SODA CREEK UMBRELLA AGREEMENT

This Agreement is dated for reference March 27, 2020.

BETWEEN:

Her Majesty the Queen in right of the Province of British Columbia, as represented by the Minister of Indigenous Relations and Reconciliation

(the "Province")

AND:

Soda Creek Indian Band, on behalf of itself and its Members, as represented by the Chief and Council

(the "SCIB")

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

WHEREAS:

- A. The Soda Creek Indian Band, together with the Canim Lake Indian Band, the Stswecem'c/Xgat'tem First Nation, and the Williams Lake Indian Band (known collectively as the Northern Secwepemc te Qelmucw, or NStQ), through its Chief and Council, asserts that it has used, occupied, governed and exercised exclusive ownership of their Traditional Territory from time immemorial;
- B. NStQ, the Province and Canada have entered into Stage 5 of the British Columbia Treaty Commission process, Negotiation to Finalize a Treaty;
- C. The Parties wish to create momentum in the Treaty negotiations in order to conclude a Final Agreement;
- D. British Columbia has committed to implement the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) and passed legislation to adopt the UN Declaration by setting out a process to align BC's laws with the UN Declaration; and
- E. British Columbia will continue to work with Indigenous peoples to ensure their rights and interests are respected in all aspects of the agriculture and ranching sectors.

NOW THEREFORE the Parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 **Definitions.** In this Agreement:

"Aboriginal Rights" means asserted or determined aboriginal rights, including aboriginal title, which are or may be recognized and affirmed by section 35 of the *Constitution Act, 1982*;

"Asset Purchase Agreement" means an asset purchase agreement between the vendors of the Lands under the Offer to Purchase and the SCIB with respect to the purchase and sale of equipment, inventory, cattle and hay in connection with the use and operation of the Lands and the ranch business operated by the vendor;

"Closing Date" means the closing date under and defined in the Offer to Purchase, which as of the date of this Agreement is March 27, 2020;

"Designated Company" means 1238353 B.C. Ltd. with its registered office at 3403 Mountain House Road, Williams Lake, BC V2G 5L4 and its records office at Suite 205 – 1544 Marine Drive, West Vancouver, BC V7V 1H8;

"Effective Date" means the date on which the Final Agreement takes effect;

"Final Agreement" means the Final Agreement to be concluded by the Parties and Canada at the conclusion of Stage 5 of the British Columbia Treaty Commission process;

"Lands" means:

- a) all Lands described in Part 1 of Schedule A to the Offer to Purchase; and
- b) includes all appurtenances, rights of way, easements, buildings, improvements or other fixtures benefiting the Lands;

"Lease Agreement" means the agreement between the Province, SCIB and the Designated Company for the lease of the Lands to SCIB or its Designated Company by the Province, effective as of the Closing Date;

"Member" means any person who is a "member of the band", as that phrase is defined in the *Indian Act*, of the SCIB;

"NStQ" means Soda Creek Indian Band, together with the Canim Lake Indian band, the Stswecem'c/Xgat'tem First Nation, and the Williams Lake Indian band, also known collectively as the Northern Secwepemc te Qelmucw;

"Offer to Purchase" means the Offer to Purchase dated December 19, 2019, as amended by amending agreements dated January 14, 2020, January 29, 2020 and February 14, 2020, between:

- a) Her Majesty the Queen in right of the Province of British Columbia, as represented by the Minister of Forests, Lands and Natural Resource Operations and Rural Development and the Minister of Indigenous Relations and Reconciliation, as purchaser; and
- b) Carpenter Mountain Ranch Ltd., Roger Joseph Patenaude individually and as trustee and Alison Fey Patenaude individually and as trustee, as vendor

and includes any further amendment to reflect the date of October 31, 2020 as set out in section 9.2 of this Agreement;

"Proceeding" includes any claim, demand, cause of action, action, suit or other proceeding, including any expenses, legal fees, damages, costs or other liability, incurred, directly or indirectly, arising out of or in connection with the foregoing;

"Proposed NStQ Treaty Settlement Lands" means the lands identified in paragraph 3.1.1 of the Lands Chapter of the NStQ Agreement-in-Principle and as identified for illustrative purposes in Appendix B of the NStQ Agreement-in-Principle.

"Provincial Official" means:

- a) the Province or any minister, public official, employee, contractor, agent or representative of the Province;
- b) any Provincial government corporation or any director, officer, employee, agent or representative of a government corporation; or
- c) any person acting as a decision maker under any enactment of the Province;

"Soda Creek Stewardship Area" means the Xats'ull/Cmetem' (Soda/Deep Creek) area set out on the Statement of Intent for the Northern Shuswap Treaty Society map in Schedule "3" to this Agreement; and

"Traditional Territory" means, for the purposes of this Agreement, the statement of intent area filed by the NStQ and accepted by the British Columbia Treaty Commission.

1.2 **Interpretation.** For purposes of this Agreement:

- a) "Agreement" means this Umbrella Agreement, and includes the Schedules and any agreement, document or instrument executed or delivered pursuant to this Agreement;
- b) "including" means "including, but not limited to" and "includes" means "includes, but not limited to";
- the recitals and headings are for convenience only, do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;
- d) words importing gender include the masculine, feminine or neuter gender and words in the singular include the plural and vice versa;
- e) 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;
- f) a reference to a statute includes every amendment to it, every regulation made under it, every amendment made to a regulation made under it and any law enacted in substitution for, or in replacement of, it;
- g) any reference to the delivery on the Closing Date of an agreement, document or instrument "in the form" of an attached schedule means an agreement, document or instrument substantially in that form with such changes, additions or deletions as may be agreed by the representatives of the Parties;
- h) each and every acknowledgement, agreement, release or other covenant given, and action to be taken, by the SCIB under this Agreement means the SCIB acting by and through its Chief and Council, and will be conclusively deemed to have been given, or taken, by the SCIB on its own behalf, and for and on behalf of its Members; and
- i) there will be no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any Party.

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

• Schedule "1" – Treaty Range Overlaps

- Schedule "2" Environmental Reports
- Schedule "3" Soda Creek Stewardship Area

ARTICLE 2 – RECONCILIATION AND PURPOSE

- 2.1 Reconciliation. The SCIB acknowledges and agrees that in the spirit of reconciliation and to advance Final Agreement negotiations, the Lands purchased by the Province and leased to the Designated Company on an interim basis and the assets purchased pursuant to the Asset Purchase Agreement will constitute a partial contribution by the Province towards the reconciliation of the Province's and the SCIB's interests through treaty negotiations and, as such, if the Lands become an element of the Final Agreement, the Land and the value of the assets will be counted as a portion of the Province's contribution towards the Final Agreement. For greater certainty, neither the Lease Agreement nor the first year of operating costs will be counted as a portion of the Province's contribution towards the Final Agreement.
- 2.2 **Purpose.** The purpose of this Agreement is to:
 - demonstrate the commitment of the Parties to concluding a Final Agreement;
 - b) work towards addressing the treaty range overlaps between the NStQ Agreement-in-Principle land package and *Range Act* agreement areas in the Soda Creek Stewardship Area; and
 - c) in the spirit of reconciliation, provide the grant, benefits and assurances set out in this Agreement.

ARTICLE 3 - COMING INTO EFFECT AND TERMINATION

- 3.1 **Coming into Effect.** This Agreement comes into effect on the Closing Date and terminates on the Effective Date.
- 3.2 **Termination.** Notwithstanding section 3.1, this Agreement:
 - a) may be terminated in writing before the Closing Date by the Parties on a date mutually agreed on by the Parties;
 - b) will terminate automatically where the Lands are not transferred to the Province on or before the Closing Date; or
 - c) may be terminated by the Province if:

- (i) the SCIB formally withdraws in writing from the treaty negotiation process; or
- (ii) the Final Agreement is not signed by the authorized representative of the SCIB, the Province or Canada, or is not approved, given effect, declared valid and given the force of law under federal and provincial law.
- 3.3 **Non-Renewal of Lease Agreement**. In the event the Parties do not renew the Lease Agreement, the Lease Agreement will terminate in accordance with its terms and the Parties will discuss the status of the Lands, including their transfer to SCIB under another form of reconciliation agreement or the purchase of the Lands by SCIB, prior to any sale of the Lands to a third party.

ARTICLE 4 - REPRESENTATIONS AND WARRANTIES

- 4.1 **SCIB Representations.** The SCIB represents and warrants to the Province, with the intent and understanding that they will be relied on by the Province 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 a Final Agreement;
 - on satisfaction or waiver of the conditions precedent under section 5.4, it will, as represented by its Chief and Council, have the legal power, capacity and authority to enter into and to carry out its obligations under this Agreement on behalf of the SCIB and its Members;
 - d) on satisfaction or waiver of the conditions precedent under section 5.4, the Designated Company has the legal power, capacity and authority to enter into and to carry out its obligations under each agreement and transaction to which it is a party in accordance with this Agreement; and
 - e) the Province has fulfilled its obligation to consult with SCIB in relation to the Lease Agreement.
- 4.2 **Provincial Representations.** The Province represents and warrants to the SCIB, with the intent and understanding that they will be relied on by the SCIB in entering into this Agreement, that:
 - a) it has the legal power, capacity and authority to enter into this Agreement;

- b) it has appropriated sufficient monies to enable it to make the expenditures to conclude the Asset Purchase Agreement, the Offer to Purchase and to provide the first year operating costs as described in section 7.1 of this Agreement; and
- c) on satisfaction or waiver of the conditions precedent under section 5.1 and section 5.2, it will have the legal power, capacity and authority to lease the Lands to a Designated Company as contemplated by the Lease Agreement.

ARTICLE 5 – CONDITIONS PRECEDENT

- Band Council Resolution. Prior to the execution of this Agreement, the SCIB will deliver to the Province a resolution made by its elected Council approving and authorizing the SCIB's representatives named in the resolution to execute on behalf of the SCIB the Asset Purchase Agreement, the Lease Agreement, and this Agreement.
- 5.2 **Conditions Precedent in favour of the Province.** The Province's obligation to complete this Agreement is subject to:
 - a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable the Province in any fiscal year, when any expenditure in respect of an obligation may be required, to make that expenditure;
 - b) the representations and warranties of the SCIB under this Agreement being true and correct on and up to the Closing Date; and
 - c) the satisfaction or waiver of any conditions precedent under the Offer to Purchase and Lease Agreement.
- 5.3 **Waiver of Conditions Precedent**. The conditions precedent set out in section 5.2 are for the sole benefit of the Province and may be waived by the Province on written notice to the SCIB.
- 5.4 **Conditions Precedent in favour of SCIB.** SCIB's obligation to complete this Agreement is subject to:
 - a) the representations and warranties of the Province under this Agreement being true and correct on and up to the Closing Date; and
 - b) the Province becoming the owner of the Land on or before the Closing Date.

5.5 **Waiver of Conditions Precedent**. The conditions precedent set out in section 5.4 are for the sole benefit of SCIB and may be waived by SCIB on written notice to the Province.

ARTICLE 6 - LEASE AGREEMENT

- 6.1 **Lease Agreement**. The Parties acknowledge and agree that the Province has agreed to grant a lease of the Lands pursuant to the provisions of the Lease Agreement for the nominal value of \$10.00.
- 6.2 Umbrella and Lease Agreement Amendment. The Parties acknowledge that this Agreement and the Lease Agreement are the first in what the Province anticipates will be a number of umbrella agreements and lease agreements with other NStQ First Nations and that, where the terms of those umbrella or lease agreements differ from this Agreement or the Lease Agreement, respectively, the Parties will, at SCIB's request, discuss whether amendments to this Agreement or the Lease Agreement are necessary to ensure equity between the agreements having regard for, among other things, the materiality of the terms and any factual differences between the ranches, and, if so, the Province will recommend to the statutory decision-maker that this Agreement or the Lease Agreement, as the case may be, be amended.

<u>ARTICLE 7 – TRANSACTION AND OPERATIONAL COSTS</u>

- 7.1 **First Year Operational Costs.** On the Closing Date, the Province will provide SCIB with a grant of \$420,000 to offset the first-year operational costs of Carpenter Mountain Ranch as operated under the terms of the Lease Agreement.
- 7.2 **Ranch Business.** On the Closing Date, the Province will pay the vendor a sum not to exceed \$2,020,000 toward the purchase of the ranch business for SCIB.
- 7.3 **Transaction and Other Costs**. There are no transaction or other costs associated with this Agreement.

ARTICLE 8 – LAND PROTECTION MEASURES

8.1 The Province will, as soon as practicable, seek the appropriate authorities to prevent the recording of any further mineral or placer claims in relation to the subsurface resources on or under the Lands as part of the broader No Registration Reserve under the *Mineral Tenure Act* covering the Proposed NStQ Treaty Settlement Lands.

ARTICLE 9 – OTHER COVENANTS

- 9.1 Other SCIB Covenants. The SCIB acknowledges and agrees that, during the term of this Agreement and subject to Article 10, the Lands are subject to provincial and local government laws, including applicable zoning, land use, land development and property tax laws, and at no time during the term of this Agreement will the SCIB challenge the applicability of provincial laws to the Lands.
- 9.2 **Dam Upgrades.** The Province will ensure that the vendor in the Offer to Purchase carries out the work necessary to ensure that all dam structures on the Lands are in compliance with the *Water Sustainability Act*, to the satisfaction of the Regional Water Manger, and will correct all deficiencies and complete all recommended work necessary to comply with water licences C501875, F104864, and C501802 (the "Dam Works"). If this is not completed by October 31, 2020, the Province will take the necessary steps to complete the outstanding Dam Works in a reasonable time frame, at no cost to the SCIB or the Designated Company.

<u>ARTICLE 10 – STATUS OF LANDS ON EFFECTIVE DATE</u>

- 10.1 **Transfer of Lands on Effective Date**. As part of the NStQ Final Agreement negotiations, the Province will offer to transfer the Lands to SCIB on the Effective Date.
- 10.2 Status of Lands and Subsurface Rights in the Final Agreement. As part of Final Agreement negotiations, the Parties will negotiate the status of the Lands as "NStQ Treaty Settlement Lands" as if the Lands were included in the definition of that term in the NStQ Agreement-in-Principle. If the Parties conclude a Final Agreement and the Lands become Treaty Settlement Lands, the subsurface resources beneath the Lands will be included, if owned by the Province.
- 10.3 Interests in Final Agreement. The Parties acknowledge and agree that the terms of this Agreement and the Lease Agreement will not prejudice the Parties' position with respect to the encumbrances on the Land under the Final Agreement, including their continuation or removal.

ARTICLE 11 – SCIB CLAIMS AND OVERLAPPING CLAIMS

11.1 Other First Nations' Litigation. In the event of any Proceeding brought by any other aboriginal group against the Province or any Provincial Official with respect to the Lease, the SCIB will provide the Province with reasonable assistance in support of its defence of the Proceeding, the nature and extent of which will be agreed between the Parties.

11.2 **Provincial Consultation Obligations.** The Province confirms that it is satisfied that, with respect to the lease of the Lands, it has fulfilled any consultation obligations it may have with respect to assertions of Aboriginal Rights to the Lands by First Nations other than the SCIB.

ARTICLE 12 - TREATY RANGE OVERLAPS

12.1 **Treaty Range Overlaps.** The Parties agree to work towards addressing the overlaps between Proposed NStQ Treaty Settlement Lands and *Range Act* agreement areas in the Soda Creek Stewardship Area of the Traditional Territory through the approaches identified in Schedule "1".

ARTICLE 13 - DISPUTE RESOLUTION

- 13.1 **Representatives**. If a dispute arises between the Province and the SCIB regarding the interpretation of a provision of this Agreement, the Parties or their duly appointed representatives will meet as soon as is practical to attempt to resolve the dispute.
- 13.2 **Senior Representatives**. 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 SCIB.
- 13.3 **Other Means**. The Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

ARTICLE 14 - NOTICES

14.1 **Notices**. 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 in this Agreement, 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, e-mail or facsimile copier, when received as follows

if to the Province:

Deputy Minister Ministry of Indigenous Relations and Reconciliation P.O Box 9100 Stn. Prov. Gvt. Victoria, B.C. V8W 9B1 Fax: (250) 387-6073

and if to the SCIB:

Soda Creek Indian Band 3405 Mountain House Road Williams Lake, BC V2G 5L5 Attention: Chief Sheri Sellars

Email: bandadmin@xatsull.com Phone: (250) 989-2323

14.2 **Change of Address**. Either Party may, from time to time, give notice to the other Party of any change of address, email address or facsimile number of the Party giving such notice and after the giving of such notice, the address, email address or facsimile number will, for purposes of this Agreement be conclusively deemed to be the address, email address or facsimile number of the Party giving such notice.

ARTICLE 15 - GENERAL

- 15.1 **Entire Agreement.** This Agreement is the entire agreement between the Parties in respect of the subject matter of this Agreement and, except as set out in this Agreement, there is no representation, warranty, collateral agreement, condition, right or obligation affecting this Agreement.
- 15.2 **Further Acts and Assurances.** Each of the Parties will, upon the reasonable request of the other Party, do such further lawful acts or deliver such further documents in a timely fashion as are reasonably required in order to fully perform and carry out the terms of this Agreement.
- 15.3 **No Implied Waiver**. Any waiver of a provision of this Agreement, the performance by a Party of an obligation under this Agreement or a default by a Party of an obligation under this Agreement will be in writing and signed by the Party giving the waiver and will not be a waiver of any other provision, obligation or subsequent default.
- 15.4 **Successors.** This Agreement will enure to the benefit of and be binding on the SCIB and its successors and the Province.
- 15.5 **No Admissions.** Nothing in this Agreement will be construed as:
 - a) an admission by the Province of the validity of any claim by the SCIB to a specific treaty or aboriginal right or aboriginal title within the meaning of section 35 of the *Constitution Act, 1982*;

- b) an acknowledgement by the Province that it has an obligation to provide financial or economic accommodation to the SCIB; or
- c) in any way limiting the position either Party may take in treaty or reconciliation negotiations except as expressly set out herein.
- 15.6 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 any responsibilities of the Parties except as set out in this Agreement.
- 15.7 **No Fettering**. Nothing in this Agreement will be interpreted in a way that fetters the discretion given to any Provincial Official in an enactment.
- 15.8 **Amendment.** This Agreement may be amended from time to time by the Parties in writing.
- 15.9 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.

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15.10 **Execution in Counterpart.** This Agreement may be entered into by each Party signing a separate copy of this Agreement (including a photocopy, email or facsimile copy) and delivering it to the other Party by email or facsimile transmission.

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

Signed on behalf of the SODA CREEK INDIAN BAND by:

Chief Sheri Sellars

Witnessed by Print Name:

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

Mark Lofthouse Chief Negotiator

Ministry of Indigenous Relations

and Reconciliation

Witnessed by

Print Name: Josie Junck

Schedule 1: Treaty Range Overlaps

Part 1 – Continuation of Grazing

Subject to the Final Agreement, SCIB agrees that grazing currently authorized by the following *Range Act* agreements will continue on Proposed NStQ Treaty Settlement Lands:

Forest File ID	Client Name
	153 MILE RANCH (the portion that overlaps the
RAN076891	Soda Creek Stewardship Area)
	SPRINGFIELD RANCH (the portion that does not
RAN076873 A	overlap the Whisky Creek ITA parcel)
RAN076635 1	TIANNA MACLEOD
RAN077612 1	MORGAN CREEK RANCH
RAN076634 1	DUNLEVY RANCH

Part 2 – Boundary Amendment

The Province will, by the Effective Date, amend the boundaries of the following *Range Act* agreements to exclude the Proposed NStQ Treaty Settlement Lands. The Province understands that these amendments will not result in a reduction to authorized animal unit months (AUMs) and for greater certainty, the Parties confirm that the understanding referred to herein is not intended to derogate from the obligation of the Province to amend boundaries under this Part 2. The Province will work with these agreement holders to identify any secondary impacts arising from the boundary adjustment and subject to the Final Agreement will identify mutually agreed approaches to address those impacts. Measures to address secondary impacts may include fencing, provision for livestock watering, and livestock access on or across Proposed NStQ Treaty Settlement Lands. The Parties acknowledge there may be circumstances where impacts related to a boundary amendment to a *Range Act* agreement may be addressed by allowing grazing to continue under part 1 of this Schedule.

During Final Agreement negotiations, the Province will work with *Range Act* agreement holders identified in Part 1 above to identify any additional *Range Act* agreement areas that may also become subject to this Part 2.

Forest File ID	Client Name
RAN076874 A	THE BLUE GOOSE CATTLE COMPANY LTD.
RAN076890 A	GEORGE KEENER
RAN076112 RAN076112	JACE JACOBSEN
RAN076655 A	WESTWICK RANCHING INC.
RAN076888 A	MICHAEL NICOL

RAN077614 1	U2 CATTLE CO. LTD.
RAN076385 1	THE BLUE GOOSE CATTLE COMPANY LTD.
RAN076110 A	ARTHUR MELDRUM
RAN076625 A	BENJAMIN SWAN
	SPRINGFIELD RANCH LTD (the portion that
RAN076873 A	overlaps the Whiskey Creek ITA parcel)
	JOHN HOLMES (the portion that overlaps the
RAN076636 1	Wildwood North ITA parcel)

Part 3 – Approach to be Confirmed

The Province and SCIB agree to negotiate an approach to address the treaty range overlaps with the following *Range Act* agreements. As part of those negotiations, the Province will fully engage with the *Range Act* agreement holders with regards to potential impacts and solutions.

Forest File ID	Client Name
	JOHN HOLMES (the portion that does not overlap
RAN076636 1	the Wildwood North ITA parcel)
RAN076637 1	JOANNE COOK
RAN077822A	cre manna (Contacas) politico de collector de la collector
	SPRINGFIELD RANCH
RAN077509 A	THE BLUE GOOSE CATTLE COMPANY LTD.

Schedule 2 - Environmental Reports

Environmental Site Assessment Reports and Memo

Phase I Environmental Site Assessment (ESA) of 18 Parcels North of 150 Mile House, BC, dated August 2018, prepared by McElhanney Consulting Services

Phase II Environmental Site Assessment Carpenter Mountain Ranch, dated December 2018, prepared by SLR Global Environmental Solutions

Memorandum Task #1 Confirmation Sampling – Carpenter Ranch, dated June 28, 2019, prepared by McElhanney Ltd.

Phase III Environmental Site Assessment (ESA): Carpenter Mountain Ranch, dated November 27, 2019, prepared by McElhanney Ltd.

Water Study Reports

Carpenter Mountain Ranch Water Availability Assessment, dated July 23, 2019, prepared by DWB Consulting Services Ltd.

Carpenter Mountain Ranch Certified Irrigation Management Plan, dated August 8, 2019, prepared by DWB Consulting Services Ltd.

Carpenter Mountain Ranch Existing Irrigation System Assessment, dated August 9, 2019, prepared by DWB Consulting Services Ltd.

Schedule 3 - Soda Creek Stewardship Area



