

BACKGROUNDER



Leasehold Title Purchase

Background

Chu Níikwän Development Corporation is the development corporation wholly owned by the Kwanlin Dün First Nation (KDFN). Chu Níikwän has established Da Nan Properties, operating as Whitehorse Properties, to vend residential and commercial leases in the Whitehorse real estate market.

Kwanlin Dün First Nation (KDFN) has taken the next step towards unlocking settlement land for economic development purposes. As the second largest landowner in the City of Whitehorse, the availability of certain parcels of settlement land for general residential and commercial use will be a benefit to the community.

KDFN Settlement Lands may not be sold, so the interests that will be bought and sold are leasehold interests.

KDFN will apply to the Yukon Land Titles Office for a certificate of Settlement Land Title for certain lands selected for development. These lands will then be leased to an affiliate of Chu Níikwän Development Corporation. These lands may then be subleased to leasehold purchasers or developed and sold as leasehold condominiums. Leasehold interests can be registered at the Yukon Land Titles Office, which means that purchasers will have a certificate of leasehold title in their name.

The legal documents (leases and subleases) developed and the registration of title in the Yukon Land Titles Office have been put in place to allow for certainty and clarity for both KDFN and the eventual leasehold interest owners.

KDFN has taken the required steps to create the legal and financial structures required for private land development. The leases provide the certainty required to achieve financing and support investment.

The Lands Act provides the tools and structure allowing KDFN to issue leases and manage land.

When will land be available and what parcels are you focussed on?

You will see commercial and industrial land available before Christmas. We are focussing on several lots in the Marwell area, Kulan and Sima. All in all, there is close to 40 acres coming online soon with another 40 acres following closely behind.

On the residential side, we are working closely with the City and YG to get a large parcel out to market for both individuals and private developers on Range Road – centrally located with great views. Ideally this is a mix of larger sections and individual lots. We are targeting 2021 / 2022 for larger land parcel releases. The Plan is to include both bare land, improved land and leasehold condominiums for the private sector developments and individuals.

How much will it cost and how do people pay?

This is a great option for Yukon businesses, developers and homeowners. Land values will be based on market appraisals and development costs. We are committed to providing confidence in the legal and financing structure and value to customers.

What is the difference between leasehold and freehold title to property?

A leasehold type of ownership means that the landlord remains the owner of the land but the purchaser has the right to use and occupy the land and buildings for a defined period of time. A freehold type of ownership means that the purchaser owns the building and the land for an indefinite period of time.

Term

The terms will be for a long period of time, typically between 25 and 125 years. Generally, commercial leasehold interests will be for a term of 25 to 99 years, and generally residential leasehold interests will be for a longer term, potentially up to 125 years.

Rent

Most leases, especially residential leases, will require that an upfront prepaid in full at the beginning of the term. This allows for a clear mortgage and financing structure with the banks. With commercial leases, there is an opportunity to offer flexible options including monthly rental payments, pre-payments, as well as financing to allow the cost of land to be spread out over time – this should appeal to businesses focussed on cash flow.

Can a leasehold interest be sold?

Yes, for market commercial and residential lands, the lessee who is not in default will be able to assign (sell) their leasehold interest without the consent of the owner (KDFN) or the sublessor (Chu Niikwän Development Corporation or affiliate). The purchaser will have the right to the leasehold interest in the lands for the remainder of the term. This is a requirement for financing.

Mortgages

A leasehold mortgage is a mortgage of the lessee's interest in a lease. With a leasehold mortgage, the security is the leasehold interest, not the underlying title to the land. Leasehold mortgages are possible, subject to certain criteria being met. Criteria include the consent of the landlord to the mortgage of the lease, which will be provided. The standard form of lease will include confirmation that the lessor (KDFN) and sublessor (Chu Níikwän Development Corporation or affiliate) consent to the mortgage of the leasehold interest. A purchaser's leasehold mortgage will be registered against the purchaser's leasehold title in the Yukon Land Titles Office, so that the certificate of title will show the mortgage as a registered financial encumbrance.

Leasehold Condos

The development of leasehold condominiums is possible under the current Yukon Condominium Act and public authorities will be able to create condominiums on leasehold land under the Yukon Condominium Act, 2015 (not yet in force).

Chu Níikwän Development Corporation (or affiliate) intends to develop leasehold condominiums on certain KDFN settlement lands. The purchaser will hold a leasehold title to the condo unit. The purchaser will have the right to occupy the leasehold condo unit for the balance of the term and may sell (assign) the right to occupy the leasehold condo unit.

The leasehold condominium will be governed by a condominium corporation in the same manner as a freehold condominium corporation.

Insurance, Utilities, Property Taxes, etc.

There is no difference in how any taxes and utilities are paid on leasehold land. The purchaser of a leasehold interest will, similarly to an owner of a freehold interest in lands, be responsible for maintaining insurance and for all property taxes, utility and other charges. There is no difference in how property taxes or income taxes are paid.

Aboriginal Rights, Titles and Interests

KDFN will not have ceded, released or surrendered its aboriginal claims, rights, titles and interests in the leased lands registered in the Land Titles Office. However, under the Settlement Lands Regulation adopted under the Yukon Land Titles Act, a certificate of leasehold title issued further to a lease of Settlement Lands will take priority over aboriginal claims, rights, titles and interests and the right to harvest, for the term of the lease.

What laws apply?

The Yukon Land Titles Act and the KDFN Final Agreement both provide that any First Nation law that may be enacted that deals with the same subject matter as the Yukon Land Titles Act will not apply to the land that has been registered in the Yukon Land Titles Office. This gives banks and homeowners/businesses assurance that the leasehold interest and any mortgage that exists have priority over any instrument that may be introduced by the First Nation. Lands within the City of Whitehorse are subject to municipal bylaws.

What happens at the end of the term?

It is always possible that the parties could negotiate a renewal or extension of the lease, but generally, at the end of the term of a lease, any buildings on the land become the property of KDFN or Chu Níikwän Development Corporation (or affiliate) and the land must be returned in good and substantial repair and condition. If there is no extension negotiated then typically, the leasehold interest owner may be required to remove any buildings from the land.

Holders of leasehold condo units will be entitled to a certain amount of compensation from KDFN at the end of the term of their lease as per the condominium act.

For further information, please contact:

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