



MALAHAT INDIAN BAND
INCREMENTAL TREATY AGREEMENT

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MALAHAT INDIAN BAND INCREMENTAL TREATY AGREEMENT

This Agreement is dated for reference February 26, 2013.

BETWEEN:

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

AND:

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

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

WHEREAS:

- A. The Malahat Indian Band, through its Chief and Council, asserts that it has used, occupied, governed and exercised ownership of its Traditional Territory from time immemorial;
- B. The Malahat Indian Band 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 wish to create momentum in the treaty negotiations in order to conclude a Final Agreement;
- 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; and
- E. This Agreement will provide the Malahat Indian Band with transitional economic benefits in advance of a Final Agreement and is in the spirit and vision of the New Relationship.

NOW THEREFORE the Parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 Definitions. In this Agreement:

"AIP" means the Te'mexw Member First Nation Agreement-in-Principle being negotiated by the Parties and Canada in accordance with Stage 4 of the British Columbia Treaty Commission process;

"AIP Date" means the date the Parties and Canada initial the AIP as part of completing Stage 4 of the British Columbia Treaty Commission process;

"Chief" means, in respect of the Malahat Indian Band, "chief" within the meaning of the *Indian Act*;

"Closing" means the completion of the transfer of the Lands by the Province to a Designated Company on the Closing Date;

"Closing Date" means the date or dates on which the documents for the transfer of the Lands to a Designated Company under 6.2 are uploaded to the electronic meet and are filed in the Land Title Office;

"Council" and "Band Council" mean, in respect of the Malahat Indian Band, the elected "council" within the meaning of the *Indian Act*;

"Crown Grant" means a grant (as defined in the *Land Act*) of the fee simple title to Land;

"Designated Company" means a company incorporated under federal or provincial law, all the shares of which are wholly owned directly or indirectly, legally and beneficially, by the Malahat Indian Band and which the Malahat Indian Band has designated to take fee simple title to any of the Lands;

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

"Existing Legal Proceedings" means the following legal actions:

Protective Writ: Chief Malden Harry on his behalf and on behalf of the Malahat Indian Band v. Her Majesty the Queen in Right of the Province of British Columbia and the Attorney General of Canada, Victoria Registry No. 03 5075 (BCSC)

Protective Writ: Chief Malden Harry on his behalf and on behalf of the members of the Malahat First Nation, of the Saanich Nation, Councillor

Curtis Henry on his own behalf and on behalf of the Members of the Pauquachin First Nation, of the Saanich Nation, Chief Wayne Morris on his own behalf and on behalf of the members of the Tsartlip First Nation, of the Saanich Nation, Chief Allan Claxton on his own behalf and on behalf of the members of the Tsawout First Nation, of the Saanich Nation, Chief Vern Jacks on his own behalf and on behalf of the members of the Tseycum First Nation, of the Saanich Nation, Chief Malden Harry, Councillor Curtis Henry, and Chiefs Wayne Morris, Allan Claxton and Vern Jacks together bring this action on behalf of all members of the Saanich Nation v. Her Majesty the Queen in Right of the Province of British Columbia and the Attorney General of Canada, Vancouver Registry No. L033514 (BCSC)

"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;

"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;

"HST" means the harmonized sales tax imposed under the *Excise Tax Act* (Canada) or equivalent tax imposed under federal or provincial law;

"ITA Date" means the date on which this Agreement is executed by the Parties;

"Lands" means any or all of the following:

South ½ of Portion of District Lot 90, Malahat District shown on Plan DD 3331 Except Parts Shown in Red on DD 31050I, DD 12768F (see Plan 1201 O.S.) and Except Plan 3662 RW-or legal description as amended based on new survey ("South ½ of Portion of District Lot 90")

Block 141, Malahat District as shown on Plan DD27158

"Malahat First Nation Lands" means those lands identified in the Final Agreement which form part of Malahat First Nation Lands;

"Malahat Indian Band" means the "band", as that term is defined in the *Indian Act*, named the "Malahat Indian Band" and includes all Members; and

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

"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;

"Other Malahat First Nation Lands" means those lands identified in the Final Agreement which do not form part of Malahat First Nation Lands;

"Permitted Encumbrances" means the reservations, exceptions, liens, charges, and interests described in Part 1 and 2 of Schedule "2" for each of the Lands or any other Permitted Encumbrances agreed to by the Parties;

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

"Provincial Official" means:

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

"Traditional Territory" means, for the purposes of this Agreement, the statement of intent area filed by the Malahat Indian Band with the British Columbia Treaty Commission.

1.2 Interpretation. For purposes of this Agreement:

- a) "this Agreement" means this Incremental Treaty Agreement, including 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";
- c) the 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 Closing of an agreement, document or instrument "in the form" of a 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 release, covenant and other agreement given, and action to be taken, by the Malahat Indian Band under this Agreement means the Malahat Indian Band acting by and through its Chief and Council, and will be conclusively deemed to have been given, or taken, by the Malahat Indian Band 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" – Maps of Lands
- Schedule "2" – Permitted Encumbrances
- Schedule "3" – Instruments of Registration (titles, survey plans, charges and other instruments)
- Schedule "4" – Form C Additions to Reserve Restrictive Covenant
- Schedule "5" – Agreement of Designated Company
- Schedule "6" – HST Certificate

ARTICLE 2 – RECONCILIATION AND PURPOSE

- 2.1 Reconciliation.** The Malahat Indian Band acknowledges and agrees that, in the spirit of the New Relationship and to advance Final Agreement negotiations, the Lands transferred to the Malahat Indian Band in accordance with this Agreement constitute a contribution by the Province towards the reconciliation of the Province's and the Malahat Indian Band's interests and, as such, the benefits provided to the Malahat Indian Band under this Agreement will be counted as a portion of the Province's contribution towards the Final Agreement settlement.

2.2 **Purpose.** The purpose of this Agreement is to:

- a) demonstrate the commitment of the Parties to concluding a Final Agreement; and
- b) in the spirit of the New Relationship, provide the Malahat Indian Band with land as incremental treaty benefit in advance of a Final Agreement which will be transferred in accordance with this Agreement and will, on the Effective Date, become an element of the Final Agreement.

ARTICLE 3 - COMING INTO EFFECT AND TERMINATION

3.1 **Coming into Effect.** This Agreement comes into effect when it has been executed by the Parties.

3.2 **Termination.** This Agreement may be terminated in writing:

- a) by the Parties on a date mutually agreed on by the Parties; or
- b) by either Party prior to the ministerial order authorizing the disposition of Lands that are subject of the ministerial order under 5.2(g).

3.3 **Termination on Litigation.** Notwithstanding 3.2, the Province may terminate this Agreement, including the transfer of any Lands which have not been completed, in the event the Malahat Indian Band commences any action or other proceeding relating to any Governmental Action within the Traditional Territory.

3.4 **Survival of Lands Conditions.** Notwithstanding 3.2, and subject to the Final Agreement, where any of the Lands are transferred under this Agreement, Articles 8, 11 and 13 will survive the completion of the transfers or the termination of this Agreement and, for greater certainty, will continue to apply to the Lands.

ARTICLE 4 - REPRESENTATIONS AND WARRANTIES

4.1 **Malahat Indian Band Representations.** The Malahat Indian Band 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 an AIP and a Final Agreement;

- c) it, as represented by its Chief and Council, has the legal power, capacity and authority to enter into and to carry out its obligations under this Agreement on behalf of the Malahat Indian Band and its Members;
- d) any company designated by the Malahat Indian Band for the purposes of this Agreement will be a Designated Company;
- e) any 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
- f) the Province has fulfilled its obligation to consult with Malahat Indian Band in relation to:
 - i) the transfer of the Lands to a Designated Company and the Permitted Encumbrances on the Lands; and
 - ii) the transfer of land to other Te'mexw Member First Nations under an incremental treaty agreement, descriptions or maps of which have been provided by the Province to the Malahat Indian Band.

4.2 **Provincial Representations.** The Province represents and warrants to the Malahat Indian Band, with the intent and understanding that they will be relied on by the Malahat Indian Band in entering into this Agreement, that:

- a) it has the legal power, capacity and authority to enter into this Agreement; and
- b) on satisfaction or waiver of the conditions precedent under 5.2, it will have the legal power, capacity and authority to transfer the fee simple title to the Lands to a Designated Company as contemplated by this Agreement.

ARTICLE 5 – CONDITIONS PRECEDENT

5.1 **Band Council Resolution.** Prior to the execution of this Agreement, the Malahat Indian Band will deliver to the Province a resolution made by its elected Council authorizing the Malahat Indian Band's representatives named in the resolution to execute this Agreement on behalf of the Malahat Indian Band.

5.2 **Conditions Precedent to Land Transfers.** The obligation of the Province to transfer any of the Lands to the Malahat Indian Band under 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 Province and Canada reaching an agreement satisfactory to the Province, in its sole discretion, on or before the applicable ITA Date on cost sharing the value of the Lands for treaty settlement purposes;
- c) the representations and warranties of the Malahat Indian Band under this Agreement being true and correct on the applicable Closing Date;
- d) the Malahat Indian Band having complied with all covenants of the Malahat Indian Band under this Agreement on the applicable Closing Date;
- e) in respect of all previously transferred Lands, all obligations of the Malahat Indian Band and the Designated Company having been fully performed in accordance with this Agreement;
- f) surveys for the Lands having been completed on or before the applicable Closing Date; and
- g) the Province having given notice that the minister responsible has authorized the disposition of the Lands in accordance with Provincial Law.

5.3 **Waiver of Conditions Precedent.** The conditions precedent set out in 5.2 are for the sole benefit of the Province and may be waived by the Province on written notice to the Malahat Indian Band.

ARTICLE 6 – TRANSFER OF LANDS

6.1 **Closing Deliveries by Province.** Subject to the Permitted Encumbrances and the terms of this Agreement, including the satisfaction or waiver of the conditions precedent under 5.1 and 5.2, the Province will provide the Designated Company identified by the Malahat Indian Band within 60 days of written notice under 5.3 with a Crown Grant to the Lands as follows:

- a) South ½ of Portion of District Lot 90, within 120 days after the issuance of a ministerial order under subparagraph 5.2(g) after the ITA Date; and
- b) Block 141, Malahat District as shown on Plan DD27158, within 120 days after the issuance of a ministerial order under subparagraph 5.2(g) after the AIP Date.

- 6.2 **Closing Deliveries by Malahat Indian Band.** Not Less than 14 days before the Closing Date, the Malahat Indian Band will 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 4 in relation to the applicable Lands;
 - b) an agreement executed by the Designated Company in the form attached as Schedule 5 in relation to the applicable Lands;
 - c) a certificate signed by an officer of the Designated Company in the form attached as Schedule 6 confirming the Designated Company's HST registration number and registered status;
 - d) a letter of undertaking signed by the Malahat First Nation's legal counsel undertaking, among other things, that the restrictive covenant (Schedule 4) will be filed concurrently with the Crown Grant and that the Province will be provided with a signed copy of the Designated Company Agreement (Schedule 5) and the HST certificate (Schedule 6); and
 - d) all such other documents that may be necessary or advisable for the Malahat Indian Band or a Designated Company to provide to complete the transactions contemplated under this Agreement.
- 6.3 **Registration of Lands.** Subject to the Final Agreement, all Lands transferred under 6.1 will be registered in the Land Title Office.
- 6.4 **Closing Procedure.** The legal counsel for the Malahat Indian Band and the Province will confirm in writing the manner in which the documents necessary or advisable to transfer and register the Lands will be produced, managed, exchanged and delivered. Without limiting the generality of the foregoing, legal counsel responsible for registering the Lands will:
- a) provide a letter of undertaking to legal counsel for the other Party;
 - b) use the Land Title and Survey Authority electronic filing system; and
 - c) provide all documents filed under 6.4(b) to legal counsel for the other Party.

ARTICLE 7 - TREATY NEGOTIATIONS MATTERS

- 7.1 **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 the Malahat First Nation 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) withdraw the negotiated AIP land selections from disposition under the *Land Act*; and
- b) prohibit the staking of mineral claims on the negotiated AIP land selections under the *Mineral Tenure Act*.

ARTICLE 8 – CONDITION OF LANDS

- 8.1 **Lands “As Is”.** The Malahat Indian Band acknowledges and agrees that any of the Lands acquired by a Designated Company under this Agreement are acquired “as is”.
- 8.2 **Viability of Lands.** The Malahat Indian Band acknowledges and agrees that the Province has not given any representation or warranty concerning:
 - a) physical access to the Lands including, without limitation, overland access;
 - b) the economic feasibility of the development of the Lands;
 - c) the fitness of the Lands for any particular use, including the intended use of it by the Malahat Indian Band or by a Designated Company; and
 - d) the provisions of any enactments or bylaws of any governmental body which relate to the development, use and occupation of the Lands.
- 8.3 **Environmental Condition.** The Malahat Indian Band:
 - a) 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
 - b) acknowledges and agrees that the Province has not given any representation or warranty concerning the condition of the Lands (including surface water and groundwater), environmental or otherwise, including the presence or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Lands and on or under any surrounding or neighbouring land and the current and past uses of the Land and any surrounding or neighbouring land.

8.4 Environmental Remediation. The Malahat Indian Band 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.

ARTICLE 9 – ENCUMBRANCES

- 9.1 Permitted Encumbrances.** The Malahat Indian Band acknowledges that it is familiar with the Permitted Encumbrances and accepts fee simple title to the Lands subject to the Permitted Encumbrances and covenants not to do, or allow to be done, anything that would interfere with any rights 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.

ARTICLE 10 – TRANSACTION COSTS

- 10.1 Property Transfer Tax and Other Costs.** The Province is responsible for the following costs in connection with the transfer of the Lands:

- a) the cost associated with ensuring the Lands have a survey which meets the requirements for registration in the Land Title Office;
- b) any other costs or fees associated with the preparation of Crown Grants or any other documents required to register the Lands and Permitted Encumbrances including, without limitation, any fees charged by the Land Title and Survey Authority; and

- c) property transfer tax which, for greater certainty, the Province agrees to either pay or waive the requirement to pay any property transfer tax payable under the *Property Transfer Tax Act*.
- 10.2 **Public Utility Permitted Encumbrances.** Notwithstanding 10.1, all costs associated with the surveying and registration of Permitted Encumbrances held by a public utility will be the responsibility of the public utility.
- 10.3 **HST and Charges.** The Malahat Indian Band is responsible for any federal or provincial sales tax, including HST and any other transfer or registration charges for which the Province has not expressly agreed to accept responsibility under the terms of this Agreement.
- 10.4 **Annual Taxes and Other Costs.** Subject to the Final Agreement, and in accordance with provincial law, the Designated Company is responsible for any and all annual taxes payable in respect of the Lands. For greater certainty, on and after the applicable Closing Date, the Province is not required to assume financial or other obligations with respect to the Lands.

ARTICLE 11 - OTHER COVENANTS

- 11.1 **Other Malahat Indian Band Covenants.** The Malahat Indian Band further acknowledges and covenants that:
 - a) in order to preserve the possibility of the Lands becoming "Malahat First Nation Lands" in accordance with the Final Agreement, the Malahat Indian Band will not permit the Designated Company to dispose of its fee simple estate in the Lands for a period of time commencing on the applicable Closing Date and ending on the earlier of:
 - i) the 10 year anniversary of the Closing Date; or
 - ii) the Effective Date;
 - b) 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 Malahat Indian Band seek to add any of the Lands to its reserve lands; and
 - c) 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 Malahat Indian Band challenge the applicability of provincial laws to the Lands.

- 11.2 **Disposition of Interests in Lands.** Notwithstanding 11.1(a), the Malahat Indian Band may charge or encumber the Lands provided that the Malahat Indian Band advises the intended charge or encumbrance holder in writing that the Lands may, on the Effective Date,
- a) be transferred by the Designated Company to the Malahat Indian Band and may become Te'mexw Member First Nation Lands; or
 - b) be retained by the Designated Company, or transferred by the Designated Company to the Malahat First Nation, and will become Other Malahat First Nation Lands.
- 11.3 **Indemnity for Charges.** The Malahat Indian Band will indemnify and save harmless the Province and all Provincial Officials from any and all damages, losses, liabilities or costs that they may suffer or incur in connection with or as a result of any suit, action, claim, proceeding or demand arising in connection with any Permitted Encumbrance, any charge or encumbrance granted by the Malahat Indian band under 11.2, the transfer of the fee simple estate in the Lands to the Malahat Indian Band and the Lands becoming Malahat First Nation Lands or Other Malahat Member First Nation Lands .
- 11.4 **Failure to Ratify.** The restriction on the disposition of the Lands under 11.1(a) will not apply where the Final Agreement is not ratified by the Parties or Canada, or the Final Agreement is not approved, given effect, declared valid and given the force of law under federal and provincial law.
- 11.5 **Registration of Unregistered Interests.** Subject to 11.6, for the purposes of 11.4, the Malahat Indian Band will consent, or will cause the Designated Company to consent, to the registration of any interests identified in Schedule 2 which are not registered against the applicable Lands in the Land Title Office on or after the Closing Date.
- 11.6 **Registration of Cowichan Valley Regional Trail Interest.** For the purposes of 11.4, if the form of tenure, location of the trail and costs associated with establishing the Trail have been agreed to by the Malahat Indian Band and the Cowichan Valley Regional District, the Malahat Indian Band will consent, or will cause the Designated Company to consent, to the registration of that interest as identified in Schedule 2, if the interest has not been registered against the applicable Lands in the Land Title Office on or after the Closing Date.

ARTICLE 12 – STATUS OF LANDS ON EFFECTIVE DATE

- 12.1 **Status of Lands on Effective Date.** As part of Final Agreement negotiations, the Parties will negotiate the status of the Lands transferred under this

Agreement to the Malahat Indian Band as "Te'mexw Member First Nation Lands" or "Other Malahat First Nation Lands" within the meaning of the Final Agreement.

ARTICLE 13 – OVERLAPPING CLAIMS

- 13.1 **Shared Territories.** The Malahat Indian Band will discuss the issue of overlaps and claimed shared territories with relevant First Nations and will make reasonable efforts to resolve any conflicts with those First Nations prior to the ITA Date.
- 13.2 **Other First Nations' Litigation.** In the event of any action, proceeding, suit, claim or demand whatsoever, whether known or unknown, and whether in law, in equity or otherwise, brought by any other aboriginal group against the Province or any Provincial Official with respect to the transfer of the Lands to the Designated Company on behalf of the Malahat Indian Band in accordance with this Agreement, the Malahat Indian Band will provide the Province with reasonable assistance, upon request, in support of its defence of the action, proceeding, suit, claim or demand.

ARTICLE 14 – EXISTING LITIGATION

- 14.1 **Existing Legal Proceedings.** On or as soon as practicable after the Closing Date, the Parties will adjourn generally the Existing Legal Proceedings and will file such other documents as may be required to put the Existing Legal Proceedings into abeyance.
- 14.2 **Termination of Abeyance.** The abeyance of the Existing Legal Proceedings under 14.1 will terminate:
- a) where a Final Agreement is concluded, on the Effective Date of the Final Agreement; or
 - b) where a Final Agreement is not concluded, on the date on which the Malahat Indian Band formally withdraws from the treaty negotiation process.
- 14.3 **Termination of Litigation.** For the purposes of subparagraph 14.2(a), and subject to the Final Agreement, the Malahat Indian Band will, without cost to any party to the Existing Legal Proceedings:
- a) terminate the Existing Legal Proceedings;

- b) file a consent dismissal order dismissing the Existing Legal Proceedings; and
- c) execute a release in a form agreeable to the parties releasing the Province and all Provincial Officials from all claims, demands, actions, proceedings and damages that the Malahat Indian Band may have against the Province or any Provincial Official by reason of the matters giving rise to the Existing Legal Proceedings.

14.4 Abeyance without Prejudice. The Parties acknowledge that, for the purposes of subparagraph 14.2(b):

- a) this Agreement is without prejudice to the merits of any positions that the Parties have or may take in the Existing Legal Proceedings; and
- b) they will not rely on the passage of time from the date this Agreement comes into force to its termination as the basis for any legal or equitable defence in the Existing Legal Proceedings, including defenses of laches, acquiescence, estoppel or limitations.

14.5 New Litigation. Before commencing any action or other proceeding relating to any Governmental Action within the Traditional Territory, the Malahat Indian Band will:

- a) notify the Province of any interests it may have that may be impacted by the Governmental Action; and
- b) participate in the dispute resolution process set out in 15.1-15.3.

ARTICLE 15 - DISPUTE RESOLUTION

15.1 Representatives. If a dispute arises between the Province and the Malahat Indian Band 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.

15.2 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 Malahat Indian Band.

15.3 Other Means. The Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

ARTICLE 16 - NOTICES

- 16.1 **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 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, e-mail or facsimile copier, when received as follows

if to the **Province:**

Deputy Minister
Ministry of Aboriginal Relations and Reconciliation
P.O. Box 9100 Stn Prov Govt
Victoria, B.C. V8W 9B1

Fax: (250) 387-6073

and if to the **Malahat Indian Band:**

Malahat First Nation:
110 Thunder Road
Mill Bay, BC – V0R 2P4
Phone: 1-250-743-3231
Attention: Chief Councillor

Fax: 1-250-743 3251

- 16.2 **Change of Address.** Either Party may, from time to time, give written or e-mail 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 17 - GENERAL

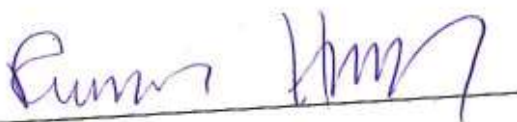
- 17.1 **Entire Agreement.** This Agreement is the entire agreement between the Parties in respect of the subject matter of this Agreement and, except as set out in this Agreement, there is no representation, warranty, collateral agreement, condition, right or obligation affecting this Agreement. The Schedules and Appendices to this Agreement form part of this Agreement.
- 17.2 **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.
- 17.3 **No Implied Waiver.** Any waiver of:
- a) a provision of this Agreement;
 - b) the performance by a Party of an obligation under this Agreement; or
 - c) 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.
- 17.4 **Successors.** This Agreement will enure to the benefit of and be binding on the Malahat Indian Band and its successors and the Province.
- 17.5 **No Admissions.** Nothing in this Agreement will be construed as an:
- a) admission by the Province of the validity of any claim by the Malahat Indian Band to a specific treaty or aboriginal right or aboriginal 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 Malahat Indian Band.
- 17.6 **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 titles or any responsibilities of the Parties except as set out in this Agreement.

- 17.7 **No Fettering.** Nothing in this Agreement will be interpreted in a way that fetters the discretion given to any Provincial Official in an enactment.
- 17.8 **Amendment.** This Agreement may be amended from time to time by the Parties in writing.
- 17.9 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.
- 17.10 **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.


IN WITNESS WHEREOF the Parties have executed this Agreement on February 26, 2013, as set out below:

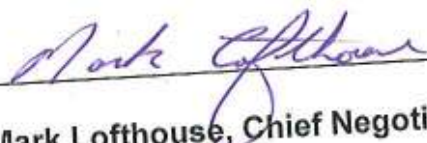
Signed on behalf of the Malahat Indian
Band by


Chief David Michael Harry


Russell Harry,
Witness

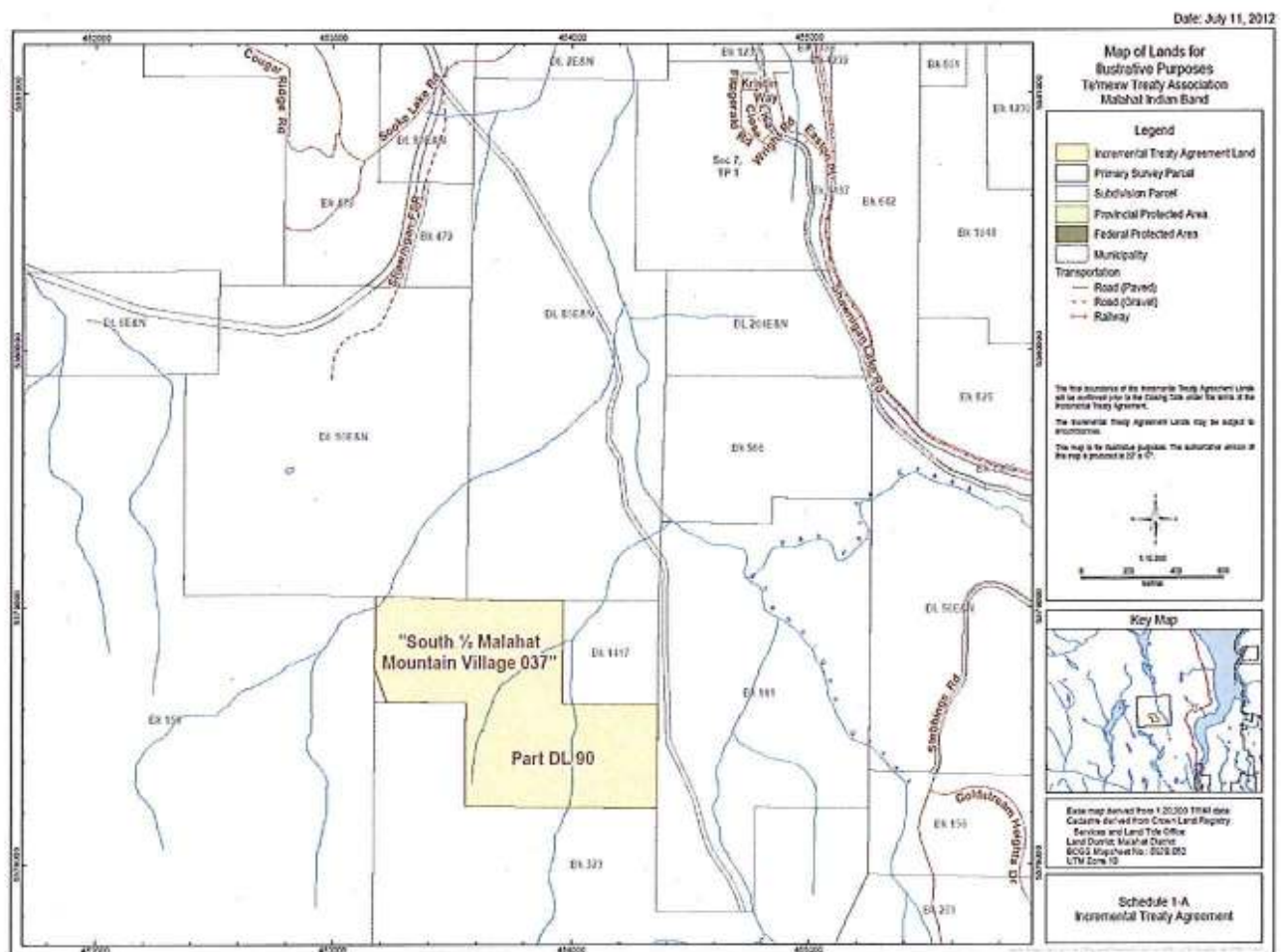
Signed on behalf of Her Majesty the
Queen In Right of the Province of
British Columbia by


Honourable Ida Chong, Minister of
Aboriginal Relations and Reconciliation


Mark Lofthouse, Chief Negotiator
Witness

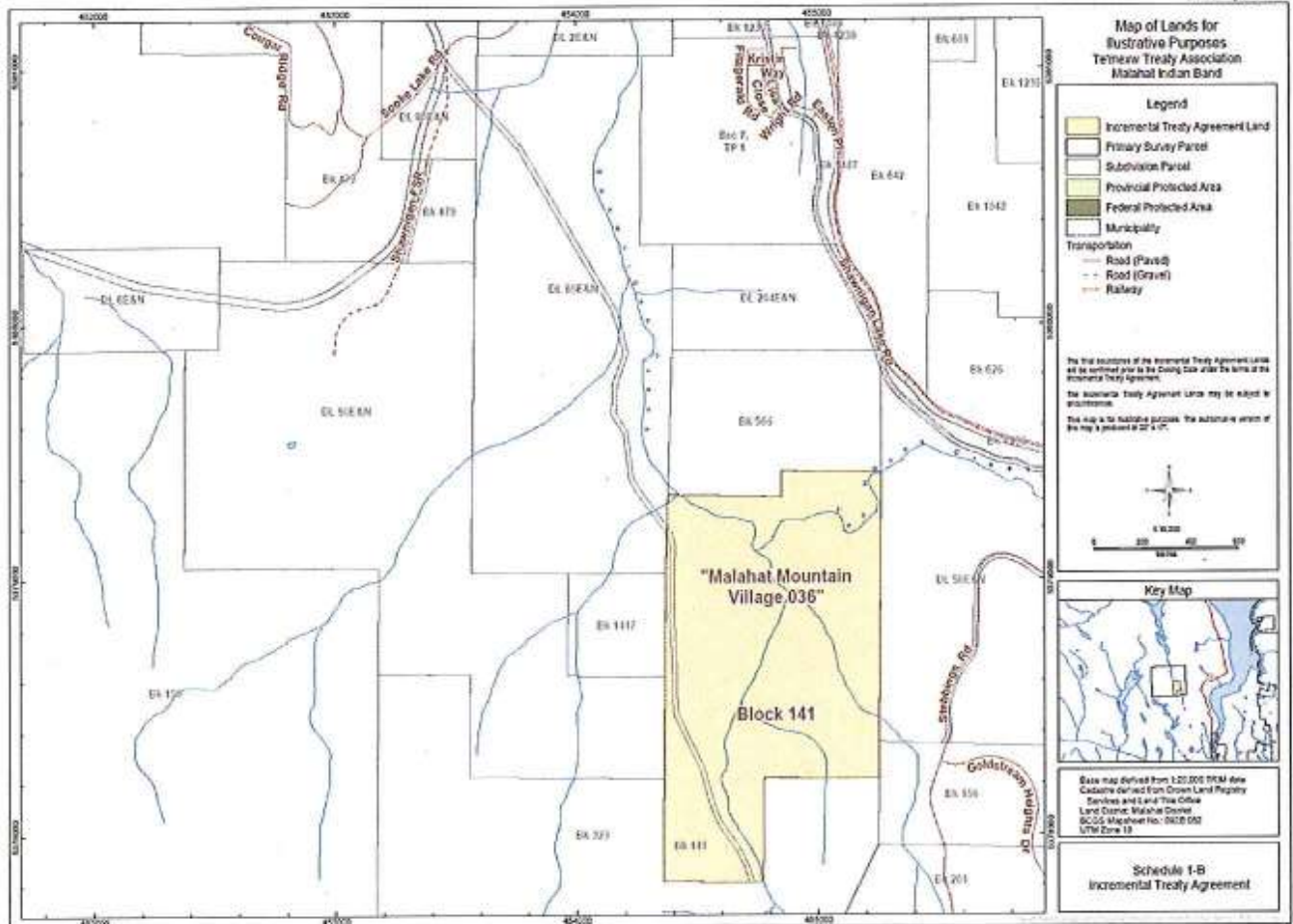
Schedule "1" – Map of Lands for Illustrative Purposes

Schedule 1-A: Map of Lands for Illustrative Purposes



Schedule 1-B: Map of Lands for Illustrative Purposes

Date: July 12, 2012



Schedule "2" Part 1 – Permitted Encumbrances

(For Discussion and Illustrative Purposes Only)

Permitted Encumbrances

Exceptions and Reservations-Esquimalt and Nanaimo Railway Company (Charge EN114753 on Title of South ½ of Portion of District Lot 90, Malahat District shown on Plan DD 3331 Except Parts Shown in Red on DD 31050I, DD 12768F (see Plan 1201 O.S.) and Except Plan 3662 RW ("South ½ of Portion of District Lot 90")

Exceptions and Reservations-Esquimalt and Nanaimo Railway Company (Charge EN 115641 on Title of Blk 141 Malahat District as Shown on Plan DD27158)

File # 1404975 Fortis BC Inc. Statutory Right of Way (Charge EV86326 on Title of Blk 141 Malahat District as Shown on Plan 8) – Plan VIP65849

Private Road Easement in favour of Block 1417, Malahat District ("Dominant Tenement") for access across ITA Lands on area of expired Special Use Permit S23784 and Forest Service Road 7983, Branch 02 and 05 in the form of Private Road Easement Schedule (to be inserted) applicable to South ½ of Portion of District Lot 90, Malahat District shown on Plan DD 3331 Except Parts Shown in Red on DD 31050I, DD 12768F (see Plan 1201 O.S.) and Except Plan 3662 RW ("South ½ of Portion of District Lot 90") ("Servient Tenement")

Private Road Easement in favour of Block 1417, Malahat District ("Dominant Tenement") for access across ITA Lands on area of expired Special Use Permit S23784 and Forest Service Road 7983, Branch 02 and 05 in the form of Private Road Easement Schedule (to be inserted) applicable to Blk 141 Malahat District as Shown on Plan DD27158 ("Servient Tenement")

Statutory Right of Way over area of former Forest Service Road 7983, Branch 02 and 05 across ITA Lands in favour of Fortis BC inc. (tenure document to be inserted)

Statutory Right of Way over area of former Forest Service Road 7983, Branch 02 and 05 across ITA Lands in favour of her Majesty the Queen as Represented by the Ministry of Forests Lands and Natural Resources (tenure document to be inserted)

all interests registered on title under the *Land Title Act* as of the Closing Date

all subsisting exceptions and reservations of interests, rights, privileges and titles contained in any previous Crown grant of the land

all exceptions and reservations contained in section 50(1) of the *Land Act*

any conditional or final water license or substituted water license issued or given under the *Water Act*, 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 *Mineral Tenure Act*, *Coal Act* or *Petroleum and Natural Gas Act* 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 Malahat Indian Band prior to the Closing Date

the Malahat Indian Band acknowledges that all existing interest holders and interests on the Lands may not have been identified in this Schedule prior to the execution of this Agreement and that these unidentified interests continue on the Lands

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 of Schedule 4 (Additions to Reserve Restrictive Covenant)

Schedule "2" Part 2 - Permitted Encumbrances-Interests Not Registered on Title

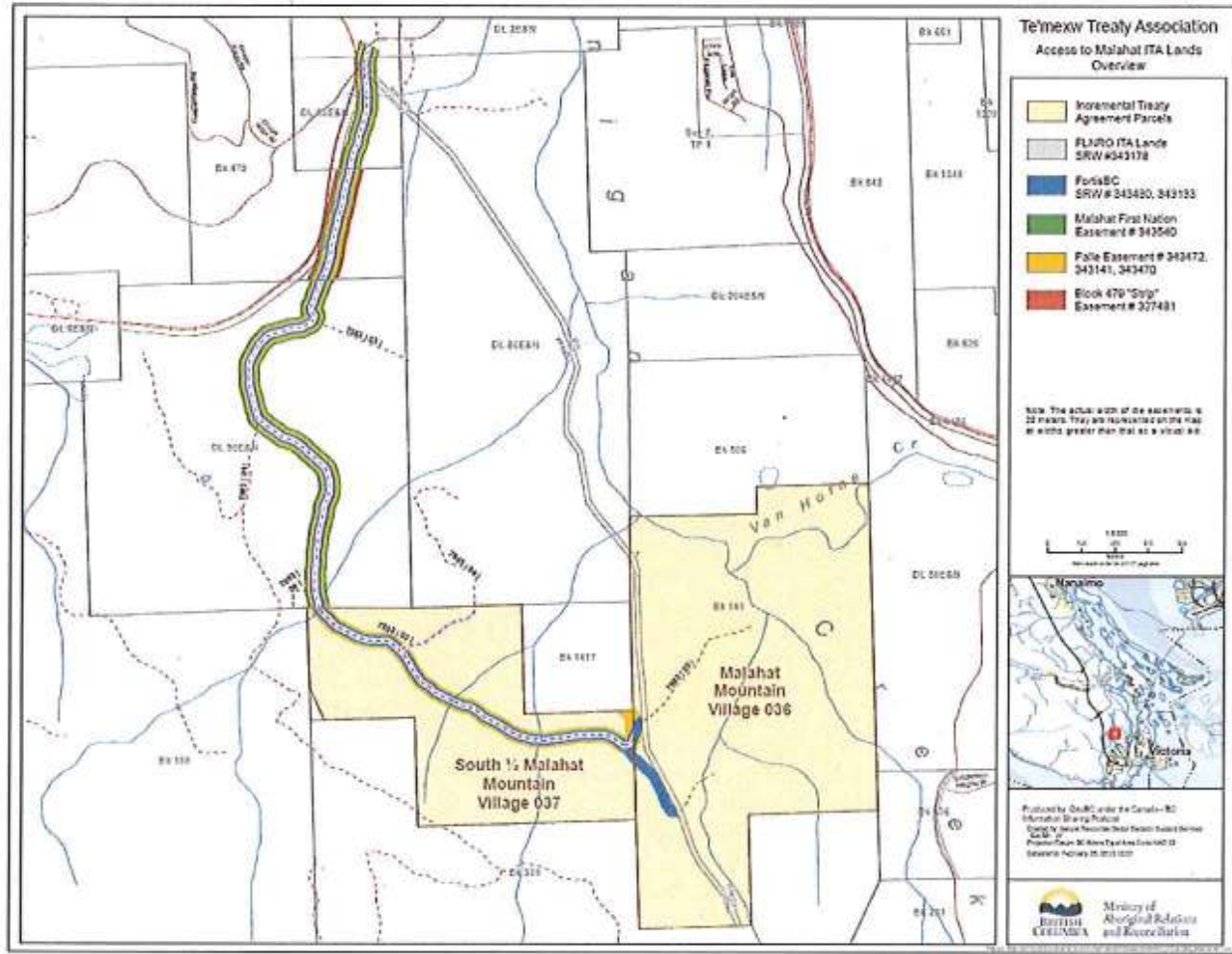
(For Discussion and Illustrative Purposes Only)

Interests Not Registered on Title
<p>Utility and local government Interests for hydro, telephone, cablevision, heating/natural gas, water infrastructure, storm drains, dykes and waste disposal/sewer continue on the Lands</p> <p>Cowichan Valley Regional District Section of Trans Canada Trail (subject to an Agreement on the form of tenure, the future location of the Trail and the costs associated with establishing the Trail interest on the Lands).</p>

Schedule "3" – Instruments of Registration (titles, survey plans, charges and other instruments) to be inserted

Schedule 3-A: Overview Map of Access to Malahat ITA Lands

Date: February 25, 2015



Schedule 3-B: Private Road Easement over South ½ of DL 90

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 **15** page(s)

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

Stikeman Elliott, Barristers and Solicitors
Suite 1700, 666 Burrard Street
Vancouver, B.C., V6C 2X8

Applicant's Solicitor

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:*

(PID)

(LEGAL DESCRIPTION)

009-382-976

Block 1417, Malahat District

South ½ of DL 90 Malahat District Plan _____

3. NATURE OF INTEREST*:
DESCRIPTION

DOCUMENT REFERENCE
(page and paragraph)

PERSON ENTITLED TO
INTEREST

Easement over Lot, South ½ of DL
90 Malahat District Plan _____

Entire Instrument

Registered owner of:
PID: 009-382-976
Block 1417, Malahat District

4. TERMS: Part 2 of this mortgage consists 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) or (b) 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.

5. TRANSFEROR(S):*

Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Forests, Lands and Natural Resource Operations, having an office at 810 Blanshard Street, P.O. Box 9510, Station Provincial Government, Victoria, British Columbia, V8W 9C2

6. TRANSFEREE(S): *(including postal address(es) and postal code(s))**

Kim Toni Palle and Lynda Margaret Palle
4948 Sooke Road
Victoria,
V9C 4C1

BC

GENERAL INSTRUMENT - PART 1

Page 2

7. ADDITIONAL
NONE

OR

MODIFIED

TERMS:*

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

Y	M	D
13		

Transferor's Signature(s) Her Majesty
the Queen in Right of the Province of
British Columbia as represented by
the Minister of Forests, Lands and
Natural Resource Operations
by its authorized signatory(ies)

Name:

Name:

(as to both signatures)

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.

**LAND TITLE ACT
FORM D**

EXECUTIONS CONTINUED

Officer Signature(s)

Execution
Date

Y	M	D
13		

Transferee's Signature(s)

Name: **Kim Toni Palle**

Name: **Lynda Margaret Palle**

(as to both signatures)

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.

TERMS OF INSTRUMENT – PART 2

GRANT OF PRIVATE
ROAD EASEMENT – ITA LANDS

THIS AGREEMENT is dated _____, 2013.

BETWEEN:

HER MAJESTY THE QUEEN, in the Right of the Province of British Columbia, as represented by the Minister of Forests, Lands and Natural Resource Operations having an office at
810 Blanshard Street, P.O. Box 9510,
Station Provincial Government
Victoria, British Columbia, V8W 9C2

(the "Owner")

AND:

Kim Toni Palle and Lynda Margaret Palle
4948 Sooke Road
Victoria, BC
V9C 4C1

(the "Grantee")

WHEREAS:

- A. Whereas the Owner is the registered owner of the Servient Lands and the Grantee is the registered owner of the Grantee's Property;
- B. The Grantee wishes an easement over the Servient Lands to provide access to the Grantee's Property.
- C. 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

"Easement Area" means that portion of the Servient Lands as shown on the sketch in Schedule "A" attached to this Agreement.

"FLNRO" means Ministry of Forests, Lands and Natural Resource Operations Forest Tenures Branch, Forest Land Acquisitions.

"Grantee's Property" means the lands described as:

Parcel Identifier: 009-382-976
Block 1417, Malahat District

"Lands" means collectively the Grantee's Property and the Servient Lands;

"Security" means the security for the performance of the Grantee's obligations as set out in paragraph 12 in the amount of \$2,500.

"Servient Lands" means the lands legally described as:

South ½ of DL 90 Malahat District Plan_____

2. Rights and Privileges on Servient Lands

By this Agreement the Owner grants to the Grantee, and its invitees, permittees, representatives, employees, and agents, their heirs, executors, administrators and assigns, in common with the Owner and the Owner's invitees, permittees, representatives, employees and agents, the non-exclusive full, free and uninterrupted easement, right and liberty over the Servient Lands to enter on and use the Servient Lands 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. Limitation on Easement

Notwithstanding the blanket nature of the grant of easement in paragraph 2, the Grantee shall in exercising the rights, liberties and easements granted therein, only use those portions of the Servient Lands containing the Easement Area.

4. Duration

This Easement is appurtenant to the Grantee's Property and, subject to the delivery to the Owner of the assignment and assumption agreement referred to in paragraph 10(b), 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, provided that if the Servient Lands are subdivided, the Easement will not run with

*If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E

those parcels derived from the Servient Lands which do not, in the reasonable opinion of the Owner, include any part of the Easement Area. The Easement will be discharged from such parts by the Grantee upon receipt of a written request from the Owner together with the form of discharge in registrable form. The cost of preparation of such discharge and the cost of registration of same in the Land Title Office will be paid by the Owner.

5. Annual Fee

The Grantee will pay the Owner an annual fee of \$100.00, payable in advance.

6. Non Exclusive Use and Registration Priority

This Agreement will not entitle the Grantee to exclusive possession of the Easement Area and the Owner reserves the right to use the Easement Area and grant other dispositions of the Easement Area so long as the use or grant does not materially impair the Grantee's permitted use of the Easement Area. The Grantee acknowledges and agrees that the interests in land contained in this Agreement are subject to the prior rights to use the Servient Lands granted as of the date hereof and registered against title to the Servient Lands in favour of:

- (a) Esquimalt and Nanaimo Railway Company, (Charge EN114753), *Exceptions and Reservations*.
- (b) FLNRO, Statutory Right of Way Agreement Charge____, (insert replacement tenure file #).
- (c) FLNRO, Malahat Access Easement Charge _____.
- (d) Terasen Gas (Vancouver Island) Inc. Access SRW Charge _____.

The Owner agrees to cause the registrable interests in Land contained in this Agreement to be registered against title to the Servient Lands in priority to all other charges save only for the prior rights referred to above in favour of Esquimalt and Nanaimo Railway Company, FLNRO and Terasen.

7. Covenants of the Grantee

The Grantee covenants with the Owner:

- (a) to pay the annual fee as described in paragraph 5 at the address of the Owner set out above or at such other place as the Owner may specify under paragraph 13;
- (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;

*If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E

- (c) to observe, abide by and comply with all applicable laws, bylaws, orders, directions, ordinances and regulations of any competent government authority 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 or annoyance to the Servient Lands;
- (e) not to dump or bury debris or rubbish of any kind on the Easement Area;
- (f) 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;
- (g) to indemnify and save harmless the Owner and the Owner's servants, employees and agents against all claims, actions, causes of action, 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, bodily injury (including death), or property damage occurring on or off the Servient Lands and 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 such losses, damages, costs and liabilities to the fees payable under paragraph 5, and the amount added will be payable to the Owner immediately upon demand;

- (h) in respect of the use of the Easement Area by the Grantee or anyone permitted by the Grantee to use the Easement Area, to keep the Easement Area in a safe, clean and sanitary condition satisfactory to the Owner acting reasonably including, without limitation, maintaining and repairing any damage to the Easement Area caused by the Grantee's or anyone permitted by the Grantee to use under this Agreement, 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;
- (i) to permit the Owner or its authorized representative to enter upon the Easement Area at any time to examine its condition;
- (j) to use and occupy the Easement Area in accordance with the provisions of this Agreement;

*If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E

- (k) 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; and
 - (ii) if requested by the Owner 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 all the Grantee's right, interest and estate in the Servient Lands will be absolutely forfeited to the Owner, and to the extent necessary, this covenant shall survive the expiration or cancellation of this Agreement;

- (l) 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 \$2,000,000.00;
- (m) notwithstanding subparagraph (l), 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;
- (n) 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 prior or 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
- (o) 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,

*If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E

then the Owner may by further written notice to the Grantee cancel this Agreement and despite paragraph 7(k), any improvements to the Easement Area will, at the discretion of the Owner, become the property of the Owner. If this Agreement is canceled under this paragraph the Grantee shall forthwith provide a registrable discharge of this Agreement executed by the Grantee and any lender with a registered charge on the Grantee's Property.

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 the Owner's 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 easement 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(k) (ii). If this Agreement is canceled under this paragraph the Grantee shall forthwith provide a registrable discharge of this Agreement executed by the Grantee and any lender with a registered charge on the Grantee's Property.

10. Third Party Transfers

If the Owner or the Grantee, as the case may be, wishes to dispose of all or portions of their respective fee simple interests in the Lands, then it is agreed that:

- (a) the Owner will not dispose of, or agree to dispose of, all or portions of the Servient Lands without first notifying any intended purchaser of the existence of this Agreement;
- (b) the Grantee will not dispose of, or agree to dispose of, all or portions of the Grantee's Property, unless:
 - (i) the acquiring party (the "Assuming Party"), concurrently and together with the Grantee executes and delivers to the Owner an assignment and assumption agreement (in a form reasonably required by the Owner and, to the extent if reasonably required by the Owner, constituting a novation) pursuant to which:
 - (A) the Assuming Party agrees to assume, observe, be bound by and perform the covenants, agreements and obligations (whether past, present or future) of the Grantee under this Agreement; and
 - (B) the Assuming Party obtains an assignment of applicable rights under this Agreement; and
 - (C) the Grantee will be deemed to be released from its covenants, agreements and obligations to the extent provided in paragraph 16 hereof.

11. Ownership of Commercially 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

*If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E

- (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.

The parties agree that the amount of the Security does not constitute a liquidated damages estimate of the Owner's damages if the Grantee breaches its obligations hereunder and the Owner reserves its right to claim for further damages.

13. 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, except in the case of mail interruption in which case actual receipt is required.

14. 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.

*If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E

15. 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.

16. 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 and all of the covenants, agreements and obligations herein made by the Owner or the Grantee, as the case may be, are for themselves and their respective successors and assigns and the owner or owners from time to time of an interest in all or any portion of the Lands. If the Owner or the Grantee, as the case may be, transfers, sells or otherwise disposes of any of their respective interests in and to the Lands or portions thereof, such transferring owner (the "Transferring Owner") shall not be released from, and shall continue to be bound by, all covenants, agreements and obligations under this Agreement, wherever arising or occurring; provided that if, and only if:

- (a) the Transferring Owner has transferred all of its fee simple interest (whether registered, legal or beneficial) in the Lands or portions thereof (a "Transferred Parcel" and such event being called a "Transfer Event"); and
- (b) such Transferring Owner is not in default of any of its covenants, agreements and obligations under this Agreement (including in the case of the Grantee, the requirement under paragraph 10(b) to have concurrently with such Transfer Event delivered the assignment and assumption agreement referred to therein);

then, such covenants, agreements and obligations shall be personal and binding upon such Transferring Owner in respect of the Transferred Parcel only until the Transfer Event but, for greater certainty:

- (c) the Transferred Parcel, if it comprises the Servient Lands, shall, nevertheless be at all times charged as applicable, by the easements and any other interests granted in this Agreement;
- (d) the Transferring Owner shall remain liable after the Transfer Event for all breaches, and non-observance and non-performance, of covenants herein occurring prior to such Transfer Event in respect of such Transferred Parcel; and
- (e) nothing contained or implied in this paragraph 16 shall, for greater certainty, release, diminish or affect any obligations or liabilities that the Transferring Owner may have pursuant to this Agreement in respect of another portion of the Lands that is not the Transferred Parcel.

*If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E

17. Entire Agreement

This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent written agreement.

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.

19. Each party will, upon the reasonable request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.

20. Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made, then the Owner or the Grantee, as the case may be, will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that the Owner or the Grantee have sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.

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

**Her Majesty the Queen in Right of
the Province of British Columbia
as represented by the Minister of Forests,
Lands and Natural Resource Operations**

Per: _____

GRANTEE

Kim Toni Palle

Per: _____
(authorized signatory of Grantee)

GRANTEE

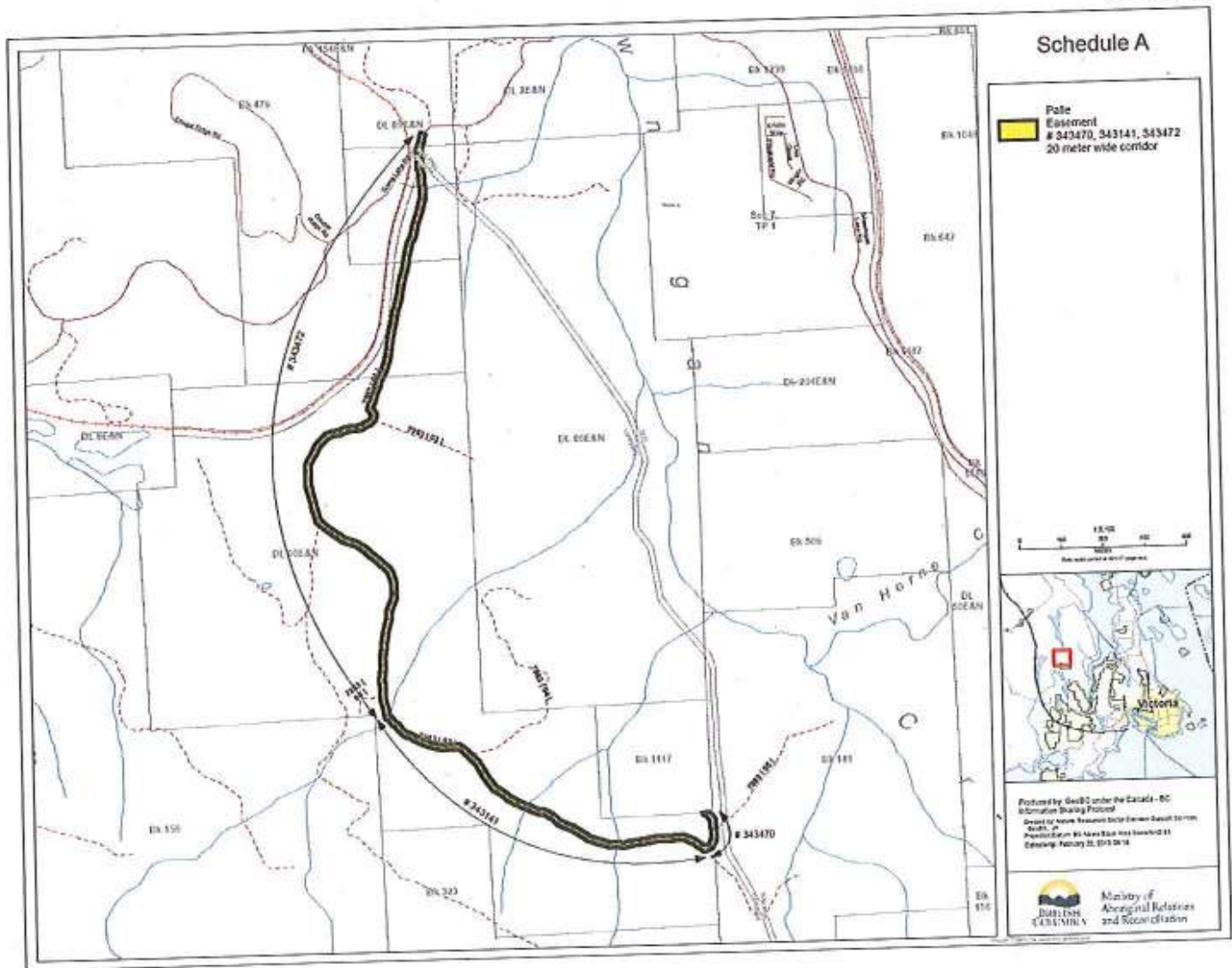
Lynda Margaret Palle

Per: _____
(authorized signatory of Grantee)

*If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E

Schedule "A"
[Plan of Easement Area]

Date: February 22, 2013



*If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E

END OF DOCUMENT

*If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E

Schedule 3-C: Private Road Easement Over Block 141

AND TITLE ACT

FORM C

(Section 233)

Province of

British Columbia

GENERAL INSTRUMENT - PART 1 (This area for Land Title Office Use) Page 1 of 15 page(s)

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

Stikeman Elliott, Barristers and Solicitors
Suite 1700, 666 Burrard Street
Vancouver, B.C., V6C 2X8

Applicant's Solicitor

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:*

(PID)

(LEGAL DESCRIPTION)

010-291-971

Block 141, Malahat District as shown on Plan DD27158

3. NATURE OF INTEREST*:
DESCRIPTION

DOCUMENT REFERENCE
(page and paragraph)

PERSON ENTITLED TO
INTEREST

Easement over Block 141, Malahat
District as shown on Plan DD27158

Entire Instrument

Registered owner of:
PID: 009-382-976
Block 1417, Malahat District

4. TERMS: Part 2 of this mortgage consists of (select one only):

- (a) Filed Standard Charge Terms
(b) Express Charge Terms
(c) Release

- ☐ D.F. No.
☒ Annexed as Part 2
☐ There is no Part 2 of this instrument

A selection of (a) or (b) 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.

5. TRANSFEROR(S):*

Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Forests, Lands and Natural Resource Operations, having an office at 810 Blanshard Street, P.O. Box 9510, Station Provincial Government, Victoria, British Columbia, V8W 9C2

6. TRANSFEREE(S): (including postal address(es) and postal code(s)) *

Kim Toni Palle and Lynda Margaret Palle
4948 Sooke Road
Victoria,
V9C 4C1

BC

7. ADDITIONAL
NONE

OR

MODIFIED

TERMS:*

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

Y	M	D
13		

Transferor's Signature(s) **Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Forests, Lands and Natural Resource Operations**
by its authorized signatory(ies)

Name:

Name:

(as to both signatures)

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.

**LAND TITLE ACT
FORM D**

EXECUTIONS CONTINUED

Officer Signature(s)

Execution
Date

Y	M	D
13		

Transferee's Signature(s)

Name: **Kim Toni Palle**

Name: **Lynda Margaret Palle**

(as to both signatures)

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.

TERMS OF INSTRUMENT – PART 2

EASEMENT OVER BLOCK 141

THIS AGREEMENT is dated _____, 2013.

BETWEEN:

HER MAJESTY THE QUEEN, in the Right of the Province of British Columbia, as represented by the Minister of Forests, Lands and Natural Resource Operations having an office at
810 Blanshard Street, P.O. Box 9510,
Station Provincial Government
Victoria, British Columbia, V8W 9C2

(the "Owner")

AND:

Kim Toni Palle and Lynda Margaret Palle
4948 Sooke Road
Victoria, BC
V9C 4C1

(the "Grantee")

WHEREAS:

- A. Whereas the Owner is the registered owner of the Servient Lands and the Grantee is the registered owner of the Grantee's Property;
- B. The Grantee wishes an easement over the Servient Lands to provide access to the Grantee's Property.
- C. 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

"Easement Area" means that portion of the Servient Lands as shown on the sketch in Schedule "A" attached to this Agreement.

"FLNRO" means Ministry of Forests, Lands and Natural Resource Operations Forest Tenures Branch, Forest Land Acquisitions.

"Grantee's Property" means the lands described as:

Parcel Identifier: 009-382-976
Block 1417, Malahat District

"Lands" means collectively the Grantee's Property and the Servient Lands;

"Security" means the security for the performance of the Grantee's obligations as set out in paragraph 12 in the amount of \$2,500.

"Servient Lands" means the lands legally described as:

PID: 010-291-971, Block 141, Malahat District as shown on Plan DD27158

2. Rights and Privileges on Servient Lands

By this Agreement the Owner grants to the Grantee, and its invitees, permittees, representatives, employees, and agents, their heirs, executors, administrators and assigns, in common with the Owner and the Owner's invitees, permittees, representatives, employees and agents, the non-exclusive full, free and uninterrupted easement, right and liberty over the Servient Lands to enter on and use the Servient Lands 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. Limitation on Easement

Notwithstanding the blanket nature of the grant of easement in paragraph 2, the Grantee shall in exercising the rights, liberties and easements granted therein, only use those portions of the Servient Lands containing the Easement Area.

4. Duration

This Easement is appurtenant to the Grantee's Property and, subject to the delivery to the Owner of the assignment and assumption agreement referred

to in paragraph 10(b), 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, provided that if the Servient Lands are subdivided, the Easement will not run with those parcels derived from the Servient Lands which do not, in the reasonable opinion of the Owner, include any part of the Easement Area. The Easement will be discharged from such parts by the Grantee upon receipt of a written request from the Owner together with the form of discharge in registrable form. The cost of preparation of such discharge and the cost of registration of same in the Land Title Office will be paid by the Owner.

5. Annual Fee

The Grantee will pay the Owner an annual fee of \$100.00, payable in advance.

6. Non Exclusive Use and Registration Priority

This Agreement will not entitle the Grantee to exclusive possession of the Easement Area and the Owner reserves the right to use the Easement Area and grant other dispositions of the Easement Area so long as the use or grant does not materially impair the Grantee's permitted use of the Easement Area. The Grantee acknowledges and agrees that the interests in land contained in this Agreement are subject to the prior rights to use the Servient Lands granted as of the date hereof and registered against title to the Servient Lands in favour of:

- (a) Esquimalt and Nanaimo Railway Company, (Charge EN114753),
Exceptions and Reservations.
- (b) Terasen Gas (Vancouver Island) Inc. Access SRW Charge
_____.

The Owner agrees to cause the registrable interests in Land contained in this Agreement to be registered against title to the Servient Lands in priority to all other charges save only for the prior rights referred to above in favour of Esquimalt and Nanaimo Railway Company, FLNRO and Terasen.

7. Covenants of the Grantee

The Grantee covenants with the Owner:

- (a) to pay the annual fee as described in paragraph 5 at the address of the Owner set out above or at such other place as the Owner may specify under paragraph 13;

- (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 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 or annoyance to the Servient Lands;
- (e) not to dump or bury debris or rubbish of any kind on the Easement Area;
- (f) 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;
- (g) to indemnify and save harmless the Owner and the Owner's servants, employees and agents against all claims, actions, causes of action, 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, bodily injury (including death), or property damage occurring on or off the Servient Lands and 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 such losses, damages, costs and liabilities to the fees payable under paragraph 5, and the amount added will be payable to the Owner immediately upon demand;

- (h) in respect of the use of the Easement Area by the Grantee or anyone permitted by the Grantee to use the Easement Area, to keep the Easement Area in a safe, clean and sanitary condition satisfactory to the Owner acting reasonably including, without limitation, maintaining and repairing any damage to the Easement Area caused by the Grantee's or anyone permitted by the Grantee to use under this

Agreement, 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;

- (i) to permit the Owner or its authorized representative to enter upon the Easement Area at any time to examine its condition;
- (j) to use and occupy the Easement Area in accordance with the provisions of this Agreement;
- (k) 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; and
 - (ii) if requested by the Owner 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 all the Grantee's right, interest and estate in the Servient Lands will be absolutely forfeited to the Owner, and to the extent necessary, this covenant shall survive the expiration or cancellation of this Agreement;

- (l) 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 \$2,000,000.00;
- (m) notwithstanding subparagraph (l), 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;
- (n) 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 prior or 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
- (o) 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(k), any improvements to the Easement Area will, at the discretion of the Owner, become the property of the Owner. If this Agreement is canceled under this paragraph the Grantee shall forthwith provide a registrable discharge of this Agreement executed by the Grantee and any lender with a registered charge on the Grantee's Property.

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 the Owner's 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 easement 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(k) (ii). If this Agreement is canceled under this paragraph the Grantee shall forthwith provide a registrable discharge of this Agreement executed by the Grantee and any lender with a registered charge on the Grantee's Property.

10. Third Party Transfers

If the Owner or the Grantee, as the case may be, wishes to dispose of all or portions of their respective fee simple interests in the Lands, then it is agreed that:

- (a) the Owner will not dispose of, or agree to dispose of, all or portions of the Servient Lands without first notifying any intended purchaser of the existence of this Agreement;
- (b) the Grantee will not dispose of, or agree to dispose of, all or portions of the Grantee's Property, unless:
 - (i) the acquiring party (the "Assuming Party"), concurrently and together with the Grantee executes and delivers to the Owner an assignment and assumption agreement (in a form reasonably required by the Owner and, to the extent if reasonably required by the Owner, constituting a novation) pursuant to which:
 - (A) the Assuming Party agrees to assume, observe, be bound by and perform the covenants, agreements and obligations (whether past, present or future) of the Grantee under this Agreement; and
 - (B) the Assuming Party obtains an assignment of applicable rights under this Agreement; and
 - (C) the Grantee will be deemed to be released from its covenants, agreements and obligations to the extent provided in paragraph 16 hereof.

11. Ownership of Commercially 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.

The parties agree that the amount of the Security does not constitute a liquidated damages estimate of the Owner's damages if the Grantee breaches its obligations hereunder and the Owner reserves its right to claim for further damages.

13. 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, except in the case of mail interruption in which case actual receipt is required.

14. 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.

15. 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.

16. 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 and all of the covenants, agreements and obligations herein made by the Owner or the Grantee, as the case may be, are for themselves and their respective successors and assigns and the owner or owners from time to time of an interest in all or any portion of the Lands. If the Owner or the Grantee, as the case may be, transfers, sells or otherwise disposes of any of their respective interests in and to the Lands or portions thereof, such transferring owner (the "Transferring Owner") shall not be released from, and shall continue to be bound by, all covenants, agreements and obligations under this Agreement, wherever arising or occurring; provided that if, and only if:

- (a) the Transferring Owner has transferred all of its fee simple interest (whether registered, legal or beneficial) in the Lands or portions thereof (a "Transferred Parcel" and such event being called a "Transfer Event"); and
- (b) such Transferring Owner is not in default of any of its covenants, agreements and obligations under this Agreement (including in the case of the Grantee, the requirement under paragraph 10(b) to have concurrently with such Transfer Event delivered the assignment and assumption agreement referred to therein);

then, such covenants, agreements and obligations shall be personal and binding upon such Transferring Owner in respect of the Transferred Parcel only until the Transfer Event but, for greater certainty:

- (c) the Transferred Parcel, if it comprises the Servient Lands, shall, nevertheless be at all times charged as applicable, by the easements and any other interests granted in this Agreement;
- (d) the Transferring Owner shall remain liable after the Transfer Event for all breaches, and non-observance and non-performance, of covenants herein occurring prior to such Transfer Event in respect of such Transferred Parcel; and

- (e) nothing contained or implied in this paragraph 16 shall, for greater certainty, release, diminish or affect any obligations or liabilities that the Transferring Owner may have pursuant to this Agreement in respect of another portion of the Lands that is not the Transferred Parcel.

17. Entire Agreement

This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent written agreement.

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.

19. Each party will, upon the reasonable request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.

20. Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made, then the Owner or the Grantee, as the case may be, will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that the Owner or the Grantee have sole discretion to take an action, provide a consent or approval

or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.

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

**Her Majesty the Queen in Right of
the Province of British Columbia
as represented by the Minister of Forests,
Lands and Natural Resource Operations**

Per: _____

GRANTEE

Kim Toni Palle

Per: _____
(authorized signatory of Grantee)

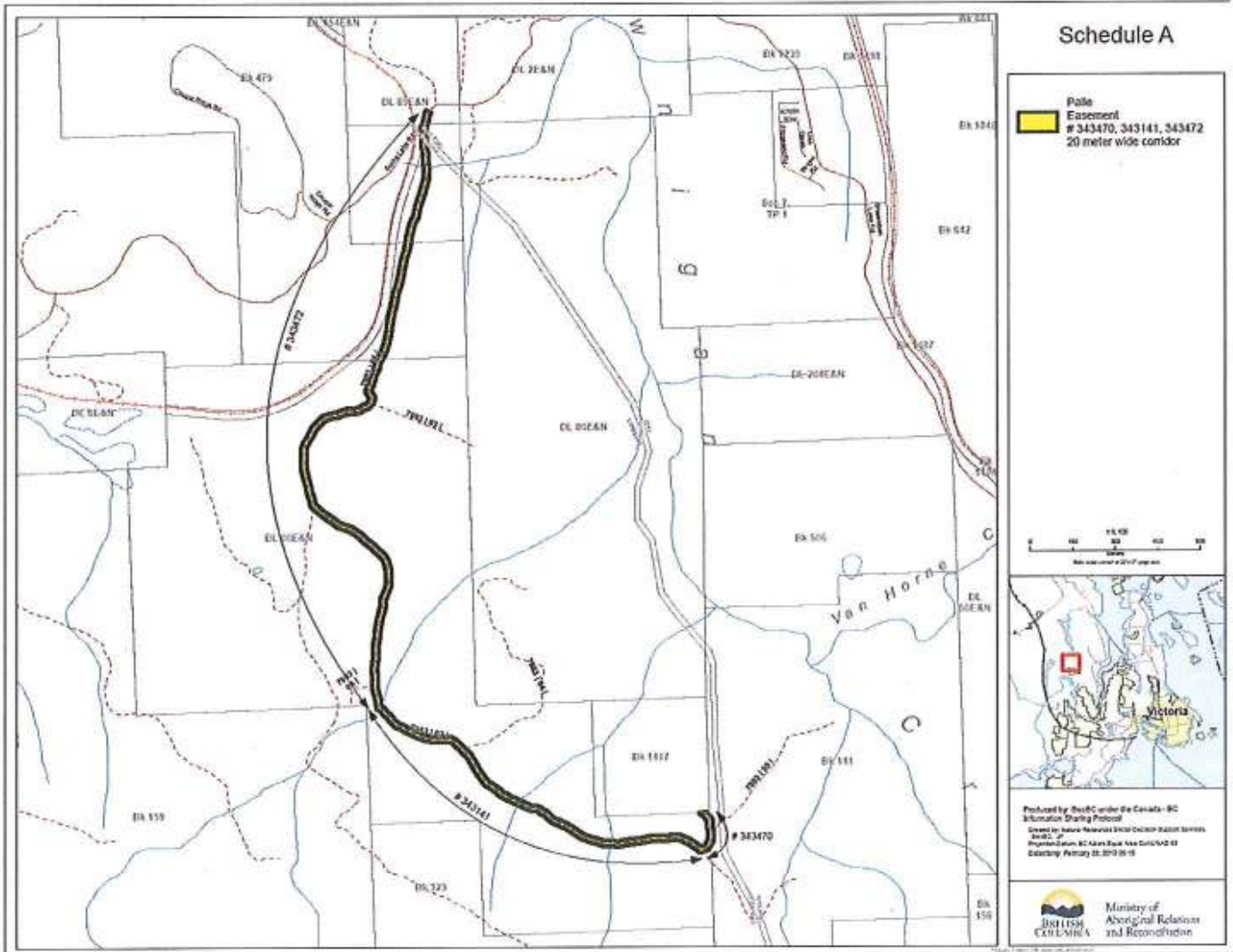
GRANTEE

Lynda Margaret Palle

Per: _____
(authorized signatory of Grantee)

Schedule "A" [Plan of Easement Area]

Date: February 22, 201



END OF DOCUMENT

Schedule 3-D: FLNRO Statutory Right-of-Way

LAND TITLE ACT FORM C

(Section 233)

Province of British Columbia

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

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)
Stikeman Elliott, Barristers and Solicitors
Suite 1700, 666 Burrard Street
Vancouver, B.C., V6C 2X8
Attention: Richard Jackson

Applicant's Solicitor

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

(PID)

(Legal Description)

TBD

South 1/2 of DL 90 Malahat District Plan _____

3. NATURE OF INTEREST:*

Description

Document Reference
(page and paragraph)

Person Entitled to Interest

Statutory Right-of-Way

Entire Instrument

Transferee

4. TERMS: Part 2 of this instrument consists 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.

5. TRANSFEROR (GRANTOR):*

Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Forests, Lands and Natural Resource Operations, c/o Forest Tenures Branch, Forest Land Acquisitions, 1810 Blanshard Street, P. O. Box 9510, Stn. Prov. Govt., Victoria, British Columbia V8W 9C2

6. TRANSFeree (FLNRO):* (Including postal address(es) and postal codes(s))

Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Forests, Lands and Natural Resource Operations, c/o Forest Tenures Branch, Forest Land Acquisitions, 1810 Blanshard Street, P. O. Box 9510, Stn. Prov. Govt., Victoria, British Columbia V8W 9C2

7. ADDITIONAL OR MODIFIED TERMS:* None

LAND TITLE ACT

FORM C

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.

Witnesses	Execution Date			Parties' Signatures
	Y	M	D	
Signature _____	13			Authorized Signatory Her Majesty The Queen as Represented by the Minister of Forests, Lands and Natural Resource Operations
Printed name _____				
Address _____				
Occupation _____				
Officer Signature _____	13			Authorized Signatory of Her Majesty The Queen as Represented by the Minister of Forests, Lands and Natural Resource Operations

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 attached schedule in Form E.



Terms of Instrument

STATUTORY RIGHT OF WAY AGREEMENT - INDUSTRIAL ROADS

This Agreement dated for reference _____, 20____, is made:

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA**

Parliament Buildings
Victoria, B.C.

("the Grantor")

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA**

**as Represented By The Minister Of Forests, Lands
and Natural Resource Operations**

c/o Forest Tenures Branch, Forest Land Acquisitions

810 Blanshard Street, P.O. Box 9510,

Station Provincial Government

Victoria, British Columbia, V8W 9C2

("FLNRO")

WHEREAS:

A. The Grantor is the registered owner of land legally described as:

South ½ of DL 90 Malahat District Plan EPP _____

("the Lands")

B. The Grantor owns private industrial roads constructed on a portion of the Lands;

C. The Grantor has agreed to provide to FLNRO, on the terms and conditions set out in this agreement, the right to use certain roads which exist on the Lands at the date of this agreement.

THE GRANTOR AND FLNRO NOW AGREE AS FOLLOWS:

Definitions

In this agreement:

"FLNRO" includes FLNRO's employees, agents, licensees, invitees, permittees and contractors;

"ITA" means the Incremental Treaty Agreement between the Province and the Malahat Indian Band.

"Right-of-Way" means the rights granted to FLNRO in Part 1 of this Agreement;

"Road Activity" means realigning, upgrading, maintaining, or using a Road;

"Roads" means the roads shown in heavy bold outline on the plan attached hereto as Schedule "A";

Part 1. Grant of Right-of-Way

1.01 In consideration of the sum of \$1.00 (One Dollar) paid by FLNRO to the Grantor, the Grantor hereby grants to FLNRO a Right-of-Way at all times, by day and by night at their will and pleasure to pass and repass along, and over the Lands, together with the right to use, maintain, upgrade and realign roads, for the purpose of transporting logs from forest tenures or for transporting other natural resources, and for all purposes necessarily ancillary to the harvesting of logs from forest tenures or extraction of other natural resources.

1.02 Subject to 1.03 and 2.01, the Right-of-Way shall be non-exclusive and perpetual, provided that FLNRO may bring this agreement to an end at any time on written notice to the Grantor. If FLNRO brings this agreement to an end it shall provide to the Grantor a registrable release of this agreement.

1.03 FLNRO covenants to cease use of Road 2, as shown on Schedule "A", if the title to Block 141, Malahat District is transferred in accordance with the ITA, in fee simple, to the designated company held by the Malahat Indian Band. In such event, FLNRO shall provide the Grantor with a registrable partial release or modification of this agreement to reflect this change.

1.04 This Right-of-Way is granted pursuant to 218 of the *Land Title Act* and is necessary for the operation and maintenance of FLNRO's undertaking.

1.05 The parties intend that this agreement shall constitute a charge running with the Lands and will be registered in the Land Title Office.

Part 2. Cancellation

- 2.01 This Agreement will be cancelled upon the Lands becoming Malahat Treaty Settlement Lands under the Malahat First Nation Final Agreement and the Charge associated with this Agreement will be removed from the Title of the Lands, unless the Parties agree otherwise.

Part 3. Limitation on Use

- 3.01 FLNRO covenants that, despite this Right-of-Way being granted over all of the Lands, FLNRO will exercise the rights granted in section 1.01 only along and over the Roads.
- 3.02 Each Road shall be deemed to be 20 metres wide centered on the centre line of the Road.

Part 4.0 Liability for Roads

In this section, "Road" means a Road or a part, or a section, of a Road.

- 4.01 The parties accept the Roads in their condition as of the reference date of this agreement.
- 4.02 Subject to the provisions below concerning Road Activities, FLNRO shall have no liability associated with the Roads, and no obligation to carry out a Road Activity.
- 4.03 If and when FLNRO wishes to carry out a Road Activity, it will, before it commences the Road Activity, first give written notice to the Grantor containing the following information:
- (a) the Road on which the Road Activity will take place;
 - (b) the nature of the Road Activity;
 - (c) when the Road Activity will commence and when it will end;
 - (d) what condition FLNRO expects to leave the Road in at the end of the Road Activity.
- 4.04 When FLNRO commences a Road Activity, FLNRO is liable, whether or not the notice required in section 4.03 has been given, to indemnify and save harmless the Grantor from and against any and all losses, claims, damages, actions, causes of actions, costs and expenses that the Grantor may sustain, incur, suffer or be put to arising from an incident which occurs during, and as a result of, the Road Activity, excepting always liability arising out of the negligent acts or omissions of the Grantor, its employees, agents, invitees, licensees, permittees or contractors.
- 4.05 When FLNRO concludes a Road Activity:

- (a) subject to subsection (b) below, FLNRO may remove any improvements it has installed during a Road Activity;
 - (b) FLNRO will leave the Road or the part of the Road:
 - (i) in the same or better condition than it was in when FLNRO commenced the Road Activity; and
 - (ii) in a condition that meets or exceeds the duty of care required of an occupier of similar premises as set out in the *British Columbia Occupiers Liability Act*;
 - (c) FLNRO will then give written notice to the Grantor:
 - (i) confirming what Road Activities were done on the Road;
 - (ii) stating what condition the Road has been left in; and
 - (iii) confirming that the conditions in subsections 4.05(b)(i) and (ii) have been met.
 - (d) Upon giving such notice, FLNRO:
 - (i) will have no obligation to maintain the Road or the part of the Road thereafter;
 - (ii) will thenceforth have no liability associated with the Road except liability for breach of any of FLNRO's covenants in this agreement.
- 4.06 The Grantor will indemnify and save harmless FLNRO from and against any and all losses, claims, damages, actions, causes of actions, costs and expenses that FLNRO may sustain, incur, suffer or be put to arising from an incident which occurs during, and as a result of the Grantor's use of the Road provided FLNRO has complied with its obligations in this agreement, and excepting always liability arising out of the negligent acts or omissions of FLNRO, its employees, agents, invitees, licensees or permittees using the Roads.
- 4.07 The procedures and the liability regime set out in this section shall apply to any and all subsequent Road Activities which FLNRO may carry out.
- 4.08 FLNRO shall not carry out any Road Activity on the Roads without complying with this Part, except for occasional use ancillary to Road Activity, it being expressly acknowledged and agreed that the indemnity provisions in Section 4.04 will apply to any such ancillary uses.

Part 5. Promises

5.01 FLNRO will:

- (a) use, and permit the use of, the Roads only for the purposes set out in this agreement, and for no other purpose, without the express written consent of the Grantor, which consent shall not be unreasonably withheld;
- (b) not cause any damage or disturbance to the Roads, and in particular (but without limiting this covenant) will not cause damage or disturbance to the natural drainage pattern of the Lands;
- (c) not park or place vehicles or machinery in a manner which will interfere with the use of any cross-road, driveway or entrance or exit ramp;
- (d) use its best efforts to prevent, control and extinguish any fire on the Lands or any lands adjacent to the Lands which FLNRO may cause, and will conform to and observe the provisions of the *Forest and Range Practices Act* (as amended or replaced from time to time) and any other statutes and regulations that are in force or may in the future be enacted or made regarding the prevention of fires;
- (e) reimburse the Grantor for any costs or expenses the Grantor incurs to fight fires for which FLNRO is responsible under this subsection on an actual cost basis and not on FLNRO scale;
- (f) carry out its Road Activities in a safe manner having regard to all the circumstances and, in particular, having regard to others who may be using the Road at the same time;
- (g) comply with any laws, regulations, bylaws, standards, policies, directions, permits or orders of any duly constituted authority governing, affecting, or in any way related to the use of the Right-of-Way.
- (h) ensure that the right-of-way remains in an environmentally sound, clean, safe and orderly condition, and free from all waste, including, without limitation, wood waste relating to the use of the right-of-way by FLNRO.
- (i) not assign its rights under this agreement without the prior written approval of the Grantor, which may not be unreasonably withheld.

5.02 The Grantor will not do or knowingly permit to be done any act or thing which will interfere with any Road Activities being carried out by FLNRO.

5.03 Other than as expressly permitted in this agreement, FLNRO will not do or knowingly permit to be done any act or thing which will materially interfere with the rights of the Grantor to use the Roads or which would interfere with the Grantor's rights of ownership in the Lands.

Part 6. Notice

6.01 Any notice, document or communication required or permitted to be given under this agreement:

- (a) must be in writing;
- (b) may be given by delivery by hand, by courier, or by double-registered mail to the following addresses:

To FLNRO:

Forest Tenures Branch
Ministry of Forests, Lands and Natural Resource Operations
PO Box 9510 Stn Prov Govt
Victoria , British Columbia V8W 9C2

To the Grantor:

Forest Tenures Branch
Ministry of Forests, Lands and Natural Resource Operations
PO Box 9510 Stn Prov Govt
Victoria , British Columbia V8W 9C2

or at such other addresses as the parties hereto may from time to time designate in writing.

- (c) may be given by e-mail, provided that there is proof of receipt, at e-mail addresses provided by the parties to each other.

Part 7 Alternative Right-of-Way

7.01 The Grantor may, by written notice delivered to FLNRO, require FLNRO to relocate all or a portion of the Roads to another mutually acceptable location on the Lands and such relocation will be undertaken by the Grantor within a reasonable time and at the expense of the Grantor.

7.02 Provided any other party with a registered interest permitting that party to use the Roads has consented to the proposed relocation, FLNRO may, by written notice delivered to the Grantor request the Grantor to agree to relocate all or a portion of the Roads to another mutually acceptable location on the Lands and such relocation will be undertaken by FLNRO within a reasonable time and at the expense of the FLNRO.

7.03 Any portion of the Roads which are to be relocated in accordance with sections 7.01 and 7.02 shall be constructed to the same standard as that which existed for

that original portion of the Road which is being relocated, or as otherwise agreed by the parties.

- 7.04 If the Roads are relocated in accordance with sections 7.01 and 7.02, FLNRO agrees to provide the Grantor with a registrable partial release or a modification of this agreement to reflect the changed location of the Road.

Part 8 Defaults

- 8.01 If FLNRO defaults in the observance and performance of any material term and condition contained in this Agreement and such default is not remedied within a reasonable period of time after the Grantor has given notice to FLNRO specifying the default and requesting it be cured, Grantor may remedy the default and seek reimbursement from FLNRO.
- 8.02 Any failure by the Grantor to exercise its rights with respect to any particular default of FLNRO shall not operate as a waiver of its rights with respect to any continuing subsequent default.

Part 9 Entire Agreement

- 9.01 This Agreement constitutes the entire agreement between the Grantor and FLNRO regarding the right-of-way and supersedes all prior agreements and understandings between them. There are no representations, promises, agreements or understandings between the Grantor and FLNRO concerning the right-of-way that are not expressly set out in this Agreement.

Part 10 Enurement

- 10.01 This Agreement will enure to the benefit of and be binding upon the Grantor and FLNRO and their respective successors and permitted assigns. The word *Grantor* is deemed to include the heirs, executors, administrators, successors, and assigns, wherever the context so admits.

Part 11 Governing Law

- 11.01 This Agreement will be governed by and construed in accordance with the laws in force from time to time in British Columbia.

Part 12 Interpretation

12.01 In this Agreement:

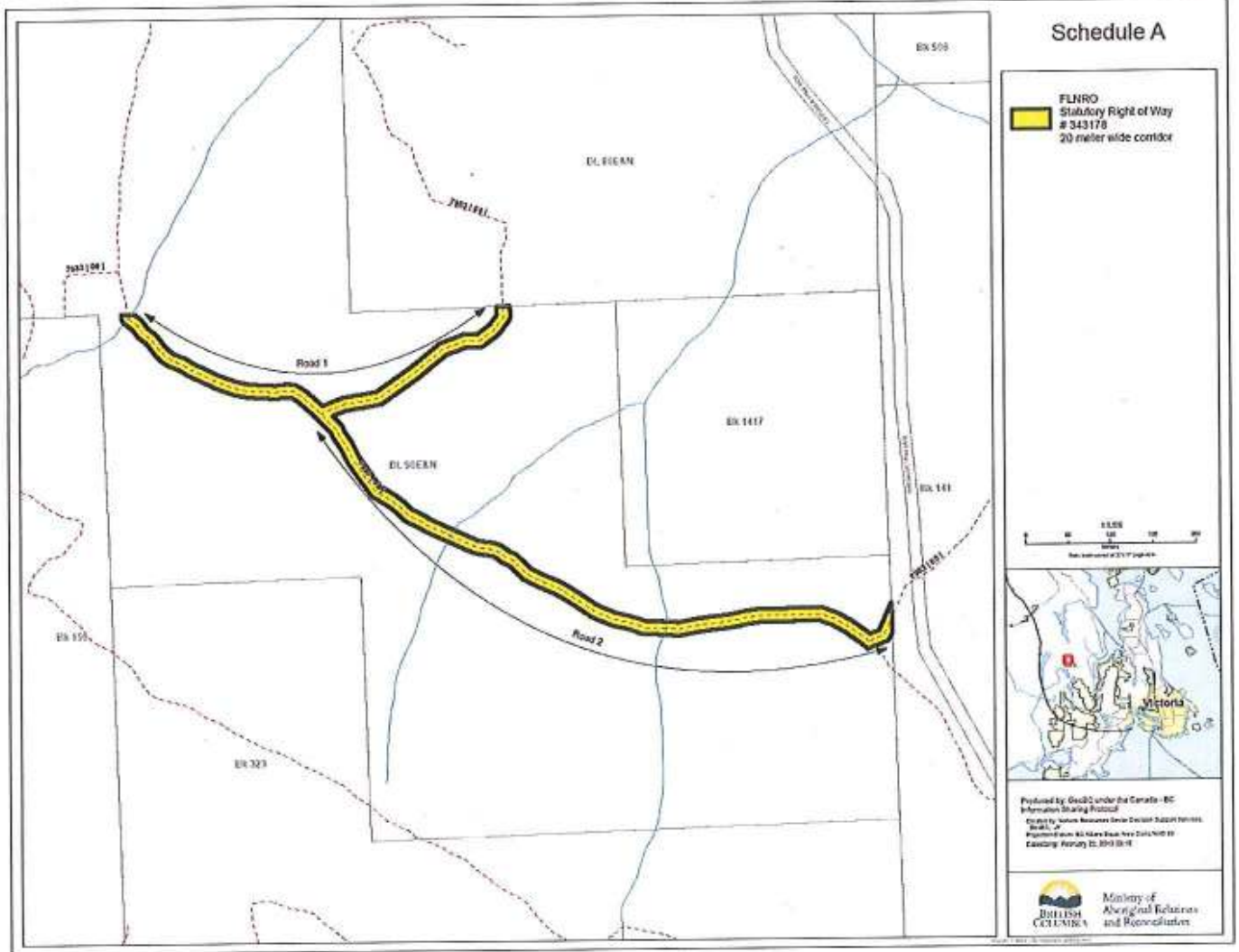
- (a) all attached schedules form an integral part of this Agreement;
- (b) unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender, body politic and a corporation;
- (c) the headings are for convenience only and are not to be construed as 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.

12.02. Each party will, upon the reasonable request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.

12.03. Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made, then the Grantor or FLNRO, as the case may be, will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that the Grantor or FLNRO have sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.

Schedule "A"

Date: February 22, 2013



End of Document

Schedule 3-E: Terasen Gas Statutory Right-of-Way

LAND TITLE ACT FORM C

(Section 233)

Province of British Columbia

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

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

Stikeman Elliott, Barristers and Solicitors
Suite 1700, 666 Burrard Street
Vancouver, B.C., V6C 2X8
Attention: Richard Jackson

Applicant's Solicitor

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

(PID)

(Legal Description)

No PID Number
010-291-971

South ½ of DL 90 Malahat District Plan VIP _____
Block 141, Malahat District as shown on Plan DD27158

3. NATURE OF INTEREST:*

Description

Document Reference
(page and paragraph)

Person Entitled to Interest

Statutory Right-of-Way

Entire Instrument

Transferee

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

- (a) Filed Standard Charge Terms
(b) Express Charge Terms
(c) Release

☐
☒
☐

- D.F. No.
Annexed as Part 2
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.

5. TRANSFEROR (GRANTOR):*

Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Forests, Lands and Natural Resource Operations, c/o Forest Tenures Branch, Forest Land Acquisitions, 1810 Blanshard Street, P. O. Box 9510, Stn. Prov. Govt., Victoria, British Columbia V8W 9C2

6. TRANSFEE (TERASEN):* (Including postal address(es) and postal codes(s))

Terasen Gas (Vancouver Island) Inc. (Inc. No. 0236352)
PO Box 3777 Stn Csc, Victoria, British Columbia V8W 3V3

7. ADDITIONAL OR MODIFIED TERMS:* None

LAND TITLE ACT
FORM C

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.

Witnesses	Execution Date			Parties' Signatures
	Y	M	D	
Signature _____	13			TERASEN GAS (Vancouver Island) INC.
Printed name _____				Authorized Signatory
Address _____				
Occupation _____				
Officer Signature _____	13			Authorized Signatory of Her Majesty The Queen as Represented by the Minister of Forests, Lands and Natural Resource Operations

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 attached schedule in Form E.



Terms of Instrument

STATUTORY RIGHT OF WAY AGREEMENT - INDUSTRIAL ROADS

This Agreement dated for reference _____, 20____, is made:

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA
as Represented By The Minister Of Forests, Lands
and Natural Resource Operations
c/o Forest Tenures Branch, Forest Land Acquisitions
810 Blanshard Street, P.O. Box 9510,
Station Provincial Government
Victoria, British Columbia, V8W 9C2
(the "Grantor")**

AND:

**Terasen Gas (Vancouver Island) Inc. (Inc. No. 0236352)
PO Box 3777 Stn Csc,
Victoria, British Columbia, V8W 3V3
("Terasen")**

WHEREAS:

A. The Grantor is the registered owner of lands legally described as:

South ½ of DL 90 Malahat District Plan _____; and

PID: 010-291-971, Block 141, Malahat District

(collectively, "**the Lands**")

B. The Grantor owns private industrial roads constructed on a portion of the Lands;

C. The Grantor has agreed to provide to Terasen, on the terms and conditions set out in this agreement, the right to use certain roads which exist, or in the future may exist on the Lands.

THE GRANTOR AND TERASEN NOW AGREE AS FOLLOWS:

Definitions

In this agreement:

"Block 141" means the lands legally described as: PID 010-291-971, Block 141, Malahat District;

"Right-of-Way" means the rights granted to Terasen in Part 1 of this Agreement;

"Road Activity" means realigning, upgrading, maintaining, or using a Road;

"Roads" means the roads shown in heavy bold outline on the plan attached hereto as Schedule "A";

"Terasen" includes Terasen's employees, agents and contractors;

"Utility SRW Area" means the portion of Block 141 charged by the utility statutory right of way registered in the Victoria Land Title Office under No. EV086326 against, inter alia, Block 141.

Part 1. Grant of Right-of-Way

1.01 In consideration of the sum of \$1.00 (One Dollar) paid by Terasen to the Grantor, the Grantor hereby grants to Terasen a Right-of-Way at all times, by day and by night at their will and pleasure to pass and repass along, and over the Lands, together with the right to use, maintain, upgrade and realign roads, for the purpose of providing vehicular access to and egress from the Utility SRW Area and for all purposes necessarily ancillary thereto.

1.02 The Right-of-Way shall be non-exclusive and perpetual, provided that Terasen may bring this agreement to an end at any time on written notice to the Grantor. If Terasen brings this agreement to an end it shall provide to the Grantor a registrable release of this agreement. The Grantor reserves the right to use the Roads and grant other dispositions of the Roads so long as the use or grant does not materially impair Terasen's permitted use of the Roads. Terasen acknowledges and agrees that the interests in land contained in this Agreement are subject to the prior rights to use the Roads granted as of the date hereof and registered against title to the Lands in favour of:

- (a) Esquimalt and Nanaimo Railway Company, (Charge EN114753), *Exceptions and Reservations*;

- (b) the Grantor, (Charge Nos. _____ and _____) [the FLNRO Access SRW and the Malahat Access Easement]; and

The Grantor agrees to cause the registrable interests in land contained in this Agreement to be registered against title to the Lands in priority to all other charges save only for the prior rights referred to above in favour of Esquimalt and Nanaimo Railway Company and the Grantor.

- 1.03 This Right-of-Way is granted pursuant to 218 of the *Land Title Act* and is necessary for the operation and maintenance of Terasen's undertaking.
- 1.04 The parties intend that this agreement shall constitute a charge running with the Lands and will be registered in the Land Title Office.

Part 2. Limitation on Use

- 2.01 Terasen covenants that, despite this Right-of-Way being granted over all of the Lands, Terasen will exercise the rights granted in section 1.01 only along and over the Roads.
- 2.02 Each Road shall be deemed to be 20 metres wide centered on the centre line of the Road.

Part 3.0 Liability for Roads

In this section, "Road" means a Road or a part, or a section, of a Road.

- 3.01 The parties accept the Roads in their condition as of the reference date of this agreement.
- 3.02 Subject to the provisions below concerning Road Activities, Terasen shall have no liability associated with the Roads, and no obligation to carry out a Road Activity.
- 3.03 If and when Terasen wishes to carry out a Road Activity, it will, before it commences the Road Activity, first give written notice to the Grantor containing the following information:
- (a) the Road on which the Road Activity will take place;
 - (b) the nature of the Road Activity;
 - (c) when the Road Activity will commence and when it will end;
 - (d) what condition Terasen expects to leave the Road in at the end of the Road Activity.

3.04 When Terasen commences a Road Activity, Terasen is liable, whether or not the notice required in section 4.03 has been given, to indemnify and save harmless the Grantor from and against any and all losses, claims, damages, actions, causes of actions, costs and expenses that the Grantor may sustain, incur, suffer or be put to arising from an incident which occurs during, and as a result of, the Road Activity, excepting always liability arising out of the negligent acts or omissions of the Grantor, its employees, agents, invitees, licensees, permittees or contractors.

3.05 When Terasen concludes a Road Activity:

- (a) subject to subsection (b) below, Terasen may remove any improvements it has installed during a Road Activity;
- (b) Terasen will leave the Road or the part of the Road:
 - (i) in the same or better condition than it was in when Terasen commenced the Road Activity; and
 - (ii) in a condition that meets or exceeds the duty of care required of an occupier of similar premises as set out in the *British Columbia Occupiers Liability Act*;
- (c) Terasen will then give written notice to the Grantor:
 - (i) confirming what Road Activities were done on the Road;
 - (ii) stating what condition the Road has been left in; and
 - (iii) confirming that the conditions in subsections 3.05(b)(i) and (ii) have been met.
- (d) Upon giving such notice, Terasen:
 - (i) will have no obligation to maintain the Road or the part of the Road thereafter;
 - (ii) will thenceforth have no liability associated with the Road except liability for breach of any of Terasen's covenants in this agreement.

3.06 The procedures and the liability regime set out in this section shall apply to any and all subsequent Road Activities which Terasen may carry out.

3.07 Terasen shall not carry out any Road Activity on the Roads without complying with this Part, except for occasional use ancillary to Road Activity, it being expressly acknowledged and agreed that the indemnity provisions in Section 3.04 will apply to any such ancillary uses.

Part 4. Promises

4.01 Terasen will:

- (a) use, and permit the use of, the Roads only for the purposes set out in this agreement, and for no other purpose, without the express written consent of the Grantor, which consent may be unreasonably withheld;
- (b) not cause any damage or disturbance to the Roads, and in particular (but without limiting this covenant) will not cause damage or disturbance to the natural drainage pattern of the Lands;
- (c) not park or place vehicles or machinery in a manner which will interfere with the use of any cross-road, driveway or entrance or exit ramp;
- (d) use its best efforts to prevent, control and extinguish any fire on the Lands or any lands adjacent to the Lands which Terasen may cause;
- (e) reimburse the Grantor for any costs or expenses the Grantor incurs to fight fires for which Terasen is responsible under this subsection on an actual cost basis;
- (f) carry out its Road Activities in a safe manner having regard to all the circumstances and, in particular, having regard to others who may be using the Road at the same time;
- (g) comply with any laws, regulations, bylaws, standards, policies, directions, permits or orders of any duly constituted authority governing, affecting, or in any way related to the use of the Right-of-Way.
- (h) ensure that the right-of-way remains in an environmentally sound, clean, safe and orderly condition, and free from all waste, including, without limitation, wood waste relating to the use of the right-of-way by Terasen.
- (i) not assign its rights under this agreement without the prior written approval of the Grantor, which may not be unreasonably withheld.

4.02 The Grantor will not do or knowingly permit to be done any act or thing which will interfere with any Road Activities being carried out by Terasen.

4.03 Other than as expressly permitted in this agreement, Terasen will not do or knowingly permit to be done any act or thing which will materially interfere with the rights of the Grantor to use the Roads or which would interfere with the Grantor's rights of ownership in the Lands.

Part 5. Notice

5.01 Any notice, document or communication required or permitted to be given under this agreement:

- (a) must be in writing;
- (b) may be given by delivery by hand, by courier, or by double-registered mail to the following addresses :

To the Grantor:

Forest Tenures Branch
Ministry of Forests, Lands and Natural Resource Operations
PO Box 9510 Stn Prov Govt
Victoria , British Columbia V8W 9C2

To Terasen:

PO Box 3777, Stn Csc
Victoria, British Columbia, V8W 3V3

or at such other addresses as the parties hereto may from time to time designate in writing.

- (c) may be given by e-mail, provided that there is proof of receipt, at e-mail addresses provided by the parties to each other.

Part 6 Alternative Right-of-Way

6.01 The Grantor may, by written notice delivered to Terasen, require Terasen to relocate all or a portion of the Roads to another mutually acceptable location on the Lands and such relocation will be undertaken by the Grantor within a reasonable time and at the expense of the Grantor.

6.02 Provided any other party with a registered interest permitting that party to use the Roads has consented to the proposed relocation, Terasen may, by written notice delivered to the Grantor request the Grantor to agree to relocate all or a portion of the Roads to another mutually acceptable location on the Lands and such relocation will be undertaken by Terasen within a reasonable time and at the expense of the Terasen.

6.03 Any portion of the Roads which are to be relocated in accordance with sections 6.01 and 6.02 shall be constructed to the same standard as that which existed for that original portion of the Road which is being relocated, or as otherwise agreed by the parties.

6.04 If the Roads are relocated in accordance with sections 6.01 and 6.02, Terasen agrees to provide the Grantor with a registrable partial release or a modification of this agreement to reflect the changed location of the Road.

Part 7 Defaults

7.01 If Terasen defaults in the observance and performance of any material term and condition contained in this Agreement and such default is not remedied within a reasonable period of time after the Grantor has given notice to Terasen specifying the default and requesting it be cured, Grantor may remedy the default and seek reimbursement from Terasen.

7.02 Any failure by the Grantor to exercise its rights with respect to any particular default of Terasen shall not operate as a waiver of its rights with respect to any continuing subsequent default.

Part 8 Entire Agreement

8.01 This Agreement constitutes the entire agreement between the Grantor and Terasen regarding the right-of-way and supersedes all prior agreements and understandings between them. There are no representations, promises, agreements or understandings between the Grantor and TERASEN concerning the right-of-way that are not expressly set out in this Agreement.

Part 9 Enurement

9.01 This Agreement will enure to the benefit of and be binding upon the Grantor and Terasen and their respective successors and permitted assigns. The word *Grantor* is deemed to include the heirs, executors, administrators, successors, and assigns, wherever the context so admits.

Part 10 Governing Law

10.01 This Agreement will be governed by and construed in accordance with the laws in force from time to time in British Columbia.

Part 11 Interpretation

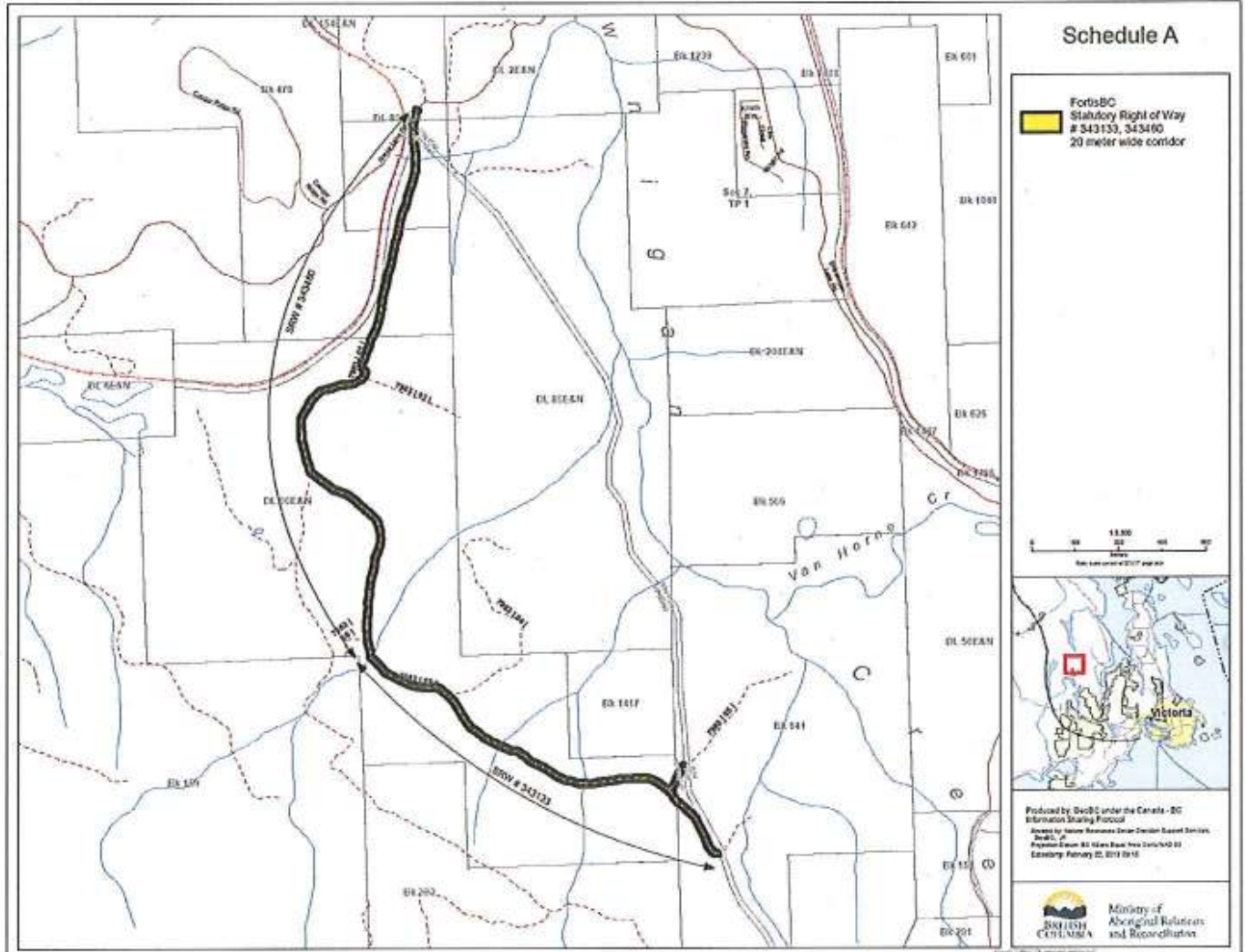
11.01 In this Agreement:

- (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.
- 11.02. Each party will, upon the reasonable request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.
- 11.03. Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made, then the Grantor or Terasen, as the case may be, will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that the Grantor or Terasen have sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.

Schedule "A"

Date: February 22, 2013



End of Document

Schedule "4" - Addition to Reserve Restrictive Covenant

LAND TITLE ACT

FORM C

(Section 23
3)

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

Person Entitled to Interest

(Page and paragraph)

Section 219 Covenant

Entire Document

Transferee (Grantee)

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

- | | | | |
|-----|-----------------------------|-------------------------------------|---------------------------------------|
| (a) | Filed Standard Charge Terms | <input type="checkbox"/> | D.F. No. |
| (b) | Express Charge Terms | <input checked="" type="checkbox"/> | Annexed as Part 2 |
| (c) | Release | <input type="checkbox"/> | 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 Forests, Lands, and Natural Resource Operations, Parliament Buildings, PO Box 9049, STN PROV GOVT, Victoria, British Columbia, V8W 9E2

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)

By _____
Its authorized signatory(ies):

Print Name: _____

Print Name:

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 Malahat Indian Band 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 Grantee 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.

END OF DOCUMENT

Schedule "5" - Designated Company Agreement

This Agreement is dated for reference _____, 2013.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
represented by the Minister of Aboriginal Relations and Reconciliation [address]

(the "Province")

AND:

_____, a company incorporated under the laws of British Columbia and
having its principle place of business at [address]

(the "Designated Company")

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

WHEREAS:

- A. The Province and the Malahat Indian Band have entered into an agreement dated _____ (the "Incremental Treaty Agreement") pursuant to which the Province will transfer to the Designated Company fee simple title to those lands legally described as:

[Insert Legal Description of lands]

(the "Lands")

- B. The Malahat Indian Band and the Designated Company have agreed that, as a condition of the transfer of the Lands, the Designated Company will execute and deliver this Agreement on the terms set out below.

NOW THEREFORE the Province and the Designated Company agree as follows:

1. **Defined Terms.** The terms "Province" and "Malahat Indian Band" and any other capitalized terms used in this Agreement and defined in the Incremental Treaty Agreement will have the meaning given to those terms in the Incremental Treaty Agreement.
2. **Environmental Condition.** 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. **ITA Binding.** Without limiting the generality of the foregoing, the terms of the Incremental Treaty Agreement relating to the Lands which are for the benefit of the

Province are legally binding on the Designated Company as if the Designated Company was a party to the Incremental Treaty Agreement, including, without limitation, 4.1, 10.1-10.3 and 10.5 of the Incremental Treaty Agreement.

4. **Enforcement of ITA.** The Province may, in its sole discretion, enforce any term or condition of the Incremental Treaty Agreement, including any obligation, covenant or indemnity of the Malahat Indian Band, against the Designated Company or the Malahat Indian Band or both of them.
5. **Legal Advice.** The Designated Company acknowledges that it has had full opportunity to review the terms and conditions of this Agreement and the Incremental Treaty Agreement, a copy of which is included as Schedule A, and to seek independent legal advice with respect to their terms and conditions.
6. **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. The Schedules and Appendices to this Agreement form part of this Agreement.
7. **Further Acts and Assurances.** 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.
8. **No Implied Waiver.** Any waiver of:
 - a) a provision of this Agreement;
 - b) the performance by a Party of an obligation under this Agreement; or
 - c) 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.
9. **Successors.** This Agreement will enure to the benefit of and be binding on the Designated Company and its successors and the Province.
10. **No Admissions.** Nothing in this Agreement will be construed as an:
 - a) admission by the Province of the validity of any claim by the X Indian Band to a specific treaty or aboriginal right or aboriginal 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 Malahat Indian Band.
11. **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. **No Fettering.** Nothing in this Agreement will be interpreted in a way that fetters the discretion given to any Provincial Official in an enactment.
13. **Amendment.** This Agreement may be amended from time to time by the Parties in writing.
14. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.
15. **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.

Signed by the Designated Company as of _____, 20__ by:

[Name of Company]

Per: Authorized Signatory

SIGNED on behalf of HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA by the Minister of Aboriginal Relations and Reconciliation or the Minister's authorized representative as of _____, 20____:

Minister of Aboriginal Relations and Reconciliation
or the Minister's authorized representative

Schedule "6" – HST Certificate