

K'ÓMOKS FIRST NATION INCREMENTAL TREATY AGREEMENT

This Agreement is dated for reference the 23 day of February, 2017

BETWEEN:

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

(the "Province")

AND:

K'ómoks First Nation, on behalf of itself and its Members, as represented by the Chief and Council

("K'ómoks")

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

WHEREAS:

- A. K'ómoks is engaged with the Province and Canada in negotiating a Final Agreement in accordance with Stage 5 of the British Columbia Treaty Commission process;
- B. The Parties wish to create momentum in the treaty negotiations in order to conclude a Final Agreement;
- C. This Agreement will provide K'ómoks 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:

"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*;

“AIP” means the K'ómoks Agreement-in-Principle negotiated by the Parties and Canada in accordance with Stage 4 of the British Columbia Treaty Commission process;

“AIP Date” means March 24, 2012;

“Chief” means, in respect of the K'ómoks First Nation, “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 are uploaded to the electronic meet and are filed in the Land Title Office;

“Council” and “Band Council” mean, in respect of the K'ómoks First Nation, 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 licence over Crown land that is used for transportation or public utility purposes and that, where the 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 company incorporated under federal or provincial law, all the shares of which are wholly owned directly or indirectly, legally and beneficially, by K'ómoks and which K'ómoks has designated to take fee simple title to any of the Lands;

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

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

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

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

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

“K'ómoks First Nation” or **“K'ómoks”** means the “band”, as that term is defined in the *Indian Act*, named the “K'ómoks First Nation” and includes all Members;

“K'ómoks First Nation Lands” means those lands identified in the Final Agreement which form part of K'ómoks First Nation Lands;

“Lands” means any or all of the following:

- a) **“Union Bay”**: Lot 1 of District Lot 7E&N, Nelson District, Plan VIP66762 as shown in Schedule 1 – Map of Union Bay Lands for Illustrative Purposes, whose area is approximately 36.84 hectares; and
- b) **“Mount Washington Gravel Pit”**: Lot 1 Section 30 Township 9, Comox District, Plan EPP30513 and Lot A Section 30 Township 9, Comox District, Plan EPP30512 as shown in Schedule 1 – Map of Mount Washington Gravel Pit for Illustrative Purposes, whose area is approximately 59 hectares.

“Member” means any person who is a “member of the band”, as that phrase is defined in the *Indian Act*, of the K'ómoks First Nation;

“Permitted Encumbrances” means the exceptions, reservations, 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;

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

“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;

“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; and

“Traditional Territory” means, for the purposes of this Agreement, the statement of intent area filed by K'ómoks with the British Columbia Treaty Commission.

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, 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 K'ómoks under this Agreement means the K'ómoks First Nation acting by and through its Chief and Council, and will be conclusively deemed to have been given, or taken, by K'ómoks 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 – Form of Permitted Encumbrances
- Schedule 4 – Form C Additions to Reserve Restrictive Covenant

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- Schedule 5 – Designated Company Agreement
 - Schedule 6 – GST Certificate
 - Schedule 7 – Consent of K'ómoks in relation to PTT Matters

ARTICLE 2 – RECONCILIATION AND PURPOSE

- 2.1 **Reconciliation.** K'ómoks acknowledges and agrees that, in the spirit of reconciliation and to advance Final Agreement negotiations, the Lands transferred to K'ómoks in accordance with this Agreement constitute a contribution by the Province towards the reconciliation of the Province's and K'ómoks' interests through treaty negotiations and, as such, the benefits provided to K'ómoks 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 reconciliation, provide K'ómoks 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 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 Lands that are the subject of the ministerial order under 5.4 h).
- 3.3 **Termination on Litigation.** Despite 3.2, the Province may terminate this Agreement, including the transfer of any Lands which have not been completed, in the event K'ómoks commences:
- a) aboriginal title litigation; or
 - b) any action or other proceeding relating to any Governmental Actions in relation to the Lands.

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- 3.4 **Survival of Lands Conditions.** Despite 3.2, and subject to the Final Agreement, where any of the 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 Lands.

ARTICLE 4 - REPRESENTATIONS AND WARRANTIES

- 4.1 **K'ómoks First Nation Representations.** K'ómoks 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) 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 K'ómoks and its Members;
 - c) any company designated by K'ómoks for the purposes of this Agreement will be a Designated Company;
 - d) 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
 - e) the Province has fulfilled its obligation to consult with K'ómoks in relation to the transfer of the Lands to a Designated Company and the Permitted Encumbrances on the Lands.
- 4.2 **Provincial Representations.** The Province represents and warrants to K'ómoks, with the intent and understanding that they will be relied on by K'ómoks in entering into this Agreement, that:
- a) it has the legal power, capacity and authority to enter into this Agreement;
 - b) it, as represented by the Minister of Aboriginal Relations and Reconciliation, has the legal power, capacity and authority to execute this Agreement; and
 - c) on satisfaction or waiver of the conditions precedent under 5.4, 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, K'ómoks will deliver to the Province a resolution made by its elected Council authorizing K'ómoks' representatives named in the resolution to execute this Agreement on behalf of K'ómoks.
- 5.2 **Authorization Letter.** Prior to the execution of this Agreement, the Minister of Aboriginal Relations and Reconciliation will provide K'ómoks with a letter stating that the Minister has obtained all necessary approvals to execute this Agreement on behalf of the Province.
- 5.3 **Transfer Letter.** The Province will not proceed with the transfer of the Lands in accordance with this Agreement until K'ómoks has delivered to the Province a resolution made by its elected Council requesting the transfer.
- 5.4 **Conditions Precedent to Land Transfers.** The obligation of the Province to transfer any of the Lands to K'ómoks under this Agreement is, with respect to each parcel of 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 Lands for treaty settlement purposes;
 - c) the representations and warranties of K'ómoks under this Agreement being true and correct on the applicable Closing Date;
 - d) in respect of all previously transferred Lands, all obligations of K'ómoks 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 Lands, it has fulfilled any consultation obligations it may have with respect to assertions of Aboriginal Rights to the Lands by First Nations other than K'ómoks;
 - f) surveys for the Lands having been completed on or before the applicable Closing Date;
 - g) the Parties having agreed on the area and size of a conservation covenant under section 219, *Land Title Act*, to be applied to the Union Bay parcel, to be registered on title at the time of transfer;

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- h) the Province having given notice that the minister responsible has authorized the disposition of the Lands in accordance with Provincial Law; and
 - i) the Province having completed and been satisfied with its investigation of the status of Lands including with respect to:
 - (i) the roads (dirt, paved, legal and otherwise);
 - (ii) access to adjacent private lands;
 - (iii) the environmental condition of the Lands;
 - (iv) crown corridors; and
 - (v) utility and local government interests for hydro, telephone, cablevision, heating/natural gas, water infrastructure, storm drains, dykes and waste disposal/sewer.
- 5.5 **Satisfaction of Conditions Precedent.** The Province will be required to satisfy the conditions precedent under 5.4 once K'ómoks has notified the Province in writing that it is prepared to proceed with the transfer of the Lands under this Agreement.
- 5.6 **Satisfaction of the Condition to Consult Other First Nations (5.4 e).** The Province, as part of the AiP approval process, has engaged in consultations regarding the Lands with other First Nations asserting Aboriginal Rights to the Lands. The Province will re-engage in those consultations regarding the Lands prior to the ITA Date and make a decision whether to proceed with the transfer based on those consultations within nine months of the ITA Date.
- 5.7 **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 K'ómoks.
- 5.8 **Lands Working Group.** As soon as practicable, the Parties will establish a lands working group. The purpose of the group will be to facilitate cooperation between the Parties regarding the work to be done towards satisfying the conditions precedent under 5.4.

ARTICLE 6 – TRANSFER OF LANDS

- 6.1 **Pre-Closing Deliveries by K'ómoks.** Within 60 days of written notice under 5.3, K'ómoks will deliver to the Province a direction identifying the Designated Company that will take fee simple title to the Lands under 6.2.

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- 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 Article 5, the Province will, with respect to each transfer, provide the Designated Company identified under 6.1 with a Crown Grant to the Lands within 120 days after the issuance of a ministerial order under 5.4 h).
- 6.3 **Closing Deliveries by K'ómoks.** Not less than 14 days before the Closing Date, or other date as agreed to by the parties in writing, K'ómoks 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 GST registration number and registered status;
 - d) a letter of undertaking signed by K'ómoks' 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 GST Certificate (Schedule 6);
 - e) a signed consent of K'ómoks in relation to Property Transfer Tax form executed by K'ómoks (Schedule 7); and
 - f) all such other documents that may be necessary or advisable for K'ómoks or a Designated Company to provide to complete the transactions contemplated under this Agreement.
- 6.4 **Registration of Lands.** Subject to the Final Agreement, all Lands transferred under 6.2 will be registered in the Land Title Office.
- 6.5 **Closing Procedure.** The legal counsel for K'ómoks 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
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- c) provide all documents filed under 6.5 b) to legal counsel for the other Party.

ARTICLE 7 – CONDITION OF LANDS

- 7.1 **Lands “As Is”.** K'ómoks acknowledges and agrees that any of the Lands acquired by a Designated Company under this Agreement are acquired “as is”.
- 7.2 **Disclosure.** The Province has searched several provincial databases, including the Environmental Remediation Sites, Historic Mines Atlas and MINFILE and found no reference to the Lands in those databases.
- 7.3 **Accuracy.** K'ómoks acknowledges and agrees that the Province has not given any representation or warranty concerning the accuracy, relevance, reliability or completeness of the research referenced under 7.2 and that the Province will have no liability for any errors, omissions or inaccuracies with respect to that research.
- 7.4 **Industrial or Commercial Uses.** The Parties acknowledge that gravel has been extracted from a portion of the Mount Washington Gravel Pit.
- 7.5 **Viability of Lands.** K'ómoks 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 K'ómoks 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.
- 7.6 **Environmental Condition.** K'ómoks:
- 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 environmental condition of the Lands (including surface water and groundwater), including the presence or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Lands or on or under any surrounding or neighbouring land or the current and past uses of the Land or any surrounding or neighbouring land.

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- 7.7 **Environmental Remediation.** K'ómoks will from and after the Closing:
- a) assume all environmental liabilities relating to the 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 Lands or migrating from the 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 Lands; and
 - c) indemnify and save harmless the Provincial Officials from and against any and all Proceedings after the Closing arising out of or in connection with any and all environmental liabilities relating to the Lands.
- 7.8 **Effect of 7.7.** For certainty, 7.7 does not apply where any environmental liability relating to the Lands results from the acts or omissions of the Province after the Closing Date.
- 7.9 **Responsible Persons.** Nothing in this Agreement precludes K'ómoks from recovering the costs incurred in the inspection or remediation of any contaminated site on the Lands transferred to K'ómoks 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 **Permitted Encumbrances.** K'ómoks acknowledges and agrees that 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 and that 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 3 and will include any modifications that K'ómoks 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
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- b) correct any errors or omissions to the Permitted Encumbrances or the form of Permitted Encumbrances attached as Schedule 2 or Schedule 3, respectively.
- 8.4 **Amendments Form Part of Agreement.** Where any amendments are made under 8.3, Schedule 2 or Schedule 3 will be revised and will, as revised, form part of this Agreement.
- 8.5 **Registration of Unregistered Interests.** K'ómoks will consent, or will cause the Designated Company to consent, to the registration of any interests identified in Schedule 2 Part 2 which are not registered against the applicable Lands in the Land Title Office on or after the Closing Date.
- 8.6 **Indemnity for Charges.** K'ómoks 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 K'ómoks' or a Designated Company's acts or omissions 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 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 costs or fees associated with the preparation and issuance of Crown Grants and any other documents required to register the 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 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 seek an exemption.
- 9.2 **Federal Tax and Other Charges.** The Designated Company is responsible for any GST or other federal taxes and any other transfer or registration charges for which the Province has not expressly agreed to accept responsibility under the terms of this Agreement.
- 9.3 **Annual Taxes and Other Costs.** Subject to the Final Agreement, the Designated Company is responsible for any and all annual taxes payable in respect of the 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 Lands.

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- 9.4 **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.

ARTICLE 10 - OTHER COVENANTS

- 10.1 **Other K'ómoks First Nation Covenants.** K'ómoks acknowledges and agrees that:
- a) in order to preserve the possibility of the Lands becoming K'ómoks First Nation Lands in accordance with the Final Agreement, K'ómoks 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 fifth 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 K'ómoks seek to add any of the Lands to its reserve lands without the consent of the Province, consistent with Schedule 4; and
 - c) subject to 11.1, the Lands are subject to provincial and local government laws, including applicable zoning, land use, land development and property tax laws, and at no time after Closing will K'ómoks challenge the applicability of provincial laws to the Lands.
- 10.2 **Disposition of Interests in Lands.** Notwithstanding 10.1 a), K'ómoks may charge or encumber the Lands provided that K'ómoks advises the intended charge or encumbrance holder in writing that the Lands will, on the Effective Date be transferred by the Designated Company to K'ómoks and will become K'ómoks First Nation Lands.
- 10.3 **Indemnity for Charges.** K'ómoks 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 or any Permitted Encumbrance, any charge or encumbrance granted by K'ómoks under 10.2, the transfer of the fee simple estate in the Lands to K'ómoks or the Lands becoming K'ómoks First Nation Lands.
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- 10.4 **Failure to Ratify.** The restriction on the disposition of the Lands under 10.1 a) will not apply where the Final Agreement is not signed by the authorized representative of 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.
- 10.5 **Registration of Unregistered Interests.** For the purposes of 10.4, K'ómoks 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.

ARTICLE 11 – STATUS OF LANDS ON EFFECTIVE DATE

- 11.1 **Status of Lands on Effective Date.** The status of the Lands transferred under this Agreement to K'ómoks will be determined during the Final Agreement negotiations.

ARTICLE 12 – OVERLAPPING CLAIMS

- 12.1 **Shared Territories.** Prior to the transfer of the Lands to the Designated Company, K'ómoks will discuss and will make reasonable efforts to resolve any overlap or shared territory claims by other First Nations. In the event any such claims are not resolved to the Province's satisfaction, the Province may amend the boundaries of the Lands, not transfer the Lands, or transfer other lands.
- 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 Lands to the Designated Company on behalf of K'ómoks, K'ómoks will provide the Province with reasonable assistance, upon request, in support of its defence of the Proceeding.

ARTICLE 13 – LITIGATION

- 13.1 **Existing Legal Proceedings.** The Parties acknowledge that there is no existing litigation that requires abeyance for the purposes of this Agreement.
- 13.2 **New Litigation.** If, at any time within 10 years of the Closing Date, K'ómoks decides to commence any Proceeding relating to any Government Action within the Traditional Territory, K'ómoks will notify the Province of its intention to commence litigation and the 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.

ARTICLE 14 - DISPUTE RESOLUTION

- 14.1 **Representatives.** If a dispute arises between the Province and K'ómoks regarding the interpretation of a provision of this Agreement, the Parties or their duly appointed representatives will meet as soon as is practical to attempt to resolve the dispute.
- 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 K'ómoks.
- 14.3 **Other Means.** The Parties may choose 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 copier, when received as follows:

if to the Province:

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

Fax: (250) 387-6073

and if to K'ómoks:

K'ómoks First Nation
3320 Comox Road
Comox, B.C. V9N 3P8
Attention: Chief Councilor

Fax: (250) 339-7053

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

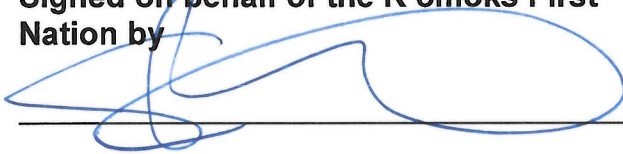
ARTICLE 16 - GENERAL

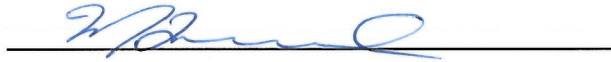
- 16.1 **Entire Agreement.** This Agreement is the entire agreement between the Parties in respect of the subject matter of this Agreement and, except as set out in this Agreement, there is no representation, warranty, collateral agreement, condition, right or obligation affecting this Agreement.
- 16.2 **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 the K'ómoks First Nation 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 K'ómoks 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 K'ómoks First Nation.
- 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* (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.
- 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.

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

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

Signed on behalf of the K'ómoks First Nation by

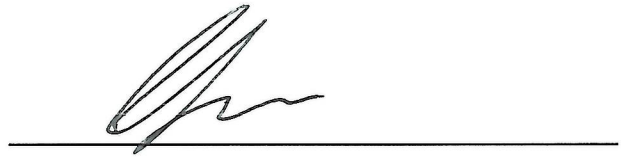






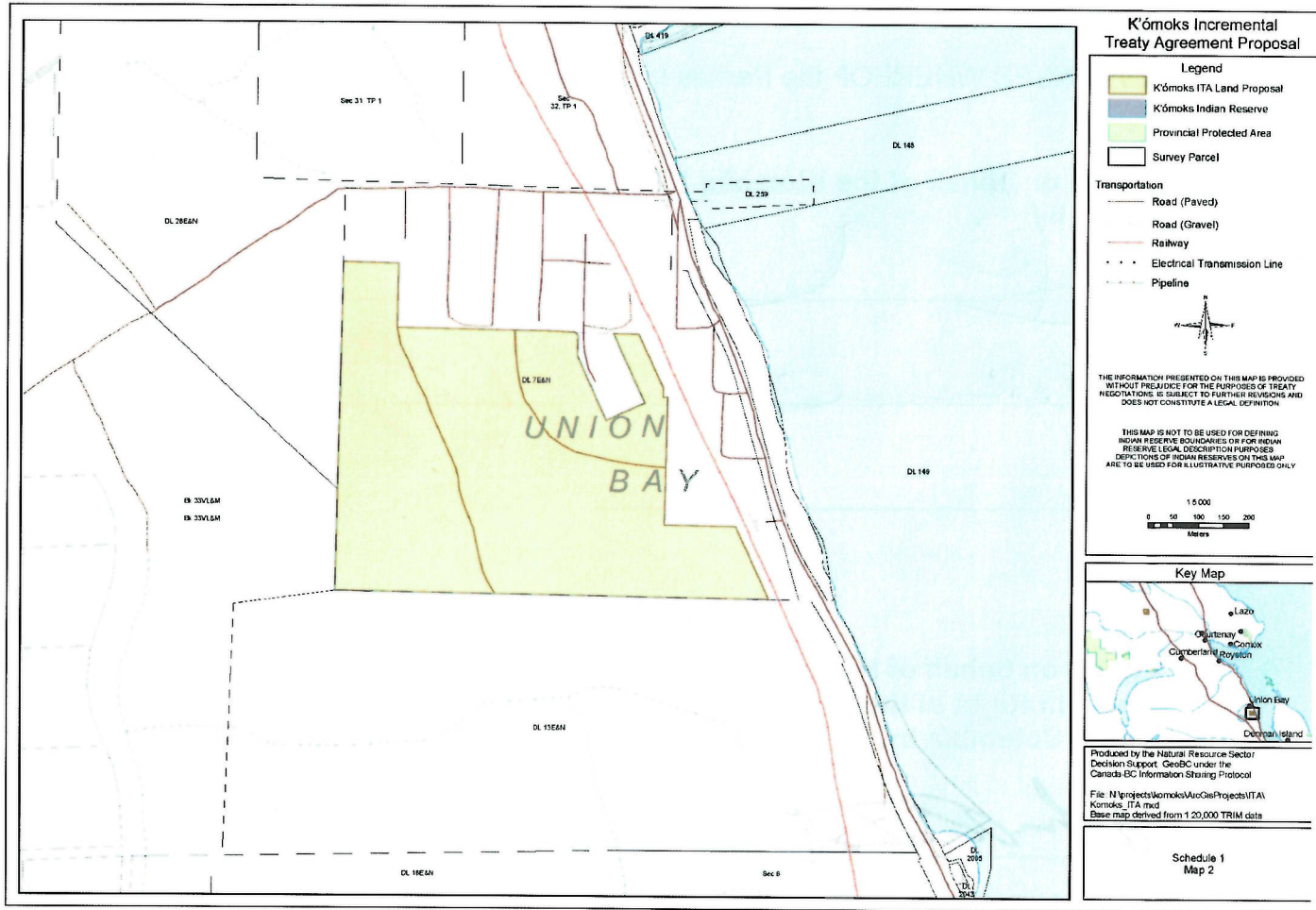
Signed on behalf of Her Majesty the Queen In Right of the Province of British Columbia by



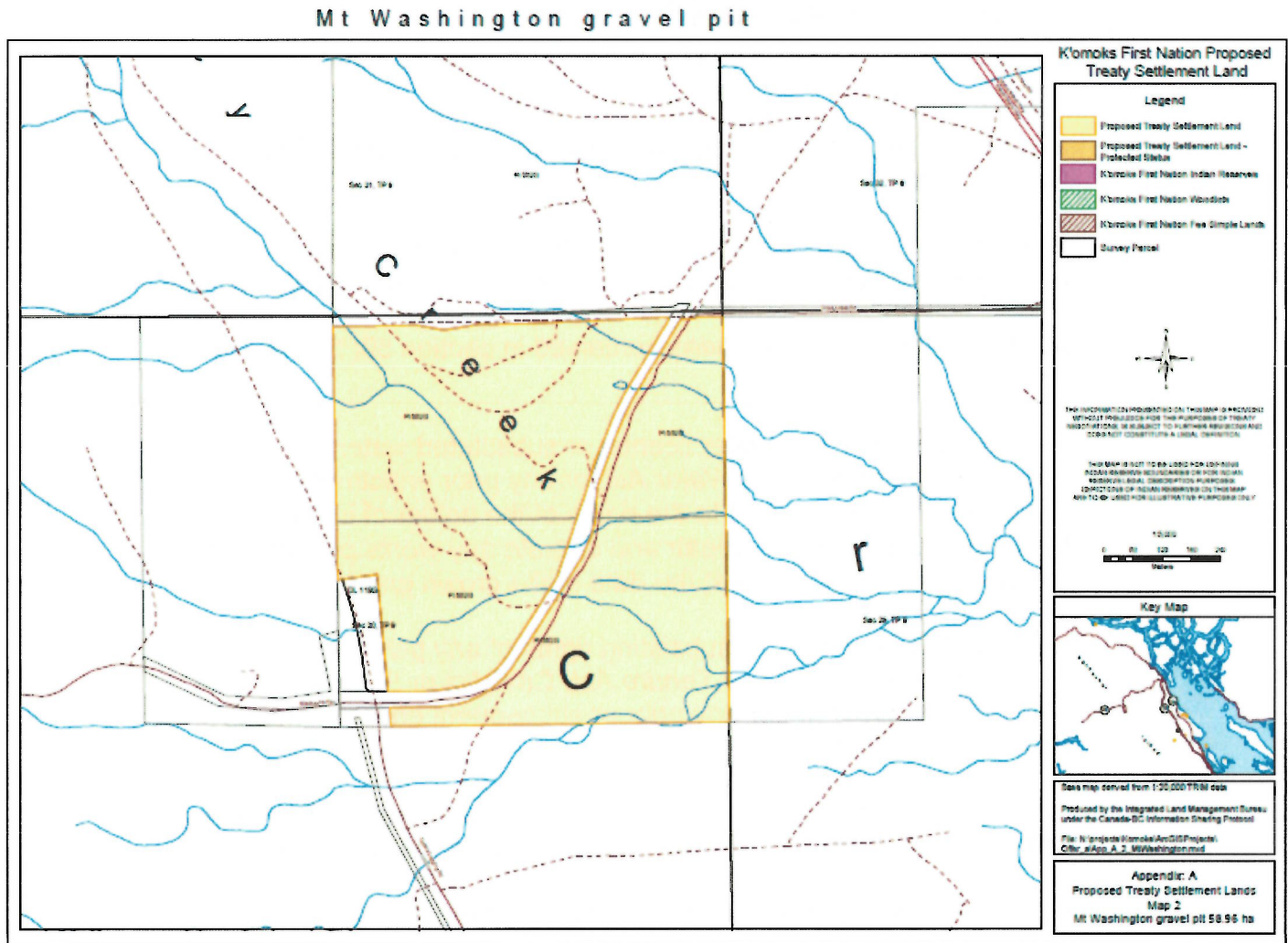


Schedule 1 – Maps of Lands

Schedule 1 A – Map of Union Bay for Illustrative Purposes



Schedule 1 B - Map of Mount Washington Gravel Pit for Illustrative Purposes



Schedule 2, Part 1 – Permitted Encumbrances

Permitted Encumbrances
<ul style="list-style-type: none"> • all interests registered on title under the <i>Land Title Act</i> 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 <i>Land Act</i>; • any conditional or final water license or substituted water license issued or given under the <i>Water Act</i>, or any prior enactment of the Province of like effect, and to the rights of the holder of it to enter on the land and to maintain, repair and operate any works permitted on the land under the license at the date of the crown grant; • all subsisting grants to, or subsisting rights of any person made or acquired under the <i>Mineral Tenure Act</i>, <i>Coal Act</i> or <i>Petroleum and Natural Gas Act</i> or under any prior or subsequent enactment of the Province of like effect; • all other liens, charges and encumbrances granted by the Province, with the prior written consent of K'ómoks prior to the Closing Date; • K'ómoks 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; 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 this property in the form attached as Schedule 4 (Additions to Reserve Restrictive Covenant).

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

Interests Not Registered on Title
<ul style="list-style-type: none">• 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 shown in Schedule 1.

Schedule 3 – Form of Permitted Encumbrances

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

Schedule 4 - 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)			
	<table border="1" style="margin: auto; border-collapse: collapse;"> <tr> <td style="width: 30px; height: 150px; text-align: center; vertical-align: top;">Y</td> <td style="width: 30px; height: 150px; text-align: center; vertical-align: top;">M</td> <td style="width: 30px; height: 150px; text-align: center; vertical-align: top;">D</td> </tr> </table>	Y	M	D		<p>_____ By</p> <p>Its authorized signatory(ies):</p> <p>_____</p> <p>Print Name:</p> <p>_____</p> <p>Print Name:</p>
Y	M	D				

OFFICER CERTIFICATION:

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

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

TERMS OF INSTRUMENT – PART 2

WHEREAS:

A. The Grantor is the registered owner of:

(the "Land");

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

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

1. The Grantor covenants and agrees that the Grantor will not, in the absence of consent by the Grantee, transfer, alienate or deal with the Land in any manner which would see it incorporated into or become part of:
 - a. Reserves or special reserves as defined in the *Indian Act*; or
 - b. "Lands reserved for the Indians" under section 91(24) of the *Constitution Act, 1867*.
2. Wherever the singular or masculine are used in this Agreement, they shall be construed as meaning the plural or feminine or body corporate where the context or the parties so require.
3. This Agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and assigns.
4. The Grantor will indemnify and save harmless the 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 5 - Designated Company Agreement

This Agreement is dated for reference _____, 2016.

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 K'ómoks 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. K'ómoks 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", "K'ómoks" and "K'ómoks First Nation" 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 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 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 K'ómoks, against the Designated Company or K'ómoks 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 and Appendices 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 to 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 K'ómoks 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 K'ómoks.
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 titles 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 signing a separate copy of this Agreement (including a photocopy, email or facsimile copy) and delivering it to the other Party by email or facsimile transmission.

Signed by the Designated Company as of _____, _____ 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 _____, 2016:



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

Schedule 6 – 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 7 – Consent of K'ómoks in relation to Property Transfer Tax Matters

TO WHOM IT MAY CONCERN:

1. Article 9.1 of the K'ómoks First Nation Incremental Treaty Agreement (the Agreement) between the Province of British Columbia and K'ómoks, executed [date of execution], provides that the Province is responsible for property transfer tax payable under the *Property Transfer Tax Act* (RSBC 1996), c. 378 in relation to the transfer of land under the Agreement (the Property Transfer Tax).

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 K'ómoks hereby
 - c. authorizes the Ministry of Finance and the Ministry of Aboriginal 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 K'ómoks

Name and Title (please print)

