

**TREATY LAND ENTITLEMENT SETTLEMENT AGREEMENT**

**BETWEEN**

**HER MAJESTY THE QUEEN,  
IN RIGHT OF CANADA,  
as represented by  
the Minister of  
Indian Affairs and Northern Development**

**OF THE FIRST PART**

**-AND-**

**THE LONG PLAIN INDIAN BAND,  
(also known as  
THE LONG PLAIN FIRST NATION)  
as represented by  
its Chief and Councillors**

**OF THE SECOND PART**

**AUGUST 3, 1994**

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## TREATY LAND ENTITLEMENT SETTLEMENT AGREEMENT

THIS AGREEMENT made this 3<sup>rd</sup> day of August, A..D. 1994

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**  
as represented by  
the Minister of Indian Affairs and Northern Development

(hereinafter referred to as "Canada")

**OF THE FIRST PART**

**-AND-**

**LONG PLAIN INDIAN BAND,**  
(also known as "LONG PLAIN FIRST NATION")  
as represented by its Chief and Councillors

(hereinafter referred to as "the First Nation")

**OF THE SECOND PART**

**WHEREAS** Her Majesty the Queen, in right of Great Britain entered into a treaty, known as Treaty No. 1, with certain bands of Chippewa and Swampy Cree Indians on or about August 3, 1971;

**AND WHEREAS** Canada is the successor of Her Majesty the Queen, in right of Great Britain for the purposes of the undertakings given the Crown under the said treaty;

**AND WHEREAS** the Portage Band was one of the signatories to the said treaty;

**AND WHEREAS**, in the articles of Treaty No. 1, Canada made certain undertakings including the following:

*"And Her Majesty the Queen hereby agrees and undertakes to lay aside and reserve for the sole and exclusive use of the Indians for following tracts of land, that is to say:*

...

*for the use of the Indians of whom Oo-za-we-kwun is Chief, so much land on the south and east side of the Assiniboine, about twenty miles above the Portage, as will furnish, one hundred and sixty acres for each family of five, or in that proportion for larger or*

*smaller families ... it being understood, however, that if, at the date of the execution of this treaty there are any settlers within the bounds of any lands reserved by any band, Her Majesty reserves the right to deal with such settlers as She shall deem just, so as not to diminish the extent of the land allotted to the Indians”;*

**AND WHEREAS** Oo-za-we-kwun was Chief of the Portage Band;

**AND WHEREAS** as a result of a decision by the members of the Portage Band to split into three separate bands (of which the First Nation was one), the said treaty was revised on or about June 20, 1876 such that the constituent bands agreed, inter alia, to share the benefits promised the Portage Band by Canada under Treaty No. 1 as between themselves, including the obligation on the part of Canada to establish reserves as therein set out;

**AND WHEREAS** the said revision further provided as follows:

*“and it is further agreed that a Reserve shall be assigned to the Band, of which Short Bear is Chief, by Her Majesty’s said Commissioner or special Commissioner on the north side of the Assiniboine River, in the vicinity of the Long Plain ...*

*... it is hereby agreed that the separate Reserves to be granted to the said three Bands shall contain an amount of land equal to that stipulated to be given to the original Band, as such land shall be assigned to each Band in proportion to their relative numbers so that each Band shall receive their fair and just share of the said land ...”;*

**AND WHEREAS** in 1876 a reserve was set aside for the use and benefit of the First Nation on the north side of the Assiniboine River in the vicinity of the Long Plain, there nevertheless remains an obligation on the part of Canada to provide the remaining lands to establish reserves for the use and benefit of the First Nation, as one of the successor bands to the Portage Band, as provided for in the Per Capita Provision (as that term is hereinafter defined);

**AND WHEREAS** Canada entered into negotiations with the First Nation with a view to revolving its claim for its remaining land entitlement under the Per Capita Provision;

**AND WHEREAS** paragraph 11 of Schedule 1 to the Constitution Act, 1930, and of the Schedule to the Manitoba Natural Resources Act, S.M. 1930, C. 30 provides as follows:

*“All lands included in Indian reserves within the province, including those selected and surveyed but not yet confirmed, as well as those confirmed, shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, and the province will from time to time, upon the request of the Superintendent General of Indian Affairs, set aside, out of the unoccupied Crown lands hereby transferred to its administration, such further areas as the said Superintendent General may, in agreement with the Minister of Natural Resources of the Province, select as necessary to enable Canada to fulfil its obligations under the treaties with the Indians of the province, and such areas shall thereafter be administered by Canada in the same way in all respects as if they had never passed to the Province under the provisions hereof.”*

**AND WHEREAS** Canada has also entered into negotiations with Manitoba with a view to resolving Manitoba’s obligations to Canada under the foregoing provision of the Constitution Act, 1930 insofar as same relates to Canada’s obligations to the First Nation under the Per Capita Provision and an agreement in this regard is anticipated to be concluded in the immediate future;

**AND WHEREAS** the parties recognize that there is minimal unoccupied provincial Crown land in the area in and around the existing reserve of the First Nation or in its traditional territory and that, in the result, the fulfilment of Manitoba’s obligation to Canada under paragraph 11 of Schedule 1 to the Constitution Act, 1930 and of Canada’s undertaking and obligations to the First Nation under the Per Capita Provision can only reasonably be addressed by providing the First Nation with sufficient funds to acquire land;

**AND WHEREAS** it is the intent and purpose of this Agreement to achieve a full and final settlement of the matter of the remaining amount of land to be provided to the First Nation as provided for in the Per Capita Provision and all other claims relating thereto to the extent provided for herein but not to affect any other treaty rights or other claims which the First Nation may have;

**AND WHEREAS** the parties have agreed to fulfil their respective obligations under this Agreement honourably and in good faith;

**NOW THEREFORE** Canada and the First Nation covenant and agree as follows:

## ARTICLE 1: DEFINITIONS

1.1 In this Agreement:

- (a) **“Council”** means the Council of the First Nation as that term is defined in the Indian Act, R.S.C. 1985 c. I-5 and amendments thereto;
- (b) **“Crown Reservations”** means all reservations normally reserved to Manitoba out of every disposition of provincial Crown land under The Crown Lands Act, R.S.M. 1987 c. C-340 or under any other statute, which interests include but are not limited to:
  - (i) in the case of land extending to the shores of any navigable water or inlet thereof:
    - A. a strip of land one and one-half chains (being 99 feet) in width, measured from the ordinary highwater mark; and
    - B. the public right of landing from, and mooring, boats and vessels so far as is reasonably necessary;
  - (ii) in the case of land bordering a body of water:
    - A. the bed of the body of water below the ordinary high water mark; and
    - B. the public right of passage over a portage, road, or trail in existence at the date of the disposition;
  - (iii) sand, gravel, mines and minerals, together with the right to enter, locate, prospect, mine for, and remove minerals;
  - (iv) the right to, and use of, land necessary for the protection and development of adjacent water power; and
  - (v) the right to raise or lower the levels of a body of water adjacent to the land, regardless of the effect upon the land, but subject to the provisions of Section 13 of The Crown Lands Act;

- (c) **“Eligible Members”** means all members of the First Nation who are over the age of 18 years, registered as “Indians” within the meaning of the *Indian Act*, RSC 1985, c. I-5 (as amended), and have not been found mentally incompetent or otherwise unable to manage their own affairs by a court of competent jurisdiction as of the dates of the votes referred to in Articles 2.3 (e), 3.4 (a), or 13.1 as the context may require;
- (d) **“Federal Payment”** means the funds to be paid by Canada to the First Nation pursuant to the terms of this Agreement other than pursuant to Articles 7.1 and 8.1.
- (e) **“ICC”** means the Indian Claims Commission or any body established in substitution for or to succeed the Indian Claims Commission;
- (f) **“Loss of Use”** means all claims of whatever kind or nature whatsoever the First Nation has had, has now, or may hereafter have relating to or arising from the fact that the Portage Band, the First Nation, and the other successors to the Portage Band did not receive the remaining land to which it was or any members of the First Nation were entitled under the Per Capita Provision;
- (g) **“Manitoba”** means Her Majesty the Queen in right of Manitoba;
- (h) **“Minister”** means the Minister of Indian Affairs and Northern Development;
- (i) **“Municipal Tax Loss”** means any claims of any city, town, village, municipality, or local government district for compensation based on the premise that the setting apart of any lands as a reserve for the use and benefit of the First Nation will result in a loss of annual tax revenue (other than school and hospital taxes), net of any replacement revenues, reduced cost of local service delivery, and any contribution or recovery of capital assets;
- (j) **“Per Capita Provision”** means the following provision contained in Treaty No. 1:

*“And Her Majesty the Queen hereby agrees and undertakes to lay aside the reserve for the sole and exclusive use of the Indian the following tracts of land, that is to say:*

...

*for the use of the Indians of whom Oo-za-we-kwun is Chief, so much land on the south and east side of the Assiniboine, about twenty miles above the Portage, as will furnish one hundred and sixty acres for each family of five, or in that proportion for larger or smaller families ... it being understood, however, that if, at the date of the execution of this treaty there are any settlers within the bounds of any lands reserved by any band, Her Majesty reserves the right to deal with such settlers as She shall deem just, so as not to diminish the extent of the land allotted to the Indians”*

and the following provision of the revision to Treaty No. 1 made on or about June 20, 1876:

*“and it is further agreed that a Reserve shall be assigned to the Band, of which Short Bear is Chief, by Her Majesty’s said Commissioner or special Commissioner on the north side of the Assiniboine River, in the vicinity of the Long Plain ...*

*... it is hereby agreed that the separate Reserves to be granted to the said three Bands shall contain an amount of land equal to that stipulated to be given to the original Band, and such land shall be assigned to each Band in proportion to their relative numbers so that each Band shall receive their fair and just share of the said land ...”;*

- (k) **“Reserve”** means a Reserve as that term is used in the *Indian Act*, R.S.C. 1985, c. I-5;
- (l) **“Third Party Interests”** means:
  - (i) any right or interest in respect of lands that have been acquired by the First Nation and which the First Nation wishes Canada to set apart as Reserve pursuant to Article 6 and includes, without limitation, any agreement to purchase, option to purchase, lease, profit a prendre, option to lease, easement, permit, or license of any kind or nature

whatsoever the holder of which interest is not Canada, Manitoba, or the First Nation; or

- (ii) any right of access to explore or exploit the mines and minerals under such lands; or
- (iii) Municipal Tax Loss (if any);
- (m) **“TLE Committee”** means Treaty Land Committee, Inc. which represents certain Indian Bands which signed or adhered to Treaty Nos. 1, 3, 4, 5, 6, and 10;
- (n) **“Trust Capital Account”** means the account to be established by the Trustees pursuant to the Trust Agreement;
- (o) **“Trust Agreement”** means an agreement to be entered into concurrently with this Agreement by the First Nation and the Trustees, the form of which agreement is set out in Schedule “A” attached to this Agreement; and
- (p) **“Trustees”** those persons appointed as such pursuant to the Trust Agreement.

## **ARTICLE 2: FEDERAL PAYMENT**

- 2.1 Subject to the terms of this Agreement, Canada shall provide the First Nation with a Federal Payment of \$16,500,000.00, which payment, if and to the extent same comes due as hereinafter provided, shall be made in two instalments.
- 2.2 Within 30 days of this Agreement coming into force, but subject to Article 14.2, Canada shall provide the First Nation with the first instalment of the Federal Payment in the amount of \$8,400,000.00.
- 2.3 Subject to Article 14.2, within 30 days of the claim of the First Nation for Loss of Use being:
  - (a) settled by the parties as provided for in Article 3.3; or
  - (b) abandoned by the First Nation as provided for in Article 3.4; or
  - (c) rejected by Canada as provided for in Article 3.5,

Canada shall provide the First Nation with the second instalment of the Federal Payment in the amount of \$8,100,000.00 (subject to any reduction as a result of Manitoba contributing land suitable to the First Nation and Canada as part of this settlement to satisfy its obligations under paragraph 11 of Schedule 1 of the Constitution Act, 1930), provided that such second instalment of the Federal Payment shall not be payable to the First Nation by Canada;

- (d) before December 1, 1994; or
  - (e) at all in the event the First Nation commences legal proceedings in a court of competent jurisdiction against Canada or Manitoba seeking damages or other relief in respect of a claim for Loss of Use provided the decision to commence which proceeding has been ratified by the Eligible Members in accordance with the ratification procedure set out in Schedule "B" (with such amendments as the circumstances may reasonably require).
- 2.4 The First Nation hereby irrevocable undertakes and agrees that any legal proceeding commenced against Canada or Manitoba seeking damages or other relief in respect of a claim for Loss of Use which has not been ratified as provided in Article 2.3 (e) shall be deemed void ab initio and the First Nation hereby irrevocably consents to the granting of any application or motion by Canada or Manitoba or any other person for an order striking out the pleadings or otherwise preventing such proceedings from continuing.

### **ARTICLE 3: PROCESS FOR DEALING WITH ALLEGED LOSS OF USE**

- 3.1 The parties affirm that it is the intent and purpose of this Agreement to achieve a full and final settlement of the matter of the amount of land to be provided to the First Nation as provided for in the Per Capita Provision and all other claims relating thereto, provided that the First Nation Reserves the right to consider a potential claim for Loss of Use as herein provided.
- 3.2 The parties undertake and agree that any claim the First Nation wishes to advance for Loss of Use shall be advanced and addressed in the manner and within the timeframe set out in this Article.

- 3.3 (a) On or before December 1, 1994, the First Nation may submit its claim for Loss of Use to Canada, particularized in sufficient detail as to permit Canada to review such claim on its merits.
- (b) Canada shall, within six months of receipt of such submission of the First Nation, review same and advise the First Nation as to whether Canada is prepared to recognize a lawful obligation to compensate the First Nation for its claim for Loss of Use.
- (c) In the event:
- (i) Canada recognizes a lawful obligation to compensate the First Nation for its claim for Loss of Use; or
  - (ii) Canada refuses to recognize such a lawful obligation, the First Nation submits such claim to the ICC for the purpose of seeking a recommendation on the issue of whether such lawful obligation exists, the ICC recommends Canada proceed to recognize same, and Canada accepts such recommendation

the parties shall commence negotiations within 30 days thereafter to determine the quantum of the claim of the First Nation for Loss of Use.

- (d) In the event Canada is prepared to recognize a lawful obligation to compensate the First Nation for its claim for Loss of Use and the parties are unable to reach consensus as to the quantum of such claim by:
- (i) June 1, 1996; or
  - (ii) six months after the date the ICC renders its recommendation under Article 3.3 (c) (ii),

which date shall last occur, the First Nation may submit such claim to the ICC for the purpose of seeking a recommendation on the issue of the quantum of same.

- (e) In the event Canada accepts the recommendation of the ICC on the issue of the quantum of the claim of the First Nation for Loss of Use, the parties shall conclude a settlement on that basis.

3.4 The First Nation shall be deemed to have abandoned its claim for Loss of Use in the event the First Nation:

- (a) provides Canada with a duly executed resolution by the Council to the effect that the First Nation has abandoned same, together with evidence that such decision has been ratified by a majority of the Eligible Members of the First Nation voting, and of those voting, a majority voting in favour, of such decision in a ratification process held in accordance with the procedure set out in Schedule "B" (with such amendments as the circumstances reasonably require); or
- (b) fails to submit its claim for Loss of Use to Canada particularised in sufficient detail as to permit Canada to review such claim on its merits by December 1, 1994; or
- (c) fails to submit its claim to the ICC on the issue of whether a lawful obligation on Canada to compensate the First Nation for its claim for Loss of Use exists:
  - (i) within eight months of the date on which it submits its claim for Loss of Use to Canada particularized in sufficient detail as to permit Canada to review such claim on its merits, in the event Canada fails to respond to same within six months of such date; or
  - (ii) within 60 days of the date Canada advises the First Nation it is not prepared to recognize a lawful obligation to compensate the First Nation for its claim for Loss of Use; or
- (d) submits its Loss of Use claim to the ICC and the ICC recommends that Canada not recognize a lawful obligation to compensate the First Nation for its claim for Loss of Use; or
- (e) fails to submit the claim to the ICC on the issue of quantum within 60 days of the later of:
  - (i) June 1, 1996; or
  - (ii) six months after the date the ICC renders its recommendation under Article 3.3. (c) (ii)

in the event Canada does recognize a lawful obligation to compensate the First Nation for its claim for Loss of Use but the parties are unable to reach consensus as to the quantum of such claim by the later of those two dates; or

- (f) fails to submit the claim to the ICC on the issue of quantum within 60 days of Canada advising the Council that it is not prepared to accept a recommendation of the ICC under Article 3.3 (c) (ii).

3.5 Canada shall be deemed to have rejected the claim of the First Nation for Loss of Use in the event Canada:

- (a) fails to respond to the submission of the First Nation within six months of receipt of same, provided such submission is particularized in sufficient detail as to permit Canada to review such claim on its merits; or
- (b) advises the Council in writing at any time that it is not prepared to recognize a legal obligation to compensate the First Nation for its claim for Loss of Use:
  - (i) following the submission of the claim to Canada by the First Nation; or
  - (ii) following the recommendation of the ICC that the claim should be accepted for negotiation in the event the First Nation makes a submission to the ICC on the merits of the claim; or
  - (iii) following the recommendation of the ICC on the issue of quantum in the event the First Nation makes a submission to the ICC on that issue; or
- (c) fails to respond within 30 days to a recommendation of the ICC made pursuant to Article 3.3 (c) (ii).

3.6 It is expressly recognized by the First Nation that:

- (a) it is Canada's position that no claim for Loss of Use exists in law; and
- (b) no recommendation of the ICC made under this Article is legally binding in Canada.

3.7 The payment of the Federal Payment by Canada and the acceptance of same by the First Nation shall be without prejudice to the positions either may advance with respect to the Loss of Use claim and, without limiting the generality of the foregoing, Canada shall be free to argue that no such claim exists or, in the alternative that such claim, if it exists, should

properly be based on the First Nation not receiving an additional 1,877 acres to which it was entitled under the Per Capita Provision in 1876.

#### **ARTICLE 4: SET OFF BY CANADA**

- 4.1 In the event the First Nation and Canada settle the First Nation's claim for Loss of Use, as a result of the process set out in Article 3 and, as a result, it is agreed that compensation is payable by Canada to the First Nation in respect of Loss of Use in an amount:
- (a) greater than \$16,500,000.00 Canada shall be entitled to set off against such quantum the sum of \$13,500,000.00; or
  - (b) less than or equal to \$16,500,000.00, Canada shall be entitled to set off against such quantum the sum of \$16,000,000.00, provided that in no case shall the First Nation be obliged to repay any amount of same to Canada.
- 4.2 In the event the claim of the First Nation is dealt with in any other way than in the manner described in Article 3 and in the result, an order is made in favour of the First Nation and against Canada:
- (a) where Canada has only paid to the First Nation the first instalment of the Federal Payment, Canada shall be entitled to set off the sum of \$5,650,000.00 against the quantum of any amount it is ordered to pay to the First Nation; or
  - (b) where Canada has paid to the First Nation both instalments of the Federal Payment, Canada shall be entitled to set off the sum of \$13,500,000.00 against the quantum of any amount it is ordered to pay to the First Nation.
- 4.3 In the event the First Nation becomes entitled to the payment of any further compensation for its claim for Loss of Use over and above the sum of \$16,500,000.00 the First Nation hereby irrevocably directs Canada to make such payment into the Trust Capital Account.

#### **ARTICLE 5: USE OF THE SETTLEMENT FUND**

- 5.1 The First Nation hereby irrevocably directs Canada that both instalments of the Federal Payment referred to in Article 2 shall be paid into the Trust Capital Account.
- 5.2 The First Nation agrees and undertakes to ensure that the Trust Agreement shall at all times provide that unless and until the total amount of land set apart for its use and benefit as Reserve has been increased by 4,169 acres (including all mines and minerals), no portion of the Federal Payment shall be released to the First Nation by the Trustees except for the purposes of permitting the First Nation to:
- (a) purchase or otherwise acquire the said land with the intention of having that land set apart as Reserve by Canada in accordance with Article 6 (including, without limitation, dealing with such Third Party Interests as may affect such lands); and
  - (b) repay the amount set out in Article 7.3.
- 5.3 Upon the total amount of land set apart for the use and benefit of the First Nation as Reserve being increased by 4,169 (including all mines and minerals), the Federal Payment shall be utilised in accordance with the Trust Agreement, subject to Article 5.4.
- 5.4 In the event the First Nation receives a distribution of the Federal Payment (or any portion thereof) from the Trust Capital Account, the First Nation agrees that no such distribution, nor any portion thereof shall be used either directly or indirectly for a per capita distribution to any member of the First Nation or any other person.
- 5.5 It is expressly agreed by the First Nation that the Federal Payment shall be conclusively deemed not to be “Indian monies” within the meaning of the *Indian Act* and it is further expressly acknowledged and agreed by the First Nation that, in making payment of the Federal Payment in the manner hereinbefore set forth, Canada is relieved of any and all obligations or liability, whether fiduciary or otherwise, relating to or arising from the deposit, use, management, withdrawal, administration, or any other dealing with respect to the Federal Payment pursuant to the Trust Agreement.

## **ARTICLE 6: RESERVE LANDS**

- 6.1 The First Nation undertakes and agrees that it shall acquire and request Canada to set apart for its use and benefit as Reserve a minimum 4,169 acres of land (including all mines and minerals), which lands shall be acquired from Manitoba or from private owners with advances of the Federal Payment by the Trustees to the First Nation pursuant to the Trust Agreement.
- 6.2 Subject to Article 6A, Canada agrees to take all necessary steps to set apart any amount of land to be acquired by the First Nation up to 26,437 acres but in any event not less than 4,169 acres, as Reserve, within the meaning of the *Indian Act*, for the use and benefit of the First Nation, provided that all of the following conditions are met with respect to such lands:
- (a) such lands are located within the traditional territory of the First Nation;
  - (b) the First Nation has delivered to Canada a Band Council Resolution duly executed by the Council advising of such intent together with:
    - (i) a map on which the land has been clearly identified, where the land is under the administration and control of Manitoba; or
    - (ii) in all other cases, all other documents necessary to permit Canada to set same apart as a Reserve for the use and benefit of the First Nation;
  - (c) the setting apart of such lands as Reserves satisfies the “*Additions to Reserve Policy*” established by Canada as that policy (or any policy which replaces same) exists on the date this Agreement comes into force or on the date such lands are acquired by the First Nation, whichever version of such policy is, in the opinion of the First Nation, less onerous;
  - (d) the Council of the First Nation, the Surveyor General of Canada, and the Director of Surveys (Manitoba) each approve a survey of such lands;
  - (e) all costs of transferring administration and control of such additional lands to Canada are paid for by the First Nation, except to the extent provided in Article 8.1;

- (f) Manitoba passes the appropriate Order-in-Council transferring administration and control of such lands to Canada, in the event such land is under the administration and control of Manitoba;
  - (g) Manitoba transfers administration and control of Crown Reservations to Canada, in the event same have been Reserved to Manitoba on any of the such lands;
  - (h) Canada accepts the transfer of administration and control of such lands for the purpose of setting them aside as Reserve for the use and benefit of the First Nation;
  - (i) such Third Party Interests as are affected by the setting apart of such lands as Reserve are satisfied in a manner acceptable to Canada, Manitoba and the First Nation, it being understood and agreed that in no event shall Canada be responsible for liable for any costs incurred by Manitoba or the First Nation in connection with removing, discharging, or accommodating such Third Party Interests; and
  - (j) the Governor-in-Council passes the appropriate Order-in-Council setting the lands aside as a Reserve for the use and benefit of the First Nation.
- 6.3 Where the First Nation has acquired land and requested Canada to set same apart as Reserve for its use and benefit, Canada undertakes:
- (a) to consider the land within the context of the *“Additions to Reserve Policy”* (or such other policy as may replace same) within a reasonable period of time after being advised by Manitoba that it concurs with the selection; and
  - (b) to proceed with due diligence and to use its best efforts to set the land apart as Reserve for the use and benefit of the First Nation in the event Canada is thereafter prepared to set the lands apart as Reserve for the First Nation, subject to the conditions set out in Article 6.2 being satisfied in full.
- 6.4 The acquisition of land by the First Nation and the setting apart of same as Reserve by Canada under Article 6.2 may take place over a period of time and may be accomplished by the acquisition of a series of individual parcels. In such case, it is understood and agreed that the provisions of Article 6.2 apply to and must be satisfied in full with respect to each and every such parcel so acquired.

- 6.5 It is understood and agreed that for the purposes of the “*Additions to Reserve Policy*”, all lands acquired by the First Nation and which the First Nation requests Canada to set apart as Reserve for its use and benefit up to 26,437 acres shall be deemed to be lands acquired by the First Nation pursuant to a “Treaty Land Settlement Agreement”, provided such lands are acquired within 20 years from the date this Agreement comes into force.
- 6.6 The First Nation hereby agrees by and through its Council to execute such Band Council Resolutions as may, from time to time, be required confirming its consent to the Minister issuing such Third Party Interest dispositions pursuant to the *Indian Act* or the *Federal Real Property Act* as may be satisfactory to Canada, Manitoba and the First Nation and as are necessary or required prior to First Nation and as are necessary or required prior to and lands affected by such Third Party Interests being set apart for its use and benefit pursuant to Article 6.2.
- 6.7 Notwithstanding any provision of this Agreement but subject to Articles 6.8 and 8.1, it is understood that the First Nation will bear:
- (a) all costs paid or payable by the First Nation in relation to or arising out of the acquisition of any lands the First Nation desires Canada to set apart as Reserve pursuant to Article 6.2 including, without limitation, the purchase price paid or payable to the vendor of such lands, real estate agent or broker commission, legal fees and disbursements, applicable taxes, land search and transfer costs; and
  - (b) all costs associated with the identification of such land and the approval of the acquisition of same by the First Nation; and
  - (c) all costs associated with settling or accommodating Third Party Interests.
- 6.8 Notwithstanding Articles 6.2 (c), 6.2 (i) and 6.7 (c), but subject to Article 6A, where the First Nation has made a reasonable offer to settle or accommodate a claim for Municipal Tax Loss and such offer has been rejected, the Minister may, upon review and in the Minister’s sole discretion, decide to waive the requirement that such claim be settled or accommodated before the lands to which such claim relates are set apart as Reserve for the use and benefit of the First Nation and seek the appropriate order from the Governor-in-Council notwithstanding such claim is unresolved.

- 6.9 The First Nation recognizes and affirms that nothing in this Agreement constitutes:
- (a) any representation or warranty of any kind or nature whatsoever by Canada that the Federal Payment will provide the First Nation with sufficient funds to acquire 26,437 acres of land and for the other attendant purposes herein; or
  - (b) any undertaking or commitment by Canada to provide the First Nation with any funds, other than the amounts which may be expressly payable by Canada under the terms of this Agreement for the purpose of acquiring land or for the other attendant purposes herein, in the event the Federal Payment does not provide the First Nation with sufficient funds to acquire 26,437 acres of land and for such other attendant purposes.

## **ARTICLE 6A: IMPLEMENTATION ISSUES**

- 6A.1 The parties further acknowledge that Canada, Manitoba and the TLE Committee are engaged in a process which, inter alia, is intended to address matters which are necessarily incidental to the implementation of the provisions of Article 6.2 of this Agreement.
- 6A.2 While the First Nation is not one of the Indian Bands represented by the TLE Committee, the parties agree that the resolution of any matters which Canada, Manitoba, and the TLE Committee negotiate and agree upon which deal with or are necessarily incidental to the implementation of the provisions of Article 6.2 of this Agreement shall, with the consent of the parties, be incorporated as and become terms of this Agreement.
- 6A.3 The parties further agree that:
- (a) until such matters are addressed in the manner hereinbefore set forth; or
  - (b) in the event Canada, Manitoba, and the TLE Committee fail to reach an agreement on such matters; or
  - (c) in the event Canada, Manitoba, and the TLE Committee do not deal with one or more matters relating or necessarily incidental to the implementation of the provisions of Article 6.2 or this Agreement,

the implementation of the provisions of Article 6.2 of this Agreement shall be carried out within the context of the existing policies of Canada and Manitoba.

## **ARTICLE 7: SETTLEMENT COSTS**

- 7.1 Canada agrees to reimburse the First Nation for negotiation, ratification, implementation and legal costs and disbursements in the sum of \$865,000.00 as full and final settlement of all claims by the First Nation and liability of Canada for costs relating to this Agreement, payment to be made at the time of payment of the Federal Payment.
- 7.2 The First Nation hereby authorizes and directs Canada to set off from the total amount of the costs determined to be payable under Article 7.1, the sum of \$865,000.00 being the total of all amounts borrowed by the First Nation from Canada for the purposes of negotiation, ratification, implementation and legal costs and disbursements relating to this Agreement.
- 7.3 The First Nation hereby acknowledges that its solicitors have foregone payment of the amount of \$500,000.00 advanced by Canada by way of the loan to the First Nation described in Article 7.2 and that its solicitors have permitted the First Nation to use such funds to purchase lands and for other costs in anticipation of this Agreement being concluded. The First Nation hereby acknowledges that the said sum of \$500,000.00 is therefore to be repaid to its solicitors by means of a disbursement from the Trust Capital Account and hereby undertakes and agrees to ensure that the Trust Agreement so provides.

## **ARTICLE 8: SURVEY AND ENVIRONMENTAL SCREENING COSTS**

- 8.1 Canada further agrees that it will pay all reasonable costs incurred in connection with the environmental screening (as required by the *"Additions to Reserve Policy"*) and surveying of lands which are to be set apart as Reserve for the First Nation pursuant to Articles 6.2 of this Agreement, provided that Canada's obligation hereunder shall expire fifteen years from the date this Agreement comes into force.

## **ARTICLE 9: RELEASE**

9.1 In consideration of this Agreement and in particular the covenants contained therein, the First Nation, on its own behalf and on behalf of all past, present, and future members of the First Nation, does hereby:

- (a) cede, release and surrender to Canada all claims, rights, title and interest it ever had, now has or may hereafter have by reason of or in any way arising out of the Per Capita Provision; and
- (b) release and forever discharge Canada, Her servants, agents and successors from:
  - (i) all obligations imposed on, and promises and undertakings made by Canada relating to land entitlement under the Per Capita Provision; and
  - (ii) without restricting the generality of sub-article (i), all claims of whatever kind or nature whatsoever the First Nation has had, has now, or may hereafter have relating to or arising from the fact that the Portage Band, the First Nation, and the other successors to the Portage Band did not receive the remaining land to which it was or any members of the First Nation were entitled under the Per Capita Provision; and
  - (iii) further, without limiting the generality of sub-article (i), all other claims of any kind or nature whatsoever against Canada based on membership of or in the First Nation including past, present, or future members of the First Nation or their descendants with respect to the Per Capita Provision,

and waives any rights, actions or causes of actions, claims, demands, damages, costs, expenses, liability and entitlements of whatever nature and kind whether known or unknown which it or any of its members past, present or future, ever had, now have, or may hereafter have against Canada by reason of or in any way arising out of the Per Capita provision relating to land entitlement, it being understood, for greater certainty that the "Per Capita Provision" means the following provision of Treaty No. 1:

*"And Her Majesty the Queen hereby agrees and undertakes to lay aside and Reserve for the sole and exclusive use of the Indians the following tracts of land, that is to say:*

...  
*for the use of the Indians of whom Oo-za-we-kwun is Chief, so much land on the south and east side of the Assiniboine, about twenty miles above the Portage, as will furnish one hundred and sixty acres for each family of five, or in that proportion for larger or smaller families ... it being understood, however, that if, at the date of the execution of this treaty there are any settlers within the bounds of any lands Reserved by any band, Her Majesty Reserves the right to deal with such settlers as She shall deem just, so as not to diminish the extent of the land allotted to the Indians”*

and the following provisions of the revision thereto which was made on or about June 20, 1876:

*“and it is further agreed that a Reserve shall be assigned to the Band, of which Short Bear is Chief, by Her Majesty’s said Commissioner or special Commissioner on the north side of the Assiniboine River, in the vicinity of the Long Plain ...*

*... it is hereby agreed that the separate Reserves to be granted to the said three Bands shall contain an amount of land equal to that stipulated to be given to the original Band, and such land shall be assigned to each Band in proportion to their relative numbers so that each Band shall receive their fair and just share of the said land ...”;*

and

- (c) release and forever discharge Canada, Her servants, agents and successors from any and all obligations or liability, whether fiduciary or otherwise, relating to or arising from the deposit, use, management, administration, withdrawal, or any other dealing with respect to the Federal payment pursuant to the Trust Agreement or the operation of the Trust Capital Account or any actions of the Trustees and waives any rights, actions or causes of actions, claims, demands, damages, costs, expenses, liability and entitlements of whatever nature and kind whether known or

unknown which it or any of its members past, present or future, ever had, now have, or may hereafter have against Canada by reason of or in any way arising out the deposit, use, management, administration, withdrawal, or any other dealing with respect to the Federal Payment pursuant to the Trust Agreement or the operation of the Trust Capital Account or any actions of the Trustees.

- 9.2 Furthermore, it is understood and agreed by the parties that this Agreement, and in particular the covenants contained herein, represent full and final satisfaction of all obligations or undertakings of Canada relating to land entitlement contained in the Per Capita Provision, all expenses incurred by the First Nation in dealing with Third Party Interests as affect lands the First Nation has acquired and desires to have Canada set apart for its use and benefit as Reserve under Article 6, and all manner of costs, legal fees, travel and expenses expended by the First Nation or its representatives in relation thereto.
- 9.3 The First Nation further undertakes and agrees not to assert any cause of action, action for a declaration, claim or demand of whatever kind or nature which it ever had, now has or may hereafter have against Canada relating to land entitlement pursuant to the Per Capita Provision, the administration of the Federal Payment pursuant to the Trust Agreement, the operation of the Trust Capital Account or any actions of the Trustees.
- 9.4 Canada further agrees that it shall not rely on the provisions of Article 9.1 as such provisions relate to any claim the First Nation may have for Loss of Use until:
- (a) the First Nation's claim for Loss of Use has been resolved in accordance with Article 3; and
  - (b) payment by Canada of the second instalment of the Federal Payment referred to in Article 2.3, in the event such instalment becomes payable under the provisions of that Article.
- 9.5 It is understood and agreed that, notwithstanding Article 9.4, in the event the First Nation commences legal proceedings in respect of a claim for Loss of Use before a court of competent jurisdiction prior to such claim being resolved in accordance with Article 3, the releases hereby given may be relied upon by Canada immediately in their entirety, provided the decision to commence such proceeding has been ratified by the Eligible Members in accordance with the ratification procedure set out in Schedule "B" (with such amendments as the circumstances may reasonably require).

9.6 It is understood and agreed that the releases herein given are without prejudice to any claims or grievances the First Nation may have regarding Canada's obligations, or the performance or non-performance thereof, other than claims or grievances relating to land entitlement under the Per Capita Provision and without limiting the generality of the foregoing, such releases are without prejudice to:

(a) any claim under the following provision of Treaty No.1:

*“And Her Majesty the Queen hereby agrees and undertakes to lay aside and Reserve for the sole and exclusive use of the Indians the following tracts of land, that is to say:*

*...  
for the use of the Indians of whom Oo-za-we-kwun is Chief, ... reserving also a further tract enclosing said Reserve to comprise an equivalent to twenty-five square miles of equal breadth, to be laid out round the Reserve ...”*

and as such provision was amended in the revision of Treaty No. 1 dated July 20, 1876, except to the extent set out in Article 9.7; or

(b) any claim arising from a verbal exchange between the Lieutenant Governor of Manitoba Stuart Archibald and one Wa-sus-koo-koon of the Pembina Band during the negotiations leading up to the signing of Treaty No 1, reported in *The Manitoban* on August 15, 1871 as follows:

**“Wa-sus-koo-koon -**

*‘I understood thoroughly that every 20 people get a mile square; but if an Indian with a family of five, settles down, he may have more children. Where is their land?’*

**“His Excellency -**

*‘Whenever his children get more numerous than they are now, they will be provided for further West. Whenever the reserves are found too small the Government will sell the land, and give the Indians land elsewhere.’*

except to the extent set out in Article 9.8; or

- (c) any right, claim, or action in respect of any improper surrender, alienation, or other disposition by Canada of reserve lands set apart for the use and benefit of the Portage Band or the First Nation

it being understood and agreed that nothing herein constitutes an admission by Canada of the validity of any of the grievances the First Nation alleges it has, as set out above or otherwise.

- 9.7 Notwithstanding Article 9.6, the First Nation acknowledges that 5,577.0 acres of land has been set apart for its use and benefit as Reserve by Canada pursuant to the provision of Treaty No. 1 (and the revision thereto dated July 20, 1876) set out in Article 9.6 (a).
- 9.8 In the event the First Nation advances a claim based on the verbal exchange described in Article 9.6 (b) which is validated or otherwise accepted by Canada or Canada should be held liable in respect of same by a court of competent jurisdiction, Canada shall be entitled to set off from any amount which may be agreed or adjudged to be payable to the First Nation in respect of same the amount of the Federal Payment to the extent it is agreed or adjudged that such claim (or any portion thereof):
  - (a) arises out of or by virtue of the Per Capita Provision; or
  - (b) would otherwise result in the First Nation being compensated for such claim (or any portion thereof) twice having regard to the provisions of this Agreement and the basis upon which same was reached.

## **ARTICLE 10: INDEMNITY**

- 10.1 The First Nation hereby agrees to indemnify and forever save harmless Canada from all manner of suits, actions, causes of action, claims, demands, damages, costs or expenses, initiated, made or incurred after this Agreement, whether known or unknown, against Canada made by the First Nation or any person, including any heirs, successors or permitted assigns of such person ever had, now has or may hereafter have against Canada and including any past, present or future claims against Canada based on membership in the First Nation of past, present, or future members of the First Nation or their descendants relating to the subject matter of this Agreement (including, without limitation, the Trust Agreement, the actions of the Trustees, and the operation of the Trust Capital Account).

10.2 If Canada should be held liable as a result of a judgment obtained in a legal action taken by the First Nation, its successors or any persons whomsoever, the First Nation acknowledges that Canada may resort to section 4(2) of the *Indian Act*, with respect to section 89 of the *Indian Act* for the purpose of recovering from the First Nation any judgment against Canada to satisfy the indemnity provided for in Article 10.1.

## **ARTICLE 11: FURTHER ASSURANCES**

11.1 The parties hereto covenant each with the other to do such things and to execute such further documents and take all necessary measures to carry out and implement the terms of this Agreement; and the First Nation hereby authorizes, empowers and directs its respective present Council and succeeding Councils to act for and on its behalf in executing such documents and taking such further necessary measures to carry out and implement the terms, intent and meaning of this Agreement.

## **ARTICLE 12: ENUREMENT**

12.1 This Agreement enures to the benefit of and is binding upon Her Majesty the Queen in the Right of Canada, Her heirs, successors and permitted assigns and on the First Nation, its heirs, successors and permitted assigns and on all past, present, and future members of the First Nation.

## **ARTICLE 13: APPROVALS**

13.1 The parties confirm that:

- (a) this Agreement; and
- (b) the Trust Agreement

have all been ratified by the Eligible Members in a ratification process held in accordance with the definitions and procedures set out in Schedule "B" attached hereto.

13.2 The parties further confirm that this Agreement has been approved by the appropriate authorities of Canada.

## ARTICLE 14: COMING INTO FORCE

14.1 This Agreement shall come into force and be binding upon the parties hereto on the date upon which the last of all of the following events occur:

- (a) execution of the Trust Agreement by the First Nation and establishment of the Trust Capital Account by the Trustees; and
- (b) provision by the financial institution at which the Trust Capital Account is established of written confirmation to Canada that:
  - (i) it is in possession of an executed copy of the Trust Agreement;
  - (ii) the Trust Capital Account has been established and the agreement between the financial institution and the Trustees governing the operation of same is consistent with the provisions of the Trust Agreement; and
  - (iii) it meets the definition of an eligible financial institution for the purposes of the Trust Agreement;

and advice to Canada as to full particulars as to where Canada should direct payment of Federal Payment in accordance with the provisions of this Agreement; and

- (c) execution of an agreement between Canada and Manitoba leading to the resolution of Manitoba's obligations to Canada under paragraph 11 of Schedule 1 of the Constitution Act, 1930 insofar as same relates to Canada's obligations to the First Nation under the Per Capita Provision; and
- (d) provision by the First Nation to Canada of a Certificate of Independent Financial Advice in a form satisfactory to Canada executed by a qualified financial advisor certifying that such financial advisor has been retained by and has advised the First Nation of its options, rights and obligations in investing the Federal Payment and in establishing the Trust Agreement and the Trust Capital Account; and
- (e) provision by the First Nation to Canada of a Certificate of Independent Legal Advice in a form satisfactory to Canada

executed by the First Nation's solicitor, being a lawyer entitled to practise law in the Province of Manitoba, certifying that such solicitor has been retained by and has advised the First Nation of its rights and obligations in negotiating and settling of its claim for land pursuant to the Per Capita Provision and, without limiting the generality of the foregoing, its rights and obligations under this Agreement and the Trust Agreement.

- 14.2 Notwithstanding any other provision of this Agreement, any obligation on the part of Canada to make any payment to, on behalf of or for the benefit of the First Nation is subject to the appropriation of sufficient funds from Parliament.

## **ARTICLE 15: SCHEDULES**

- 15.1 The following Scheduled are Attached hereto:

- "A" Trust Agreement.
- "B" Procedures for ratification of this Agreement.

## **ARTICLE 16: ENTIRE AGREEMENT**

- 16.1 This Agreement shall, upon execution replace and supersede all other agreements and recommendations for settlements between the parties, whether oral or in writing relating to the subject matter of this Agreement and including, with limitation:

- (a) a document executed by the negotiators for each of the parties dated September 8, 1992 captioned "*Protocol Agreement - Treaty Land Entitlement Negotiation*"; and
- (b) a document executed by the negotiators for each of the parties dated December 14, 1993 captioned "*Long Plain First Nation Treaty Land Entitlement Claim Recommendation*".

- 16.2 In the event any provision, or any portion of any provision, of this Agreement should be found to be void, this Agreement shall be read without reference to such provision or part of a provision and the remainder of the Agreement (including the remainder of any provision a

portion of which has been declared void, as the case may be) shall remain in full force and effect.

**ARTICLE 17: NO PRESUMPTIONS**

- 17.1 There shall not be any presumption that doubtful expressions in this Agreement be resolved in favour of either party, provided that this provision shall extend only to the terms of this Agreement.
- 17.2 This Agreement does not create any new treaty rights for the First Nation.
- 17.3 This Agreement shall not be used in the interpretation of any other agreement other than the Trust Agreement, the procedures for the ratification of this Agreement or any other agreement necessarily incidental to implementing the provisions of this Agreement.

**ARTICLE 18: PROGRAMS UNAFFECTED**

- 18.1 Canada agrees that nothing in this agreement shall affect the ability of the First Nation to access federal programs and services on the same basis as other Indian bands in Canada, in accordance with the criteria established from time to time for such programs and services.

**ARTICLE 19: NO BENEFIT**

- 19.1 No member of the House of Commons or Senate shall be admitted to any share or part of this Agreement or to any benefit not enjoyed by any other member of the public which may arise out of it.

**IN WITNESS THEREOF** the Minister of Indian Affairs and Northern Development on behalf of Her Majesty the Queen in Right of Canada has executed this Agreement under his hand and deal this            day of            , A.D. 1994, at the            , in the Province of            .

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
MINISTER OF INDIAN AFFAIRS  
AND NORTHERN DEVELOPMENT

**AND FURTHERMORE, IN WITNESS WHEREOF** the Long Plain Indian Band, as represented by the Chief and Councillors of the First Nation, for themselves and on behalf of the Indians of the First Nation, have executed this Agreement under their respective hands this \_\_\_\_\_ day of \_\_\_\_\_, 1994, at the \_\_\_\_\_, in the Province of Manitoba.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
CHIEF

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
COUNCILLOR

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WITNESS

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COUNCILLOR

**TREATY LAND ENTITLEMENT SETTLEMENT  
AMENDING AGREEMENT**

**HER MAJESTY THE QUEEN,  
IN RIGHT OF CANADA,  
as represented by  
the Minister of  
Indian Affairs and Northern Development**

**OF THE FIRST PART**

**-AND-**

**THE LONG PLAIN INDIAN BAND,  
(also known as  
THE LONG PLAIN FIRST NATION)  
as represented by  
its Chief and Councillors**

**OF THE SECOND PART**

**AUGUST 3, 1994**

**TREATY LAND ENTITLEMENT SETTLEMENT  
AMENDING AGREEMENT**

**THIS AMENDING AGREEMENT** made this 3<sup>rd</sup> day of August, A.D., 1994.

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**  
as represented by  
the Minister of Indian Affairs and Northern Development

(hereinafter referred to as "Canada")

**OF THE FIRST PART**

-AND-

**LONG PLAIN INDIAN BAND,**  
(also known as "LONG PLAIN FIRST NATION")  
as represented by its Chief and Councillors

(hereinafter referred to as "the First Nation")

**OF THE SECOND PART**

**WHEREAS** the parties executed a Treaty Land Entitlement Settlement Agreement (hereinafter referred to as "the Settlement Agreement") on even date with this Amending Agreement;

**AND WHEREAS** THE First Nation, by Band Council Resolution dated the 24<sup>th</sup> day of May, 1994, a copy of which is attached hereto as Schedule "A", requested an amendment to Article 10 of the Settlement Agreement in order to clarify the application of the terms of that Article;

**AND WHEREAS** Article 11.1 of the Settlement Agreement provides that the parties may execute such further documents as are necessary to carry out and implement the terms of the Settlement Agreement and the First Nation has authorized, empowered and directed its Council to act for and on its behalf in executing such documents;

**AND WHEREAS** Canada has agreed to the request of the First Nation to amend the Settlement Agreement to clarify the application of the terms of Article 10 as hereinafter set forth;

**NOW THEREFORE** the parties agree as follows:

1. The Settlement Agreement is hereby amended by adding the following clause immediately after Article 10.2:

"10.3 Notwithstanding the provisions of Articles 10.1 and 10.2, and for greater certainty, Canada undertakes and agrees that:

(a) Canada will only rely on the indemnity hereinbefore given by the First Nation with respect to any claims for Loss of Use in those circumstances where Canada is able to rely upon the

release given by the First Nation in favour of Canada under Article 9 as such provision relates to any claims the First Nation may have for Loss of Use; and

- (b) in the event the First Nation, or any member of the First Nation, brings an action against Canada for a claim for Loss of Use and such action is unsuccessful, Canada will limit any claim for costs against the First Nation arising out of the indemnity hereinbefore given by the First Nation to:
- (i) in the amount (if any) actually ordered by the court hearing the action to be paid by the First Nation or any member of the First Nation to Canada; and
  - (ii) the situation in which the decision to commence such action had been ratified by the Eligible Members in accordance with the ratification procedure set out in Schedule "B" (with such amendments as the circumstances may reasonably require)."

**IN WITNESS WHEREOF** the Minister of Indian Affairs and Northern Development on behalf of Her Majesty the Queen in Right of Canada has executed this Agreement under his hand and seal this 6<sup>th</sup> day of August, A.D. 1994, at the City of Ottawa, in the Province of Ontario.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
MINISTER OF INDIAN AFFAIRS AND  
NORTHERN DEVELOPMENT

**AND FURTHERMORE, IN WITNESS WHEREOF** the Long Plain Indian Band, as represented by the Chief and Councillors of the First Nation, for themselves and on behalf of the Indians of the First Nation, have executed this Agreement under their respective hands this 3<sup>rd</sup> day of August, 1994, at the Long Plain First Nation Reserve, in the Province of Manitoba.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
CHIEF

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WITNESS

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COUNCILLOR

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WITNESS

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COUNCILLOR

**SCHEDULE "A"**

**BAND COUNCIL RESOLUTION  
OF THE LONG PLAIN FIRST NATION BAND COUNCIL  
DATED THIS 24<sup>TH</sup> DAY OF MAY, 1994**

---

Pursuant to the consent of a majority of the Council of the Long Plain Indian Band ("the Council") present at a duly convened special meeting held on the 24<sup>th</sup> day of May, 1994;

**WHEREAS** Canada and the Long Plain Indian Band ("the First Nation") have reached an agreement for the settlement of the First Nation's Treaty Land Entitlement Claim;

**AND WHEREAS** the eligible members of the First Nation ratified the terms of the proposed settlement agreement in a vote held May 12, 1994;

**AND WHEREAS** Article 10 of the settlement agreement obliges the First Nation to indemnify Canada, as more particularly therein set out;

**AND WHEREAS** it is seen to be in the best interests of the First Nation to seek to clarify the application of the terms of that Article;

**NOW THEREFORE BE IT RESOLVED AS FOLLOWS:**

1. **THAT** the Council requests Canada that the Treaty Land Settlement Agreement be amended so as to clarify the application of the terms of Article 10 thereof in the following manner:

"10.3 Notwithstanding the provisions of Articles 10.1 and 10.2, and for greater certainty, Canada undertakes and agrees that:

- (a) Canada will only rely on the indemnity hereinbefore given by the First Nation with respect to any claims for Loss of Use in those circumstances where Canada is able to rely upon the release given by the First Nation in favour of Canada under Article 9 as such provision relates to any claims the First Nation may have for Loss of Use; and
- (b) in the event the First Nation, or any member of the First Nation, brings an action against Canada for a claim for Loss of Use and such action is unsuccessful, Canada will limit any claim for costs against the First Nation arising out of the indemnity hereinbefore given by the First Nation to: