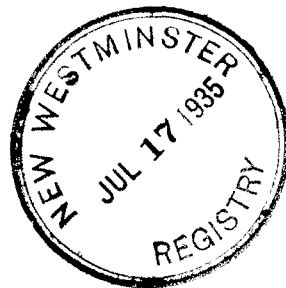


CORPORATION OF THE DISTRICT OF BURNABY

BY-LAW NO. 1518



A BY-LAW to authorize the Corporation of the District of Burnaby to grant a lease of real estate viz:- these portions of Lots 6 and 7 in Block 14 and Lot 7 in Block 16 and in District Lot 79, Group 1, New Westminster District lying to the east of the highway known as Sperling Avenue, in the said District of Burnaby and an option to purchase the said lands and premises to Western Non-Metallics Ltd. a company duly incorporated under the laws of the Province of British Columbia and having its registered office at the City of Vancouver, B. C.

WHEREAS by section 325 of the Municipal Act being Chapter 179 of the Revised Statutes of British Columbia 1924 and amending acts the Corporation may lease any of the Corporation property on the terms and conditions expressed in the said section.

AND WHEREAS by section 54 subsection 175 (b) of the said Act the Council of such Corporation may by by-law finally passed by a three fourths majority of all the members of the Council dispose by auction or otherwise of any lands acquired by the Municipality under tax-sale proceedings and such by-law shall not require the assent of the electors.

AND WHEREAS the Corporation of Burnaby is the owner as the result of tax sale proceedings of the lands and premises before described.

AND WHEREAS the Corporation has had at all times available for inspection by the public a list of the lands proposed to be leased and in respect of which it is proposed to grant option to purchase as aforesaid showing the price for which each parcel is to be offered there being no buildings on the said lands.

AND WHEREAS the said Company, Western Non-Metallics Limited, is desirous of acquiring a lease of the said lands and premises and an option to purchase the same.

AND WHEREAS the covenants, agreements, terms and conditions on which the said lease and option shall be granted by the said Corporation to the said Company are fully set forth in the draft Indenture attached by way of Schedule "A" to this by-law and forming part thereof

AND WHEREAS it is deemed advisable that an Agreement in the form and to the effect of the said draft attached hereto should be entered into and executed by and between the said Corporation and the said Company.

AND WHEREAS the Commissioner of the Corporation of the District of Burnaby has under the said Municipal Act power to do such acts and to pass such by-laws as may be done and passed by the Council of the Municipality.

THEREFORE THE SAID COMMISSIONER in exercise of all the powers him thereunto enabling enacts as follows:-

1. It shall be lawful for the Corporation of the District of Burnaby and the said Corporation is hereby authorized and empowered to enter into and to execute the said Indenture or Agreement a draft of which is attached hereto as Schedule "A" under its Corporate Seal and by the hand of its proper officers and to deliver the same as its free act and deed, the said Indenture or Agreement to have full force and effect from the date of execution thereof according to its full tenor and purport.

This By-law shall not come into force and effect unless and until it has received the consent of the Lieutenant Governor-in-Council as required by law.

This By-law may be cited as "WESTERN NON METALLICS LIMITED LEASE AUTHORIZATION BY-LAW 1935."

Done and Passed this Nineteenth (19th) day of June, 1935.

Reconsidered and Finally passed this Twenty-first (21st) day of June, 1935.



Hugh M. Fraser

COMMISSIONER.

Charles B. Brown

CLERK.

I, Charles B. Brown, Clerk of the Corporation of the District of Burnaby do hereby certify that the foregoing is a true copy of a By-law passed on the 21st. day of June, 1935.



CLERK.

THIS INDENTURE made in duplicate the 1st day of March in the year of our Lord one thousand nine hundred and thirty five.

IN PURSUANCE OF THE SHORT FORM OF LEASES ACT.

BETWEEN

THE CORPORATION OF THE DISTRICT OF BURNABY
Hereinafter called the Lessor

OF THE FIRST PART

AND

WESTERN NON/METALLICS LIMITED a body corporate,
duly incorporated under the laws of the Province
of British Columbia and having its registered
office in the City of Vancouver in the Province
of British Columbia hereinafter called "the lessee"

OF THE SECOND PART.

WHEREAS the lessor is the owner as the result of tax sale proceedings of lands and premises in the Municipality of Burnaby more particularly known and described as Lots 6 and 7 in Block 14 and Lot 7 in Block 16 all in District Lot 79, Group 1, New Westminster District.

AND WHEREAS the lessee is desirous of acquiring a lease, with option to purchase, of the portion of the said lands and premises lying to the east of the Highway known as Sperling Avenue with the view to carrying on operations for the removal therefrom, manufacture and processing of diatomite during the currency of the said lease and after acceptance of said option, if accepted.

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the rents, covenants and conditions hereinafter respectively reserved and contained the lessor doth demise and lease unto the lessee ALL AND SINGULAR those certain parcels or tracts of land and premises lying and being in the Municipality of Burnaby in the Province of British Columbia more particularly known and described as those portions of Lots 6 and 7 in Block 14 and of Lot 7 in

Block 16 in District Lot 79, Group 1, New Westminster District lying to the east of the highway known as Sperling Avenue and containing 19.76 acres more or less from the 1st day of March 1935 to the 28th. day of February 1945 both inclusive, yielding and paying therefor unto the lessor as clear rent in and for each year during the subsistence of this Lease the aggregate of the following amounts namely (1) the sum of \$120.00 and (2) a sum equivalent to the amount of the Municipal taxes which would in and for each of the said respective years be levied and imposed upon the lands hereby demised and upon any improvements which may during the subsistence of this Lease be erected thereon were the said lands and improvements assessed and taxed and the lessee the owner thereof at the date of assessment and taxation from time to time, due and payable said rent by four equal quarterly payments on the 1st day of March the 1st day of June, the 1st day of September and the 1st day of December in each and every year during the subsistence of this lease the first of such payments to be made on the day of the date hereof.

THE LESSEE COVENANTS WITH THE LESSOR to pay the water rates and meter rents, if any, levied upon or payable in respect of water supplied to the said lands and premises by the said Corporation.

THE LESSEE COVENANTS WITH THE LESSOR that it will on or before the first day of October 1935 commence construction upon the said lands and premises of a plant or factory suitable for the extraction and processing of diatomite from the lands hereby demised which plant or factory shall conform in all respects to the building by-laws of the Corporation of Burnaby and be of value of not less than \$10,000.00, that the construction of the said plant or factory will be diligently and continuously proceeded with so that it will be completed, ready for operation within twelve months from the date hereof, and that it, the lessee, will upon such completion operate and maintain the said plant or factory during the currency of this lease and of any agreement for sale to follow hereon paying its workmen fair and reasonable wages in return for

services rendered provided and it is hereby understood and agreed by and between the parties hereto that if in anyone calendar year after construction of the plant or factory herein referred to the lessee shall for a period of three consecutive calendar months or longer fail to operate and maintain the said plant or factory the lessor may give to the lessee one month's notice in writing requiring the lessee to resume its operation and maintenance of the said plant or factory and if the lessee shall fail within such month to resume operation and maintenance of the said plant and/or to continue such operation and maintenance during the remainder of the said calendar year then and in that event the lessor may at its option terminate and cancel this agreement whereupon the same shall be and become null and void and of no further force virtue or effect, provided also however that should the lessee at any time during the currency of this agreement be unable to carry on its proposed operations by reason of any act of God, intervention of the Kings enemies, strikes or lockouts of workmen, riots, inclement weather or any other matter cause thing or occurrence beyond the lessee's control other than lack of funds then and in any of these events the time within which the lessee shall not have operated by reason of any one or more of the foregoing matters shall not be counted as part of any such three months period heretofore in this paragraph mentioned.

AND THAT IT, THE LESSEE, will adequately protect and keep protected all roads and road allowances in and adjacent to the said leased premises, leaving the soil unmoved from both sides thereof for a distance of thirty feet on either side.

THE LESSEE also undertakes to bear the full cost of installing water service or services for use upon the said leased lands and premises.

THE LESSEE COVENANTS WITH THE LESSOR to pay rent and to repair any buildings which may be erected by the lessee on the demised premises during the currency of this lease and that

the lessor may enter and view the state of repair and that the lessee will repair according to notice.

AND to keep the premises insured in a company approved by the lessor to their full insurable value.

AND THAT THE LESSEE will not assign or sublet without leave; and will not carry on any business that shall be deemed a nuisance on the said premises.

AND THAT it will leave the premises in good repair (reasonable wear and tear and damage by fire and tempest excepted) and also that if the premises hereby granted shall be at any time seized or taken in execution or in attachment by any creditor of the lessee or if the lessee shall make any assignment for the benefit of creditors, or becoming bankrupt or insolvent shall take the benefit of any act that may be in force for bankrupt or insolvent debtors, the then current rent shall immediately become due and payable and the said term shall immediately become forfeited and void.

IN THE EVENT OF THE LESSEE erecting and constructing any building or buildings upon the demised premises such building or buildings, on the expiration of this lease if the option hereinafter granted is not exercised, shall belong to and become the property of the lessor free from any claim thereupon by the lessee, and without payment of any compensation therefor by it.

PROVIDED FOR RE-ENTRY by the lessor on non-payment of rent whether lawfully demanded or not, or non-observance or non-performance of any of the covenants and provisos herein contained.

AND THE LESSOR COVENANTS with the lessee for quiet enjoyment.

AND IN CONSIDERATION of the premises and the rent to be paid as aforesaid by the lessee to the lessor, and subject to payment of the royalty hereinafter reserved and contained,

the lessor hereby gives to the lessee an option irrevocable within the time for acceptance herein limited to purchase free from encumbrances in so far as the same may be created by the lessor, all these certain parcels or tracts of land hereinbefore leased and particularly described.

The purchase price of the said property, in the event of acceptance of option, shall be the sum of \$1976.00 (being at the rate of \$100.00 per acre) which shall be payable one quarter in cash on acceptance of the said option and the balance in six half yearly payments with interest at the rate of 6 per centum per annum on the balance of price unpaid from time to time the said interest being payable half yearly along with the said instalments, the first of such half yearly payments being payable on a date six months from the date of acceptance of the said option.

THE OPTION HEREBY GIVEN shall be open for acceptance up to but not after the 1st day of March 1936 and may be accepted by a letter delivered to the lessor or mailed postage prepaid and registered addressed to it at the Municipal Hall, Edmonds, New Westminster, B.C. and in either case accompanied by an accepted cheque for the amount to be paid upon acceptance as hereinbefore provided.

IT IS ALSO UNDERSTOOD AND AGREED that the option hereby given is so given on the condition and understanding that the covenants and obligations contained in the foregoing lease, each and all of them, are carried out and fully implemented by the lessee in so far as these fall to be carried out prior to the expiration of the time herein limited for acceptance of the option; the agreement being that should the lease for any reason be cancelled through non-observance of such covenants or obligations or any of them this option shall ipso facto terminate.

Should this option be exercised, the lessee covenants in that event to pay to the lessor an amount equivalent to the proportion of Municipal taxes which would have been levied upon

the said lands and improvements, if any, for the ten current year had the lessee been the registered owner thereof unless the same shall have been previously fully paid by way of rent and for all subsequent years such municipal taxes as may from year to year be levied and imposed upon the lands hereby demised, with improvements thereon the same having, by the exercise of the said option, become susceptible to municipal assessment and taxation.

THE LESSEE HEREBY COVENANTS to pay to the lessor from the time of acceptance but only in the event of acceptance of the said option a sum or royalty of .5¢ per ton of processed diatomite on all material processed at the plant or factory to be erected as aforesaid and taken from the land above described and hereinbefore leased and any other land in the immediate vicinity which the company may lease or purchase from private owners other than land covered by the water of Burnaby Lake, ^{as} and when the same is processed and sold and a statement of the amount of diatomite processed as aforesaid during the quarter then ending shall be prepared and certified by the lessee at the end of each and every third month from the date of acceptance of the said option and forwarded to the Corporation not later than the 15th day of the following month accompanied by a certified cheque for the royalty payable, calculated as aforesaid. It is understood and agreed that all material removed from the said lands shall be processed at the plant to be erected by the Lessee on the said lands in terms hereof. In the event of the option to purchase being accepted by the lessee an agreement for the sale and purchase of the said lands and premises shall be entered into by and between the parties hereto setting forth the terms and conditions of sale and purchase as herein contained or referred to and containing all the other usual and necessary clauses and covenants.

The conveyance to follow upon fulfilment of the terms and conditions of the said agreement for sale shall be prepared and registered by the Lessor who is hereby constituted the agent of the lessee for the purpose of registration and the costs of the said conveyance and registration thereof at the land registry office shall be paid by the lessee to the lessor.

In the event of the lessee having entered into the said agreement for sale and holding thereunder at the time making default in payment of the said royalty to the lessor or any portion thereof and/or failing to pay the said instalments of purchase price or any of them with interest thereon and /or failing to perform any of the other covenants herein to be observed by it in that event the lessor shall be at liberty to invoke the provisions of Section 273 of the Municipal Act and to give the notice therein mentioned with effect as therein set forth.

In the event of the lessee having had a conveyance granted in its favour in terms hereof making default in payment of the said royalty to the lessor or any portion thereof and/or of the lessee failing to perform any of the other covenants herein to be observed and performed by it in that event the lessee, upon notice in writing given by the lessor to the lessee setting forth the default and such default continuing for a period of 90 days after the date of the said notice, shall be bound to reconvey to the lessor all of the said lands and premises conveyed to the lessee in terms hereof and shall also in such event cease operations of any kind whatsoever in or upon the said lands and premises.

THE EXECUTION HEREOF is subject to the observance of the provisions of the Municipal Act as regards the passage of the necessary by-law for the purpose.

THE LESSEE HEREBY AGREES that in so far as possible it will, in carrying on its operations within the Municipality of Burnaby, employ residents of the said Municipality.

TIME shall be of the essence of this Agreement.

THIS AGREEMENT shall enure to the benefit of and be binding upon the respective parties hereto, their respective successors and assigns.

IN WITNESS WHEREOF the Corporate Seals of the respective parties hereto have been hereunto affixed the day and year first above written.

THE CORPORATE SEAL OF THE LESSOR was hereunto affixed in the presence of

COMMISSIONER.

THE CORPORATE SEAL OF THE LESSEE was hereunto affixed in the presence of

CLERK.

WESTERN NON-METALLICS LIMITED

A. S. MATHESON, President.

H. F. ROBINS, Secretary.