



# Cheam First Nation Land Code

January 11, 2016

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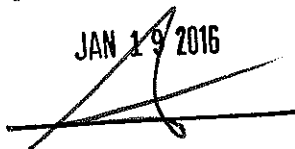
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*Colleen Raleck*

Colleen R. Deck No. 2014-0635  
Commissioner for Taking Affidavits  
for British Columbia  
Expiration: May 31, 2017

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## SECTION 1 PRINCIPLES

### *Cheam Aboriginal Title*

- 1.1 S'ólh Téméxw te fkw'élò. Xólhmet te mekw'stám ít kwelát. This is our land. We have to take care of everything that belongs to us. This declaration is based on our sxwōxwiyám, our Sqwelqwqel and our connection through our shxweli to S'ólh Téméxw. We make this declaration to protect our Sxoxomes (gifts from the Creator), including all the resources from the water, the land and the mountains including xó:letsa (many lakes) and Mómet'es. We make this declaration to preserve the teachings and to protect S'ólh Téméxw for our tómiyeqw (seven generations past and future).
- 1.2 The Supreme Court of Canada has made it clear that Aboriginal Title is collectively held by the respective Indigenous Peoples and nations. The People of Cheam have never ceded, released or surrendered our land. Our people continue to extensively use our land and waters today and can establish Aboriginal Title throughout our territory with the necessary continuity. We, the people of Cheam hold Aboriginal Title to our territory, which is exclusive ownership that entails the right to: determine the uses of our land, the economic benefits of our land, and proactively use and manage our land.

### *Cheam Authority to Govern*

- 1.3 By enacting this Land Code, Cheam exercises our inherent right to govern that Part of S'ólh Téméxw (our lands) which has been designated as Cheam Reserve land within the meaning of the *Indian Act, R.S.C. 1985, c 1-5*.
- 1.4 The authority of Cheam to govern our Land and resources flows from:
- (a) The Creator to the Cheam people;
  - (b) The Cheam people to the Council according to the culture, traditions, customs and laws of Cheam; and
  - (c) Cheam's inherent right of self-government and its other aboriginal rights, including Aboriginal title.

### **Respect for Cheam Heritage, Culture and Tradition**

- 1.5 Using this Land Code, Cheam will continue to carry out our responsibility to protect and manage the land and resources for future generations in accordance with Stó:lō heritage, culture and traditions, while allowing for the evolution of modern expressions of that heritage, culture and tradition.

### **Legal Title held by Canada for Purposes of Land Code**

- 1.6 Cheam acknowledges that, subject to Section 2.10 (non-derogation of aboriginal rights and title), for the purposes of this Land Code, legal title to Cheam Reserve Land continues to be held for Cheam's use and benefit by Her Majesty the Queen in Right of Canada.

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## SECTION 2 DEFINITIONS AND INTERPRETATION

2.1 In this Land Code, unless the context does not permit, these words have the following meanings:

**Act** means the *First Nations Land Management Act, S.C.1999, c.24*;

**Adjudicator** means a Barrister or Solicitor and or a Member of the British Columbia Bar who is independent of the Parties to a dispute and to other Interests or Licenses in the dispute'

**Allotment** means an Interest in Cheam Reserve Lands granting a Member possession of a Part of Cheam Reserve Lands under Section 9 of this Land Code or, prior to the date this Land Code comes into force, pursuant to section 20 of the *Indian Act* and, for greater certainty, once an Allotment is confirmed by a Cheam Certificate of Possession duly issued under this Land Code and any Cheam Law, subject to the Land Code and Cheam Law, has similar legal force and effect and content as a Certificate of Possession issued by the Minister under the *Indian Act*;

**Certificate of Possession or CP** means an official document issued under this Land Code or formerly issued under section 20 of the *Indian Act* to confirm a Member's Allotment;

**Cheam First Nation Lands Registry** means the unofficial duplicate Registry maintained by Cheam First Nation under 6.25 of this Land Code;

**Cheam First Nation (CFN) or Cheam** means the collective of those individuals who recognize each other as Members of a community connected to Cheam Reserve Lands and who are eligible to be on the Cheam Band Member list, which is also a first nation within the meaning of the Framework Agreement;

**Cheam Reserve Lands** that are subject to this Land Code are the lands as described in the Individual Agreement and any lands added in compliance with this Land Code. This includes:

- (a) The Indian reserves known as Cheam I.R. #1 and Tseatah I.R. #2,
- (b) In the future, portions of Cheam I.R.#1 or I.R.#2, including Rosedale Bar, that are excluded from the application of this Land Code in the Individual Agreement, once the issues causing these exclusions are resolved and written confirmation is provided by the Minister;
- (c) Lands set apart by Canada in the future as lands reserved for the use and benefit of Cheam First Nation, within the meaning of subsection 91(24) of the *Constitution Act, 1867* and subsection 2(1) of the *Indian Act*; and
- (d) Reserve lands jointly for the use and benefit of Cheam and one or more other First Nations, if the First Nations agree upon a joint management scheme for those lands;

And the water, beds underlying the water, riparian rights, minerals and subsurface resources and all other renewable and non-renewable Natural Resources in and of the lands described in (a) to (e) directly above to the extent that those resources are under the jurisdiction of Canada or Cheam; and

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All the Interests and Licenses granted or confirmed to Cheam by Her Majesty in right of Canada listed in the Individual Agreement;

***Cheam Lands Governance Office*** means the department established by Council to govern Cheam Reserve Lands;

***Cheam Community Reserve Lands*** mean any Cheam Reserve Lands in which no Allotment or CP to a Member has been granted or affirmed by this Land Code or under the *Indian Act*;

***Chief*** means the elected Chief of Cheam;

***Child*** includes the natural offspring of an individual Member, and any Person less than 18 years of age who has been adopted legally or recognized by a community cultural practice or Stó:lō custom;

***Common-law Marriage*** means the union of two individuals who, though not married to each other, have lived together as Spouses for a period of not less than ten years;

***Committee*** means the Lands Governance Advisory Committee established in Section 6;

***Community Purpose*** means a purpose which is intended to provide a facility, benefit or support for the Members or Persons residing on Cheam Reserve Lands and may include public works, utility or transportation corridors, institutional or recreational facilities or uses or similar vital purposes;

***Council*** means the elected or appointed governing body of Cheam;

***Council Resolution*** means a formal, written motion passed by a quorum of Council at a duly convened meeting of Council;

***Easement*** means a non-exclusive Interest in Cheam Reserve Lands granted under Section 9 of this Land Code or, prior to the date of the Land Code, under the *Indian Act*, giving the grantee the right to use the land of another for a right of way or to provide utility or other services to the land of the grantee, and is limited to only such Interests as is necessary to give effect to the Easement granted;

***Eligible Voter*** means a Member, who, as of the date of a Ratification Vote or other Vote provided for in this Land Code, has attained the age of eighteen (18) years of age on the day of the Vote;

***First Nations Land Registry or Registry*** means the First Nations Land Register System established by Canada in accordance with clause 51.1 of the Framework Agreement and maintained by the Minister in Ottawa, Ontario;

***Framework Agreement*** means the Framework Agreement on this First Nations Land Management entered into between the Government of Canada and fourteen (14) First Nations on February 12, 1996, as amended;

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**Immediate Family** means a parent, grandparent, sister, brother, grandchild, Child or Spouse of an individual who is a registered Member;

**Individual Agreement** means the agreement entered into between Cheam and the Government of Canada pursuant to section 6(3) of the *Act* and Section 6.1 of the Framework Agreement;

**Interest** means an Interest in or relating to Cheam Reserve Lands or activities or uses on Cheam Reserve Lands, and without limiting the generality of Interests, includes Allotments, CPs, certificates, Easements, Leases, Life Estates, Mortgages, Permits, statutory rights-of-way, Subleases and all other Interests in or relating to land or activities or uses on Cheam Reserve Lands, except Licenses;

**Land Code** means this Cheam First Nation Land Code;

**Lands Governance Director** means the Cheam First Nation employee or contractor responsible for the day-to-day administration of Cheam Reserve Lands;

**Land Use Plan** means a ratified plan addressing land use and other factors related to the use or development of Cheam Reserve Lands;

**Law** means a law or regulation passed under this Land Code but does not include a Council Resolution that does not comply with the requirements set out in this Land Code;

**Lease** means a written agreement granting Leasehold;

**Leasehold** means an Interest in Cheam Reserve Lands granted under this Land Code or, prior to the date of this Land Code, under the *Indian Act* including a sub-lease, unless otherwise specified, giving a person the exclusive right of use and possession of lands, agreed upon conditions, for a specified time, including any renewal or extension period;

**License** means any right of use or occupation of Cheam Reserve Lands or right to carry out an activity on Cheam Reserve Lands or used or extract Natural Resources but that does not include an Interest in land;

**Life Estate** means an Interest in an Allotment, CP or home granted to any natural Person, including a non-Member, that grants the individual a right to use and occupy a specified home, structure or area or parcel of land for a specified time period, which is not transferable and cannot exceed the life of that Person;

**Majority** means fifty percent plus one (50% +1);

**Member** means a Person who meets the requirements to appear on the Cheam First Nation Membership roll;

**Minister** means the Minister of Indigenous and Northern Affairs Canada, as the representative of Her Majesty the Queen in Right of Canada;

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**Mortgage** means a charge on an Interest or License in Cheam Reserve Lands in favor of another as security for a debt;

**Natural Resources** means any minerals, oil, gas, substances, groundwater, water, vegetation or animals found on, under, or in Cheam Reserve Lands which, when removed, have economic or other value;

**Permit** means a limited authorization to carry out a use or activity, or an Interest in specified area of Cheam Reserve Lands other than a Leasehold, Easement or Permit, granted under Land Code or, prior to the date of this Land Code, under the *Indian Act*, giving a Person the right to use a specified area of Cheam Reserve Lands a specified purpose or activity. A Permit does not convey any right of exclusive possession in the land and does not restrict the rights of the grantor of the Permit beyond that required to give effect to the Permit granted;

**Person** includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law;

**Ratification Vote** means a Vote carried out in relation to this Land Code in a manner consistent with Section 4;

**Register or Registration** means to submit a document, Interest or License to the Registry;

**Registry** means the First Nations Land Register established by Canada in accordance with clause 51.1 of the Framework Agreement and maintained by the Minister in Ottawa, Ontario;

**Residential Use** means use of an Allotment by one Member, who does not already have an Allotment or a CP, for the purpose of situating their home, and does not include buildings intended for renting out, or industrial, commercial or other uses except in accordance with Cheam First Nation Laws including laws for home-based business;

**Spouse** means an individual who is married to another, whether by custom, religious or civil ceremony, and includes a Spouse by Common-law marriage;

**Sub-Lease** means a portion of that Interests held under Lease; and

**Verifier** means a verifier appointed in accordance with clause 8.1 of the Framework Agreement.

### **Interpretation**

2.2 In this Land Code:

- (a) The use of the word “shall” denotes an obligation that, unless this Land Code provides to the contrary, must be carried out as soon as practicable after this Land Code comes into effect or the event that gives rise to the obligation;
- (b) Unless it is otherwise clear from the context, the use of the word “including” means “including, but not limited to”, and the use of the word “includes” means “includes, but is not limited to”;

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- (c) Headings and subheadings are for convenience only, do not form a section of this Land Code and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Land Code;
- (d) A reference to a "statute" includes every amendment to it, every regulation made under it and any law enacted in substitution for it or in replacement of it;
- (e) Unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular;
- (f) Unless it is otherwise clear from the context, the use of the masculine includes the feminine and the use of the feminine includes the masculine;
- (g) Where the time limited for the doing of an act expires or falls on a Saturday, a Sunday or a federal, provincial statutory holiday or an indigenous holiday, the act will follow on the next business day;
- (h) Where the time limited for the doing of an act in the Cheam Administration Building falls on a day when the office is not open during regular business hours, the act may be done on the next day that the office is open; and
- (i) Where there is reference to a number of days, these days on which the events happen are excluded.

### ***Paramountcy***

- 2.3 If there is an inconsistency or conflict between this Land Code and any other Cheam Law or Council Resolution relating to Cheam Reserve Lands, this Land Code shall prevail to the extent of the inconsistency or conflict.
- 2.4 If there is an inconsistency or conflict between this Land Code and Framework Agreement, the Framework Agreement shall prevail to the extent of the inconsistency or conflict.

### ***Culture and Traditions***

- 2.5 The structures, bodies and procedures established by or under this Land Code shall be interpreted in accordance with the culture, traditions and customs of Cheam otherwise provided.

### ***Fair Interpretation***

- 2.6 This Land Code shall be interpreted in a fair, large and liberal manner.

### ***Purpose***

- 2.7 The purpose of this Land Code is to set out the principles, procedures, law-making authority and administrative structures that apply to Cheam Reserve Lands and by which Cheam will exercise authority over those lands.

### ***Non-Abrogation***

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- 2.8 This Land Code shall not abrogate or derogate from any aboriginal right, treaty right or other right or freedom that pertains now or in the future to Cheam or its Members.
- 2.9 This Land Code is not intended to affect the eligibility of Cheam or any Member to receive services or participate in such public or aboriginal programs as may be established from time to time, to the extent that Cheam has not assumed responsibility for such services and programs.
- 2.10 This Land Code is not intended to abrogate or derogate from the fiduciary relationships between Her Majesty the Queen in Right of Canada, Cheam and its Members.

### SECTION 3 CHEAM LAW MAKING AND LAWS

#### *Law-making Powers*

- 3.1 Council may, in accordance with this Land Code, make Laws respecting:
- (a) Development, conservation, protection, management, regulation, occupation, servicing, use and possession of and planning for, Cheam Reserve Lands;
  - (b) Interests or Licenses;
  - (c) Establishment, collection, administration, borrowing, saving and expenditure of any fees, charges, revenues, royalties or other monies in relation to Cheam Reserve Lands;
  - (d) Any matter necessary to give effect to this Land Code; and
  - (e) Any matter necessary or ancillary to a Law.
- 3.2 For greater certainty, and without limiting the generality of Section 3.1, Council may make Laws respecting the following but only after completing the community consultation process out in Section 4:
- (a) A significant amendment to a Land Use Plan;
  - (b) Creation, regulation and prohibition of Interests or Licenses;
  - (c) Environmental assessment and environmental protection;
  - (d) An Expropriation Law; and
  - (e) Setting aside and regulation of heritage lands and sacred sites.
- 3.3 For greater certainty, and without limiting the generality of Section 3.1, Council may make Laws respecting the following:
- (a) The purchase, acquisition or sale of lands in accordance with the *Act* and this Land Code;

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- (b) Regulation, control, authorization and prohibition of residency, access, occupation and development of Cheam Reserve Lands;
- (c) Zoning and land use planning;
- (d) Archaeological assessment and protection of archaeological and cultural resources;
- (e) Regulation of development, building and construction, including the application of building codes, engineering standards and other standards;
- (f) Expropriation of Interests and Licenses;
- (g) Forms, procedures, application fees and related matters, including fees to be paid to Cheam for applications or administrative procedures;
- (h) Mortgages and secured interests relating to Interests and Licenses;
- (i) Registration of Interests and Licenses, including priority of registration;
- (j) Fees or charges to be paid to Cheam for the granting or transfer of Interests or Licenses in Reserve Lands;
- (k) Fees, regulations and processes for the certification or registration of Interests or Licenses;
- (l) Creation or registration of priority Interests or priority agreements in relation to Interests or Licenses;
- (m) Protection, regulation and granting of Interests or Licenses in Natural Resources;
- (n) Fees, stumpage, or royalties to be paid to Cheam for the removal or extraction of Natural Resources from Cheam Reserve Lands, including for removal or extraction of minerals, gravels, timber and water from our Reserve Lands and from Allotments or CP Lands;
- (o) Provision of, installation of, and Interests or Licenses for, utilities, infrastructure and local services and imposition of user charges including development cost charges or their equivalent;
- (p) Authorization and regulation of subdivisions and developments including requirements for contributions to community benefits, park dedications or grants in lieu or park dedications;
- (q) The conduct of surveys of lands or Interests or Licenses;
- (r) Setting aside, designation, regulation or management of parks, parklands, green space and recreational lands;
- (s) Rules and procedures for the receipt, management, expenditure, investment, and borrowing of moneys relating to Cheam Reserve Lands and Interests or Licenses, and the establishment of administrative structure to manage such moneys;
- (t) Creation of management and administrative bodies or agencies;

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- (u) Removal and punishment of Persons trespassing upon Cheam Reserve Lands or frequenting Cheam Reserve Lands for prohibited purposes;
- (v) Public nuisance and private nuisance;
- (w) Regulation of sanitary services in private premises and public places;
- (x) Construction and maintenance of boundaries, screening and fences;
- (y) Construction and maintenance and management of roads, watercourses, water diversions, storm drains, bridges, dykes, ditches, and other local and public works;
- (z) Regulation of traffic and transportation;
- (aa) Hunting, fishing, and management and protection of fish, wildlife and their habitat on Cheam Reserve Lands;
- (bb) Enforcement of Laws;
- (cc) Dispute resolution and adjudication of disputes; and
- (dd) Use and storage of fireworks, firearms, weapons and hazardous materials or substances.

### ***Introduction of Laws***

3.4 A proposed Law may be introduced at a meeting of Council by:

- (a) A member of Council;
- (b) A representative on behalf of the Committee, or other body composed of Members as may be authorized by Council; or
- (c) The Lands Governance Director.

### ***Tabling and posting of proposed Laws***

3.5 At least 30 days prior to a Council vote on a Law, the proposed Law shall be:

- (a) Tabled at a meeting of Council;
- (b) Deposited with the Chair of the Committee;
- (c) Posted in the Cheam administration offices and other public places on Cheam Reserve Lands; and
- (d) If directed by Council or the Lands Governance Director, posted in other public places Cheam may want to include for posting, such as social media, mailing notices to the off-reserve members or locations where off-reserve Members may gather.

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- 3.6 For proposed Laws relating to subsections 3.2 above, in addition to the requirements set out in 3.4-3.5 above, Council or the Lands Governance Director must also bring the proposed Law to a special Membership Meeting.
- 3.7 Council may pass Laws regarding land use planning by following Sections 3.1-3.6 above. However, for a Land Use Plan, in addition to the requirements set out above, a Ratification Vote is required at a Special Membership Meeting in accordance with Section 4.8 below.

#### ***Urgent Matters***

- 3.8 Council may enact a Law without the preliminary steps required above if Council, acting reasonably, believes that the Law is required urgently to protect Cheam Reserve Lands or Members.
- 3.9 A law enacted under Section 3.8 will be deemed to have been repealed and to have no force and effect 90 days after its enactment, but may be re-enacted in whole or as amended in accordance with subsections 3.1 to 3.7 and 3.10.

#### ***Enactment of Laws***

- 3.10 A Law is enacted when approved by Council Resolution after Council has complied with subsections 3.1-3.7 above, or for urgent matters, subsection 3.8.

#### ***Administration***

- 3.11 Council shall perform all the duties and functions, and exercise all the powers of Cheam that are not specifically assigned to an individual body established under this Land Code.

#### ***Delegation***

- 3.12 Notwithstanding Section 3.11, Council may, by enacting a Law, delegate administrative authority to an individual or a body established or authorized under this Land Code.

#### ***Certification of Laws***

- 3.13 A quorum of Council shall sign the original copy of a Law or Council Resolution.

#### ***Amendments***

- 3.14 Any Cheam Law may be repealed or amended by following the procedure set out in the provisions under which the Law was enacted.

#### ***Law Coming into Force***

- 3.15 A Law comes into force on:

- (a) The date is enacted; or
- (b) Such other reasonable date as may be set by Council Resolution or Law.

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***Publication***

3.16 All Laws shall be published.

***Posting Laws***

3.17 As soon as practicable after a Law has been enacted, Council shall post a copy of the Law in the Cheam administration office.

***Register of Laws***

3.18 Council shall require to be registered all laws and Council Resolutions passed in relation to this Land Code, including those that have been repealed or are otherwise no longer in force, and may also direct the Lands Governance Director to keep copies in an unofficial duplicate registry at the Cheam administration office.

3.19 Any person may,

- (a) Access and view the laws and Council Resolutions referenced in subsection 3.18 through the Registry by following normal procedures for accessing the Registry; or
- (b) During regular business hours at the Cheam administration office, have reasonable access to the registry of Laws, if an unofficial duplicate registry is kept at the Cheam administration office.

***Copies for Any Person***

3.20 Any person may obtain a copy of a law or Council Resolution referred to in section 3.18 upon payment of such reasonable fee, if any, as may be set by Council or the Lands Governance Director.

**SECTION 4 COMMUNITY AND COMMITTEE CONSULTATION*****Right of Eligible Voter***

4.1 An Eligible Voter is entitled to:

- (a) Attend Special Membership Meetings called under this Land Code; and
- (b) If there is a vote, vote at a Special Membership Meeting called under this Land Code.

***Conduct of Meetings***

4.2 Council shall, in consultation with the Committee, develop Laws, policies or procedures for the conduct of meetings under this Land Code.

***Consultation with Committee*****VERIFIED**

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- 4.3 Without limiting the generality of the Committee's roles and responsibilities under section 6.3, Council shall meet with the Committee, or refer a matter to the Committee, to receive input prior to proposing or enacting a Law in respect of:
- (a) A Land Use Plan or a significant amendment of a Land Use Plan;
  - (b) A subdivision plan;
  - (c) Declaring land or an Interest in land subject to this Land Code;
  - (d) Designated heritage or sacred land;
  - (e) Environmentally sensitive property;
  - (f) Environmental assessment;
  - (g) The transfer or assignment of Interests or Licenses in Cheam Reserve Lands;
  - (h) Spousal property under subsections 9.47 to 9.51; or
  - (i) Any other matter or class of matters that Council by Council Resolution declares to be subject to this section.

#### ***Process to Implement Laws***

- 4.4 Nothing in this Land Code precludes Council or the Committee from consulting with other advisors or representatives of other jurisdictions, including Canada, a Province, another First Nation, a Municipal Council or a Regional District.

#### ***Special Membership Meetings***

- 4.5 Where required by this Land Code, Council shall consult with Members at a Special Membership Meeting.

#### ***Notice***

- 4.6 Council shall give written notice of a Special Membership Meeting that:
- (a) Specifies the date, time and place of the meeting;
  - (b) Contains a brief description of matters to be discussed at the meeting; and
  - (c) Includes the text to any Law or other document to be voted on, if any, and such notice shall be:
    - (i) Posted in public places on Cheam Reserve Lands at least 30 days before the meeting; and
    - (ii) Mailed or delivered to Members at least 30 days before the meeting; and
    - (iii) Given by such additional methods as Council may consider appropriate.

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- 4.7 Nothing precludes Council from holding a Special Membership Meeting in conjunction with any other meeting of Cheam Members, provided it meets the requirements of this Land Code.

***Approval by Ratification Vote***

- 4.8 Prior to passing a Law or making a final decision on any of the following, approval by a Ratification Vote at a Special Membership Meeting or a Special Membership Meeting in combination with a mail-in vote or e-vote must be obtained:
- (a) A disposal or grant of an Interest or License in Reserve Lands having a term of more than 15 years;
  - (b) Any law or decision that may result in significant damage to, alteration of or destruction of a heritage or sacred site on Cheam Reserve Lands; Setting aside and regulation of heritage lands and sacred sites;
  - (c) A voluntary exchange of Cheam Reserve Lands under Section 7.11;
  - (d) Approval of an initial Land Use Plan;
  - (e) An Expropriation of an Interest or License in Cheam Reserve Lands but not the actual Expropriation Law itself; and
  - (f) Enactment of a Law or class of Laws that Council, by Council Resolution, declares to be subject to this section.
- 4.9 Despite subsection 4.8, no Ratification Vote is required for:
- (a) The regular granting of or transfer of Interests or Licenses by CP Holders in CP lands or Allotments in accordance with this Land Code or any Cheam Laws;
  - (b) Granting of CPs or Allotments by Council to Members in accordance with this Land Code and any applicable laws or policies; or
  - (c) General granting of Interests and Licenses which are not of a type or term which specifically requires a Ratification Vote under this Land Code.

***Ratification Process***

- 4.10 A Ratification Vote required under this land Code shall be conducted, with any modifications necessary in the circumstances, in substantially the same manner as that provided in the process used to ratify this Land Code.

***Minimum Requirements for Approval***

- 4.11 A matter is approved by a Ratification Vote where a Majority of those Eligible Voters who cast a vote, in accordance with registration procedures approved by Council, vote by secret ballot in favor of the manner.

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***No Verifier***

4.12 A verifier is not required in a Ratification Vote.

**SECTION 5 FINANCIAL ADMINISTRATION RELATING TO INTERESTS AND LICENSES****Financial Management*****Application***

5.1 This Section applies only to financial matters in relation to Cheam that are administered under this Land Code.

***Establishment of Bank Accounts***

5.2 Council will maintain one or more dedicated financial accounts in an accredited financial institution and will deposit in those accounts:

- (a) Transfer payments received from Canada for the management and administration of Cheam Reserve Lands;
- (b) Moneys received by Cheam from the grant or disposition in Interests or Licenses in Cheam Reserve Lands;
- (c) Fees, fines, charges and levies collected under a Law or Council Resolution in respect of Cheam Reserve Lands;
- (d) All capital and revenue moneys received from Canada from the grant or disposition of Interests or Licenses in Cheam Reserve Lands; and
- (e) Any other revenues received by Cheam in relation to Cheam Reserve Lands excluding property tax revenues.

5.3 Council will continue to implement a system of financial planning and financial administration for the management of Cheam moneys through which Council, Cheam employees and other persons who manage moneys in relation to Cheam Reserve Lands are accountable to the Members within the meaning of subsection 5.2(d) of the Framework Agreement.

***Financial Policy***

5.4 Cheam may, in accordance with this Land Code, adopt a financial policy to further manage money related to Cheam Reserve Lands.

***Signing Officers*****VERIFIED**

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- 5.5 A cheque or other bill of exchange or transfer drawn on a financial account maintained under Section 5.2 must be signed by at least two members of Council in accordance with Cheam financial policy.
- 5.6 Despite subsection 5.5, Council may delegate signing authority to the Lands Governance Director to act as one of two signers provided that this delegation:
- (a) Is set out in a Council Resolution;
  - (b) Is for a specified and limited period of time and expires if the Lands Governance Director is no longer an employee of Cheam; and
  - (c) Is for specified types of payments and within a dollar limit set by Council in the Council Resolution.
- 5.7 A signing authority in Section 5.5 or 5.6 shall not sign a cheque for which they are the payee.
- 5.8 Any signing authority who violates Section 5.7 is subject to having the cheque signed in violation voided and is also personally liable for any additional costs incurred by Cheam.
- 5.9 Every signing officer will complete a reasonable security screening process as required by Council or in accordance with the Cheam Financial Policy.

### ***Fiscal Year***

- 5.10 Unless specified differently in other laws or agreements, the fiscal year of Cheam will begin on April 1 of each year and end on March 31 of the following year.

### **Budgets**

#### ***Budget***

- 5.11 Council will, by Council Resolution, prior to the beginning of each fiscal year, adopt a Land Governance budget for management and administration of revenues and expenditures relating to this Land Code in that fiscal year and may, if Council deems it necessary in the course of the fiscal year, adopt one or more supplementary budgets for that fiscal year.
- 5.12 Prior to adopting a budget or supplementary budget referred to in Section 5.11, Council will consult with the Land Governance Advisory Committee.

#### ***Procedure***

- 5.13 After adopting a Land Governance budget or supplementary budget, Council will as soon as practicable make a copy of the budget or supplementary budget available at the Cheam administration office for inspection by Members during regular business hours.

#### ***If No Budget***

**VERIFIED**

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- 5.14 If Council fails to adopt a Land Governance budget for a fiscal year prior to the beginning of that fiscal year:
- (a) Council will adopt a Land Governance budget as soon as possible; and
  - (b) The budget and any supplementary budget of the previous fiscal year will apply until another budget is adopted.

***Spending Must Follow Budget***

- 5.15 Council shall not spend moneys related to the administration of Cheam Reserve Lands under this Land Code or commit, by contract or otherwise, to spend moneys related to Cheam Reserve Lands unless the spending is authorized under a duly approved budget.

***Determination of Fees and Revenues***

- 5.16 Council will establish a process for determining:
- (a) Fees, rents, royalties, charges or other monies payable for the granting and transfer of Interests or Licenses in Cheam Reserve Lands;
  - (b) Fees or charges payable for the registration and transfer of Interests or Licenses relating to Cheam Reserve Lands; and
  - (c) Fees for processing applications and other services provided in relation to Cheam Reserve Lands and compliance with this Code.

***Financial Records***

- 5.17 Cheam will keep financial records in relation to Cheam Reserve Lands in accordance with generally accepted accounting principles.

***Preparation of Financial Statements***

- 5.18 After the end of each quarter of each fiscal year, the Cheam Finance Department office will prepare a financial statement, in comparative form, relating to the administration of Cheam Reserve Lands under this Land Code and containing:
- (a) A balance sheet;
  - (b) A statement of revenues and expenditures and comparison of these with the amounts stated in the Land Governance Budget and any duly approved supplementary budget; and
  - (c) Any other information necessary for a full and fair presentation of the financial position of Cheam in relation to the administration of Cheam Reserve Lands under this Land Code.

***Consolidated Accounts***

**VERIFIED**

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- 5.19 The accounting, auditing and reporting requirements of this Land Code may be consolidated with other Cheam accounts, audits and reports, provided that the statement and analysis relating to Cheam Reserve Lands is clearly distinguishable.

## **Audit**

### ***Appointment of Auditor***

- 5.20 For each fiscal year Council will appoint a duly accredited auditor to audit the financial records under this Part.
- 5.21 An auditor appointed for other Cheam audits may be appointed under Section 5.20.

### ***Vacancy in Office***

- 5.22 If vacancy occurs during the term of an auditor, Council will forthwith appoint a new auditor for the remainder of the former auditor's term.

### ***Remuneration***

- 5.23 All appointments of auditors in relation to this Land Code will contain a statement approving the remuneration to be paid to the auditor.

### ***Duty of Auditor***

- 5.24 The auditor will within 90 days after the end of Cheam's fiscal year prepare and submit to Council an audit report of the Cheam financial statement stating whether, in the opinion of the auditor, the financial statement presents fairly and accurately the financial position of Cheam in accordance with generally accepted accounting principles applied on a basis consistent with that applied in the previous fiscal year.

### ***Access to Records***

- 5.25 The auditor may at all reasonable times inspect any Cheam financial records and the financial records of any Person or body who is authorized to administer money relating to Cheam Reserve Lands.

## **Annual Report**

### ***Annual Report to be published***

- 5.26 The Lands Governance Director will prepare and table with Council an annual report on Cheam Reserve Land Governance within 120 days of the end of each Fiscal Year.
- 5.27 The annual report will include:

- (a) An annual review of Cheam Reserve Land and Governance activities;

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- (b) A copy and explanation of the audit report as it applies to Cheam Reserve Lands; and
- (c) Such other matters as may be directed by Council or reasonably requested by the Committee

### Access to Information

5.28 Any Member may, during regular business hours at Cheam administration office, have reasonable access to view:

- (a) Cheam First Nation audit reports; and
- (b) Cheam First Nation annual reports.

5.29 Council may decide to include all or a portion of any Cheam Reserve Lands audit reports or annual reports in a newsletter or meeting presentation to Cheam Members.

### Offences

5.30 Any Person who has control of Cheam financial records and who:

- (a) Impedes or obstructs any Member or Auditor from exercising a right to inspect those records; or
- (b) Fails to give all reasonable assistance to any Member or Auditor exercising a right to inspect those financial records,

is guilty of an offence under this Land Code.

## SECTION 6 LANDS ADMINISTRATION

### Land Governance Advisory Committee

#### *Committee Established*

- 6.1 Within a month after this Land Code becomes operational, Cheam First Nation shall establish a Land Governance Advisory Committee.
- 6.2 Subject to budget and available qualified candidates, Council shall hire and retain in place a Lands Governance Director.
- 6.3 The purpose of the Committee is to:
  - (a) Advise Council and the Land Governance Director on the Cheam Reserve Land administration system;
  - (b) Advise Council and Cheam staff on matters respecting Cheam Reserve Lands;
  - (c) Recommend to Council Laws, Council Resolutions, policies and procedures respecting Cheam Reserve Lands;

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- (d) Subject to section 10 (Dispute Resolution), hold, or help arrange, meetings of Members and other meetings to discuss issues relating to Cheam Reserve Lands and make recommendations to Council on the resolution of such issues;
- (e) Assist in the exchange of information between Members and Council regarding Cheam Reserve Land matters;
- (f) Oversee other consultations under this Land Code and providing Council with updates; and
- (g) Perform such other duties and functions as Council may direct.

### ***Development of Land Related Rules and Procedures***

- 6.4 With a reasonable time after this Land Code comes into effect, Council will, in consultation with Members, the Lands Governance Director, and Committee, establish rules and procedures, which may include laws or policies, to address:
- (a) Environmental protection and assessment;
  - (b) Subject to section 10, resolution of disputes in relation to Cheam Reserve Lands;
  - (c) Subject to 3.7 and 4.8 (Community approval of Land Use Plans), land use planning and zoning; and
  - (d) Section 9.45 respecting spousal property and the policy upon which that section is based.

### ***Implementation of Policies***

- 6.5 Recommendations of the Committee in relation to Section 6.3 will be given full and fair consideration by Council for implementation as Council decisions or Resolutions, Laws, policies, or amendments to this Land Code.

### ***Internal Procedures***

- 6.6 The Committee may establish rules and procedures for the conduct of its meetings and general affairs, provided that any such rules and procedures are not inconsistent with any rules and procedures established by Council.
- 6.7 Subject to approved budgets and to Council requirements in respect of financial obligations, the Committee may recommend to Council, in relation to this Land Code and the administration of Cheam Reserve Lands:
- (a) Policies for the remuneration and recovery of expenses incurred by Committee members; and
  - (b) Programs for orientation and education of Council, staff and Committee members.
- 6.8 The Committee will take reasonable measures to consult with Elders with respect to matters in general under this Land Code, and particularly with respect to heritage lands and sacred lands.

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***Committee Membership***

6.9 The Lands Governance Advisory Committee shall be composed of:

- (a) At least one Elected Council member as an ex-officio member;
- (b) A staff member as an ex-officio member; and
- (c) A maximum of four (4) Eligible Voters appointed by Cheam Council in a manner so as to provide for a broad representation for Cheam.

***Eligibility***

6.10 Any Eligible Voter, whether or not resident on Cheam Reserve Lands, is eligible to be appointed to the Committee.

6.11 Council will develop a process for selection of Committee Members, reflecting the family makeup of Cheam or re-appoint the current Committee Members.

6.12 A selection process developed under section 6.11 will include:

- (a) A process for providing notice to Members that appointments will be made to the committee and offering Members an opportunity to apply for such appointments; and
- (b) Standards and criteria for appointment to the Committee.

***Terms of Office and Vacancy***

6.13 A member of the Committee will serve for two years or until that member:

- (a) Resigns in writing;
- (b) Becomes ineligible to be a Committee member;
- (c) Ceases to be an Eligible Voter;
- (d) Is removed by Council Resolution, including if this removal is recommended by other Members of the Committee; or
- (e) Dies or becomes mentally incompetent.

***Filling Vacancies***

6.14 Where a seat becomes vacant on the Committee, Council will fill the seat in accordance with Section 6 as soon as possible and no later than three months after it becomes vacant.

**Chair of the Committee*****Chair***

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6.15 The Committee will select a Committee member in good standing to be the Chair.

***Co-Chair***

6.16 The Committee will select a Co-Chair to perform the functions of the Chair if the Chair is unavailable or unable to perform them.

***Duties of the Chair***

6.17 The duties of the Chair are to:

- (a) Keep a speaking order and intervening if participants "barge in" without permission or interrupt each other;
- (b) Maintain decorum, civility and mutual respect and ensure that issues, not people, are discussed;
- (c) Keep the meeting on track, remind the members of what is currently on the agenda, intervene if there are digressions, and keep the Committee aware of where they are in the process;
- (d) Manage time, keep updates on time, enforce limits on speaking time, and ensure agreed-upon time frames are adhered to;
- (e) Educate and advise, offer options to achieve results (e.g. amendments, postponement, or referral to a committee for study);
- (f) Create balance: Create opportunities for quieter members to enter the discussion, go around the table, ask dominant members to give priority to those who have not spoken;
- (g) Ensure clarity: Explain the overall purpose at the start of the meeting, repeat motions periodically and again before they are voted on;
- (h) Encourage good listening;
- (i) Use polite questioning: Listen for ambiguities, missed points, generalizations, misunderstandings;
- (j) Re-direct and shift discussion from complaints and accusations to constructive channels, and encourage members who oppose something to propose a solution;
- (k) Summarize: From time to time, briefly repeating key points and concerns raised, and highlighting (in concise point form) apparent areas of agreement and disagreement; and
- (l) Facilitate closure and follow-up: Articulate the proposal being voted on, ensure that it is understood, then taking a vote on it, facilitate the assignment of follow-up duties, confirm that the secretary is able to record the decisions made.

**Registration of Interests or Licenses**

***First Nations Lands Register***

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- 6.19 An Interest or License in Cheam Reserve Lands created or granted after this Land Code comes into effect is void and unenforceable unless it is registered as required under this Land Code and Cheam Law.
- 6.20 Persons or entities involved in registering Interests or Licenses are responsible for ensuring the validity and accuracy of their documents. Neither Cheam, nor the Lands Governance Director or Cheam Lands Governance Office shall be responsible or liable for ensuring that a document which affects or purports to affect Cheam Reserve Lands:
- (a) Is validly made;
  - (b) Complies with Land Code;
  - (c) Should be Registered or recorded; or
  - (d) Will be accepted for Registration or recording.

***Council Consent Must be Registered***

- 6.21 No document in relation to this Land Code that requires the consent of Council by Cheam Council Resolution can be validly registered unless the Council Resolution approving it, or a certified copy of the Council Resolution, is attached to the document.

***Duty to Deposit***

- 6.22 Every Person who receives a grant of an Interest or License in Cheam Reserve Lands will register an original copy of the document granting that Interests or License.
- 6.23 Council will direct the Lands Governance Director to ensure that a copy of the following documents is submitted for registration, provided the Lands Governance Director receives a copy and any required fees or authorizations:
- (a) A grant of an Interest or License in Cheam Reserve Lands;
  - (b) A transfer or assignment of an Interest or License in Cheam Reserve Lands;
  - (c) A Land Use Plan or subdivision plan; and
  - (d) This Land Code and any amendments to this Land Code.

***Unofficial Duplicate Cheam Lands Registry***

- 6.25 The Council may direct the Lands Governance Director to maintain an unofficial duplicate Cheam Land Register in the same form and with same content as the First Nations Land Registry but any such unofficial duplicate registry has no legal status or authority.

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**SECTION 7 PROTECTION OF LAND****Expropriation by Cheam*****Rights and Interests or Licenses that May Be Expropriated***

7.1 An Interest or License in Cheam Reserve Lands or in any building or other structure on Cheam Reserve Lands may be expropriated by Cheam in accordance with the Framework Agreement and a Law enacted under this Land Code.

***Community Purpose***

7.2 An expropriation may be made only for a Community Purpose.

***Process and Limits on Expropriation***

7.3 Council may only expropriate an Interest or License in Cheam Reserve Lands:

- (a) For a Community Purpose;
- (b) After Council has notified all holders of legal Interests or Licenses of Cheam's needs for the land or Interests or Licenses and of the proposed use;
- (c) After Council has made good faith efforts to try and acquire the Interest or License through negotiations;
- (d) If no other similar and suitable land is reasonably available;
- (e) In the smallest amount of land and for the shortest period of time necessary to reasonably meet the need for which the land or Interest is required by Cheam;
- (f) After a Special Membership Meeting to identify whether the proposed use is sufficiently compelling to justify expropriation;
- (g) After Cheam has paid fair market value or provided fair and reasonable replacement compensation for the expropriation; and
- (h) After all of the other relevant requirements set out in the Land Code or Cheam Law have been followed.

***Expropriation Law***

7.4 Prior to undertaking any expropriation, Council will enact a Law, which is consistent section 17 of the Framework Agreement in respect of rights and procedures for expropriation including provisions in respect of:

- (a) Taking possession of an expropriated Interest or License;

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- (b) Notice of expropriation;
- (c) Service of a notice of expropriation;
- (d) Entitlement to compensation;
- (e) Determination of the amount of compensation; and
- (f) The method of payment of compensation.

### ***Rights That Cannot Be Expropriated***

7.5 Council cannot expropriate:

- (a) An Interest or License of Her Majesty the Queen in Right of Canada, or
- (b) An Interest or License previously expropriated under Section 35 of the *Indian Act*.

### ***Calculating Compensation***

7.6 The total value of compensation payable under this Part will be based on the following factors and in accordance with the heads of compensation set out in the federal *Expropriation Act*:

- (a) The fair market value of the Interest or License being expropriated;
- (b) The damage attributable to any disturbance; and
- (c) Damages for reduction in the value of any remaining Interests or License.

### ***Fair Market Value***

7.7 The Fair Market Value of an expropriated Interest or License is equivalent to the amount that would have been paid for the Interest or License if it had been sold on Cheam Reserve Lands, with all of the rights, limits and restrictions that apply to Interests or Licenses and transactions on Cheam Reserve Lands, by a willing seller to a willing buyer.

### ***Neutral Evaluation to Resolve Disputes***

7.8 Subject to Section 7.10, the resolution of a dispute concerning an expropriation involving Canada will be determined by neutral evaluation as provided in Part IX of the Framework Agreement.

7.9 The 60-day period referred to in subsection 32.6 of the Framework Agreement will be applied as appropriate in the circumstances, by the neutral evaluator.

### ***Arbitration to Resolve Disputes***

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7.10 Subject to any more detailed provisions set out in a Cheam Expropriation Law, resolution of the following disputes in relation to an expropriation by Cheam will be determined by arbitration in the same manner as provided in Part IX of the Framework Agreement:

- (a) A dispute about the right to compensation for the holder of an expropriated Interest or License; and
- (b) A dispute about the amount of compensation owed for an expropriation.

## **Voluntary Land Exchange**

### ***Conditions for a Land Exchange***

7.11 Cheam may, by agreement with another party, exchange Cheam Reserve Land for land from that other party in accordance with this Land Code and the Framework Agreement.

### ***No Effects Unless Ratified***

7.12 A land exchange is of no force and effect unless it receives approval by a Ratification Vote.

### ***Conditions of Lands to be Received***

7.13 A proposed Land Exchange cannot proceed to Ratification Vote unless the land to be received by Cheam is:

- (a) Of equal or greater area than the Cheam Reserve Land to be exchanged;
- (b) Of a value comparable to the appraised value of the Cheam Reserve Land to be exchanged; and
- (c) Eligible to become a reserve under the *Indian Act* and to become Cheam Land in accordance with this Land Code.

### ***Negotiators must be Designated by Resolution***

7.14 A Person can only negotiate a Land Exchange Agreement on behalf of Cheam if they are designated by Council Resolution for that specific negotiation.

### ***Additional Compensation***

7.15 Cheam may accept additional compensation, including money or other land, in addition to the exchange land referred to in Section 7.13.

7.16 Other land accepted under Section 7.15 may be held by Cheam in fee simple or otherwise.

### ***Federal Consent***

7.17 Before Cheam completes a land exchange, it must receive a written statement from Canada stating that Her Majesty in Right of Canada:

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- (a) Consents to set apart as a Reserve subject to this Land Code the land to be received in the Land Exchange, as of the date of the Land Exchange or such later date as Council may specify by Council Resolution; and
- (b) Consents to the manner and form the land exchange as set out in the Land Exchange Agreement.

### ***Information to Members***

7.18 At such time as negotiations of a land exchange agreement are concluded, and at least 30 days before the Ratification Vote set out in Section 7.12, Council will provide the following information to Members:

- (a) A description of the Cheam Reserve Land to be exchanged;
- (b) A description of the land to be received by Cheam;
- (c) A description of any additional compensation to be received by Cheam;
- (d) A report from a certified land appraiser stating that the conditions set out in sections 7.13(a) and (b) have been met;
- (e) A copy of the Land Exchange Agreement; and
- (f) A copy of the statement referred to in Section 7.17

### ***Process for Land Exchange***

7.19 A land exchange agreement will provide that:

- (a) The other Party to the exchange will transfer to Canada the title to the land that is to be set apart as Reserve;
- (b) Council will pass a Council Resolution authorizing Canada to transfer title to the Cheam Reserve Land being exchanged, in accordance with the land exchange agreement; and
- (c) A copy of the documents transferring title to the land will be registered.

7.20 Despite the voluntary transfer and expropriation provisions in this Part, nothing in this Land Code prevents a Member with an Allotment or CP from transferring all or a portion of their Interests or Licenses in land to Cheam for fair market value or other agreed upon compensation and such transfers do not require community consultation or Ratification Vote.

## **SECTION 8 CONFLICT OF INTERESTS**

### **Conflict of Interests**

#### ***Application of Rules***

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8.1 Section 8.2 applies to:

- (a) A member of Council who is dealing with a matter before Council that is related to Cheam Reserve Lands;
- (b) An employee of Cheam dealing with a matter that is related to Cheam Reserve Lands; and
- (c) A member of a Cheam board, Committee or other body dealing with a matter that is related to Cheam Reserve Lands.

***Duty to Report an Abstain***

8.2 If there is any financial or proprietary Interests in a matter being dealt with that might involve an individual referred to in Section 8.1, the individual's Immediate Family or a business in which the individual holds an interest, that individual will:

- (a) Disclose in writing the interests to Council, their employment supervisor, the board, the Committee, or the other relevant body;
- (b) Take no part in deliberations or discussions on the matter; and
- (c) Take no part in any votes, decisions or recommendations on the matter.

***Common Interests Not a Conflict***

8.3 Section 8.2 does not apply to an interest that is held by a Member in common with every other Member. For example, an individual is not in conflict if a proposed decision will benefit that Member in the same way it will benefit all Members.

***Council May Refer Matter to Meeting of Members***

8.4 If Council is unable to vote on a proposed Law or Council Resolution due to one or more conflicts of interest, Council may refer the matter to a Special Membership Meeting to be decided by a Ratification Vote.

***Committee May Refer Matter to Council***

8.5 If a board, committee or other body is unable to make a decision or recommendation due to one or more conflicts of interest, the board, committee or other body will refer the matter to Council for a final decision.

***Disputes***

8.6 Any Person may refer a matter to the Adjudicator to determine if there has been a breach of the conflict of interest provisions in this Part.

***Penalty***

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- 8.7 In addition to any other penalty that may be prescribed by Council or by Law for breach of this Section, an individual is liable to Cheam for any benefit to himself, an Immediate Family member or a business in which that individual holds an interest resulting from a violation of this Section.

## **SECTION 9 INTERESTS IN LAND**

### **Limits on Interests**

#### ***Dispositions Must be in Writing***

- 9.1 An Interest or License may only be created, granted, disposed of, assigned, or transferred by a document issued and registered in accordance with this Land Code.

#### ***Standards***

- 9.2 Council may, after full and fair consideration of any recommendation made by the Committee, establish mandatory standards, criteria and forms for Interests or Licenses.

#### ***Improper Transactions Void***

- 9.3 A document by which Cheam, a Member or any other Person purports to create, grant, dispose of, assign, or transfer an Interest or License after the date the Land Code comes into effect is void if it contravenes this Land Code or a law passed under the Land Code.

#### ***Non-Members***

- 9.4 Subject to this Land Code, a Person who is not a Member may hold an Interest or License in Cheam Reserve Lands but a non-Member may never hold an Allotment or a CP.

#### ***Ceasing to be a Member***

- 9.5 A Person who ceases to be a Member shall within six months of ceasing to be a Member transfer any Allotment or CP they hold to Cheam or another Member.
- 9.6 Where a Member does not transfer their Allotment or CP in accordance with section 9.5, the Allotment and any CP issued shall, six months and one day after the Person ceases to be a Member, be cancelled and the Cheam Reserve Lands described in the Allotment or CP shall automatically become Cheam Community Reserve Lands.
- 9.7 Where an Allotment reverts to Cheam under Section 9.6, the Person ceasing to be a Member shall remain liable for any obligations or liabilities, including environmental liabilities, or any monies owing pursuant to any Interests they held prior to the date the Allotment or CP reverts to Cheam.

### **Natural Resources**

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- 9.8 Subject to applicable law, all Natural Resources on Cheam Reserve Lands belong to Cheam.
- 9.9 The use and development of Natural Resources on or under Cheam Reserve Lands will be subject to this Land Code and all Cheam Laws and Land Use Plans.
- 9.10 Subject to Sections 9.8 and 9.9, unless specifically excluded by the document granting any new Allotment of Cheam Reserve Lands, the Allotment includes all Natural Resources on or under that land to the extent they are under Cheam jurisdiction.

## Existing Interests or Licenses

### *Continuation of Existing Interests or Licenses*

- 9.11 An Interest or License that is legally in effect when this Land Code comes into effect will, subject to this Land Code, continue in force in accordance with the terms and conditions of that Interests.
- 9.12 All existing Interests or Licenses will be subject to the terms and conditions set out in this Land Code and to any relevant Laws, Land Use Plans or regulations passed into relation to this Land Code. For greater certainty, Cheam is not liable for any decrease in value or use of an Interest or License arising in relation to a Law, Land Use Plan, or regulation duly passed under in relation to this Land Code.
- 9.13 Council may by Council Resolution, upon receiving compelling evidence or subject to an applicable ruling under Section 9 or by a court of competent jurisdiction, confirm, cancel, discharge, amend or correct any Interests or License issued or allotted in error or by fraud or that has expired.

## New Interests or Licenses

### *Authority to Make Dispositions*

- 9.14 Council may grant, in accordance with this Land Code:
- (a) Subject to subsection 4.8, Interests or Licenses;
  - (b) Permits and Licenses to carry out activities or occupy or take Natural Resources from Cheam Reserve Lands;
  - (c) Certificates or other documentation to confirm ownership or another type of Interests in a home, structure or Interests;
  - (d) Life Estates in Interests in Cheam Reserve Lands;
  - (e) Permits, Easements, statutory rights-of-way and any Interests or License for utilities for Cheam Reserve Lands;
  - (f) Consent for mortgages; and

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- (g) With the written consent from a CP-holder, Interests or Licenses in CP lands including Permits or Licenses to occupy or take Natural Resources from CP lands.

### ***Conditional Grant***

- 9.15 In addition to subsection 9.14 above, Council may attach specific conditions to the grant of an Interest or License but any such conditions must be set out in writing in the granting of the Interests or License.

### ***No Development without Permits or Authorization***

- 9.16 Subject to any Law with more specific provisions, all of the following are prohibited without a Permit or authorization from Cheam:
- (a) Subdivision,
  - (b) Stratification or other division of legal Interests in lands or structures into strata units, sub-leases or shares,
  - (c) Development of any kind,
  - (d) Installation of roads, intersections, rip-rapping, erosion control, dyking, sewer, water, and other infrastructure,
  - (e) Construction, alteration, renovation, enlargement, addition, demolition or removal of industrial, commercial or residential structures, including the installation, demolition or removal of signs, swimming pools and decks,
  - (f) Anything that puts structures or people at risk within the flood plain or increases flood risks;
  - (g) Anything that takes place in or within 30m of a water body or fish habitat;
  - (h) Deposit or removal of more than 10 m<sup>3</sup> (approximately one dump truck load) of clean, non-polluted soil, gravel or other materials per year per parcel of land; and
  - (i) Cutting, removal or alteration of any tree.

### **Allotments and CPs**

- 9.17 Subject to this Land Code and any relevant Cheam Laws, Land Use Plans, regulations and policies approved by Council Resolution, Council may grant an Allotment to a Member for residential use by Council Resolution; and for greater certainty, an Allotment duly issued under this Land Code and confirmed by certificate or other document, has at least the same legal force and effect and content as a Certificate of Possession issued by the Minister under the *Indian Act*.
- 9.18 Any Law or Policy relating to Allotments for residential use and any decision to grant an Allotment for residential use shall include:

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- (a) A maximum lot size which shall not be greater than half an acre;
- (b) A fair process to ensure that members who do not yet have an Allotment or CP have an opportunity to apply for one; and
- (c) An assessment of whether hook-up, servicing, or other fees are required to cover or offset expenses incurred by Cheam in acquiring or developing the lot.

9.19 Despite any other provision of this Land Code, a Person who is not a Member cannot hold an Allotment or CP in Cheam Reserve Lands.

#### **Creation of Sub-Interests in Allotted Cheam Reserve Lands**

9.20 A Member or Members holding an Allotment or CP in Cheam Reserve Lands may request Council to grant, transfer, devise, or transfer or grant by way of a Spousal Real Property agreement, an Interest or License in those lands by a written document registered in the Registry provided that:

- (a) The Member or Members receive the consent of Council by a Council Resolution;
- (b) The Member or Members are the sole lawful possessor of the Allotment or that any other Member who jointly holds the Allotment or CP states in writing that they do not oppose the transaction;
- (c) There is a proper legal description of the lands, and if required, the lands, License or Interest have been surveyed and the survey registered or recorded in the Registry;
- (d) The Member receives a letter from the Lands Governance Director or, if required by Law or regulation, a Council Resolution, stating that the transaction and Interest or License complies with this Land Code and all Cheam Laws, Land Use Plans and bylaws; and
- (e) The Member states in writing that the transaction and the documents and agreements relating to it will not violate any agreement with a Person who has, or will have, an Interest or License in the lands affected, or any portion thereof or the Member has obtained the written consent of the other Interest or License holder or holders.

9.21 Unless specified in the grant, transfer, Spousal Real Property Agreement or testamentary disposition creating the Life Estate, a Life Estate does not create any rights to:

- (a) Natural Resources;
- (b) Create or transfer any sub-interests; or
- (c) To receive rents or other revenues from the home, Allotment or CP.

9.22 A Member requesting a grant of a Leasehold, Life Estate, Easement, Permit or License under Section 9.19 may request that the sub-Interests be granted to himself or herself in the same manner as to another Person.

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- 9.23 A Person holding a Leasehold in Cheam may grant a Sub-Lease, Easement, Permit or License in those lands by a written document registered in the Registry provided that:
- (a) The Person receive the consent of Council by a Council Resolution;
  - (b) The grant complies with the Land Code and all Cheam Laws and bylaws;
  - (c) The grant is permitted by the terms of the Lease;
  - (d) There is a proper legal description of the lands, and if required, the lands have been surveyed and they survey registered or recorded in the Natural Resources Canada; and
  - (e) The term of the Interest or License granted does not exceed the duration of the Leasehold.
- 9.24 The granting of Leasehold does not grant any interests in the Natural Resources on or under the lands described in the Lease unless specifically included in the terms and conditions of the Lease.
- 9.25 For transactions under this Section,
- (a) Neither the Cheam Lands Governance Office nor the Lands Governance Director are obligated to undertake any investigations or due diligence and will not be responsible or liable for any breaches of those provisions for any representation or warranty made by the Person granting the Interest or License; and
  - (b) Without restricting the generality of (a) directly above, neither Cheam, the Cheam Lands Governance Office nor the Lands Governance Director shall be responsible for determining whether an Interest or License is in good standing or the terms have been complied with.

## Transfer and Assignment of Interests or Licenses

### *Transfer of Interests or Licenses*

- 9.26 A Member holding an Allotment or CP may sell or transfer that Allotment or CP to another Member provided that:
- (a) The Member receives confirmation from Council or the Lands Governance Director that the proposed transferee is a Member;
  - (b) The Member applies to the Lands Governance Director for a parcel abstract report and a list of any known outstanding issues relating to the Allotment or CP;
  - (c) There are no outstanding housing arrears, mortgage guarantees or other debts owing to, or guaranteed by, Cheam in relation to the land or home;
  - (d) The Member makes reasonable efforts to resolve outstanding issues relating to the Allotment or CP; and

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(e) The sale or transfer is registered.

- 9.27 Where an Allotment is transferred or reverts to Cheam other than in relation to specific terms set out in the granting of a Mortgage, the Allotment and any CP issued are automatically cancelled and the lands described in the Allotment become Cheam Reserve Lands.
- 9.28 Subject to this Section, a Person holding an Interest or License other than an Allotment in Cheam Reserve Lands may transfer, assign or devise their Interest or License to any Person or entity by a written document provided the transaction complies with this Land Code and any Laws and is duly registered.

## Mortgages and Limits on Mortgages and Seizures

### *Protections*

- 9.29 In accordance with the Framework Agreement, sections 29, 87, 89(1) and 89(2) of the *Indian Act* continue to apply on Cheam Reserve Lands but section 89 is modified as set out below.

### *Mortgage of Interests*

- 9.30 A Member may apply for a mortgage of a Lease to himself or herself under Section 9.22, provided the Member complies with any requirements set out in Cheam Law.
- 9.31 Subject to this Land Code and complying with any requirements set out in Cheam Law, the holder of an Allotment, CP or Leasehold may, in accordance with this Section grant a Mortgage of that Interests by Registered document in the First Nation Lands Register provided that:
- (a) The land is the sole lawful possession of the Member granting the Mortgage, or the Leaseholder granting the Mortgage holds the entire legal and beneficial Interests in the Leasehold or receives written consent from any other holders;
  - (b) The granting of the Mortgage and the terms of the Mortgage are permitted by the provisions of the Allotment, CP or Lease;
  - (c) There is a proper legal description of lands that are to be subject to the Mortgage and, if required, the lands have been surveyed and the survey registered; and
  - (d) In the case of a Mortgage of a Leasehold, the Mortgage term does not exceed the duration of the Leasehold.
- 9.32 A Leasehold in Cheam Reserve Lands, including Allotted Lands, that is held by an Indian as that term is defined in the *Indian Act*, is subject to charge, pledge, mortgage, attachment, levy, seizure, distress, and execution, and the mortgagee has all the same legal and equitable rights in would have had if the Leasehold were held by a non-Indian and, for greater certainty, the mortgagee has a right of access onto Cheam Reserve Lands and onto the leasehold lands if necessary to deal with seizure, forfeiture or any related matter.

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9.33 Neither Cheam, the Cheam Lands Governance Office, nor the Cheam Lands Governance Director shall be responsible or liable for ensuring that Lease permits the Interests in the land to be mortgaged or that the Lease is in good standing or its terms have been complied with.

***Power of Redemption***

9.34 If Council exercises Cheam's power of redemption with respect to Leasehold Interests, Cheam becomes the lessee of the land and takes the position of the charger or Mortgagor for all purposes after the date of redemption.

**Residency and Access; Trespass**

***No Financial Obligations***

9.35 A right of residence or access to Cheam Reserve Lands does not create any financial obligation on the Part of Cheam.

***Trespass***

9.36 Subject to any Cheam Laws, any Person who resides on, enters, remains on, or solicits on Cheam Reserve Lands other than in accordance with a residence or access right under this Land Code or a Law or legally valid Interests or agreement is guilty of an offence, punishable by summary conviction or in accordance with Cheam Laws, and may be immediately evicted from Cheam Reserve Lands.

9.37 Subject to any Laws or bylaws, all civil remedies for trespass are preserved.

***No Liability***

9.38 No liability is imposed upon Cheam in respect of any Person exercising a right of residency or access under this Land Code for injuries or damages suffered on account of the condition or state of Cheam Reserve Lands.

**Transfer or Death or Mental Incompetence**

9.39 In making any decision on its merits under this Section, Council shall consider:

- (a) All input, requests or recommendations from Immediate Family Members and the Committee;
- (b) Any outstanding loans or financial obligations in relation to the Interests or Licenses in the lands in question and may give priority to the arrangement that is most likely to result in ensuring these loans or financial obligations are paid out; and
- (c) All other relevant information.

***Right of Widow or Widower***

9.40 In the event that:

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- (a) A Member holding an Interest in Cheam Reserve Lands dies intestate and is survived by a Spouse or dependent who does not hold a registered Interests in that land; or
- (b) A Member holding an Interest in Cheam Reserve Lands is declared incompetent due to mental incapacity,

subject to any order or the Minister or a court, the Member's Spouse and/or dependents may, where their usual place of residence was with the Member at the time of the Member's death or declaration of incompetence, continue to reside on and use the land until the Member's Interests is disposed of under this Part.

- 9.41 A Spouse or dependent referred to in subsection 9.40, whether or not their usual place of residence was with the Member at the time of the Member's death or declaration of incompetence, may make application for transfer of the Member's Interests, and Council will, subject to this Land Code, evaluate the application on its merits and make a recommendation to the Minister.

#### ***Notification***

- 9.42 Pursuant to the Land Code, in the event that;

- (a) No other provision has been made by a Member referred to in subsection 9.40 for the disposition of the Interests in Cheam Reserve Lands;
- (b) The Member's Spouse or dependent does not within 3 months make application under subsection 9.41; or
- (c) A member of the Member's Immediate Family disputes the continued residence on and use of the land by the Member's Spouse or dependent,

Council or the Lands Governance Manager shall take reasonable steps to advise other Members of the Member's Immediate Family that the land held by the Member is available for disposition or is in dispute.

#### ***Optional Meeting of Members or Committee***

- 9.43 If a Member's Immediate Family does not within 3 months after the date of a Member's death or declaration of incompetence under section 9.40 recommend who is to receive the Interests, Council may refer the matter to the Committee or call a Meeting of Members to provide advice on the disposition of the Interests.

#### ***Land Goes to Cheam if No Immediate Family***

- 9.44 Subject to the *Act* and the *Indian Act*, if no Immediate Family members are interested and eligible to take the Interests in the Land within 4 months of a death or declaration of mental incapacity under subsection 9.40, Council will pass a Council Resolution to transfer the Interests in the Land to Cheam and, if the Interests is an Allotment or a CP, the Land will become Community Lands.

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***If Competing Members, Council Makes Recommendation***

9.45 If there is more than one Immediate Family member Interested and eligible to take the Interests in the Land arising from section 9.40, Council will, after taking into account any information received under section 9.43, recommend to the Minister on the merits who should receive the Interests.

***Council May Comment on Outstanding Debts***

9.46 In making a recommendation under section 9.45, Council may include recommendations or comments on dealing with any outstanding debts or liabilities relating to the Interests to be transferred.

***Council to Make Best Efforts to Influence Minister***

9.47 Council will make best efforts to influence the Minister to implement recommendations made under this section.

**Spousal Property Law*****Development of Rules and Procedures***

9.47 Within twelve months after the date this Land Code comes into effect Council will enact a Spousal Property Law providing rules and procedures applicable on the breakdown of a marriage to:

- (a) The use, occupancy and possession of Cheam Reserve Lands; and
- (b) The division of Interests or Licenses in that land.

***Enactment of Rules and Procedures***

9.48 For greater certainty, the rules and procedures contained in the Spousal Property Law will be developed in consultation with the Members and the Committee.

***General Principles***

9.49 The rules and procedures developed under Section 9.48 will take into account the following general principles:

- (a) Regard for the best Interests of any Child or children of the marriage;
- (b) The distinction between Members and Non-Members for the purpose of determining what Interests or Licenses in Cheam Reserve Lands may be held by an Individual; and
- (c) The rules and procedures will not discriminate on the basis of gender.

***Interim Law*****VERIFIED**

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- 9.50 Council may enact an interim Spousal Property Law at any time within the twelve-month period set out in Section 9.47.
- 9.51 An interim law enacted under Section 9.50 will be deemed to be repealed twelve months after the coming into force of this Land Code but may be re-enacted in whole or as amended, in accordance with Section 9.48-9.49.

## **SECTION 10 DISPUTE RESOLUTION**

### **Adjudicator of Disputes**

#### *Informal Resolution of Disputes*

- 10.1 Cheam intends that whenever possible, to settle a dispute in relation to Cheam Reserve Lands, that is not resolved by informal discussions by the parties the dispute, the parties seek to resolve the dispute through voluntary participation of the parties in a tribal or alternate justice forum.

#### *Adjudicator Established*

- 10.2 The Office of the Adjudicator is hereby established to hear and resolve disputes in relation to Cheam Reserve Lands in accordance with this Land Code and relevant to Cheam Laws and Policies.
- 10.3 The Adjudicator will be a Barrister and Solicitor and a Member of the British Columbia bar who is independent of the Parties to a dispute and to other Interests or Licenses in the dispute.

### **Dispute Resolution Procedure**

#### *Disputes*

- 10.4 The Parties to a dispute in relation to Cheam Reserve Lands, after demonstrating they have made efforts to resolve the dispute under section 10.1, and providing any application information and fees set out in Cheam Law, may notify Council and request in writing that they wish to refer the dispute to the Adjudicator for resolution.

#### *Prior Disputes*

- 10.5 Disputes in relation to Cheam Reserve Lands that originated before this Land Code comes into effect may be referred to the Adjudicator in accordance with this Part and any applicable Cheam Law or policy.

#### *Council to Appoint*

- 10.6 Council will appoint the Adjudicator within thirty (30) consecutive days of a request under section 10.4 to settle any dispute.

#### *Optional Process*

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- 10.7 Referral of a dispute to the Adjudicator is optional and all other civil remedies continue to be available to all Parties to the dispute.

### ***Application Procedure***

- 10.8 Referral of a dispute to the Adjudicator will be made in accordance with procedures established by Council by Resolution in consultation with the Committee.

### **Limitation Period**

- 10.9 Unless otherwise determined by a Cheam Law, a Council Resolution or a court ruling, the limitation period for referring a dispute to the Adjudicator is:
- (a) Ninety (90) days after the day of the decision, act or omission that is the subject of the dispute occurred;
  - (b) In the case of a dispute under section 9.39 (transfer on death or mental incompetence), twelve months after the date of the final decision of Council under that section; and
  - (c) In the case of historic grievances not involving Indigenous and Northern Affairs Canada, within twelve months of the effective date of this Land Code.

### ***Duty to Act Impartially***

- 10.10 The Adjudicator will act impartially and without bias or favour to any party in a dispute.

### ***Offence***

- 10.11 It is an offence for a Person to act, or attempt to act, in an improper way to influence the decision of the Adjudicator.

### ***Rejection of Application***

- 10.12 The Adjudicator may refuse to hear or decide an application:
- (a) Regardless of whether a Person has been found to have committed an offence under section 10.11, the Adjudicator reasonably concludes that the applicant acted, or attempted to act, in a way to improperly influence the Adjudicator's decision; or
  - (b) One or more of the Parties refuse to accept the Adjudicator's proposal to retain professionals who are, in the reasonable opinion of the Adjudicator, required to resolve the dispute.

### **Powers of the Adjudicator**

#### ***Power of the Adjudicator***

- 10.13 The Adjudicator may, after hearing a dispute:
- (a) Rescind or cancel a decision in dispute;

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- (b) Clarify the facts or make observations on interpretation matters or the rights of or potential rights of any party in the dispute;
- (c) Refer the matter or dispute back to the decision-maker for reconsideration; or
- (d) Refer the matter to a tribal, alternative justice or other forum.

10.14 The Adjudicator has the authority to order one, both, or all of the Parties to pay some or all of the costs of the adjudication process, including but not limited to the costs of the Adjudicator and any professionals retained, taking into account:

- (a) The reasonableness of the Parties in their positions;
- (b) The conduct of the Parties;
- (c) The result of the adjudication;
- (d) The use of professional services; and
- (e) Any other relevant factor.

10.15 An order or ruling from an Adjudicator may be entered into court and enforced through the court.

## **Adjudication Procedures**

### ***Rules of Adjudicator***

10.16 The Adjudicator may, consistent with this Land Code and any Cheam Laws, establish rules for procedure at its hearings and for the general conduct of proceedings.

### ***Professional Services***

10.17 Prior to retaining the services of any professionals to assist in fulfilling his or her functions, the Adjudicator will notify the Parties to the dispute of the proposed professionals and their estimated services and costs.

10.18 Upon agreement of the Parties, the Adjudicator may retain the services of professionals to assist in fulfilling his or her functions, in which case they will make best efforts to use professional services available in the community who do not have a conflict of Interests.

### ***Decisions***

10.19 The Adjudicator will give written reasons for a decision and will sign the written reasons.

10.20 Subject to section 10.21 (Appeal of Decision), a decision of the Adjudicator is binding.

### ***Appeal of Decision***

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10.21 Subject to any exception established by Law, a decision of the Adjudicator may be appealed to a court of competent jurisdiction.

### **Costs**

10.22 Unless otherwise ordered by the Adjudicator or an appellate court, the Parties to a dispute will bear their own cost and an equal share of the costs of the adjudication process.

10.23 For greater certainty, Cheam will not be liable or responsible for the costs of any dispute resolution process where Cheam is not a Party.

### **Alternate Forums**

10.24 Nothing in this Section precludes Council or the Committee from establishing additional processes for resolving disputes under this Section, which process may include facilitated discussion, mediation, arbitration, or referral to a tribal or other forum.

## **SECTION 11 OTHER MATTERS**

### **Liability**

11.1 Cheam is not liable for anything done or omitted to be done by Canada or any Person or body authorized by Canada in the exercise of any federal rights, powers or responsibilities prior to the date this Land Code comes into force.

11.2 This Land Code is not, nor shall it be interpreted as being, a waiver by Cheam in regard to any liabilities, acts, or omissions of Canada.

11.3 Council will arrange for, maintain, and pay insurance coverage for:

(a) Liability of Cheam in relation to Cheam Reserve Lands and assets; and

(b) Personal liability of Cheam Lands Governance office employees, officers or Committee members for acts done in good faith while engaged in carrying out duties related to Cheam Reserve Lands under this Land Code.

### **Extent of Coverage**

11.4 Council will determine the extent of insurance coverage reasonably required under section 11.3

### **Offences and Enforcement**

#### ***Application of the Criminal Code***

11.5 Unless otherwise provided by a Law, the summary conviction procedures or Section XXVII of the *Criminal Code* apply to offences under this Land Code and offences under a Law.

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**11.6** Despite paragraph 11.5:

- (a) A Law may provide for fines consistent with federal law, including fines of up to \$100,000 for violations for specified provisions of the Law;
- (b) A Law relating to environmental protection may include punishments at least equivalent in their effect to any standards established and punishments imposed by laws of the Province of British Columbia; and
- (c) A Law may provide for a variety of enforcement mechanisms including ticketing, stop work orders, administrative penalties, restorative orders, and fines.

***Enforcement***

- 11.7 Council may enact any enforcement Law or procedures authorized under the Act or the Framework Agreement including any provisions consistent with federal law for inspections, searches, seizures and compulsory sampling, testing and the production of information.
- 11.8 Council may enact Laws respecting appointment of justices of the peace for the enforcement of this Land Code and Laws.
- 11.9 If no justice of the peace is appointed, this Land Code and Laws are to be enforced by a Court of competent jurisdiction.
- 11.10 Council may enact Laws or develop policies to enable appropriate enforcement issues and disputes to be dealt with through Qwí:qwelstóm or other relevant tribal or community justice process.
- 11.11 Council may enact Laws to create ticketing processes or similar enforcement mechanisms or to incorporate such processes or enforcement mechanisms from provincial or local government sources.

**Revisions to Land Code**

- 11.12 A ratification vote is not required for revisions made to this Land Code that do not change the substance. Council may, from time to time, arrange and revise this Land Code. Revisions may be made as a result of, but are not limited to:
  - (a) An amendment of the description of Cheam First Nation Land subject to the Land Code and Individual Agreement;
  - (b) A reference in this Land Code to a clause in another Act, Law or document that was amended and resulted in clause renumbering;
  - (c) A reference in this Land Code to an Act or Law or parts thereof that have expired, have been repealed or suspended;

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- (d) Changes in this Land Code as are required to reconcile seeming inconsistencies with other Acts or Laws;
- (e) Minor improvements in the language as may be required to bring out more clearly the intention of the Cheam First Nation without changing the substance of the Land Code; and
- (f) Correct editing, grammatical or typographical errors.

### Severability

11.18 If any provision is determined by a court of competent jurisdiction to be illegal or unenforceable, that provision will be considered separate and severable, and the legality or enforceability of the remaining provisions will not be affected by that determination.

### Commencement

#### **Ratification**

11.19 This Land Code will be ratified if:

- (a) The eligible voters approve this Land Code and the Individual Agreement with Canada by Ratification Vote held in accordance with the Cheam First Nation Community Ratification Process dated for reference January 7, 2016; and
- (b) This Land Code has been certified by the Verifier pursuant to the Framework Agreement.

#### ***Effective Date***

11.21 This Land Code will come into effect on the later of:

- (a) The first day of the month following certification of this Land Code by the Verifier, provided the Individual Agreement has been executed on behalf of Canada; or
- (b) The date the Individual Agreement is executed on behalf of Canada.

**VERIFIED**

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