

**WE WAI KAI
2019
INCREMENTAL TREATY
AGREEMENT**

**BETWEEN
BRITISH COLUMBIA
AND
We Wai Kai**



WE WAI KAI
INCREMENTAL TREATY AGREEMENT

This Agreement is dated for reference **June 17, 2019**.

BETWEEN:

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

(the "Province")

AND:

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

("We Wai Kai")

WHEREAS:

- A. We Wai Kai, through the Laich-Kwil-Tach Treaty Society, is engaged with the Province and Canada in negotiating a Treaty in accordance with the British Columbia Treaty Commission process.
- B. The Parties wish to create momentum in the Treaty negotiations in order to conclude a Treaty.
- C. This Agreement will provide We Wai Kai with transitional economic benefits in advance of a Treaty and is in the spirit and vision of reconciliation.

NOW THEREFORE the Parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 **Definitions.** In this Agreement:

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

“BC Hydro Transmission Line Rights of Way” means those BC Hydro transmission line rights of way identified in Schedule 5;

“Canada” means the federal government of Canada;

“Cape Mudge Indian Band” or **“We Wai Kai”** means the “band”, as that term is defined in the *Indian Act*, named the **“Cape Mudge Indian Band”** and includes all Members;

“Chief” means, in respect of We Wai Kai, “chief” within the meaning of the *Indian Act*;

“Closing” means the completion of the transfer of the ITA 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 ITA Lands to a Designated Company are uploaded to the electronic meet and are filed in the Land Title Office;

“Council” and **“Band Council”** mean, in respect of We Wai Kai, the elected “council” within the meaning of the *Indian Act*;

“Crown Corridor” means a highway (as defined in the *Transportation Act*) and the area of any other road, right-of-way, easement or license over Crown land that is used for transportation or public utility purposes and that, where the ITA Lands are not surveyed or have to be re-surveyed, is identified in Schedule 1;

“Crown Grant” means a **“Crown grant”** as defined in the *Land Act*;

“Designated Company” means a corporation incorporated under federal or provincial law, all the shares of which are wholly owned directly or indirectly, legally and beneficially, by We Wai Kai and which We Wai Kai has designated to take fee simple title to any of the ITA Lands;

“Disposition Agreement” means a revenue sharing agreement between We Wai Kai and British Columbia Timber Sales resulting from a release to the Province of a volume of non-replaceable We Wai Kai Crown timber harvesting rights that will subsequently be auctioned by British Columbia Timber Sales through its competitive bid process;

“Effective Date” means the date on which the Treaty takes effect;

“Existing Legal Proceeding” means the following legal action:

Cape Mudge Indian Band v HMQBC and Homalco Indian Band
Vancouver Registry No. S150306 (BCSC);

“Governmental Action” means all processes, decisions, approvals, authorizations, permits, licenses, 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 ITA Date;

“GST” means the goods and services tax imposed under the *Excise Tax Act* (Canada) or equivalent tax imposed under federal or provincial law;

“Impact Zone” means that area between the shoreline of the Lower Campbell Reservoir and the impact line to be identified by a geotechnical study, as shown for illustrative purposes in Schedule 2, and to be confirmed by survey;

“ITA” means Incremental Treaty Agreement;

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

“ITA Lands” means the area of approximately 3,100 hectares as shown for illustrative purposes in Schedule 1 and, following completion and approval of the survey or re-survey of those lands, the area legally described by survey, which for greater certainty will not include the Impact Zone;

“Member” means any person who is a “member of the band”, as that phrase is defined in the *Indian Act*, of We Wai Kai;

“Permitted Encumbrances” means the exceptions, reservations, liens, charges, and interests described in Schedule 3 for each of the ITA Lands or any other permitted encumbrances agreed to by the Parties;

“Proceeding” includes any claim, demand, cause of action, action, suit or other proceeding, including any expenses, legal fees, damages, costs or other liability, incurred, directly or indirectly, arising out of or in connection with the matters referred to herein;

“Provincial Official” means:

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

“PST” means the sales tax imposed under the *Provincial Sales Tax Act* or equivalent tax imposed under federal or provincial law;

“Reservation” means the exceptions and reservations contained in the *Land Act* and all subsisting exceptions and reservations of interests, rights and privileges and title contained in any previous grant of land;

“Traditional Territory” means, for the purposes of this Agreement, the statement of intent area of the Laich-Kwil-Tach Treaty Society on file with the British Columbia Treaty Commission;

“Treaty” means the treaty to be concluded by the Parties and Canada at the conclusion of Stage 5 of the British Columbia Treaty Commission process; and

“We Wai Kai Lands” means those lands identified in the Treaty which form We Wai Kai Lands.

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

- a) **“this Agreement”** means this Incremental Treaty Agreement, and includes the Schedules and any agreement, document or instrument executed or delivered pursuant to this Agreement;
- b) **“including”** means “including, but not limited to” and **“includes”** means “includes, but not limited to”;
- c) the recitals and headings are for convenience only, and they 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 an attached schedule means an agreement, document or instrument substantially in that form with such changes, additions or deletions as may be agreed by the representatives of the Parties;

- h) each and every acknowledgement, agreement, release or other covenant given, and action to be taken, by We Wai Kai under this Agreement means We Wai Kai acting by and through its Chief and Council, and will be conclusively deemed to have been given, or taken, by We Wai Kai 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 – Map of ITA Lands
- Schedule 2 – Map of Impact Zone
- Schedule 3 – Permitted Encumbrances Part 1 and Part 2
- Schedule 4 – Form of Permitted Encumbrance
- Schedule 5 – BC Hydro Transmission Line Rights of Way
- Schedule 6 – Addition to Reserve Restrictive Covenant
- Schedule 7 – Form of Designated Company Agreement
- Schedule 8 – GST Certificate
- Schedule 9 – Form of Consent of Designated Company in relation to Property Transfer Tax Matters

ARTICLE 2 – RECONCILIATION AND PURPOSE

2.1 **Reconciliation.** We Wai Kai acknowledges and agrees that, in the spirit of reconciliation and to advance Treaty negotiations, the ITA Lands transferred to We Wai Kai in accordance with this Agreement constitute a contribution by the Province towards the reconciliation of the Province's and We Wai Kai's interests through Treaty negotiations and, as such, the benefits provided to We Wai Kai under this Agreement will be counted as a portion of the Province's contribution towards the Treaty settlement.

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

- a) demonstrate the commitment of the Parties to concluding a Treaty; and
- b) in the spirit of reconciliation, provide We Wai Kai with land as an incremental treaty benefit in advance of a Treaty which will be transferred in accordance with this Agreement and will, on the Effective Date, become an element of the Treaty.

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 and, where it has been executed in counterparts, on the date on which it is executed by the last Party signing the Agreement.
- 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 the ITA Lands that are the subject of the ministerial order under 5.2(h).
- 3.3 **Survival of ITA Lands Conditions.** Despite 3.2, and subject to the Treaty, where any of the ITA Lands are transferred under this Agreement, Articles 7, 10 and 12 will survive the completion of the transfers or the termination of this Agreement and, for greater certainty, will continue to apply to the ITA Lands.

ARTICLE 4 – REPRESENTATIONS AND WARRANTIES

- 4.1 **We Wai Kai Representations.** We Wai Kai represents and warrants to the Province, with the intent and understanding that such representations and warranties will be relied on by the Province in entering into this Agreement, that:
- a) it enters into this Agreement for, and on behalf of, its Members;
 - b) its Members have provided it with a mandate to negotiate a Treaty;
 - 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 We Wai Kai and its Members;
 - d) any company designated by We Wai Kai for the purposes of this Agreement will be a Designated Company;
 - e) any Designated Company has or will have 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;
 - f) the Province has fulfilled its obligation to consult with We Wai Kai in relation to the transfer of the ITA Lands to a Designated Company and the Permitted Encumbrances on the ITA Lands; and

- g) it has entered into a Nation to Nation Understanding in February 2017 with Kwiakah First Nation, the Campbell River Indian Band, and the Homalco First Nation relating to the ITA of each, and a Nation to Nation Understanding with Campbell River Indian Band in December 2017 relating to the ITA of each.

4.2 **Provincial Representations.** The Province represents and warrants to We Wai Kai, with the intent and understanding that they will be relied on by We Wai Kai 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 ITA 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, We Wai Kai will deliver to the Province a resolution made by its elected Council authorizing We Wai Kai's representatives named in the resolution to execute this Agreement on behalf of We Wai Kai.

5.2 **Conditions Precedent to Land Transfers.** The obligation of the Province to transfer any of the ITA Lands to We Wai Kai under this Agreement is, with respect to each parcel of ITA Lands, 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 cost sharing the value of the ITA Lands for Treaty settlement purposes;
- c) the representations and warranties of We Wai Kai under this Agreement being true and correct on the applicable Closing Date;
- d) in respect of all previously transferred ITA Lands, all obligations of We Wai Kai and the Designated Company having been fully performed in accordance with this Agreement;

- e) the Province being satisfied that, with respect to each transfer of the ITA Lands, it has fulfilled any consultation obligations it may have with respect to assertions of Aboriginal Rights to the ITA Lands by First Nations other than We Wai Kai;
- f) surveys for the ITA Lands having been completed on or before the applicable Closing Date;
- g) any and all necessary subdivision approvals having been obtained for the applicable Lands; and
- h) the Province having given notice that the minister responsible has authorized the disposition of the ITA Lands in accordance with provincial law.

5.3 **Satisfaction of Conditions Precedent.** The Province will not be required to satisfy the conditions precedent under 5.2 until such time as We Wai Kai has notified the Province in writing that it is prepared to proceed with the transfer of the ITA Lands under this Agreement. The Province acknowledges that the satisfaction of condition 5.2(e) will be determined in accordance with 12.1.

5.4 **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 We Wai Kai.

ARTICLE 6 – TRANSFER OF LANDS

6.1 **Pre-Closing Deliveries by We Wai Kai.** Within 60 days of the Province providing We Wai Kai written notice of the satisfaction of conditions precedent under 5.2, We Wai Kai will deliver to the Province a direction identifying the Designated Company that will take fee simple title to the ITA Lands under 6.2.

6.2 **Closing Deliveries by Province.** Subject to the Reservations and Permitted Encumbrances and the terms of this Agreement, including the satisfaction or waiver of the conditions precedent under 5.2 and 5.4, the Province will, with respect to each transfer, provide the Designated Company identified under 6.1 with a Crown Grant transferring the indefeasible title to the ITA Lands as follows:

- a) Phase 1, within 120 days after the issuance of a ministerial order under 5.2(h) after the ITA Date;
- b) Phase 2, within 120 days after the issuance of a ministerial order under 5.2(h) and after:
 - i. the conclusion of a Disposition Agreement with respect to a volume of timber within Phase 2; and

- ii. the completion of a "Terms of Reference" for the negotiation of a government-to-government relationship between We Wai Kai and the Province with respect to the management of lands and resources within the Traditional Territory.
- 6.3 **Phase 1 and Phase 2 Parcels.** For greater certainty, the specific parcels included in Phase 1 and Phase 2 will be determined by:
- a) executing a Disposition Agreement for a volume within Phase 1 including the release of all obligations generated by a Timber Sales License; and
 - b) resolution of issues created by the fee simple subsurface rights registered against title to the parcels.
- 6.4. **Best Efforts for Phase 2 Transfer.** The Parties will make best efforts to effect the transfer of Phase 2 to We Wai Kai pursuant to 6.2 (b) not less than 12 months and not more than 24 months following the transfer of Phase 1 to We Wai Kai pursuant to 6.2 (a).
- 6.5 **Alternative Conditions for Phase 2 Transfer.** If a Disposition Agreement or Terms of Reference referred to in 6.2(b) is not concluded so as to enable the transfer of Phase 2 to We Wai Kai within the timeframe set out in 6.4, the Parties will negotiate and attempt to reach agreement for an alternative conditions precedent for the transfer of Phase 2 to We Wai Kai.
- 6.6 **Closing Deliveries by We Wai Kai.** Not less than 14 days before each Closing Date, or other date as agreed to by the Parties in writing, We Wai Kai 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 6 in relation to the applicable ITA Lands;
 - b) a Designated Company Agreement executed by the Designated Company in the form attached as Schedule 7 in relation to the applicable ITA Lands;
 - c) a GST Certificate signed by an officer of the Designated Company in the form attached as Schedule 8 confirming the Designated Company's GST registration number and registered status;
 - d) a letter signed by We Wai Kai's legal counsel undertaking to file the restrictive covenant concurrently with the Crown Grant in the Land Title Office and to provide the Province with a signed copy of the Designated Company Agreement and the GST Certificate;
 - e) a signed consent of the Designated Company in relation to Property Transfer Tax in the form attached as Schedule 9; and

- f) all such other documents that may be necessary or advisable for We Wai Kai or a Designated Company to provide to complete the transactions contemplated under this Agreement.
- 6.7 **Registration of Lands.** Subject to the Treaty, all ITA Lands transferred under 6.2 will be registered in the Land Title Office.
- 6.8 **Closing Procedure.** The legal counsel for We Wai Kai and the Province will confirm in writing the manner in which the documents necessary or advisable to transfer and register the ITA Lands will be produced, managed, exchanged and delivered. Without limiting the generality of the foregoing, legal counsel responsible for registering the ITA 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 under 6.6 to legal counsel for the other Party.
- 6.9 **BC Hydro Transmission Line Rights of Way.** For greater certainty, the BC Hydro Transmission Line Rights of Way are not included in the ITA Lands. Prior to the Treaty, the parties will negotiate and attempt to reach agreement regarding the inclusion of the BC Hydro Transmission Line Rights of Way as part of We Wai Kai Lands.
- 6.10 **Land Protections.** As soon as practicable after the ITA Date, the Province will seek approval to apply the following protections for the ITA Lands:
- a) part 13 designation under the *Forest Act*;
 - b) section 16 Map Reserve under the *Land Act*;
 - c) no staking reserve and no disposition notice under the *Mineral Tenure Act*; or
 - d) similar measures as appropriate.

ARTICLE 7 – CONDITION OF LANDS

- 7.1 **Lands “As Is”.** We Wai Kai acknowledges and agrees that any of the ITA Lands acquired by a Designated Company under this Agreement are acquired “as is”.
- 7.2 **Viability of Lands.** We Wai Kai acknowledges and agrees that the Province has not given any representation or warranty concerning:
- a) physical access to the ITA Lands including, without limitation, overland access;

- b) the economic feasibility of the development of the ITA Lands;
- c) the fitness of the ITA Lands for any particular use, including the intended use of it by We Wai Kai 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 ITA Lands.

7.3 Environmental Condition. We Wai Kai:

- 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 ITA Lands; and
- b) acknowledges and agrees that the Province has not given any representation or warranty concerning the environmental condition of the ITA Lands (including surface water and groundwater), including the presence or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the ITA Lands or on or under any surrounding or neighbouring land, or the current and past uses of the ITA Lands or any surrounding or neighbouring land.

7.4 Environmental Conditions. We Wai Kai will, from and after Closing:

- a) assume all environmental liabilities relating to the ITA Lands including all liability for the clean-up of any contamination or any other toxic, hazardous, dangerous or potentially dangerous substances or conditions on or under the ITA Lands or migrating from the ITA Lands (including surface water and groundwater);
- b) release the Provincial Officials from and against any and all Proceedings with respect to any and all environmental liabilities relating to the ITA Lands described in 7.4(a); and
- c) indemnify and save harmless the Provincial Officials from and against any and all Proceedings after Closing arising out of or in connection with any and all environmental liabilities relating to the ITA Lands described in 7.4(a).

7.5 Effect of 7.4. For greater certainty:

- a) 7.4 applies where:
 - i. any contamination relating to the ITA Lands, whether disclosed or undisclosed, known or unknown, created or existing, arose before the Closing Date or arose before and continues after the Closing Date; and

- ii. any environmental liability relating to the costs of remediation of the ITA Lands are incurred after the Closing Date and relate to contamination that arose before the Closing Date or arose before and continues after the Closing Date; and
 - b) 7.4 does not apply where any environmental liability relating to the ITA Lands results from the acts or omissions of the Province after the Closing Date.
- 7.6 **Responsible Persons.** Nothing in this Agreement precludes We Wai Kai from recovering the costs incurred in the inspection or remediation of any contaminated site on the ITA Lands transferred to We Wai Kai from any party, other than the Province, who may be determined to be a responsible person under the *Environmental Management Act*.

ARTICLE 8 – RESERVATIONS AND ENCUMBRANCES

- 8.1 **Reservations and Permitted Encumbrances.** We Wai Kai acknowledges and agrees that, on execution of this Agreement or receipt of updated Schedules under 8.3 and as of the Closing Date:
- a) it is familiar with the existence and terms of the Reservations and Permitted Encumbrances and accepts fee simple title to the Lands subject to the Reservations and Permitted Encumbrances;
 - b) the Province may grant any related extensions, renewals or replacements or issue any further rights related to the Permitted Encumbrances in accordance with Provincial law; and
 - c) it will not 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.
- 8.2 **Form of Permitted Encumbrances.** The Permitted Encumbrances will be in the form attached as Schedule 4 and will include any modifications that We Wai Kai and the holder of the Permitted Encumbrance may have agreed to in writing.
- 8.3 **Amendments to Permitted Encumbrances.** The Parties acknowledge and agree that between the execution of this Agreement and the Closing Date, the Province may require that the Permitted Encumbrances be amended to:
- a) comply with current Provincial policies and practices, and any legal requirements; and

- b) correct any errors or omissions to the Permitted Encumbrances or the form of Permitted Encumbrances attached as Schedule 3 or Schedule 4, respectively.
- 8.4 **Amendments Form Part of Agreement.** Where any amendments are made under 8.3, Schedule 3 or Schedule 4 will be revised and will, as revised, form part of this Agreement.
- 8.5 **Registration of Unregistered Interests.** We Wai Kai will consent, or will cause the Designated Company to consent, to the registration of any interests identified in Schedule 3 Part 2 which are not registered against the applicable ITA Lands in the Land Title Office on or after the Closing Date.
- 8.6 **Indemnity for Charges.** We Wai Kai will indemnify and save harmless the Province and all Provincial Officials from and against any and all Proceedings arising out of or in connection with the acts or omissions of We Wai Kai or a Designated Company in connection with any Permitted Encumbrance.

ARTICLE 9 – TRANSACTION COSTS

- 9.1 **Property Transfer Tax and Other Costs.** The Province is responsible for the following costs in connection with the transfer of the ITA Lands:
- a) the cost associated with ensuring the ITA Lands are surveyed in accordance with the requirements for registration in the Land Title Office;
 - b) any costs or fees associated with the preparation and issuance of Crown Grants and any other documents required to register the ITA Lands and Permitted Encumbrances;
 - c) any fees charged by the Land Title Office or the Land Title and Survey Authority relating to the registration of the ITA Lands and the Permitted Encumbrances; and
 - d) property transfer tax payable under the *Property Transfer Tax Act* which, for greater certainty, the Province will pay or in respect of which will seek an exemption.
- 9.2 **Silviculture Liability.** The Parties acknowledge that outstanding silviculture obligations exist on portions of the ITA Lands. The Province is responsible for satisfying all obligations at no cost to We Wai Kai, unless We Wai Kai, or the Designated Company, agrees to assume those obligations as a result of a negotiated contribution from the Province.
- 9.3 **Public Utility Permitted Encumbrances.** Notwithstanding 9.1, all costs associated with the surveying and registration of Permitted Encumbrances held by a public utility will be the responsibility of the public utility.

- 9.4 **GST, PST and Other Charges.** We Wai Kai is responsible for any federal or provincial sales tax, including GST and PST, and any other transfer or registration charges for which the Province has not expressly agreed to accept responsibility under the terms of this Agreement.
- 9.5 **Annual Taxes and Other Costs.** Subject to the Treaty, the Designated Company is responsible for any and all annual taxes payable in respect of the ITA Lands in accordance with Provincial law. 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 ITA Lands.

ARTICLE 10 – OTHER COVENANTS

- 10.1 **Other We Wai Kai Covenants.** We Wai Kai acknowledges and agrees that:
- a) subject to 10.2 and 10.4(a), in order to preserve the possibility of the ITA Lands becoming We Wai Kai Lands in accordance with the Treaty, We Wai Kai will not permit the Designated Company to dispose of its fee simple estate in the ITA Lands, other than to another Designated Company, for a period of time commencing on the applicable Closing Date and ending on the earlier of:
 - i. the 5-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 We Wai Kai seek to add any of the Lands to its reserve lands without the consent of the Province, consistent with Schedule 6; and
 - c) subject to 11.1, the ITA Lands are subject to provincial and local government laws, including applicable zoning, land use, land development and property tax laws, and at no time after Closing will We Wai Kai challenge the applicability of provincial laws to the ITA Lands.
- 10.2 **Disposition of Interests in Lands.** Notwithstanding 10.1(a), We Wai Kai may charge or encumber the ITA Lands provided that We Wai Kai advises the intended charge or encumbrance holder in writing that the ITA Lands, on the Effective Date will, unless otherwise agreed to by the Parties, be transferred by the Designated Company to We Wai Kai and will become We Wai Kai Lands.

- 10.3 **Indemnity for Charges.** We Wai Kai will indemnify and save harmless the Province and all Provincial Officials from and against any and all Proceedings arising out of or in connection with any charge or encumbrance granted by We Wai Kai under 10.2, the transfer of the fee simple estate in the ITA Lands to We Wai Kai or in respect of the ITA Lands becoming We Wai Kai Lands.
- 10.4 **Failure to Ratify.** Where the Treaty is not signed by the authorized representative of the Parties or Canada, or the Treaty is not approved, given effect, declared valid and given the force of law under federal and provincial law:
- a) the restriction on the disposition of the ITA Lands under 10.1(a) will not apply; and
 - b) any reservation placed on the ITA Lands, including any reservation under *Mineral Tenure Act*, will be removed.

ARTICLE 11 – STATUS OF LANDS ON EFFECTIVE DATE

- 11.1 **Status of Lands on Effective Date.** Unless otherwise agreed to by the Parties, the ITA Lands will be We Wai Kai Lands within the meaning of the Treaty as of the Effective Date.

ARTICLE 12 – OVERLAPPING CLAIMS

- 12.1 **Overlapping Claims.** The Province acknowledges the agreements referred to in 4.1(g) and the reasonable efforts on the part of We Wai Kai to discuss and resolve any overlap or shared territory claims with respect to the ITA Lands. Prior to the transfer of the ITA Lands to the Designated Company, the Province will confirm the status of any outstanding claims with respect to the ITA Lands. In the event any such claims are not resolved to the Province's satisfaction, the Province will make best efforts to work with We Wai Kai on options to resolve the claim prior to the transfer.
- 12.2 **Other First Nations' Litigation.** In the event of any Proceeding brought by any other aboriginal group against the Province or any Provincial Official with respect to the transfer of the ITA Lands to the Designated Company on behalf of We Wai Kai, We Wai Kai will provide the Province with reasonable assistance, upon request, in support of its defense of the Proceeding. The costs of such reasonable assistance will be borne by the Province.

ARTICLE 13 – LITIGATION

- 13.1 **Existing Legal Proceeding.** Subject to completion of all activities associated with Closing, and as soon as practicable after the Closing Date, We Wai Kai will:
- a) terminate the Existing Legal Proceeding;
 - b) file a consent dismissal order dismissing the Existing Legal Proceeding with the British Columbia Supreme Court; and
 - c) execute a release in a form agreeable to the Parties releasing the Province and all Provincial Officials from all proceedings We Wai Kai may have against the Province or any Provincial Official by reason of the matters giving rise to the Existing Legal Proceeding.
- 13.2 **New Litigation.** If, at any time within 10 years of the Closing Date, We Wai Kai intends to commence a Proceeding relating to any Government Action within the Traditional Territory, We Wai Kai will notify the Province of its intent to commence the Proceeding and its reasons for doing so. Once the Province has received the notification, the Parties will meet within 30 days to discuss and attempt to resolve the matter.
- 13.3 **Termination on Litigation.** Despite 3.2, the Province may terminate this Agreement, including the transfer of any ITA Lands which have not been completed, in the event We Wai Kai commences:
- a) aboriginal title litigation; or
 - b) any Proceeding relating to any Governmental Action in relation to the ITA Lands.

ARTICLE 14 – DISPUTE RESOLUTION

- 14.1 **Representatives.** If a dispute arises between the Province and We Wai Kai 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.
- 14.2 **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 We Wai Kai.
- 14.3 **Other Means.** The Parties may mutually agree upon other appropriate approaches to assist in reaching resolution of the interpretation issue.

ARTICLE 15 – NOTICES

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

if to the Province:

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

and if to We Wai Kai:

Cape Mudge Indian Band
690 Head Start Crescent
Campbell River, BC V9H 1P9
Attention: Chief Councillor
Email: brian.assu@wewaikai.com or reception@wewaikai.com
Fax: (250) 914-1981

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

ARTICLE 16 – GENERAL

- 16.1 **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.
- 16.2 **Further Acts and Assurances.** Each of the Parties will, upon the reasonable request of the other Party, do such further lawful acts or deliver such further documents in a timely fashion as are reasonably required in order to fully perform and carry out the terms of this Agreement.
- 16.3 **No Implied Waiver.** Any waiver of a provision of this Agreement, the performance by a Party of an obligation under this Agreement, or a default by a Party of an obligation under this Agreement will be in writing and signed by the Party giving the waiver and will not be a waiver of any other provision, obligation or subsequent default.
- 16.4 **Successors.** This Agreement will enure to the benefit of and be binding on We Wai Kai and its successors and the Province.
- 16.5 **No Admissions.** Nothing in this Agreement will be construed as an:
- a) admission by the Province of the validity of any claim by We Wai Kai to a specific treaty or Aboriginal Right; or
 - b) acknowledgment by the Province that it has an obligation to provide financial or economic accommodation to We Wai Kai.


- 16.6 **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*; or
 - b) recognize, affirm, define, deny, limit or amend any Aboriginal Rights or any responsibilities of the Parties except as set out in this Agreement.
- 16.7 **No Fettering.** Nothing in this Agreement will be interpreted in a way that fetters the discretion given to any Provincial Official in an enactment.
- 16.8 **Amendment.** This Agreement may be amended from time to time by the Parties in writing.
- 16.9 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.

(this portion of the page is intentionally blank)

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

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

Signed on behalf of We Wai Kai by:

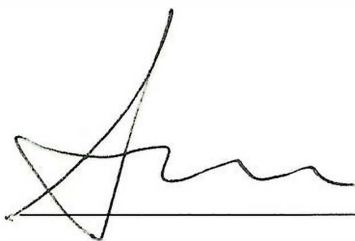


Chief Brian Assu



Witness

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



The Honourable Scott Fraser
Minister of Indigenous Relations and Reconciliation



Witness

Schedule 2
Map of Impact Zone

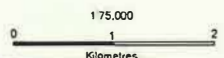
Legend

- We Wai Kai ITA Land
- Primary Survey Parcel
- Subdivision Parcel
- Park or Protected Area
- Impact Zone
- Road (Paved)
- Road (Gravel)

DRAFT



THIS MAP OF THE IMPACT ZONE IS FOR ILLUSTRATIVE PURPOSES ONLY. NO REPRESENTATION OR WARRANTY IS MADE WITH RESPECT TO THE RELEVANCE, ACCURACY, RELIABILITY OR COMPLETENESS OF THIS MAP.

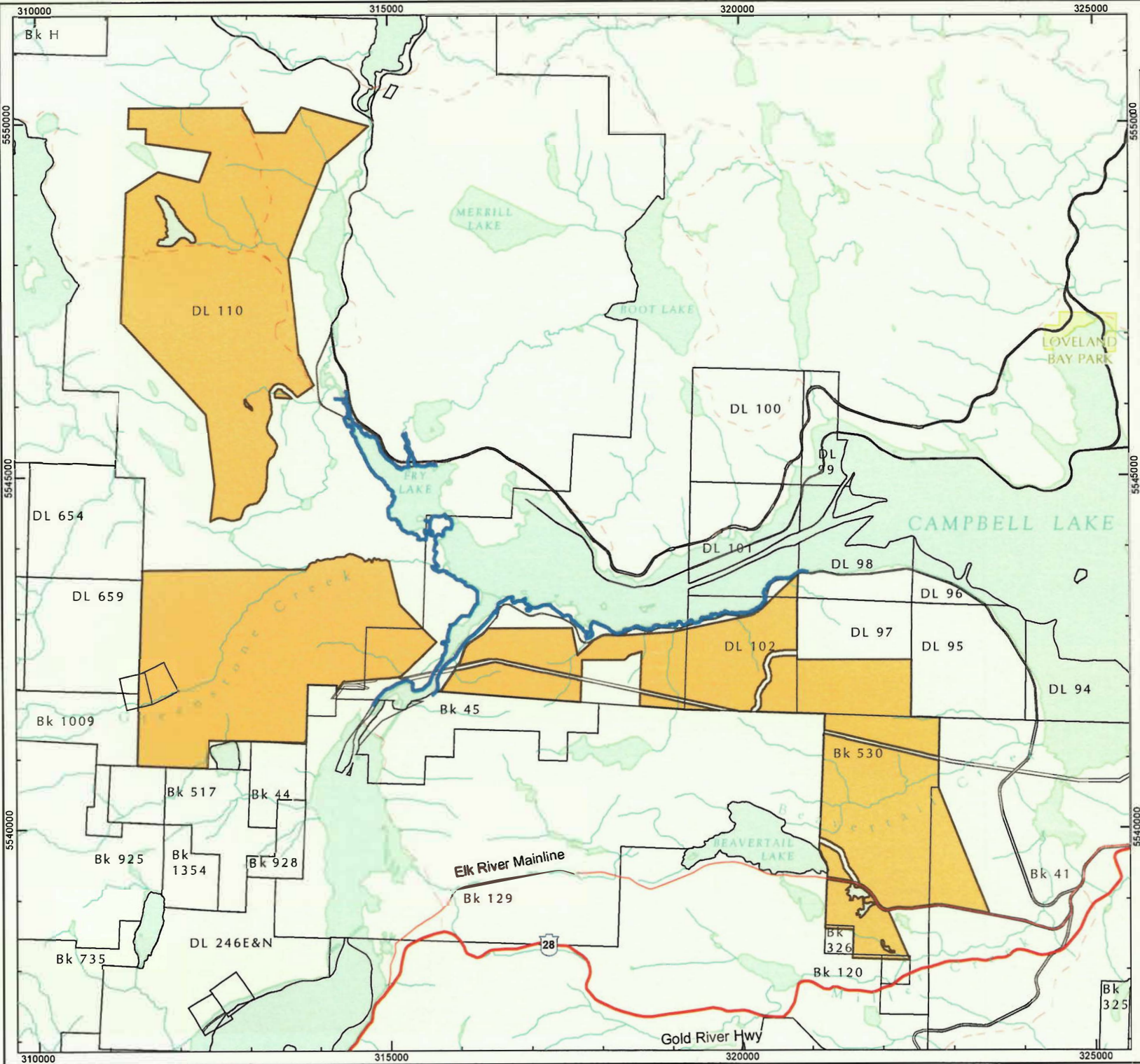


Key Map



Base map derived from 1:20,000 TRIM data
Cadastral derived from Crown Land Registry Services and Land Title Office
Land District: Sayward and Comox District
BCGS Mapsheet No.: 092K.003, 092K.002, 092F.092, 092F.093
Projection: NAD 1983 UTM Zone 10N

We Wai Kai First Nation



Schedule 3 Part 1 – Permitted Encumbrances

(For Discussion and Illustrative Purposes Only)

Permitted Encumbrances

- all interests registered on title to the ITA Lands 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 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 like effect;
- all other liens, charges and encumbrances granted by the Province, with the prior written consent of We Wai Kai prior to the Closing Date;
- We Wai Kai acknowledges that all existing interest holders and interests on the ITA Lands may not have been identified in this Schedule prior to the execution of this Agreement and that these unidentified interests continue on the ITA Lands; and
- 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 the ITA Lands in the form attached as Schedule 8 Addition to Reserve Restrictive Covenant.

Schedule 3 Part 2 - Permitted Encumbrances-Interests Not Registered on Title

(For Discussion and Illustrative Purposes Only)

Interests Not Registered on Title
Utility and local government interests for hydro, telephone, cablevision, heating/natural gas, water infrastructure, storm drains, dykes and waste disposal/sewer continue on the ITA Lands shown in Schedule 1 and Schedule 2.

Schedule 4 – Form of Permitted Encumbrance
(For Discussion and Illustrative Purposes Only)

This would include titles, survey plans, charges and other instruments

Schedule 5 – BC Hydro Transmission Line Rights of Way

Schedule 6 - Addition to Reserve Restrictive Covenant

LAND TITLE ACT

FORM C

(Section 233)

Province of
British Columbia

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

Page 1 of 4 pages

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

(Signature of Solicitor or Authorized Agent)

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

(PID)

(LEGAL DESCRIPTION)

3. NATURE OF INTEREST:*

Description

Document Reference

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.

5. TRANSFEROR(S):* (Grantor)

6. 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)
	Y	M	D	
				_____ 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 attach schedule in Form E.
** If space insufficient, continue executions on additional page(s) in Form D.

TERMS OF INSTRUMENT – PART 2

WHEREAS:

A. The Grantor is the registered owner of:

(the "Land");

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

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

1. The Grantor covenants and agrees that the Grantor will not, in the absence of consent by the Grantee, transfer, alienate or deal with the Land in any manner which would see it incorporated into or become part of:
 - a. Reserves or special reserves as defined in the *Indian Act*; or
 - b. "Lands reserved for the Indians" under section 91(24) of the *Constitution Act, 1867*.
2. Wherever the singular or masculine are used in this Agreement, they shall be construed as meaning the plural or feminine or body corporate where the context or the parties so require.
3. This Agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and assigns.
4. The Grantor will indemnify and save harmless the 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 attached.

END OF DOCUMENT

Schedule "7" - Designated Company Agreement

This Agreement is dated for reference _____, 201__.

BETWEEN:

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

(the "Province")

AND:

_____, a company incorporated under the laws of British Columbia
and having its principal 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 We Wai Kai have entered into an agreement dated June 17, 2019 (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 "ITA Lands")

- B. We Wai Kai and the Designated Company have agreed that, as a condition of the transfer of the ITA 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 "We Wai Kai" 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. **Representations and Warranties.** The Designated Company represents and warrants that it is a “Designated Company” within the meaning of the Incremental Treaty Agreement and that it 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.
3. **ITA Binding.** The terms of the Incremental Treaty Agreement relating to the ITA 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, those provisions of the Incremental Treaty Agreement relating to the condition of the Lands (Article 7), the Reservations and Permitted Encumbrances (Article 8) and Other Covenants (Article 10).
4. **Environmental Condition.** Without limiting the generality of the foregoing, 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 ITA Lands.
5. **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 We Wai Kai, against the Designated Company or We Wai Kai or both of them.
6. **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 attached as Schedule A, and to seek independent legal advice with respect to their terms and conditions.
7. **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 to this Agreement form part of this Agreement.
8. **Further Acts and Assurances.** The Parties will, upon the reasonable request of the other Party, do such further lawful acts or deliver such further documents in a timely fashion as are reasonably required in order to fully perform and carry out the terms of this Agreement.
9. **No Implied Waiver.** Any waiver of a provision of this Agreement, the performance by a Party of an obligation under this Agreement, or a default by a Party of an obligation under this Agreement will be in writing and signed by the Party giving the waiver and will not be a waiver of any other provision, obligation or subsequent default.

10. **Successors.** This Agreement will enure to the benefit of and be binding on the Designated Company and its successors and the Province.
11. **No Admissions.** Nothing in this Agreement will be construed as an:
 - a) admission by the Province of the validity of any claim by We Wai Kai to a specific treaty or Aboriginal Right; or
 - b) acknowledgment by the Province that it has an obligation to provide financial or economic accommodation to We Wai Kai.
12. **Not a Treaty.** This Agreement does not:
 - a) constitute a treaty or land claims agreement within the meaning of section 25 or 35 of the *Constitution Act, 1982* (Canada); or
 - b) recognize, affirm, define, deny, limit or amend any Aboriginal Rights or any responsibilities of the Parties except as set out in this Agreement.
13. **No Fettering.** Nothing in this Agreement will be interpreted in a way that fetters the discretion given to any Provincial Official in an enactment.
14. **Amendment.** This Agreement may be amended from time to time by the Parties in writing.
15. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.

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

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 Indigenous Relations and Reconciliation or the Minister's authorized representative as of _____, 20_____:

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

Schedule A
(as attached)

Schedule 8 – GST Certificate

FORM 221(2)(b) (CERTIFICATE AS TO REGISTRATION STATUS OF PURCHASER)

Certificate as to Registration Status of Purchaser

(Paragraphs 221(2)(b) and (c))

FROM: *[the "Vendor"]*

TO: *[the "Purchaser"]*

RE: *[the "Property"]*

THE PURCHASER HEREBY CERTIFIES TO THE VENDOR PURSUANT TO PARAGRAPHS 221(2)(b) AND (c) OF *THE EXCISE TAX ACT* (THE "ACT") THAT THE PURCHASER:

is a prescribed recipient under the Act.

[OR]

is registered under Part IX of the Act, its registration number is *[number]* and the Purchaser will account for the tax payable in respect of the purchase of the Property in accordance with the Act.

The Purchaser acknowledges that the Vendor is relying on this Certificate in connection with the sale of the Property.

Each term that is used in the Certificate and that is defined in, and for the purposes of, Part IX of the Act has the meaning assigned to it in Part IX of the Act.

DATED *[month, day, year]*.

[Name of Corporate Vendor]

[Name of Individual Vendor]

Per: _____

Schedule 9

**CONSENT OF
[NAME OF DESIGNATED COMPANY]
IN RELATION TO PROPERTY TRANSFER TAX MATTERS**

TO WHOM IT MAY CONCERN:

1. Article [number] of the Incremental Treaty Agreement (the "Incremental Treaty Agreement") between the Province of British Columbia and We Wai Kai dated for reference [date], provides that the Province is responsible for property transfer tax payable under the *Property Transfer Tax Act* (RSBC 1996), c. 378 ("Property Transfer Tax") in relation to the transfer of land under the Incremental Treaty Agreement.
2. In the event that:
 - (a) an exemption from Property Transfer Tax is not enacted prior to the date on which payment of that tax is due, or
 - (b) the Province pays the Property Transfer Tax,then [name of Designated Company] hereby
 - (c) authorizes the Ministry of Finance and the Ministry of Indigenous Relations and Reconciliation to deal directly with one another in regard to all matters relating to the Property Transfer Tax, and
 - (d) agrees that if there is any refund payable in respect of the Property Transfer Tax paid by the Province, then the amount of that refund may be retained by the Province.

Executed on the _____ day of _____, 20__

Signature of the duly authorized signatory for [name of Designated Company]

Name and Title (please print)