

**Forest Tenure Opportunity Agreement**  
(the "Agreement")

**Between:**  
**Westbank First Nation**  
As represented by  
Chief and Council

**and**  
**Her Majesty the Queen in Right of the Province of British Columbia**  
as represented by the Minister of Forests, Mines and Lands  
("British Columbia")

(collectively the "Parties")

**WHEREAS:**

- A. In 2005, British Columbia and the First Nations Leadership Council, representing the Assembly of First Nations-BC Region, First Nations Summit, and the Union of BC Indian Chiefs entered into a New Relationship and signed the Transformative Change Accord, the purposes of which is to implement a government-to-government relationship based on an effective working partnership, enhanced collaboration, mutual respect and recognition and accommodation of Aboriginal title and rights and achieve the mutual goals of closing the social and economic gap between Westbank First Nation and other British Columbians.
- B. In the spirit of the New Relationship and the Transformative Change Accord, British Columbia and Westbank First Nation have undertaken a shared commitment to strengthening relationships on a government-to-government basis, and on focusing efforts to close the socio-economic gaps between Aboriginal and non-Aboriginal people.
- C. This Agreement, and the benefits flowing from it, will assist the Westbank First Nation in achieving progress towards the goals referred to in the previous recitals, and in particular help to address the conditions that contribute to poverty among Aboriginal people and to ensure that they can more fully benefit from and contribute to British Columbia's prosperity.
- D. British Columbia recognizes that Westbank First Nation has a unique history and its own culture and traditions that help to define it, and that these characteristics, along with its relationship with British Columbia, form an important context for the cooperative efforts needed to improve the Westbank First Nation community's well-being.
- E. The Westbank First Nation has Aboriginal Interests within its Traditional Territory.

- F. This Agreement is intended to assist in achieving stability and greater certainty for forest resource development on Crown lands within the Traditional Territory of the Westbank First Nation which will enhance the ability of the forest industry to exercise timber harvesting in a timely, economic, and environmentally sustainable manner while longer term interests of the Westbank First Nation are addressed through other agreements or processes.

THEREFORE THE PARTIES AGREE AS FOLLOWS:

## 1. Definitions

- 1.1. "Aboriginal Interests" means asserted aboriginal rights (including aboriginal title) or determined aboriginal rights (including aboriginal title) which are recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.
- 1.2. "Alternate" means a corporation in which the Westbank First Nation has controlling interest, or a society which has as one of its stated purposes the holding of the Forest Tenure(s) on behalf of the Westbank First Nation and the corporation or society has been duly appointed by the Westbank First Nation to hold the Forest Tenure(s).
- 1.3. "Effective Date" means the date on which this Agreement has been ratified and signed by each of the Parties.
- 1.4. "Forest Tenure" means an agreement granting rights to harvest Crown timber as defined in section 12(1) of the *Forest Act*.
- 1.5. "Licence" means a forest licence or a forestry licence to cut as defined in the *Forest Act*.
- 1.6. "Licensee" means a holder of a forest tenure.
- 1.7. "Licence Area" means an area defined by agreement between the licensee and British Columbia, over which the licensee will have the right to apply for cutting authorities to a specified level of harvest of Crown timber as defined in the *Forest Act*.
- 1.8. "Representative" means a legal entity that a Westbank First Nation has duly appointed to hold their Forest Tenure(s).
- 1.9. "Traditional Territory" means the Westbank First Nation's claimed or asserted Traditional Territory as shown on bold black on the map attached in Appendix A.

## 2. Purpose and Objectives

The purposes and objectives of this Agreement are to:

- 2.1. Provide an opportunity for the Westbank First Nation to identify and pursue socio-economic objectives in its community and, in

connection with those objectives, to assist the Westbank First Nation in achieving progress towards closing socio-economic gaps between the members of Westbank First Nation and non-Aboriginal people in British Columbia;

- 2.2. Promote and increase Westbank First Nations participation in the forest sector by offering a forest tenure opportunity.
- 2.3. Provide an accommodation in respect of potential impacts of forestry decisions and operations within the Traditional Territory on the Westbank First Nation's Aboriginal Interests.

### 3. Forest Tenure Opportunity

During the term of this Agreement, British Columbia will provide one or more of the following Forest Tenure opportunities to the Westbank First Nation

- 3.1. After execution of this Agreement, the District Manager or Regional Manager will invite the Westbank First Nation, or its Representative or Alternate, to apply for a non-replaceable forest licence (the "Licence") on a non-competitive basis for up to 17,984 cubic metres annually in the Okanagan Timber Supply Area for a term of 3 years.

For greater certainty, the maximum volume that may be available under the licence will be 53,952 cubic metres over 3 years.

- 3.2. If the Westbank First Nation or its Representative already holds an existing Licence that has or have been previously directly awarded under section 47.3 of the Forest Act, then the District Manager or Regional Manager may extend one or more of those existing Licences, authorizing additional volume or allowable annual cut (AAC) for those licences in the amounts identified under section 3.1.
- 3.3. If the intended holder of the Licence is a legal entity other than the Westbank First Nation, the Regional Manager or District Manager must be satisfied that the intended holder of the Licence is a person or other legal entity and has been duly appointed by the Westbank First Nation as its Representative.
- 3.4. The Licence Area for the Licence referenced in section 3.1 will be located in the Okanagan Timber Supply Area and is outlined on the map attached to this Agreement as Appendix C.
- 3.5. Prior to submitting an application for the Licence referred to in 3.1, the Westbank First Nation will meet with British Columbia to discuss the identification of a Licence Area, and British Columbia will strive to identify a Licence Area that is located, to the extent operationally feasible, within Westbank First Nation's Traditional Territory.
- 3.6. The Licence under section 3.1 of this Agreement will:

- 3.6.1. be a non-replaceable forest licence as defined under the *Forest Act*;
  - 3.6.2. Include other terms and conditions required by law including the condition that the Westbank First Nation must comply with this Agreement; and,
  - 3.6.3. include other terms and conditions as may be required by the Regional Manager.
- 3.7. Notwithstanding any other provision of this Agreement, British Columbia neither makes nor offers any guarantee of the financial viability of any operations under the Licence referred to in section 3.1.
  - 3.8. During the term of this Agreement and notwithstanding section 3.7, the Westbank First Nation agrees that British Columbia has provided to the Westbank First Nation an accommodation in respect of potential impacts of forestry decisions and operations within the Traditional Territory on the Westbank First Nation s' Aboriginal Interests, in the form of the Licence provided for under this Agreement.
  - 3.9. If the Licence entered into under this Agreement remain(s) in effect beyond the term of this Agreement, the Licence will continue to be considered by the Parties to be an accommodation as contemplated in sections 2.3 and 3.9 until the Licence expires or is terminated.

#### 4. Reporting of Tenure Information

- 4.1. British Columbia, in its commitment to the goals of the Transformative Change Accord, may require certain Information from Westbank First Nation on what measurable benefits the Westbank First Nation community has been able to achieve as a result of this Agreement.
- 4.2. The Westbank First Nation agrees to cooperate with British Columbia in providing the Information in a format acceptable to both Parties and in a manner that maintains the confidentiality of that information in accordance with applicable statutory requirements.

#### 5. Westbank First Nation Traditional Territory

- 5.1. The Westbank First Nation agrees to provide British Columbia with a hard copy map of their Traditional Territory.

#### 6. Economic and Operational Stability within Westbank First Nation Traditional Territory

- 6.1. Westbank First Nation will respond immediately to any discussions sought by British Columbia in relation to any acts of intentional

interference by members of Westbank First Nation with provincially authorized forest activities and will work cooperatively with British Columbia to assist in resolving any such matters.

## 7. Term and Termination

- 7.1. The term of this Agreement is 3 years.
- 7.2. This Agreement will take effect on the date on which the last Party has executed it.
- 7.3. This Agreement will terminate on the occurrence of the earliest of any of the following events:
  - 7.3.1. expiry of its term;
  - 7.3.2. 90 days notice by either Party to the other Party; or
  - 7.3.3. mutual agreement of the Parties.
- 7.4. This Agreement may be terminated by British Columbia if the Licence or any of them issued pursuant to section 3.1 is or are cancelled, surrendered or otherwise terminated under the Forest Act.
- 7.5. Prior to the expiry of the 90 days when 90 day notice of termination has been given under section 7.3.2, the Parties agree to meet and endeavour to resolve the issue that has given rise to the 90 day notice of termination.

## 8. Dispute Resolution

- 8.1. If a dispute arises between British Columbia and the Westbank First Nation regarding the interpretation of a provision of this Agreement, the Parties or their duly appointed Representatives or Alternates will meet as soon as is practicable to attempt to resolve the interpretation dispute.
- 8.2. If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of British Columbia and the Westbank First Nation.
- 8.3. If the interpretation dispute cannot be resolved by the Parties directly, the Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation dispute.

## 9. Renewal of the Agreement

- 9.1. Prior to the expiry of the term of this Agreement, if the terms and conditions of this Agreement are being met and if each party has received such authorizations as it may require to either renew this Agreement or negotiate a new Agreement, British Columbia and Westbank First Nation will, negotiate a renewal of this Agreement or, where applicable, negotiate a new agreement.

10. Amendment of Agreement

- 10.1. Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.
- 10.2. Either Party may request the participation of the other Party to review the effectiveness of this Agreement annually and consider amendments to this Agreement.

11. Suspension or Cancellation by the Minister

- 11.1. Without limiting the actions that may be taken by the Minister or by British Columbia, the Minister or a person authorized by the Minister may suspend or cancel the Licence entered into as a result of the invitation to apply under this Agreement, if the Minister or a person authorized by the Minister determines that the Westbank First Nation is not in compliance with this Agreement.
- 11.2. If this Agreement is terminated in accordance with section 7.3.2 or 7.3.3, the Minister may cancel the Licence issued pursuant to this Agreement.
- 11.3. Prior to contemplating any action referred to in sections 11.1 or 11.2, British Columbia will provide notice to the Westbank First Nation of any alleged contravention of this Agreement that may lead to the Westbank First Nation not being in compliance with this Agreement.

12. Entire Agreement

- 12.1. This Agreement, and any amendment to it, constitutes the entire Agreement between the Parties with respect to the subject matter of this Agreement.

13. Notice

- 13.1. Any notice or other communication that is required to be given or that a Party wishes to give to the other Party with respect to this Agreement, will be in writing and will be effective if delivered, sent by registered mail, or transmitted by facsimile to the address of the other Party as set out in this section of the Agreement.
- 13.2. Any notice or other communications will be deemed to have been given on the date it is actually received, if received before 4:00 p.m. on that day.

- 13.3. The address of either Party may be changed by notice in the manner set out in this section of the Agreement.

British Columbia	Westbank First Nation
Deputy Minister	Chief Robert Loule
Ministry of Forests, Mines and Lands	Westbank First Nation
P.O. Box 9525 STN PROV GOVT	301-515 Highway 97 South
Victoria B.C. V8W 9C3	Westbank, B.C. V1Z 3J2
Telephone: 250-356-5012	Telephone: 250-769-4999
Facsimile: 250-953-3687	Facsimile: 250-769-4377

- 13.4. This Agreement may be entered into by each Party signing a separate copy of this Agreement, including a photocopy or faxed copy, and delivering it to the other Party by facsimile. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.

#### 14. Miscellaneous

- 14.1. This Agreement is to be interpreted in a manner consistent with provincial, federal and constitutional law.
- 14.2. Except as set out in this Agreement, this Agreement will not limit the positions that a Party may take in future negotiations or court actions.
- 14.3. British Columbia acknowledges and enters into this Agreement on the basis that the Westbank First Nation has Aboriginal interests within its Traditional Territory but that the specific nature, scope and geographic extent of Westbank First Nation's Aboriginal interests have not yet been determined, and further that broader processes engaged in to bring about reconciliation will eventually result in a common understanding of the nature, scope and geographic extent of Aboriginal interests or treaty interests of the Westbank First Nation.
- 14.4. This Agreement does not exclude the Westbank First Nation from accessing forestry economic opportunities and benefits, which may be available to them, other than those expressly set out in this Agreement.
- 14.5. This Agreement is not a treaty or a lands claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*

and does not define or amend aboriginal rights, or limit any priorities afforded to aboriginal rights, including aboriginal title.

- 14.6. This Agreement and any decisions made during the term of this Agreement do not change or affect the positions either Party has, or may have, regarding jurisdiction and authorities.
- 14.7. Any reference to a statute in this Agreement includes all regulations made under that statute and any amendments or replacement of that statute and its regulations.
- 14.8. This Agreement does not address or prejudice conflicting interests or competing claims between First Nations.
- 14.9. There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
- 14.10. The laws of British Columbia will govern this Agreement.
- 14.11. This Agreement is not intended to limit any obligation of forest licensees or other third parties to the Westbank First Nation.

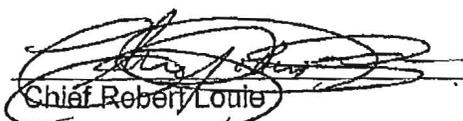
14.12. The appendices to this Agreement form part of the Agreement.

Signed on behalf of:

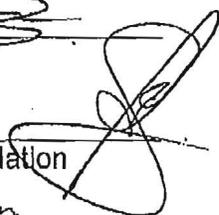
Westbank First Nation

Date:

March - 17 - 2011

  
Chief Robert Louie

Witness of Westbank First Nation  
signature

  
Kat De Guevara

Signed on behalf of:

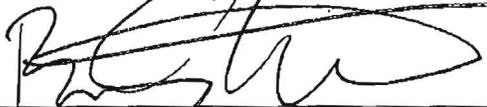
British Columbia

Date:

April 19 / 2011

  
Steve Thomson

Minister of Forests, Lands and Natural Resource Operations

  
Witness of Minister signature

**APPENDIX A**

**Map of Westbank First Nation Traditional Territory**

	<p style="text-align: center;"><b>stqa?k<sup>w</sup>4nfw` t</b>  <b>WESTBANK FIRST NATION</b>  #301 - 515 Highway 97 South  Kelowna, B.C. V1Z 3J2  Phone: (250) 769-4999 Fax: (250) 769-4377  <a href="http://www.wfn.ca">www.wfn.ca</a>  <i>Community. Leadership. Pride.</i></p>	<p style="text-align: center;"><b>MINUTES  GENERAL COUNCIL  MEETING</b></p> <p style="text-align: center;"><b>skix<sup>w</sup>fws, sknr'mn /  Monday, February  14, 2011</b>  Approved sknr'mn /  February 28, 2011</p>
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This is a certified excerpt from the General Council Meeting minutes of February 14, 2011.

<p><b>RESOLUTION  110214-18</b></p>	<p><b>MOVED BY COUNCILLOR WERSTUIK</b>  <b>Seconded by Councillor Swite-Ghostkeeper</b>  <b>THAT</b> Chief and Council hereby delegate signing authority for forest stewardship plans and cutting permits to the Manager of Heartland Economics. Signing authority for the licence and licence amendments will be retained by Chief Loule.  <b>CARRIED</b></p>
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CERTIFIED TRUE COPY  
This 9<sup>TH</sup> DAY OF MARCH, 2011

  
**DELLA ELLIOTT**  
Commissioner of Oaths  
for Westbank First Nation  
#301 - 515 Hwy 97 S  
Kelowna, BC V1Z 3J2



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**BC Company Summary**  
For  
**HEARTLAND ECONOMICS LTD.**

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Date and Time of Search: March 09, 2011 03:27 PM Pacific Time  
Currency Date: February 03, 2011

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**ACTIVE**

Incorporation Number: BC0764757  
Name of Company: HEARTLAND ECONOMICS LTD.  
Recognition Date and Time: July 28, 2006 01:32 PM Pacific Time as a result of an Amalgamation      In Liquidation: No  
Last Annual Report Filed: July 28, 2010      Receiver: No

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**AMALGAMATING CORPORATION(S) INFORMATION**

Name of Amalgamating Corporation	Incorporation Number in BC
CANADA JAPAN WOODWORKS LTD.	BC0374748
HEARTLAND ECONOMICS LTD.	BC0340676

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**REGISTERED OFFICE INFORMATION**

<b>Mailing Address:</b> 3522 A RED CLOUD WAY KELOWNA BC V4T 2G9 CANADA	<b>Delivery Address:</b> 3522 A RED CLOUD WAY KELOWNA BC V4T 2G9 CANADA
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**RECORDS OFFICE INFORMATION**

<b>Mailing Address:</b> #205 - 1544 MARINE DRIVE WEST VANCOUVER BC V7V 1H8 CANADA	<b>Delivery Address:</b> #205 - 1544 MARINE DRIVE WEST VANCOUVER BC V7V 1H8 CANADA
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**DIRECTOR INFORMATION**

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**Last Name, First Name, Middle Name:**  
FOSBERY, JR., PAT

**Mailing Address:**  
#301 - 515 HIGHWAY 97 SOUTH  
KELOWNA BC V1Z 3J3  
CANADA

**Delivery Address:**  
#301 - 515 HIGHWAY 97 SOUTH  
KELOWNA BC V1Z 3J3  
CANADA

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**Last Name, First Name, Middle Name:**  
LOUIE, ROBERT

**Mailing Address:**  
#301 - 515 HIGHWAY 97 SOUTH  
KELOWNA BC V1Z 3J3  
CANADA

**Delivery Address:**  
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KELOWNA BC V1Z 3J3  
CANADA

---

**Last Name, First Name, Middle Name:**  
MONTAIN, JAMES F.

**Mailing Address:**  
#301 - 515 HIGHWAY 97 SOUTH  
KELOWNA BC V1Z 3J3  
CANADA

**Delivery Address:**  
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KELOWNA BC V1Z 3J3  
CANADA

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NO OFFICER INFORMATION FILED AS AT July 28, 2010.

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CERTIFIED TRUE COPY  
*THIS 9TH DAY OF MARCH, 2011*

  
**DELLA ELLIOTT**  
*Commissioner of Oaths  
for Westbank First Nation*  
#301 - 515 Hwy 97 S  
Kelowna, BC V1Z 3J2