WHEREAS section 35 of the Constitution Act, 1982 recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples of Canada;

AND WHEREAS section 10 of the Indian Act, 1985, c.I-5, provides that a Band may assume control of its membership if it establishes Membership rules for itself in writing and receives the consent of the majority of its electors;

AND WHEREAS the Miawpukek Band assert or sovereign status as a nation, our right to self government and our inherent right, aboriginal, realty and other rights, as confirmed by our forefathers under the treaties, and we recognize the protection afforded such rights by Section 25 of the Canadian Charter of Rights and Freedoms;

AND WHEREAS the Miawpukek Band, in order that our rights and freedoms, including inherent, aboriginal and treaty rights, be fully protected, exercised and preserved; to ensure justice and our security; to maintain our traditions and customs; to promote harmony and the common good;

NOW THEREFORE the Miawpukek Band do ordain and establish this membership code, hereby to govern membership in the said Band.

JURISDICTION AND TERRITORY

The jurisdiction of the Miawpukek Band in respect of it's membership as set out in this Code shall extend to and be enforceable on all lands within the boundaries of the Reserve and within all the boundaries of any land obtained by the Miawpukek Band through fulfilment of a land entitlement pursuant to treaty or any additional lands acquired in any manner whatsoever by the Miawpukek Band or by the Crown for or on behalf of the Miawpukek Band.

Article I - Definitions and Terms

.1 In this Code:

a. "Band" means Miawpukek Band as defined in the Indian Act.

b. "Band member" means a person whose name is entered or entitled to be entered on the Miawpukek Band membership list.

c. Band Membership List" means a list maintained by the Miawpukek Band which lists the name of every person who is a member of the Band.
d. "Child" refers to a child born in or out of wedlock, a legally adopted child and a child adopted in accordance with Indian custom and as defined in the Indian Act.

e. "Clear days" or the term "at least" or the term "not less than" shall where used exclude first and last days.

f. "Council" means the Chief and Council chosen according to the customary law of the Miawpukek Band.

g. "Eligible voter" means a person whose name appears on the Band register, and who has attained the age of majority as set out in the Band regulations and ordinarily resident on the reserve of the Miawpukek Band and is not disqualified from voting at band elections.

h. "Indian" means a person as defined in the Indian Act.

i. "Act" shall mean the Indian Act.

j. "Person" where used in this Code shall not include a corporation.

k. "Reserve" refers to any tract of land; the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of the Miawpukek Band.

q. "Spouse" refers to an individual who is either married to a band member, or involved in a common law relationship.

r. "Visitor" refers to a person who is lawfully on the Miawpukek Reserve or seeks to come to the Miawpukek Reserve for a temporary purpose, such as temporary employment, other than a person who is: (a) a member of the band; or (b) a person with the lawful permission to reside on the Miawpukek Reserve.

Article II - Effective Date of the Rules

2.01 The Membership Code of the Miawpukek Band shall be effective from the date which notice is given to the Minister, under s. 10(6) of the Act in compliance with
s. 10(8) of the Act.

2.02 The Membership Code and rules will become effective on [insert date].

Article III - Authority and Composition of Registrar and Council

3.01 Registrar

The Registrar shall be a person appointed by the Council who shall receive, record, and process all applications for membership pursuant to the provisions of this Code.

3.02 Council

The Council shall have the right and full authority to make decisions in regard to:

a. Any and all membership applications;

b. Any other matter relating in any manner whatsoever to membership as contemplated in or provided by this Code.

Article IV - Process of the Registrar; Membership Committee and Council

4.01 Registrar

a. The Registrar shall receive all applications for membership and ensure that they are complete with all necessary supporting documentation.

b. The Registrar shall, within thirty (30) clear days of the completed application along with full supporting documentation, deliver the same to the Membership Committee being the appointed by the Band Council.

c. The Registrar shall maintain the Membership Register and shall perform such other duties as requested by the Council from time to time.

4.02 Membership Committee

a. The Chief and Council shall appoint a membership committee made up of two elders, one council member and two community members, each with a term of three years.
b. Within thirty days of receiving a file from the Registrar under subsection 4.01(b), the Membership Committee shall review the contents of the file, and make a recommendation, and shall pass the file and recommendation to the Chief and Council.

c. Apart from the specific duties described in this Code, the Membership Committee shall assist upon request the Registrar, and the Chief and Council.

d. A member of the Membership Committee cannot at the same time be the Registrar.

4.03 Council

a. Council will meet within thirty (30) clear days of the receipt of a recommendation from the Membership Committee to review the membership recommendation and to render a decision to approve or reject the same and if rejected, to provide to the Applicant a written decision with reasons for so deciding.

b. Council members shall be disqualified from voting where the applicant is the Councilor's spouse, child, sibling, grandparent or grandchild.

c. The Council must hold the hearing within thirty (30) days of the date of the written request.

d. The proceedings before the Council shall be held and a Council reporter shall be present and receive all evidence at all such proceedings before the Council (hereinafter referred to as "the record").

Article V - Governing Law

5.01 The Council

The Council shall, in the determination of entitlement to membership, be
governed by this Membership Code, the Indian Act and the Canadian Constitution.

Article VI - Persons not Entitled to Membership

6.01 The following persons are not entitled to membership in the Miawpukek Band:

a. A person who is a member of the Miawpukek Band, but voluntarily transfers his/her membership to another Band or otherwise renounces his/her membership in the Miawpukek Band.

b. Any non-Indian marrying a Miawpukek Band member after April 17, 1985; shall not be entitled to Miawpukek Band Membership.

c. A non-Indian child who is a child of a person defined in (b) and who is adopted by a Band member, is not entitled to Band membership.

Article VII - Persons Entitled to Membership

7.02 The following are entitled for membership in the Miawpukek Band:

a. Automatic eligibility; all individuals born with the right to membership (lineal descendants) and meeting the basic requirements of future membership as required in Article VII.

Article VIII - Membership Criteria

8.01 With the consent of the Band, each of the following persons shall have a right to membership in the Miawpukek Band.

a. Any person who, prior to establishment of this Code, was entitled in accordance with Sections 11(1) and 11(2) of the Indian Act to have their names entered in the Band List and who at any time thereafter are entitled to be entered in the Band in accordance with the Indian Act shall be deemed eligible for Band Membership; either
i. is lawfully resident on the Reserve; and

ii. has applied for the membership in the Band and, in the judgement of the Band Council, has a significant commitment to and knowledge of this history, customs, traditions, culture and communal life of the Band and a character and lifestyle that would not cause his or her admission to membership in the Band to be detrimental to the future welfare or advancement of the Band;

b. A natural child of parents both of whose names are entered on the Band List.

c. With the consent of the Band Council, any person who;

i. has applied for membership in the Band;

ii. is entitled to be registered in the Indian Register pursuant to the Act;

iii. is the spouse of a member of the Band; and

iv. is not a member of another Band.

d. With the consent of the Band Council, any person who;

i. has applied for membership in the Band;

ii. was born after the date these rules come into force; and

iii. is the natural child of a member of the Band.

e. Any member of another Band admitted into membership of the Band with the consent of the Council of both Bands and who thereupon ceases to be a member of the other Band.

8.02 For the purpose of section 8.01 (a) (i) the question whether a person is lawfully resident on the Reserve shall be determined exclusively by reference to by-laws made by the Band Council pursuant to section 81 of the Indian Act except that, at any time when there are no such applicable by-laws in force, no person shall be considered to be lawfully resident on the Reserve for the purpose of section 7.01
(a) (i) unless the residence of such person on the Reserve has been approved or ratified by a resolution of the Band Council that is expressed for the purpose of these rules.

**Article IX - Situation Existing Prior to Rules**

9.01 In considering an application under section 8.01 (a) of the Act, the Band Council shall not refuse to enter the name of the applicant on the Band List by reason only of a situation that existed or an action that was taken before these Rules came into force.

**Article X - Removal from Band Membership**

The Registrar shall advise Council and they determine removal based on the following:

10.01 Any person who is eighteen (18) years of age and older may renounce his/her membership and apply in writing to the Band to have his/her name removed from the Miawpukek Band Membership List.

10.02 A member's name shall be removed from the Band Membership List:

a. Upon the death of the member;

b. If that member is registered with another Band indigenous to Canada elsewhere;

c. Where a person with no Indian blood has become a member of the Band prior to April 17, 1985 through marriage to a Band member, that person shall no longer be entitled to Band membership upon:

i. divorce from a Band Member;

ii. living separate and apart from the Band member for one continuous year; or,

iii. becoming widowed;

Unless that person is ordinarily resident and continues to reside on the reserve, in which case that person may retain his/her membership in the Band.
d. If a person becomes a member of the Miawpukek Band as a result of misrepresentation of relevant information, the acceptance of that person into the membership of the Miawpukek Band is a nullity.

e. If the addition of the member's name to the Band Membership List is contrary to the provisions of this Membership Code.

Article XI - Miscellaneous

11.01 Rights and Benefits

Applicants are entitled to all rights and benefits on membership from the date of their admission to the membership of the Band

Article XII – Appeal Procedure

Appeal Procedure

1. Any person whose application is turned down by Chief and Council pursuant to section 4.02(a) shall have the right to request within thirty days from the date of the decision or vote, a hearing before the Tribunal of Elders.

1. Upon a request for a Tribunal of Elders, the Chief and Council shall designate one man and one woman who are:
   a. Band members;
   b. Elders;
   c. Not the Chief or members of the Council;
   and such three persons shall constitute the Tribunal of Elders.

3. The Tribunal of Elders shall review the application and all documents relating to it, including all previous decisions and the reasons for them, and may;
   (i) Receive orally or in writing any information relating to the application;
   (ii) Make inquiries within the Band Community and elsewhere relating to the application;
   (iii) Request the applicant or any other Band member to appear before it to provide information;
(iv) Request the applicant, the Chief and Council, or any other Band member to provide documents relating to the application;
(v) Consult with other elders of the Band in relation to Band custom, tradition or history.

4. The Tribunal shall within ninety (90) days of the date it is established determine the disposition of the application by whatever means they shall determine appropriate, or, should the members not be agreed as to a method of decision-making by simple majority vote of the members.

5. The Tribunal shall advise the Chief and Council and the applicant of their decision and such decisions shall be binding on the Chief and Council, the Applicant and the Band.

6. If the Tribunal of Elders rejects the application for membership, the applicant has no further right to apply for membership in the Band.