out in Schedule “D” and contain the following information:
 - the date, time, and place of the meeting;
 - give notice of the purpose of the meeting including a detailed description of the matters which will be considered at the meeting; and
 - advise the Eligible Members that a vote will be taken at the meeting;
- (c) A meeting of the Eligible Members shall be held on the date and at the time and place set out in the notice, at which time and in the presence of a quorum of the Chief and Council:
- (i) the Chief and Council shall provide sufficient information to the Eligible Members in attendance so as to permit the Eligible Members to make an informed decision, including, where the purpose of the meeting is to inform the Eligible Members of the intent of the Chief and Council or Member or Members to make a request for a distribution from the Band Account for Band Development, a description of the proposed Band Development and the amount of the distribution the Chief and Council or Member or Members intend to request;
 - (ii) a statement shall be provided declaring any conflict of interest on the part of a member of the Chief and Council; and

- (iii) a poll shall be conducted by a member of the Chief and Council by a show of hands to determine the decision of the Eligible Members on the matter in respect of which the meeting was called. Approval will be given if a simple majority (50% +1 of the Eligible Members who vote) of those who vote are in favour of the matter. At any time before the poll is conducted and on a motion by any Eligible Member passed by a show of hands of those Eligible Members in attendance, the meeting or the decision with respect to a particular request or proposal for Band Development may be postponed for the purpose of compiling further information for the benefit of the Eligible Members; and
 - (d) The member of Chief and Council who conducts the poll in accordance with subsection 27.01(c)(iii) shall, following a count of the votes, announce the results of the vote and complete a resolution of the Eligible Members in the form set out in Schedule “C”, and the same shall be signed by a quorum of the Chief and Council.
- 27.02 **Rules and Procedures:** The Chief and Council may make and amend, from time to time, rules and procedures that they deem appropriate and reasonable to govern the meetings and votes to be conducted under this article provided that such rules and procedures are not inconsistent or do not conflict with the provisions of this article.
- 27.03 **Postponement:** The Chief and Council may only postpone the meeting of the Eligible Members as a result of the death of a Member.
- 27.04 **Rules Where Meeting Postponed:** Where a meeting of the Eligible Members to be held in accordance with section 27.01 or the decision with respect to a particular request or proposal for Band Development is postponed for any reason, then sections 27.01 to 27.03 shall apply to any subsequent meeting called in respect of the same subject matter.
- 27.05 **Effect of Error:** Despite section 27.01, no decision of the Eligible Members may be impugned on the grounds that a technical and non-substantial procedural breach of section 27.01 occurred which could not be reasonably inferred to have affected the outcome of the vote of the Eligible Members.

28. **CONFLICT OF INTEREST**

- 28.01 **Related:** For the purposes of this article “related” shall mean one’s immediate family, being one’s spouse or biological or adoptive parent, child, brother or sister.
- 28.02 **Duty to Disclose:** A Chief or Councillor who:
- (a) Is a party to a contract, or proposed contract entered into or to be entered into in accordance with this Agreement; or

- (b) Is a director or an officer of or has an interest in or is related to any Person who is a party to a contract or proposed contract entered into or to be entered into in accordance with this Agreement,

shall disclose in writing to the Chief and Council, or shall request to have entered in the minutes of meetings of the Chief and Council, the nature and extent of the Chief or Councillor's relationship and extent of his or her interest.

28.03 **Timing of Disclosure:** The disclosure required of a Chief or Councillor by section 28.02 shall be made:

- (a) At the meeting at which a proposed contract is first considered by the Chief and Council;
- (b) If the Chief or Councillor was not then interested in a proposed contract, at the first meeting after he or she becomes so interested;
- (c) If the Chief or Councillor becomes interested after a contract is made, at the first meeting after he or she becomes so interested; or
- (d) If a person who is interested in a contract becomes a Chief or Councillor subsequent to execution of the contract, at the first meeting after he or she becomes a Chief or Councillor.

28.04 **Exclusion from Discussion:** A Chief or Councillor described in section 28.02 shall not take part in discussions or deliberations concerning any such contract, shall leave the meeting during those discussions and deliberations and shall not vote on any resolution to approve the contract.

28.05 **Method of Disclosure:** For purposes of this Article 28, a general notice to the Chief and Council by a Chief or Councillor declaring that he or she is a director or officer of or is related to, or has an interest in, a Person and is to be regarded as interested in any contract made with that Person, is a sufficient declaration of interest in relation to any contract so made.

28.06 **Effect on Contracts:** A contract is neither void nor voidable by reason of a relationship described in section 28.02 or by reason only that a Chief or Councillor with an interest in the contract is present at, or is counted to determine the existence of a quorum at, a meeting of Chief and Council that authorized or approved the contract if the Chief or Councillor disclosed his or her interest in accordance with sections 28.02 or 28.03 as the case may be, and the contract was approved by the Chief and Council and was reasonable and fair at the time the same was approved.

28.07 **Not Relieved of Duty:** For greater certainty, nothing in section 28.06 shall relieve a Chief or Councillor of his or her duty under section 28.02.

PART III

AMENDMENT, NOTICE AND OTHER PROVISIONS

29. AMENDMENTS

29.01 **Income Tax:** Notwithstanding anything to the contrary contained in this Agreement, all Revenues Earned and Revenues Realized shall be and always remain revenues of the First Nation payable to the First Nation on Reserve and be exempt from the payment of income tax under the *Income Tax Act* and any applicable provincial income tax legislation. In the event that:

- (a) The Canada Revenue Agency or the Minister of National Revenue, or their replacements from time to time, rules at any time that any Revenues Earned or Revenues Realized will not be exempt or shall assess or attempt to assess tax on the Revenues Earned or Revenues Realized under the *Income Tax Act*;
- (b) Amendments are made to the *Income Tax Act* or regulations under that Act, or the Canada Revenue Agency or the Minister of National Revenue, or their replacements from time to time, shall issue or adopt any Interpretation Bulletin, guideline or policy which might affect adversely the intention of the First Nation; or
- (c) Professional advice is received by the First Nation with respect to taxation matters that recommends that amendments be made to the provisions of this Trust Agreement to give effect to the First Nation's intention noted in this section regarding income taxes;

then, in such event, the First Nation, by Band Council Resolution, and the Trustee may, prior to the signing of this Agreement or thereafter, amend the provisions of this Trust Agreement in such manner as may be necessary to give effect to the First Nation's intention noted in this section regarding income taxes.

29.02 **General:** Subject to any amendments as may be undertaken pursuant to section 29.01, this Agreement may be amended or terminated as follows:

- (a) The Chief and Council may, prior to the signing of this Agreement, amend this Agreement without further approval to correct any typographical error, changes required for the purpose of curing or correcting clerical errors, omissions or ambiguity or to satisfy any reasonable request of the Trustee; and
- (b) Otherwise any amendments or termination must be in writing and agreed to by the First Nation and the Trustee; provided that such amendment or termination must firstly be approved by the Eligible Members at a ratification vote held in accordance with the *Indian Referendum Regulations*, as amended or replaced

from time to time, with any changes necessary to accommodate this section, before the First Nation enters into such amendment or termination. Such approval will be given if, at the ratification vote, a majority (over 50%) of the Eligible Members vote and a majority (over 50%) of the votes cast are in favour of the amendment or termination.

30. NOTICE

30.01 **Notice Procedure:** Whenever in this Agreement it is required that notice be given or served by any party to or on the other parties, including any change of address, such notice shall be given or served in writing by delivering the notice personally, by facsimile or by forwarding by prepaid registered mail to:

(a) The First Nation (and its Chief and Council) at the following address:

Chief and Council
Key First Nation
P.O. Box 70
Norquay, Saskatchewan
S0A 2V0
Fax: (306) 594-2545

(b) The Trustee at the following address:

CIBC Trust Corporation
Alberta Office
2nd Floor
309 - 8th Avenue S.W.
Calgary, Alberta
T2P 1C6
Fax: (403) 221-2430

Any notice or communication shall be sufficient if delivered personally, or if given by registered mail, postage prepaid, addressed as set forth above, and shall be effective on delivery if delivered personally or five (5) business days after mailing if mailed. In the event of an anticipated or actual stopping of postal service, registered mail shall not be used. In the event of a change in a Trustee, the name and address of the new address shall, forthwith, be provided to the other parties.

31. OTHER PROVISIONS

31.01 **Procedure for Band Council Resolution:** Any Band Council Resolution required for the purposes of this Agreement shall be passed at a duly convened meeting of the Chief

and Council held in accordance with the procedures prescribed by the *Indian Act*, and signed by at least a quorum of the members of the Chief and Council.

- 31.02 **Applicable Laws:** This Agreement shall in all respects be interpreted and construed under, and governed by, the laws of the Province of Saskatchewan and the laws of Canada applicable therein.
- 31.03 **Termination of Trust:** Subject to subsection 29.02(b), the terms of the Trust constituted under this Agreement shall commence on the date of signing of this Agreement and shall terminate twenty (20) years after the death of the last Member of the First Nation on the Membership List on the date of the signing of this Agreement by the First Nation, upon which date the Trust Property and copies of all documents and records of the administration of the Trust shall be transferred to the First Nation to be used for the use and benefit of the First Nation.
- 31.04 **Headings for Reference Only:** The headings are inserted solely for convenience and shall not control or affect the meaning or construction of any part of this Agreement, and the recitals and all Schedules attached hereto shall form part of this Agreement.
- 31.05 **Number:** Words herein in the singular include the plural and words herein in the plural include the singular.
- 31.06 **Gender:** Words importing male persons include female persons and corporations.
- 31.07 **Time of the Essence:** Time shall be of the essence in this Agreement.
- 31.08 **Severance of Terms:** If any term or provision of this Agreement is determined to be invalid by a Court of competent jurisdiction, then such term or provision shall be deemed severable and shall not affect the validity of the remaining portions of this Agreement.
- 31.09 **Calendar Days:** Where there is a reference to a number of days in this Agreement it is deemed to be a reference to calendar days and in calculating the number of days the day on which the first event happens is excluded and the day on which the last event happens is included.
- 31.10 **Member Addresses:** It is the Members responsibility to provide their current address to the Chief and Council or their designate. The Chief and Council shall not be responsible in any way to a Member as a result of the Member not providing their current address to the Chief and Council or their designate.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

In the presence of:

**KEY FIRST NATION
AS REPRESENTED BY THE CHIEF
AND COUNCILLORS OF THE FIRST
NATION**

Witness as to all the signatures of the
Chief and Council

Chief Isabel O'Soup

Councillor Dale Brass

Councillor David Cote

Councillor Floyd Keshane

Councillor Karen Keshane

Councillor Ivy O'Soup

Councillor Patrick O'Soup

Councillor Vonda Papequash

(seal)

CIBC TRUST CORPORATION

Per: _____

Per: _____

**SCHEDULE "A" TO THE KEY FIRST NATION PELLY HAYLANDS
TRUST AGREEMENT**

AUTHORIZED INVESTMENTS

Part 1

Prior to the Investment Policy being developed by the Trustee and the Chief and Council, the Trustee shall only invest the Trust Property in the following types of investments which shall not have a term exceeding two (2) years:

- (a) Debt instruments issued or guaranteed by Canada or a province of Canada;
- (b) Debt instruments issued or guaranteed by a chartered bank or licensed trust company including banker's acceptance, certificate of deposit, guaranteed investment certificate or term deposit;
- (c) Mortgages, the payments of principal of which are guaranteed by Canada, a province of Canada, chartered bank or licensed trust company;
- (d) Commercial paper issued by a corporation rated "R-1" or "A-1" by the Dominion Bond Rating Services or Canadian Bond Rating Services;
- (e) Bonds issued by a corporation rated "A" or better by the Dominion Bond Rating Services or Canadian Bond Rating Services; and
- (f) No-Load pooled or mutual money market funds.

Part 2

Upon the development of the Investment Policy, the Trustee, subject to the Investment Policy and only with the assistance of an Investment Consultant, may invest the Trust Property in any form of investment authorized or permitted to be purchased by the Trustee under *The Trustee Act* of Saskatchewan, provided that the Trustee shall not, at any time, be authorized or permitted to invest the Trust Property in the following types of investments:

- (a) Direct purchase or ownership of real estate, including land of any type;
- (b) Except as may be permitted in the Investment Policy, any type of commodity or future;
- (c) Except as may be permitted in the Investment Policy, any type of derivative investment whose price is determined by the price of something else or any type of option; and
- (d) Except as may be permitted in the Investment Policy, in any equity security, including without limitation, common or preferred shares, installment receipts and share purchase warrants, unless issued by a corporation that is listed on a recognized stock exchange.

SCHEDULE "B" TO THE KEY FIRST NATION PELLY HAYLANDS TRUST AGREEMENT

BAND DEVELOPMENT REQUEST

TO: Chief and Council
Re: Key First Nation Pelly Haylands Trust

The Chief and Council [or a Member or Members] of the Key First Nation (the "First Nation") for Band Development purposes hereby requests a distribution from the Band Account of the Key First Nation Pelly Haylands Trust:

Description of Band Development Project:

Projected Cost:

The funds requested will be required as follows:

<u>Date</u>	<u>Amount</u>	<u>Payee</u>
-------------	---------------	--------------

Conflict of Interest, if any:

DATED this _____ day of _____, 2006.

Witness as to all the signatures of the
Chief and Council

Chief

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

A quorum of Council is _____

or

Witness as to the signature(s) of the
Member(s)

Member(s)

**SCHEDULE "C" TO THE KEY FIRST NATION PELLY HAYLANDS
TRUST AGREEMENT**

MEMBER RESOLUTION

Pursuant to the consent of the Eligible Members of the Key First Nation at a meeting duly convened in accordance with Article 27 of the Key First Nation Pelly Haylands Trust Agreement, held on _____, 2006.

WHEREAS:

- A. In accordance with the Key First Nation Pelly Haylands Trust Agreement (the "Trust Agreement"), [the Chief and Council or a Member or Members of the First Nation may request a distribution of the funds administered and maintained in accordance with the Trust Agreement from the Band Account for Band Development purposes or as the case may be];
- B. The Trust Agreement provides that, [prior to the First Nation making a request for distribution from the Band Account for Band Development purposes or as the case may be], a meeting of the Eligible Members (as therein defined) is to be held for the purpose of obtaining the authorization of the Eligible Members for the [include a description of the matter to be voted upon]; and
- C. A meeting of the Eligible Members was held at _____ on _____, 2006 for that purpose.

NOW THEREFORE it is certified as follows:

- 1. A meeting of the Eligible Members was held at _____ on _____, 2006 as prescribed in the Trust Agreement to obtain the authorization of the Eligible Members for the [distribution of funds from the Band Account for the purpose hereinafter described or as the case may be].
- 2. Written notice, in the form prescribed in Schedule "D" of the Trust Agreement advising of the date, time and place of the meeting, was posted at least thirty (30) days in advance of the date of the meeting in an area of the administrative offices of the First Nation to which the public have access, at such other times and in such other locations as the Chief and Council determined appropriate. A copy of that notice is attached and marked as Attachment "A".
- 3. A majority of the Chief and Council attended the meeting.
- 4. Information was provided to the Eligible Members in attendance so as to permit the Eligible Members to make an informed decision, and a poll was conducted by one of the

members of the Chief and Council in attendance of the Eligible Members to determine the decision of the Eligible Members on the matter in respect of which the meeting was called.

5. Following a count of the votes, the member of Chief and Council who conducted the poll announced the results of the vote and a majority of Eligible Members answered the question in the [affirmative or negative as the case may be].

6. The particulars of the vote were as follows:

The Resolution read as follows:

Resolution moved by _____

Resolution seconded by _____

Number of Eligible Members present at the time of the vote	_____
Number in favour of the Resolution	_____
Number opposed to the Resolution	_____
Abstentions	_____
Motion passed	_____
Motion not passed	_____

DATED this _____ day of _____, 2006.

Witness as to all the signatures of the
Chief and Council

Chief

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

A quorum of Council is _____.

**SCHEDULE "D" TO THE KEY FIRST NATION PELLY HAYLANDS
TRUST AGREEMENT**

FORM FOR NOTICE OF MEETING

TO: THE MEMBERS OF THE KEY FIRST NATION

NOTICE OF MEETING

TAKE NOTICE that a meeting of the Eligible Members of the Key First Nation will be held on _____ at _____ commencing at _____ AM/PM for the purpose of informing the Eligible Members of the [intent of the Chief and Council ("the Council") or Member or Members of the Key First Nation to make a request for a distribution from the Band Account for Band Development purposes or as the case may be].

In accordance with the Key First Nation Pelly Haylands Trust Agreement [distributions may only be made from the Band Account for Band Development purposes or as the case may be] if approved by a vote of the Eligible Members held in accordance with the requirements of the Trust Agreement. [The Band Development purpose for which the Council is requesting a distribution or as the case may be] is:

[(Note: Here to be inserted a description of the Band Development or as the case may be)]

[The amount the Council is requesting be distributed is \$_____ or as the case may be].

[A VOTE WILL BE TAKEN AT THE MEETING TO APPROVE OR DISAPPROVE THE INTENDED REQUEST OR AS THE CASE MAY BE].

VOTING PROCEDURE

A member of the Council from the First Nation will conduct the vote of the Eligible Members by a show of hands.

The question asked in the vote will be determined by simple majority of those Eligible Members who vote.

ELIGIBLE MEMBERS

All Members of the Key First Nation:

- (a) Whose name appears on the Membership List of the Key First Nation or whose name does not so appear but who has submitted an application to have his or her name so entered and that application has been approved;
- (b) Who is at least 18 years of age; and
- (c) Who have not been found mentally incompetent or otherwise unable to manage his or her own affairs by a court of competent jurisdiction as of the date of the meeting;

are eligible to vote.

QUESTIONS

Any questions concerning the proposed [distribution of funds or as the case may be] should be directed to the Council of the Key First Nation.

IF THERE IS ANY DISCREPANCIES BETWEEN THE INFORMATION CONTAINED IN THIS NOTICE OF MEETING AND ARTICLE 27 OF THE KEY FIRST NATION PELLY HAYLANDS TRUST AGREEMENT, THE PROVISIONS OF ARTICLE 27 OF THE TRUST AGREEMENT SHALL GOVERN.

DATED at _____, Saskatchewan this _____ day of _____, 2006.

FOR THE COUNCIL

SCHEDULE "E" TO THE KEY FIRST NATION PELLY HAYLANDS TRUST AGREEMENT

BAND ACCOUNT DEVELOPMENT DIRECTION

IN THE MATTER OF: THE KEY FIRST NATION PELLY HAYLANDS TRUST

TO: [Financial Institution]

In accordance with Section 22.01 of the Key First Nation Pelly Haylands Trust Agreement, you are authorized and directed to make the payment as described below from the Band Account, namely:

Payee: _____

Amount: \$ _____

Method of Payment: _____

AND FOR SO DOING, this shall be your good, sufficient and irrevocable authority.

DATED as of _____, 20__.

Chief and Council

Per: _____
Chief

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Must be signed by at least a **majority** of the Chief and Council.

SCHEDULE "F" TO THE KEY FIRST NATION PELLY HAYLANDS TRUST AGREEMENT

TRUST ACCOUNT FIRST NATION USE DIRECTION

IN THE MATTER OF: THE KEY FIRST NATION PELLY HAYLANDS TRUST

TO: CIBC TRUST CORPORATION

In accordance with Subsections 4.01(b), (c), (d) and (e) and Articles 6 and 7 of the Key First Nation Pelly Haylands Trust Agreement, you are authorized and directed to make the payment as described below from the Trust Account, namely:

Payee: _____

Amount: \$ _____

Method of Payment: _____

Description of First Nation Use: _____

AND FOR SO DOING, this shall be your good, sufficient and irrevocable authority.

DATED as of _____, 20__.

Chief and Council

Per: _____
Chief

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Must be signed by at least a **majority** of the Chief and Council.

SCHEDULE "G" TO THE KEY FIRST NATION PELLY HAYLANDS TRUST AGREEMENT

TRUST ACCOUNT INVESTMENT DIRECTION

IN THE MATTER OF: THE KEY FIRST NATION PELLY HAYLANDS TRUST

TO: CIBC TRUST CORPORATION

In accordance with Subsections 9.01(b), (c) and (d) of the Key First Nation Pelly Haylands Trust Agreement, you are authorized and directed to make the payment as described below from the Trust Account, namely:

Payee: _____

Amount: \$ _____

Method of Payment: _____

Description of Authorized Investment: _____

AND FOR SO DOING, this shall be your good, sufficient and irrevocable authority.

DATED as of _____, 20__.

Chief and Council

Per: _____
Chief

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Must be signed by at least a **majority** of the Chief and Council.

SCHEDULE "H" TO THE KEY FIRST NATION PELLY HAYLANDS TRUST AGREEMENT

TRUST ACCOUNT LAND ACQUISITION DIRECTION

IN THE MATTER OF: THE KEY FIRST NATION PELLY HAYLANDS TRUST

TO: CIBC TRUST CORPORATION

In accordance with Subsections 8.01(c)(i) and (ii) and 8.02(d) and (e) of the Key First Nation Pelly Haylands Trust Agreement, you are authorized and directed to make the payment as described below from the Trust Account, namely:

Payee: _____

Amount: \$ _____

Method of Payment: _____

Description of Land _____

AND FOR SO DOING, this shall be your good, sufficient and irrevocable authority.

DATED as of _____, 20__.

Chief and Council

Per: _____
Chief

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Per: _____
Councillor

Must be signed by at least a **majority** of the Chief and Council.

SCHEDULE "I" TO THE KEY FIRST NATION PELLY HAYLANDS TRUST AGREEMENT

RELEASE DIRECTION

IN THE MATTER OF: THE KEY FIRST NATION PELLY HAYLANDS TRUST

TO: CIBC TRUST CORPORATION

In accordance with Subsection 9.01 (g) of the Key First Nation Pelly Haylands Trust Agreement, you are authorized and directed to release, transfer and deliver the following Investment Instrument as indicated below against receipt from the indicated person of the bank draft or a certified cheque, or upon confirmed receipt by a direct deposit, wire transfer or otherwise to the Trust Account, in the amount described below, namely:

Description of Investment Instrument: _____
Method of Transfer or Delivery: _____
Effective Date: _____

Amount of Bank Draft,
Certified Cheque
or Wire Transfer: _____
Other Directions: _____

AND FOR SO DOING, this shall be your good, sufficient and irrevocable authority.

DATED as of _____, 20__.

Chief and Council

Per: _____ Chief	Per: _____ Councillor
Per: _____ Councillor	Per: _____ Councillor
Per: _____ Councillor	Per: _____ Councillor
Per: _____ Councillor	Per: _____ Councillor

Must be signed by at least a **majority** of the Chief and Council.