

**TLA-O-QUI-AHT FIRST NATIONS  
INCREMENTAL TREATY AGREEMENT**



**Tla-o-qui-aht First Nations**



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## INCREMENTAL TREATY AGREEMENT

This Agreement is dated for reference the 13th day of November, 2008

### **BETWEEN:**

**Her Majesty the Queen in right of the Province of British Columbia**, as represented by the Premier of British Columbia

### **AND:**

**Tla-o-qui-aht First Nations**, on behalf of itself and its Members, as represented by the Ha-wiih and its Chief and Council

(Collectively referred to as the "Parties" and individually referred to as a "Party")

### **WHEREAS:**

- A. The Tla-o-qui-aht, through its Ha-wiih, assert that they have used, occupied, governed and have exercised exclusive ownership of their traditional territory from time immemorial.
- B. The Tla-o-qui-aht is engaged with the Province and Canada in negotiating an Agreement-in-Principle in accordance with Stage 4 of the British Columbia Treaty Commission process.
- C. The Parties are desirous of creating momentum in the treaty negotiations and concluding a Final Agreement by 2011.
- D. 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, have entered into a New Relationship.
- E. This Agreement will provide the Tla-o-qui-aht with transitional economic benefits in advance of a Final Agreement and is in the spirit and vision of the New Relationship.

- F. The Parties are desirous of creating additional certainty on the land base in the Clayoquot Sound region and in facilitating the establishment of a secure source of water for the District of Tofino for the benefit of Tofino area residents, including Tla-o-qui-aht Members.

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

**ARTICLE 1**  
**INTERPRETATION**

- 1.1 **Definitions.** In this Agreement and the Recitals to this Agreement, unless the context requires otherwise:

“AIP” means the Tla-o-qui-aht First Nation Agreement-in-Principle currently being negotiated by the Parties and Canada in accordance with Stage 4 of the British Columbia Treaty Commission process;

“AIP Date” means the date on which the Tla-o-qui-aht approve the AIP as initialled by the negotiators for the Parties and Canada as part of completing Stage 4 of the British Columbia Treaty Commission process;

“Ahousaht Fisheries Litigation” means BC Supreme Court Action No.S033335, Vancouver Registry and includes any appeal of any matter in relation thereto;

“Chief” means, in respect of the Tla-o-qui-aht, “chief” within the meaning of the Indian Act;

“Closing” means the completion of those land transfers, deliveries and other matters contemplated by this Agreement in relation to a transfer of the Lands by the Province to a Designated Company on a Closing Date;

“Closing Date” means the date on which the applicable Lands are transferred to a Designated Company as set out in section 5.1(a) to (e);

“Community Water Reservoir Tenure” means any tenure, authorization or licence that may be issued by the Province to the District of Tofino, its successors, agents or assigns, under provincial law in relation to Lot 129, or any portion thereof, to enable the use and development of such lands as a community water reservoir;

“Council” and “Band Council” mean, in respect of the Tla-o-qui-aht, the elected “council” within the meaning of the *Indian Act*;

“Designated Company” means a company incorporated under the *Business Corporations Act* (British Columbia) which is controlled, as that term is defined in that Act, by the Tla-o-qui-aht, and which the Tla-o-qui-aht has designated to take registered fee simple to any of the Lands;

“Final Agreement” means the Tla-o-qui-aht First Nations Final Agreement to be concluded by Canada, the Province and the Tla-o-qui-aht at the conclusion of Stage 5 of the British Columbia Treaty Commission process;

“Final Agreement Initialling Date” means the date on which the chief negotiators for the Parties and Canada initial the Final Agreement signifying their intention to recommend the Final Agreement to their respective principals for ratification in accordance with the Ratification Chapter of the Final Agreement as part of completing Stage 5 of the British Columbia Treaty Commission process;

“Final Agreement Signing Date” means the date which the authorized signatories for the Parties and Canada sign the Final Agreement in accordance with the Ratification Chapter of the Final Agreement as part of completing Stage 5 of the British Columbia Treaty Commission process;

“Funds” means the capacity building and communications payments made by the Province to the Tla-o-qui-aht in accordance with section 6.1;

“Governmental Action” means all processes, decisions, authorizations, permits, licences, approvals, Crown land dispositions, agreements, and other actions whatsoever, issued, granted, entered into or otherwise taken by a Provincial Official either before or after the date of this Agreement;

“GST” means the goods and services tax imposed under the *Excise Tax Act* (Canada);

“Ha-houlthee” means, for the purposes of this Agreement, the statement of intent area filed by the Tla-o-qui-aht with the British Columbia Treaty Commission;

“Ha-wiih” means the Hereditary Chiefs of the Tla-o-qui-aht First Nations who hold their positions in accordance with Nuuchahnulth customs;

“Indian Act” means the *Indian Act*, R.S.C. 1985, c.1-5;

“ITA Date” means the date on which this Agreement is executed and delivered by the Parties;

“Lands” means Lot 120-Easterly Portion, Lot 120-Westerly Portion, Lot 121, Lot 124, Lot 128 and Lot 129, or any of those fee simple lands, as shown for illustrative purposes in Part 1 of Schedule “1” ;

“Lot 120–Easterly Portion” means those fee simple lands legally described as Parcel Identifier: 010-305-751, the easterly 30 acres of District Lot 120, Clayoquot District, more particularly described as commencing at a post planted at the north east corner of said lot; thence west 15 chains along the north boundary; thence 20 chains to the south boundary; thence 15 chains along the south boundary of said lot; thence north 20 chains along the east boundary of said lot to point and post of commencement;

“Lot 120-Westerly Portion” means those fee simple lands legally described as Parcel Identifier 009-391-185, Lot 120, Clayoquot District, except the east 15 chains thereof more particularly described as follows: commencing at a post planted at the north east corner of said lot; thence west 15 chains along the north boundary; thence 20 chains to the south boundary; thence 15 chains along the south boundary of said lot; thence north 20 chains along the east boundary of said lot to point and post of commencement;

“Lot 121” means those fee simple lands described as District Lot 121, Clayoquot District;

“Lot 124” means those fee simple lands described as District Lot 124, Clayoquot District;

“Lot 128” means that portion of those fee simple lands described as District Lot 128, Clayoquot District, that are not included within the Tofino Mudflats Wildlife Management Area;

“Lot 129” means that portion of those fee simple lands described as District Lot 129, Clayoquot District that are not included within the Tofino Mudflats Wildlife Management Area and that the Province may offer to sell to the Tla-o-qui-aht in accordance with section 5.13;

“Meares Island Litigation” means BC Supreme Court action number C845934 and includes any appeal of any matter in relation thereto;

“Member” means any person who is:

- (i) a “member of the band”, as that phrase is defined in the Indian Act, of the Tla-o-qui-aht First Nations band,
- or
- (ii) enrolled or entitled to be enrolled as a beneficiary under the Final Agreement;

and their heirs, descendants, legal representatives, successors and assigns;

“New Relationship” means the vision developed in March 2005 by the Province and the First Nations Leadership Council, representing the Assembly of First Nations-BC Region, First Nations Summit, and Union of BC Indian Chiefs, that resulted in a new relationship founded on principles of mutual respect, recognition and reconciliation of Aboriginal rights;

“Permitted Encumbrances” means the reservations, exceptions, liens, charges, and interests as described in Part 2 of Schedule “1” for each of the Lands;

“Province” means Her Majesty the Queen in right of the Province of British Columbia;

“Provincial Official” means:

- (i) the Province,
- (ii) any minister, public official, employee, or agent of the Province,
- (iii) any government corporation,
- (iv) any director, officer, employee, or contractor acting on behalf of a government corporation, the Province or an agent of the Province, or
- (v) any person acting as a decision maker under any enactment of the Province.

“Title Instrument” means a Crown grant (as defined in the *Land Act*), or any other enactment or instrument which is legally effective to cause fee simple title in any of the Lands to be transferred to, or vested in, a Designated Company, subject to the Permitted Encumbrances;

“Tla-o-qui-aht” means the “band”, as that term is defined in the Indian Act, named the “Tla-o-qui-aht First Nations” and includes all Members;

“Tofino Mudflats Management Area” means that area within Lot 128 and 129, as amended from time to time, that is designated as the “Tofino Mudflats Wildlife Management Area” by regulation under the *Wildlife Act*.

1.2 **Interpretation.** For purposes of this Agreement, except as otherwise expressly provided:

- a) “this Agreement” means this Incremental Treaty Agreement, including the Schedules hereto, and any agreement, document or instrument entered into, made or delivered pursuant to the terms hereof, as any of them may from time to time be supplemented or amended and in effect;

- b) all references in this Agreement to a designated "Article", "section", "subsection" or other subdivision or to a Schedule are to the designated Article, section, subsection or other subdivision of, or Schedule to, this Agreement;
- c) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, section, subsection or other subdivision or Schedule;
- d) the headings in this Agreement are for convenience only and do not form a part of this Agreement and are not intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision thereof;
- e) all reference to currency refer to lawful money of Canada (unless expressed to be in some other currency);
- f) a reference in this Agreement to any particular enactment or other statute or regulation or any particular section or portion thereof shall be deemed to be a reference to any enactment, statute, regulation or to any particular section or portion thereof, as the case may be, which is enacted in substitution therefore or in replacement thereof;
- g) any reference to a corporate entity includes and is also a reference to any corporate entity that was a predecessor to, or that is a successor to, such entity;
- h) words importing gender include the masculine, feminine or neuter gender and words in the singular include the plural and vice versa;
- i) the use of "including" is to be read as not limiting the generality of the preceding term or phrase;
- j) there shall be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of any Party;
- k) any reference to the delivery on Closing of an agreement or document "in the form" of an attached schedule means an agreement or document substantially in that form with such changes, additions or deletions as may be agreed by the representatives of the Province and the Tla-o-qui-aht authorized for that purpose; and
- l) each and every release, covenant and other agreement given, and action to be taken, by the Tla-o-qui-aht in this Agreement means the Tla-o-qui-aht acting by and through its Chief and Council, and will be conclusively deemed to have been given, or taken, by the Tla-o-qui-aht on its own behalf, and for and on behalf of its Members.



1.3 **Schedules.** The following are the Schedules to this Agreement:

- Schedule "1" – Map of Lands for Illustrative Purposes and Permitted Encumbrances
- Schedule "2" – Additions to Reserve Restrictive Covenant
- Schedule "3" – Release and Waiver of Designated Company
- Schedule "4" – Grant of Private Road Easement

1.4 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.

## ARTICLE 2 PURPOSES

2.1 **Purposes.** The purposes of this Agreement are to:

- a) demonstrate the commitment of the Parties to concluding a Final Agreement;
- b) provide the Tla-o-qui-aht with incremental treaty benefits in advance of a Final Agreement, in the spirit of the New Relationship. The Lands to be transferred in accordance with this Agreement will become an element of the Final Agreement;
- c) develop capacity within the Tla-o-qui-aht to enable it to more effectively implement the Final Agreement;
- d) establish additional certainty on the land base in the Clayoquot Sound region; and
- e) facilitate the establishment of a secure source of water for the District of Tofino for the benefit of Tofino area residents, including Tla-o-qui-aht Members.

## ARTICLE 3 COMING INTO EFFECT AND TERM

3.1 **Effective Date.** This Agreement comes into effect when it has been executed and delivered by each of the Parties.

3.2 **Term.** The term of this Agreement is four (4) years.

3.3 **Termination.** This Agreement will terminate on the occurrence of the earliest of any of the following events:

- a) expiry of its term;
- b) 90 days notice by either Party; or
- c) mutual agreement of the Parties.

3.4 **Extension of Term.** The term of this Agreement may be extended by the written agreement of the Parties.

#### **ARTICLE 4** **REPRESENTATIONS AND WARRANTIES**

4.1 **Tla-o-qui-aht Representations.** The Tla-o-qui-aht represents and warrants to the Province, with the intent and understanding that the Province will rely thereon in entering into this Agreement, that:

- a) it enters into this Agreement for, and on behalf of, its Members;
- b) its Members have provided it with a mandate to negotiate an AIP and Final Agreement and it is committed to attempt to conclude such negotiations by 2011;
- c) it, as represented by its Chief and Council and Ha-wiih, has the legal power, capacity and authority to accept, execute and deliver this Agreement and to carry out its obligations under this Agreement on behalf of the Tla-o-qui-aht and its Members;
- d) this Agreement is binding upon and enforceable against the Tla-o-qui-aht and its Members in accordance with its terms;
- e) this Agreement has been duly authorized, executed and delivered by and on behalf of the Tla-o-qui-aht and its Members;
- f) any company designated by the Tla-o-qui-aht as a Designated Company for the purposes of this Agreement will be a company duly incorporated under the *Business Corporations Act* (British Columbia) and controlled by the Tla-o-qui-aht such that it is duly constituted on the applicable Closing as a Designated Company as defined herein; and

- g) any Designated Company has the power and capacity to enter into each transaction and agreement to which it is a Party in accordance with this Agreement and to carry out its obligations in connection with such transactions and agreements.

4.2 **Provincial Representations.** The Province represents and warrants that on Closing each of the representations and warranties set out below will be true and complete and acknowledges that the Tla-o-qui-aht has entered into this Agreement in reliance on the truthfulness of each of these representations and warranties:

- a) it has the power and authority to make the payments and to cause fee simple title to the Lands to be transferred to or vested in a Designated Company as contemplated by this Agreement.

## ARTICLE 5 LAND TRANSFERS

5.1 **Transfers of the Lands.** Subject to the Permitted Encumbrances and the terms of this Agreement, the Province will transfer to a Designated Company the Lands as follows:

- a) Lot 124, as soon as practicable after the ITA Date;
- b) Lot 121, as soon as practicable after the AIP Date;
- c) Lot 120-Easterly Portion, as soon as practicable after the Final Agreement Initialling Date;
- d) Lot 120-Westerly Portion, as soon as practicable after the Final Agreement Signing Date; and
- e) Lot 128, as soon as practicable after the Final Agreement Signing Date.

5.2 **Pre-Closing Deliveries by the Tla-o-qui-aht.** Thirty (30) days prior to a Closing Date the Tla-o-qui-aht will deliver to the Province a direction identifying the Designated Company that will take registered title to the applicable Lands.

5.3 **Closing Deliveries by the Province.** At Closing the Province shall execute and deliver, or cause to be executed and delivered, as the case may be, to the Tla-o-qui-aht a Title Instrument for the applicable Lands.

- 5.4 **Closing Deliveries by the Tla-o-qui-aht.** At Closing the Tla-o-qui-aht shall execute and deliver, or cause to be executed and delivered, or deliver, as the case may be, to the Province:
- a) a restrictive covenant granted by the Designated Company in the form attached as Schedule 2 in relation to the applicable Lands;
  - b) a release and waiver by the Designated Company in the form attached as Schedule 3 in relation to the applicable Lands;
  - c) a certificate signed by an officer of the Designated Company confirming the Designated Company's GST registration number and registered status; and
  - d) if applicable, a private road easement granted by the Designated Company in the form attached as Schedule 4.
- 5.5 **Closing Procedure.** The transactions contemplated by this Agreement will be closed in accordance with procedures to be agreed to by the respective legal counsel of the Tla-o-qui-aht and the Province such that all deliveries and the lodging for registration of any documents at the Land Title Office for which registration is necessary or advisable may be completed concurrently.
- 5.6 **Environmental Matters.** The Tla-o-qui-aht acknowledges and agrees that any of the Lands acquired by the Designated Company under this Agreement are acquired "as is". The Tla-o-qui-aht waives the requirement, if any, of the Province to provide a site profile as defined in the *Environmental Management Act* for any of the Lands and except as otherwise specifically set forth herein, the Province has not given any warranty or representation concerning:
- a) the fitness of the Lands for any particular use, including the intended use of it by the Tla-o-qui-aht or by a Designated Company;
  - b) the condition of the Lands (including surface and groundwater), environmental or otherwise, including the presence or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Land and on or under any surrounding or neighbouring land and the current and past uses of the Land and any surrounding or neighbouring land;
  - c) the provisions of any enactments or bylaws of any governmental body which relate to the development, use and occupation of the Lands; and
  - d) the economic feasibility of the development of the Lands;

5.7 **Environmental Remediation.** The Tla-o-qui-aht will from and after the Closing:

- a) assume all environmental liabilities relating to the Lands including, but not limited to, all liability for the clean-up of any toxic, hazardous, dangerous or potentially dangerous substances or conditions on or under the Lands or migrating from the Lands (including surface water and groundwater);
- b) indemnify and save harmless the Provincial Officials from and against all claims, demands, liabilities, losses, damages, costs or expenses suffered or incurred by them after the Closing arising out of or in connection with all environmental liabilities relating to the Lands, including, but not limited to, any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances migrating from the Lands; and
- c) release the Provincial Officials from and against all claims, demands, liabilities, losses, damages, costs, actions, causes of action, suits and proceedings with respect to all environmental liabilities relating to the Lands, including, but not limited to, any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances migrating from the Lands.

5.8 **Land Use.** To the best of the Province's knowledge, the Lands have not been used for a prescribed industrial or commercial purpose or any other purpose or activity prescribed under the *Environmental Management Act*, and the Province is not required, under that *Act*, to prepare or provide a site profile for any of the Lands.

5.9 **Permitted Encumbrances.** The Tla-o-qui-aht acknowledges that it is familiar with the Permitted Encumbrances and accepts title to the Lands subject to the same and covenants not to do, or allow to be done, any thing that would constitute a default under any of the Permitted Encumbrances or that would otherwise result in any claim against the Province by anyone claiming by, through or under a Permitted Encumbrance.

5.10 **PTT and Other Costs.** The Province is responsible for the following costs in connection with the transfer of the Lands:

- a) the cost of any survey required for any Crown grant of the Lands;
- b) any other costs or fees associated with the preparation of Crown grants or any other Title Instrument; and
- c) property transfer tax (and for certainty the Province agrees to either pay or waive the requirement to pay any property transfer tax payable under the *Property Transfer Tax Act* in connection with the transfer of the Lands under this Agreement).

- d) The Tla-o-qui-aht is responsible for any GST and any other transfer or registration charges for which the Province has not expressly agreed to accept responsibility under the terms of this Agreement.

5.11 **Conditions Precedent in Favour of the Province.** The obligation of the Province to transfer any of the Lands to the Tla-o-qui-aht under this Agreement is subject to:

- a) the Province and Canada reaching an agreement satisfactory to the Province, in its sole discretion, on or before the applicable Closing Date on cost sharing the value of the Lands for treaty settlement purposes;
- b) the representations and warranties of the Tla-o-qui-aht herein being true and correct on the applicable Closing Date;
- c) the Tla-o-qui-aht having complied with all covenants of the Tla-o-qui-aht herein on the applicable Closing Date.

5.12 **Lot 128.** Prior to the Final Agreement Transfer Date, the Province will review the boundaries of the Tofino Mudflats Wildlife Management Area with the Tla-o-qui-aht and determine whether the boundaries of the Tofino Mudflats Wildlife Management Area within Lot 128 should be amended.

5.13 **Lot 129 Arrangements.** The Tla-o-qui-aht acknowledges that the District of Tofino intends to apply to the Province for a Community Water Reservoir Tenure in respect of all or a portion of Lot 129, and the Tla-o-qui-aht consents to the issuance by the Province of the Community Water Reservoir Tenure.

The Tla-o-qui-aht further acknowledges and covenants that the Province has, and will for all purposes be deemed to have, fulfilled its obligations of consultation and accommodation to the Tla-o-qui-aht in relation to the Community Water Reservoir Tenure.

If, during the term of this Agreement, the Province determines that all or a portion of Lot 129 is no longer required by the District of Tofino for community water reservoir purposes and the Community Water Reservoir Tenure is cancelled:

- a) the Province will notify the Tla-o-qui-aht and the Parties and the District of Tofino will review the boundaries of the Tofino Mudflats Wildlife Management Area within Lot 129;
- b) following the review of the boundaries of the Tofino Mudflats Wildlife Management Area within Lot 129, the Province will offer to sell to a Designated Company, at fair market value, that portion of Lot 129 which is not within the Tofino Mudflats Wildlife Management Area by delivering to the Tla-o-qui-aht an offer to sell such lands setting out:

- i) a description of that portion of Lot 129 which the Province is prepared to sell;
- ii) the purchase price of the lands;
- iii) the reservations, liens, charges, and interests that the lands are subject to; and
- iv) the other terms and conditions applicable to the purchase and sale of the lands.

An offer to sell all or a portion of Lot 129 in accordance with this Agreement will be open for acceptance by the Tla-o-qui-aht for a period of one year from the delivery of the offer to sell, after which the Tla-o-qui-aht is deemed to have refused the offer to sell, the offer to sell expires and the Province may otherwise dispose of such lands.

## **ARTICLE 6**

### **CAPACITY BUILDING AND COMMUNICATIONS FUNDING**

6.1 **Capacity Building and Communications Payments.** The Province will pay to Tla-o-qui-aht:

- a) a payment of **\$100,000** on the date this Agreement comes into effect;
- b) a payment of **\$150,000** as soon as practicable after the date the chief negotiators for the Parties and Canada initial an agreement that AIP land selection negotiations are substantially complete;
- c) a payment of **\$150,000** on the first annual anniversary of the date the payment under 6.1 (b) is made; and
- d) a payment of **\$200,000** on the second annual anniversary of the date the payment under 6.1 (b) is made.

6.2 **Conditions Precedent in Favour of the Province.** The obligation of the Province to pay the Funds is subject to:

- a) the availability of annual appropriations for that purpose by the Government of British Columbia;
- b) the representations and warranties of the Tla-o-qui-aht herein being true and correct on the applicable payment date; and

- c) the Tla-o-qui-aht having complied with all covenants of the Tla-o-qui-aht herein on the applicable payment date.

**ARTICLE 7**  
**TREATY NEGOTIATIONS MATTERS**

- 7.1 **Land Acquisition Treaty Related Measure.** As part of AIP negotiations, the Province will explore with Tla-o-qui-aht and Canada the potential for entering into a treaty related measure by which Canada and the Province will acquire, on a willing buyer-willing seller basis, private lands located within the Tofino peninsula for the purposes of offering such lands to the Tla-o-qui-aht in accordance with the terms and conditions of the Final Agreement. For greater certainty, the Province will require appropriate cost-sharing arrangements with Canada and Cabinet and Treasury Board approval before finalizing any such treaty related measure.
- 7.2 **Post-treaty Status of Lands.** As part of AIP or Final Agreement negotiations, the Parties will negotiate the status of the Lands transferred under this Agreement to the Tla-o-qui-aht as "Tla-o-qui-aht First Nations Lands" or "Other Tla-o-qui-aht First Nations Lands" within the meaning of the Final Agreement.
- 7.3 **Kennedy Lake Watershed.** As part of AIP or Final Agreement negotiations, the Parties will explore options for addressing Tla-o-qui-aht's interests in the preservation, management, and planning of land use within the Kennedy Lake watershed.
- 7.4 **Lot 129.** If any Community Water Reservoir Tenure that may be issued by the Province during the term of this Agreement continues beyond the term of this Agreement, the Province will agree to include provisions in the Final Agreement that, if the Province determines that all or a portion of Lot 129 is no longer required by the District of Tofino for community water reservoir purposes and the Community Water Reservoir Tenure is cancelled, provide Tla-o-qui-aht the ability to acquire Lot 129 substantially in accordance with the terms and conditions set out in section 5.13 of this Agreement.
- 7.5 **Land Protection Measures.** As soon as practicable after the chief negotiators for the Parties and Canada initial an agreement that AIP land selection negotiations are substantially complete, the Province will enter into negotiations with Tla-o-qui-aht and Canada to conclude an agreement whereby the appropriate Provincial Officials will, subject to the terms of such agreement, take the necessary statutory and administrative steps to implement the following measures under appropriate provincial legislation:



- a) specify the negotiated AIP land selections as a “designated area” under Part 13 of the *Forest Act*;
- b) withdraw the negotiated AIP land selections from disposition under the *Land Act*; and
- c) prohibit the staking of mineral claims on the negotiated AIP land selections under the *Mineral Tenure Act*.

## **ARTICLE 8** **RECONCILIATION**

- 8.1 **Reconciliation.** The Tla-o-qui-aht acknowledges and agree that in the spirit of the New Relationship and to advance Final Agreement negotiations the Funds paid to the Tla-o-qui-aht and the Lands transferred to the Tla-o-qui-aht in accordance with this Agreement constitute a contribution by the Province towards the reconciliation of the Province’s and the Tla-o-qui-aht’s interests and the settlement of the Tla-o-qui-aht’s aboriginal rights and title claims within the Ha-houlthee through treaty negotiations and, as such, the benefits provided to the Tla-o-qui-aht under this Agreement will be counted as a portion of the Province’s contribution towards the Final Agreement settlement.

## **ARTICLE 9** **OTHER ACKNOWLEDGEMENTS AND COVENANTS**

- 9.1 **Other Tla-o-qui-aht Covenants.** The Tla-o-qui-aht further acknowledges and covenants that:
- a) during the term of this Agreement, the Province has, and will for all purposes be deemed to have, fulfilled its obligations of consultation and accommodation to the Tla-o-qui-aht in relation to the Maa-nulth First Nations Final Agreement;
  - b) during the term of this Agreement, subject to the Province complying with the consultation processes established under the Forest and Range Opportunities Agreement and any process that may be established under 9.1 (g), it will not initiate any court action or proceeding to challenge any Governmental Action associated with a provincial Crown land disposition or land use authorization by any Provincial Official of provincial Crown land within the Ha-houlthee, including a Community Water Reservoir Tenure, on the basis that the Province has failed to fulfill any duty to consult or accommodate in respect of such matter or that any such matter

constitutes an unjustifiable infringement of any aboriginal rights or title of the Tla-o-qui-aht;

- c) during the term of this Agreement, it will not initiate any further steps in the Meares Island Litigation;
- d) as part of the Final Agreement it will agree to discontinue from the Ahousaht Fisheries Litigation on the same basis as the Maa-nulth First Nation litigants agreed to discontinue from such litigation in the Maa-nulth First Nation Final Agreement and related Maa-nulth First Nation Harvest Agreement;
- e) any of the Lands that may be transferred to a Designated Company in accordance with this Agreement will not be "lands reserved for the Indians" within the meaning of section 91(24) of the *Constitution Act, 1867* or a reserve within the meaning of the *Indian Act* and at no time after Closing will the Tla-o-qui-aht seek to add any of the Lands to its reserve lands;
- f) the Lands are subject to provincial laws, including applicable zoning, land use, land development and property tax laws, and at no time after Closing will the Tla-o-qui-aht challenge the applicability of provincial laws to the Lands;
- g) upon the request of the Province, it will enter into a process with the Integrated Land Management Bureau to negotiate and attempt to reach agreement on a consultation process related to Crown land use authorizations and dispositions within the Ha-houlthee; and
- h) it has entered into a Forest and Range Opportunity Agreement with the Province which sets out consultation arrangements and responsibilities regarding forest resources within the Ha-houlthee.

## **ARTICLE 10** **DISPUTE RESOLUTION**

- 10.1 If a dispute arises between the Province and the Tla-o-qui-aht regarding the interpretation of a provision of this Agreement, the Parties or their duly appointed representatives will meet as soon as is practicable to attempt to resolve the dispute.
- 10.2 If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of the Province and the Tla-o-qui-aht.

- 10.3 The Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

**ARTICLE 11**  
**NOTICES**

- 11.1 Any notice, document, statement, report, demand or grant that any Party may be required or may desire to give to any other Party under this Agreement must be in writing, unless otherwise specified herein, and will be deemed validly given to and received by the addressee, if served personally, on the date of personal service or, if delivered by mail, or facsimile copier, when received as follows

if to the Province:

Deputy Minister  
Ministry of Aboriginal Relations and Reconciliation  
P.O Box Stn. Prov. Gvt.  
Victoria, B.C. V8W 9B1

Fax: (250) 387-6073

and if to the Tla-o-qui-aht First Nations:

Tla-o-qui-aht First Nations  
PO BOX 18  
Tofino, B.C. V0R 2Z0  
Attention: Chief Councillor

Fax: (250) 725-4233

- 11.2 Either Party may, from time to time, give written notice to the other Party of any change of address or facsimile number of the Party giving such notice and after the giving of such notice, the address or facsimile number therein specified will, for purposes of this Agreement be conclusively deemed to be the address or facsimile number of the Party giving such notice.

**ARTICLE 12**  
**GENERAL**

- 12.1 **Non-waiver.** No term or condition of this Agreement and no breach by one Party of any such term or condition will be deemed to have been waived unless such waiver is in writing signed by the other Party.
- 12.2 **Written Waiver.** The written waiver by one Party of any breach by the other Party of any term or condition of this Agreement will not be deemed a waiver of such term or condition or of any subsequent breach by the other Party of the same or any other term or condition of this Agreement.
- 12.3 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement.
- 12.4 **Further Acts and Assurances.** Each of the Parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better and absolute performance of the terms and conditions of this Agreement.
- 12.5 **Not a Treaty.** This Agreement does not:
- a) constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the Constitution Act, 1982 (Canada); or
  - b) recognize, affirm, define, deny, limit or amend any aboriginal rights or titles or any responsibilities of the Parties except as set out in this Agreement.
- 12.6 **Successors and Assigns.** This Agreement will enure to the benefit of and be binding upon the Tla-o-qui-aht and its successors and permitted assigns and the Province and its assigns.
- 12.7 **Band Council Resolution.** Prior to the execution of this Agreement, the Tla-o-qui-aht will deliver to the Province a Resolution made by its elected Council authorizing the Tla-o-qui-aht's representatives named in the resolution to execute this Agreement on behalf of the Tla-o-qui-aht.
- 12.8 **Execution in Counterpart.** This Agreement may be entered into by each Party signing a separate copy of this Agreement (including a photocopy or facsimile copy) and delivering it to the other Party by facsimile transmission.

12.9 **No Admissions.** Nothing in this Agreement will be construed as an:


- a) admission by the Province of the validity of any claim by the Tla-o-qui-aht to a specific aboriginal right or title within the meaning of section 35 of the *Constitution Act, 1982*; or
- b) acknowledgment by the Province that it has an obligation to provide financial or economic accommodation to the Tla-o-qui-aht.

12.10 **No Fetter.** Nothing in this Agreement shall be interpreted in a way that fetters the discretion given to any Provincial Official in an enactment.

12.11 **Amendment.** This Agreement may be amended from time to time by the Parties by an instrument in writing. No term of this Agreement may be amended or waived except by written instrument.

IN WITNESS WHEREOF the Parties have executed this Agreement as set out below:

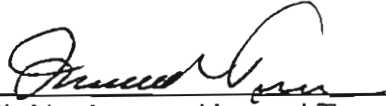
**Signed on behalf of the Tla-o-qui-aht  
First Nations by**

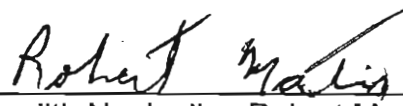
  
\_\_\_\_\_  
Tyee Hawilth Wickininnish - George Frank

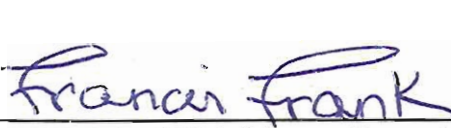
  
\_\_\_\_\_  
Tyee Hawilth Hyoueh - Ray Seitcher Jr.

  
\_\_\_\_\_  
Hawilth Muu chin ink - Bruce Frank

  
\_\_\_\_\_  
Hawilth Siyasim - Alex Frank

  
\_\_\_\_\_  
Hawilth Naak-qua - Howard Tom

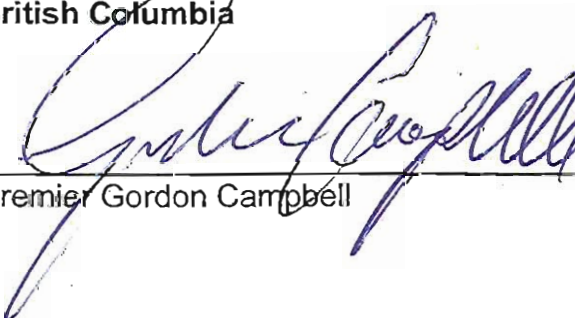
  
\_\_\_\_\_  
Hawilth Nuukmiis - Robert Martin

  
\_\_\_\_\_  
Chief Negotiator/ Chief Councillor - Francis Frank

  
\_\_\_\_\_  
Co-Chief Negotiator - Elmer Frank

  
\_\_\_\_\_  
Moses Martin  
Witness

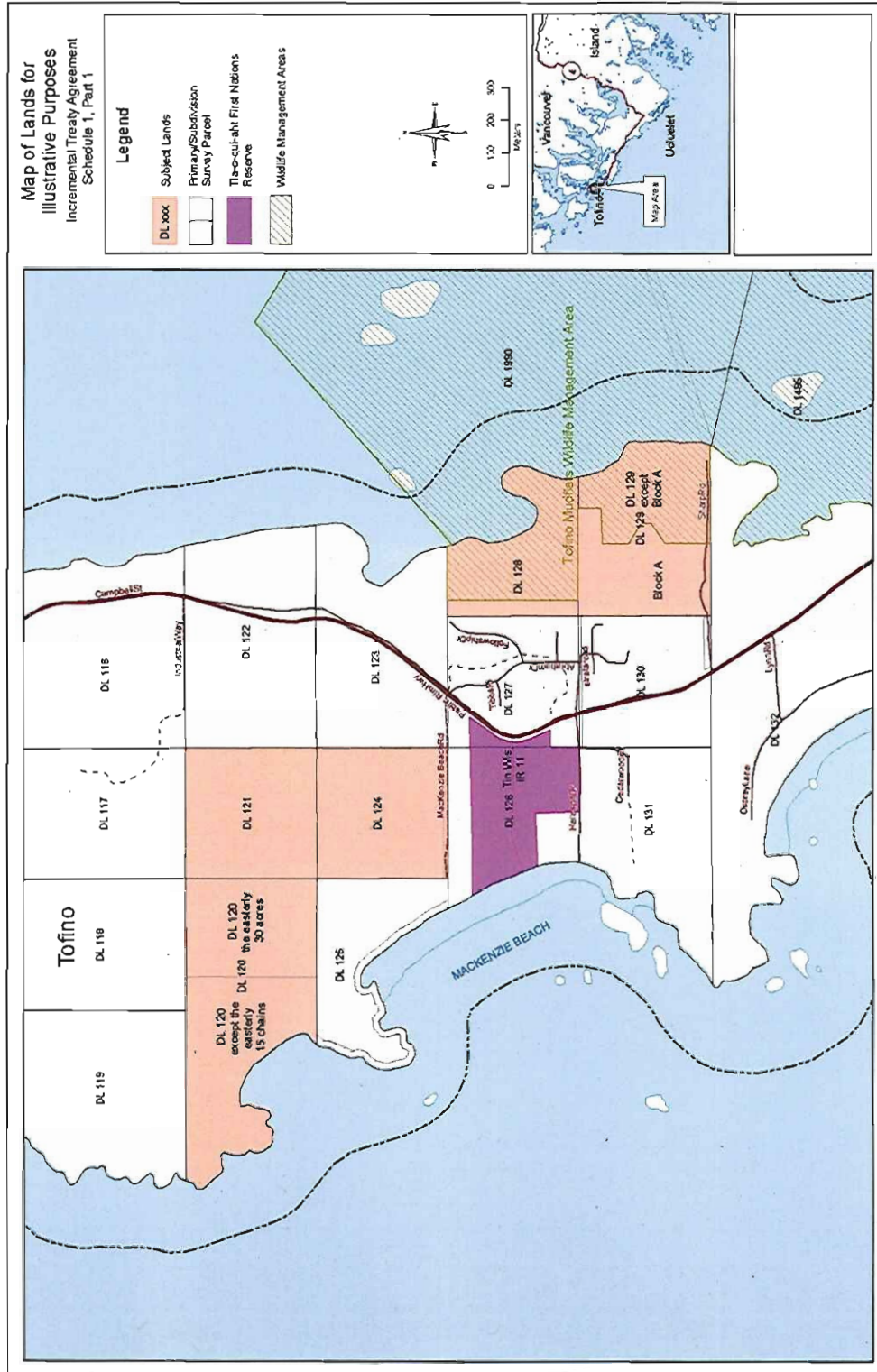
**Signed on behalf of Her Majesty the  
Queen In Right of the Province of  
British Columbia by the Premier of  
British Columbia**

  
\_\_\_\_\_  
Premier Gordon Campbell

  
\_\_\_\_\_  
Honourable Michael de Jong  
Witness

# Schedule "1" Map of Lands for Illustrative Purposes and Permitted Encumbrances

## Part 1 - Map of Lands for Illustrative Purposes



### Part 2 – Permitted Encumbrances

Parcel	Permitted Encumbrances
Lot 120 - Easterly Portion	all subsisting exceptions and reservations of interests, rights, privileges and titles contained in any previous Crown grant of the land.
Lot 120 - Westerly Portion	all exceptions and reservations contained in section 50(1) of the <i>Land Act</i> .
Lot 121 Lot 124 Lot 128 Lot 129	any conditional or final water license or substituted water license issued or given under the <i>Water Act</i> , or any prior enactment of the Province of British Columbia of like effect, and to the rights of the holder of it to enter on the land and to maintain, repair and operate any works permitted on the land under the license at the date of the crown grant.
	all subsisting grants to, or subsisting rights of any person made or acquired under the <i>Mineral Tenure Act</i> , <i>Coal Act</i> or <i>Petroleum and Natural Gas Act</i> or under any prior or subsequent enactment of the Province of British Columbia of like effect.
	all other liens, charges and encumbrances granted by the Province, with the prior written consent of the Tla-o-qui-aht prior to the Closing Date.
	a restrictive covenant in favour of Her Majesty the Queen in right of the Province of British Columbia to be registered against the title to this property in the form attached as Schedule 2 (Additions to Reserve Restrictive Covenant).
	any private road easements in relation to any private road that may exist on the Closing Date, in the form attached as Schedule 4 (Grant of Private Road Easement).



**Schedule "2"**  
**Addition to Reserve Restrictive Covenant**

**LAND TITLE ACT**  
**FORM C**  
(Section 233)

Province of  
British Columbia

**GENERAL INSTRUMENT-PART 1** (This area for Land Title Office Use)

Page 1 of 4 pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

\_\_\_\_\_  
(Signature of Solicitor or Authorized Agent)

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:\*

(PID)

(LEGAL DESCRIPTION)

3. NATURE OF INTEREST:\*

Description	Document Reference (Page and paragraph)	Person Entitled to Interest
Section 219 Covenant	Entire Document	Transferee (Grantee)

4. TERMS: Part 2 of this instrument consist of (select one only)

- (a) Filed Standard Charge Terms  D.F. No.
- (b) Express Charge Terms  Annexed as Part 2
- (c) Release  There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

3. TRANSFEROR(S):\* (Grantor)

3. TRANSFEREE(S): (Including postal address(es) and postal code(s))\* (Grantee)

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA** as represented by the Minister of Agriculture and Lands, Parliament Buildings, PO Box 9043, STN PROV GOVT, Victoria, British Columbia, V8W 9E2

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7. ADDITIONAL OR MODIFIED TERMS:\*

N/A

---

8. EXECUTION(S):\*\* This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)	Execution Date	Party(ies) Signature(s)						
	<table border="1" style="border-collapse: collapse; width: 100px;"><tr><td style="width: 33px; text-align: center;">Y</td><td style="width: 33px; text-align: center;">M</td><td style="width: 33px; text-align: center;">D</td></tr><tr><td style="height: 150px;"></td><td></td><td></td></tr></table>	Y	M	D				<p>_____ By</p> <p>Its authorized signatory(ies):</p> <p>_____</p> <p>Print Name:</p> <p>_____</p> <p>Print Name:</p>
Y	M	D						

**OFFICER CERTIFICATION:**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

\* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.  
\*\* If space insufficient, continue executions on additional page(s) in Form D.

TERMS OF INSTRUMENT – PART 2

WHEREAS:

A. The Grantor is the registered owner of:

\_\_\_\_\_

(the "Land");

B. Under section 219 of the *Land Title Act*, there may be registered against title to any land, conditions or covenants in favour of the Grantee that the land, or any specified portion thereof, is not to be used other than in accordance with the terms of a covenant.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of One (\$1.00) Dollar now paid by the Grantee to the Grantor, the receipt and sufficiency of which is hereby acknowledged, and pursuant to section 219 of the *Land Title Act*, the Grantor covenants and agrees with the Grantee as follows:

1. The Grantor covenants and agrees that the Grantor will not, in the absence of consent by the Grantee, transfer, alienate or deal with the Land in any manner which would see it incorporated into or become part of:
  - a. Reserves or special reserves as defined in the *Indian Act*, or
  - b. "Lands reserved for the Indians" under section 91(24) of the *Constitution Act, 1867*.
2. Wherever the singular or masculine are used in this Agreement, they shall be construed as meaning the plural or feminine or body corporate where the context or the parties so require.
3. This Agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and assigns.
4. The Grantor will indemnify and save harmless the Grantor from all actions, causes of action, claims demands, suits, losses, damages, debts, accounts, liabilities, costs, expenses and compensation of any kind, including fees of solicitors and other professional advisors, arising out of any breach, violation or non-performance by the Grantor of the covenants set out in section 1.
5. No term, condition, covenant or other provision of this Agreement will be considered to have been waived by the Grantee unless such waiver is expressed in writing by the Grantee and the waiver by the Grantee of any such term, condition, covenant or other provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of that or any other term, condition, covenant or other provision of this Agreement.
6. This Agreement will be interpreted according to the laws of the Province of British Columbia.

7. Where there is a reference to an enactment of the Province of British Columbia in this Agreement, that reference includes a reference to any subsequent enactment of the Province of British Columbia of like effect and, unless the context otherwise requires, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
8. If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining parts or section, as the case may be, will not be affected and will be enforceable to the fullest extent permitted by law.
9. This Agreement will be registered as a charge against the Land pursuant to section 219 of the *Land Title Act*.

IN WITNESS WHEREOF the Grantor has executed this Agreement on Form C attached.

**END OF DOCUMENT**

**Schedule "3"**  
**Release and Waiver**  
**Of**  
**[Name of Designated Company]**  
**(the "Designated Company")**

WHEREAS:

- A. Her Majesty the Queen in the Right of the Province of British Columbia as represented by The Minister of Aboriginal Relations and Reconciliation and the Tla-o-qui-aht First Nations have entered into an Agreement date as of \_\_\_\_\_ (the "Agreement") whereby the Designated Company is acquiring fee simple title to those lands legally described as:

[Insert Legal Description of lands]

(the "Lands")

- B. As a condition of the Designated Company's acquisition of fee simple title to the Lands the Tla-o-qui-aht First Nations and the Designated Company have agreed that the Designated Company grant and enter into this release and waiver on the terms set out below.

NOW THEREFORE in consideration of the premises, and the sum of ONE (\$1.00) DOLLAR and other valuable consideration paid by the Province to the Designated Company, the receipt of which is hereby acknowledged by the Designated Company, the Designated Company hereby release, waives, acknowledges and agrees as follows:

1. The terms "Province" and "Tla-o-qui-aht" and any other capitalized terms used herein and defined in the Agreement have the meaning given to those terms in the Agreement.
2. The Designated Company waives the requirement, if any, of the Province to provide a site profile as defined in the *Environmental Management Act* in connection with its acquisition of the Lands.
3. The Designated Company agrees with the Province that each covenant, representation, warranty, acknowledgement and every other term of the Agreement given by Tla-o-qui-aht or otherwise set out in the Agreement which is for the benefit of the Province is legally binding on the Designated Company in relation to the Lands as fully and as effectively as if the Designated Company had entered into and executed the Agreement along with the Tla-o-qui-aht, including, without limitation, each of those representations and acknowledgements set out in section 5.6 and 5.7 of the Agreement.
4. By executing and delivering this Covenant each of the parties intends to create both a contract and a deed executed and delivered under seal.

Signed, Sealed and Delivered as of \_\_\_\_\_, 2008 by:

[Name of Designated Company]

\_\_\_\_\_  
Per: Authorized Signatory

**Schedule "4"**

**GRANT OF PRIVATE ROAD EASEMENT**

THIS AGREEMENT is dated *[insert month, day, year]*.

BETWEEN:

[DESIGNATED COMPANY]  
(TO BE DETERMINED ON EXECUTION)

\_\_\_\_\_  
*[insert address]* (the "Owner")

AND:

\_\_\_\_\_  
*[Insert legal name of grantee]*

OF

\_\_\_\_\_  
*[insert address]*, (the "Grantee")

WHEREAS:

- A. The Grantee wishes an easement over the Servient Lands to provide access to the Grantee's Property.
- B. The Owner is willing to grant to the Grantee an easement over the Servient Lands to provide access to the Grantee's Property.

Therefore in consideration of the payment of the fee to be paid by the Grantee, and the Grantee's covenants as set out in this Agreement, the Owner and Grantee agree as follows:

**1. DEFINITIONS**

**"Grantee's Property"** means the lands described in Schedule A attached to this Agreement.

**"Easement Area"** means that portion of the Servient Lands as described in Schedule B attached to this Agreement.

**"Security"** means the security for the performance of the Grantee's obligations as set out in paragraph 12 in the amount of [\$xx]

**"Servient Lands"** means the lands described in Schedule A attached to this Agreement.

“**Special Conditions**” means the conditions, if any, set out in Schedule C attached to this Agreement.

**2. RIGHTS AND PRIVILEGES ON EASEMENT AREA**

By this Agreement the Owner grants to the Grantee, and its invitees, permittees, representatives, employees, and agents, their heirs, executors, administrators and assigns, the full, free and uninterrupted easement, right and liberty over the Easement Area to enter on and use the Easement Area for the purpose of constructing and maintaining (including trimming or removing trees and vegetation) a road and using the Easement Area as a road to give pedestrian and vehicular access to the Grantee's Property.

**3. DURATION**

This Easement is appurtenant to the Grantee's Property and passes with a conveyance or other disposition of the estate in fee simple of the Grantee's Property, and is binding on the Servient Lands.

**4. ANNUAL FEE**

The Grantee will pay the Owner an annual fee in advance in the amount of [*\$xx not to exceed \$100.00 (2008 dollars)*], to cover the Owner's costs of administering this Agreement.

**5. COVENANT**

The obligation of the Grantee in this Agreement constitutes both contractual obligations and covenants under Section 219 of the *Land Title Act* in respect of the Grantee's Property and runs with the Grantee's Property and binds successors in title.

**6. NON EXCLUSIVE USE**

This Agreement will not entitle the Grantee to exclusive possession of the Easement Area and the Owner reserves the right to grant other dispositions of the Easement Area so long as the grant does not impair the Grantee's permitted use of the Easement Area.

**7. COVENANTS OF THE GRANTEE**

The Grantee covenants with the Owner:

- a) to pay the annual fee as described in paragraph 4 at the address of the Owner set out above or at such other place as the Owner may specify under paragraph 14;
- b) to pay and discharge when due all applicable taxes, levies, charges and assessments now or hereafter assessed, levied or charged which relate to the Easement Area or any of the Grantee's improvements on the Easement Area, which the Grantee is liable to pay;



- c) to observe, abide by and comply with all applicable laws, bylaws, orders, directions, ordinances and regulations of any competent government authority, including an Owner government, in any way affecting the Easement Area and improvements situate thereon, or their use and occupation;
- d) not to commit or suffer any wilful or voluntary waste, spoil or destruction on the Easement Area or do or suffer to be done thereon by its invitees, permittees, representatives, employees, or agents, or anyone for whom the Grantee is responsible at law, anything that may be or becomes a nuisance;
- e) not to bury debris or rubbish of any kind on the Easement Area;
- f) not to commit or suffer any wilful or voluntary waste, spoil or destruction on the Easement Area, or anything that may be or becomes a nuisance or annoyance to the Servient Lands;
- g) to deliver to the Owner from time to time, upon demand, proof of insurance required under this Agreement, receipts or other evidence of payment of any taxes or charges owing, and other monetary obligations of the Grantee required to be observed by the Grantee pursuant to this Agreement;
- h) to indemnify and save harmless the Owner against all losses, damages, costs and liabilities, including fees of solicitors and other professional advisors, arising out of:
  - i. any breach, violation or non-performance of any covenant, condition or obligation under this Agreement by the Grantee; and
  - ii. any personal injury, death, or property damage, arising out of the Grantee's use or occupation of the Easement Area under this Agreement,and the Owner may add the amount of any losses, damages, costs and liabilities to the fees payable under paragraph 4, and the amount added will be payable to the Owner immediately.
- i) to keep the Easement Area in a safe, clean and sanitary condition satisfactory to the Owner acting reasonably, and to make safe, clean and sanitary any portion of the Easement Area or any improvement thereon that the Owner, acting reasonably, may direct by notice in writing to the Grantee;
- j) to permit the Owner or its authorized representative to enter upon the Easement Area at any time to examine its condition;
- k) to use and occupy the Easement Area in accordance with the provisions of this Agreement including the Special Conditions, if any, set out in Schedule C;
- l) on the expiration or at the earlier cancellation of this Agreement:

- i. to quit peaceably and deliver possession of the Easement Area to the Owner;
- ii. to de-commission the road, including the removal of any structures or works on the Easement Area, and restore the surface of the Easement Area to the satisfaction of the Owner acting reasonably;

and to the extent necessary, this covenant shall survive the expiration or cancellation of this Agreement;

- m) to obtain and keep in force insurance covering the Owner and the Grantee (without any rights of cross-claim or subrogation against the Owner) against claims for personal injury, death, property damage or third party or public liability claims arising from any accident or occurrence on the Easement Area to an amount not less than \$1,000,000.00;
- n) notwithstanding subparagraph (m), the Owner may from time to time, acting reasonably, considering the amount of insurance a prudent owner would carry, require the Grantee to increase the amount of insurance and the Grantee will, within 60 days of receiving the request, obtain the required additional insurance and deliver to the Owner written confirmation of the change;
- o) not to interfere with the activities, works or other improvements of any other person who enters on or uses or occupies the Easement Area under a subsequent right or interest granted by the Owner, or who is otherwise authorized by the Owner to enter on or use or occupy the Easement Area, in accordance with paragraph 6; and
- p) if the Grantee, or its agents, contractors or representatives, discover any archaeological material on the Easement Area, to take all reasonable steps and precautions to minimize disturbance of that material, and to immediately notify the Owner.

## 8. CANCELLATION

Despite any other provision of this Agreement, this Agreement may be cancelled if the Grantee fails or refuses to observe or perform any term in this Agreement, and the failure continues after the Owner gives written notice of the failure to the Grantee for a period of:

- a) 30 days; or
- b) 150 days, if the failure because of its nature reasonably requires more than 30 days to cure, and provided that the Grantee proceeds diligently and continuously to cure the failure,

then the Owner may by further written notice to the Grantee cancel this Agreement and despite paragraph 7(l), any fixtures to the Easement Area will, at the discretion of the Owner, become the property of the Owner.

**9. RELOCATION OF EASEMENT AREA**

If the Owner requires the Easement Area for another purpose, the Owner may, on 180 days written notice to the Grantee and in consultation with the Grantee:

- a) at its cost locate and construct an alternate road providing access to the Grantee's Property to a standard at least equivalent to the original road;
- b) grant a replacement agreement for the alternate road on the same terms as this Agreement; and
- c) by further written notice to the Grantee cancel this Agreement;

and on cancellation the Grantee will quit peaceably and deliver possession of the Easement Area, except that the Grantee may, at its election, within 60 days of the cancellation, or such longer time as reasonably required, remove any fixtures from the Easement Area, but the Grantee will not be required to comply with paragraph 7(l)(ii).

**10. THIRD PARTY NOTICE**

The Owner will not dispose of, or agree to dispose of, the Servient Lands without first notifying any intended purchaser of the existence of this Agreement.

**11. OWNERSHIP OF COMMERCIALY VALUABLE TIMBER**

All timber of commercial value on the Easement Area will remain the property of the Owner.

**12. SECURITY**

The Grantee will deliver the Security to the Owner within 30 days of the commencement of this Agreement, and in any event prior to the Grantee's use of the Easement Area, as security for the performance of the Grantee's obligations under this Agreement, and the following will apply:

- a) the Grantee will maintain the Security in full until the later of:
  - i. the termination of this Agreement; or
  - ii. the complete fulfillment of all of the Grantee's obligations under this Agreement;
- b) if the Grantee defaults in the performance of any of its obligations under this Agreement, the Owner may, in its sole election, draw on and use the Security to reimburse the Owner for all reasonable costs and expenses, including legal and other professional services costs if any, caused by or arising out of the Grantee's breach, and in the event of a call on the Security of the Grantee will, as a condition of the continuation of this Agreement, immediately pay to the Owner the amount of the draw so that the full amount of the Security is available.

**13. DISPUTES**

Any dispute arising out of or in connection with this Agreement will be resolved as follows:

- a) the parties will attempt to resolve disputes by good faith negotiations, including timely disclosure of all relevant facts, information and documents;
- b) either party may, at any time, by written notice request that the dispute be referred to mediation, conducted by a mediator, knowledgeable about the matters in dispute;
- c) if the dispute is not resolved within 30 days of the notice to mediate under subparagraph (b) then, on the agreement of both parties, the dispute may be referred to a single arbitrator for final resolution. If the parties do not agree to arbitration then either party may refer the matter to the courts;

except that it is not incompatible with this paragraph for a party to apply to a court at any time for interim or conservatory relief, and for the court to grant that relief.

**14. NOTICE**

If notice is required or permitted under this Agreement, the notice:

- a) must be in writing;
- b) must be delivered to the address set out above, or other address as specified in writing by a party; and
- c) may be given in one or more of the following ways:
  - i. delivered personally or by courier, and it will be deemed received on the next business day;
  - ii. delivered by fax, and it will be deemed received on the next business day; or
  - iii. mailed by pre-paid post in Canada, and it will be deemed received on the eighth business day following.

**15. WAIVER AND CONSENT**

A breach of any term, condition, covenant or other provision of this Agreement may only be waived in writing, and any waiver will not be construed as a waiver of any subsequent breach. Consent to or approval of any act, where consent or approval is required under this Agreement, will not be construed as consent to or approval of any subsequent act.

**16. REMEDIES**

No remedy set out in this Agreement is exclusive of any other remedy provided by law, but will be in addition to any other remedy existing at law, in equity, or by statute.

**17. ENUREMENT**

The terms and provisions of this Agreement shall extend to, be binding upon and enure to the benefit of the parties hereto and their successors and permitted assigns.

**18. INTERPRETATION**

In this Agreement:

- a) all attached schedules form an integral part of this Agreement;
- b) unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender, body politic and a corporation;
- c) the headings are for convenience only and are not to be construed as defining or in any way limiting the scope or intent of the Agreement;
- d) a reference to an enactment of British Columbia or of Canada will be deemed to include a reference to any subsequent amendments or replacements; and
- e) if any provision is determined by a court or arbitrator of competent jurisdiction to be illegal or unenforceable, that provision will be considered separate and severable, and the legality or enforceability of the remaining provisions will not be affected by that determination.

IN WITNESS THEREOF the parties have duly executed this Agreement, as of the date first referred to above.

DESIGNATED COMPANY  
(TO BE DETERMINED ON EXECUTION)

Per

\_\_\_\_\_  
[insert name]

Per

\_\_\_\_\_  
[insert name]

GRANTEE

Per

\_\_\_\_\_  
[insert name] (authorized signatory of Grantee)

**SCHEDULE A**

**To be Completed**

**SCHEDULE B**

**To be Completed**



**SCHEDULE C**

**To be Completed**