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TEMAGAMI FIRST NATION Land Code

Final Draft

ABSTRACT

Temagami First Nation Land Code is pursuant to Framework Agreement & the First Nation Land Management Act

Last Updated:
March 16, 2017

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TEMAGAMI FIRST NATION LAND CODE

PREAMBLE

WHEREAS the Temagami First Nation Members are Temagami Anishnabai people and have occupied n'Daki Menan (Our Land) since time immemorial and have inherent rights to self-determination within our homelands and the responsibility to protect and manage the lands and resources of n'Daki Menan.

And WHEREAS on February 12, 1996, fourteen First Nations and Canada concluded a government to government *Framework Agreement on First Nation Land Management*. On December 12, 2013 the Temagami First Nation entered into the *Framework Agreement on First Nation Land Management* with Canada.

And WHEREAS the Temagami First Nation has the option of withdrawing its reserve lands from the land provisions of the *Indian Act* in order to govern its Lands and resources, for the use and benefit of our Members;

And WHEREAS Canada ratified its commitment to the *Framework Agreement on First Nation Land Management* with the enactment of the *First Nations Land Management Act*, S.C. 1999, c.24;

And WHEREAS the *Framework Agreement on First Nation Land Management* acknowledges that Canada's special relationship with Temagami First Nation will continue, and that the Temagami First Nation Land Code does not change Aboriginal, Treaty, inherent rights or other rights and freedoms that pertain now or in the future to Temagami First Nation or its Members;

And WHEREAS the *Framework Agreement on First Nation Land Management* is ratified by Temagami First Nation through community approval of the Temagami First Nation Land Code;

NOW THEREFORE, this Land Code is hereby enacted as the fundamental Land Law of the Temagami First Nation.

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**PART 1
PRELIMINARY MATTERS**

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1. Title

Title of enactment

- 1.1 The title of this enactment is the Temagami First Nation Land Code.

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Vision and foundation

- 1.2 The principles set out in this Part and in the Preamble ^{AUG 25 2017} provide a vision and foundation to guide the social, economic, political and community development of the Temagami First Nation.

Clarification

- 1.3 Any words or terms used in this Land Code which are defined in the *Framework Agreement* shall have the same meaning as in the *Framework Agreement*, unless the context otherwise requires.

2. Definitions

Definitions

- 2.1 The following definitions apply in this Land Code:
- “Canada” and the “Crown” mean Her Majesty the Queen in Right of Canada;
- “Civil Remedies” means orders given by a Federal court of law to deal with disputes;
- “Common Law Relationship” means the relationship between two (2) persons who are cohabitating together in a conjugal relationship;

“Council” means the Chief, Second Chief and the Council of Temagami First Nation established, as per the Temagami First Nation Tribal Constitution enacted in 1978, or any successor elected leadership of Temagami First Nation;

“Dispute Resolution Panel” or “Panel” means the body that is established under PART 8 for the purpose of resolving disputes;

“Eligible Voter” means, for the purpose of voting in respect of Land matters under this Land Code, a Member who is at least eighteen (18) years of age on or before the day of the vote;

“Extended Family”, in respect of a person, means the person’s grandparents, uncle, aunt, first cousin, grandchild and/or other relation or relationship that Council may add by law;

“First Nation Lands Register” means the register established pursuant to clause 51 of the *Framework Agreement* and maintained by the Department of Indigenous and Northern Affairs Canada, or its successor under the *Framework Agreement*;

“*Framework Agreement*” means the *Framework Agreement on First Nation Land Management*, entered into between Canada and the signatory First Nations, on February 12, 1996, and amended to include Temagami First Nation on December 12, 2013;

“Immediate Relatives”, in respect of a person, means the person’s Spouse, child, sister, brother, and parents;

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“Individual Agreement” means the Agreement made between the Temagami First Nation and Canada in accordance with clause 6.1 of the *Framework Agreement*;

“Instrument” means a legal document in writing, duly signed and witnessed, which purports to affect or to create, grant, assign, transfer or encumber an interest in Temagami First Nation Lands;

“Interest” in relation to Temagami First Nation Land, means any Interest, right or estate of any nature in or to that Land, including a Member allotment, certificate of entitlement, lease, easement, right of way, servitude, or profit à prendre, but does not include title to that Land;

“Land” or “Temagami First Nation Land” means any portion of the Temagami Indian reserve Land that is subject to this Land Code;

“Land Code” means this Temagami First Nation Land Code, and sets out the basic provisions regarding the exercise of the Temagami First Nation’s rights and powers over its Land;

“Lands Committee” means the Lands Committee **CERTIFIED** established under Part 6 of this Land Code;

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“Land Law” means a law, including, but not limited to, policies, regulations, standards, restricted to Temagami First Nation Land, enacted in accordance with this Land Code;

“Land Use Plan” means a plan detailing the different types of Land usages such as zoning and Significant Sites within the Temagami First Nation Land;

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“Licence” in relation to Temagami First Nation Land, means the right of use or occupation of that Land, other than an Interest in that Land;

“Meeting of Members” means a meeting under PART 3 of this Land Code to which the Members are invited to attend;

“Member” means a person whose name appears on, or is entitled to appear on the Temagami First Nation Membership List;

“Riparian Rights” means the legal right of owners of land bordering on a river or other body of water, and any law that pertains to use of the water for that land;

“Resolution” means a Band Council Resolution (BCR) enacted under this Land Code;

“Significant Site” means a site set aside for protection that has been identified as a sacred site, a culturally significant site, a historical site, an environmental site and/or sensitive nature site;

“Spouse” means a person who is married to another, whether by a traditional customary, religious or civil ceremony, and includes a Spouse by Common-Law Relationship;

“Temagami First Nation” means the Temagami First Nation and its Members;

“Temagami First Nation Separate Lands Register” means the Land Register maintained by the First Nation under clause 30 of this Land Code; and

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“Verifier” means an independent third party appointed under the *Framework Agreement* and as approved by the Council, to oversee and ensure adherence to policies and procedures throughout the development, ratification and certification of the Temagami First Nation Land Code.

3. Interpretation

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Interpretation

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3.1 In this Land Code:

- (a) the word “shall” signifies 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”;
- (c) 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;
- (d) titles and headings have been inserted in the Land Code for convenience of reference only, and are not interpretive aids;
- (e) unless otherwise clear from the context, whenever the singular is used, it will include the plural, and the use of the plural includes the singular;
- (f) all references to a time period of days means consecutive days and not business days;

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- (g) where the time limited for the doing of an act expires or falls on a Saturday or Sunday, or a First Nation, federal or provincial holiday, the act may be done on the next day that is not a Saturday, Sunday or holiday;
- (h) where the time limited for the doing of an act in the Temagami First Nation administration building falls on a day when the office is not open, the act may be done on the next day that the office is open;
- (i) where there is a reference to a number of days or a number of days between two events, in calculating that number of days, the days on which the events happen are excluded; and
- (j) the principles set out in the Preamble to this Land Code may be used to interpret this Land Code.

Paramountcy

3.2 If there is an inconsistency or conflict between this Land Code and any other enactment of Temagami First Nation, including a by-law enacted under section 81 (Bylaws) of the *Indian Act*, this Land Code prevails to the extent of the inconsistency or conflict.

Consistency with the *Framework Agreement*

3.3 If there is an inconsistency or conflict between this Land Code and the *Framework Agreement*, the *Framework Agreement* will prevail to the extent of the inconsistency or conflict.

Rights not affected

3.4 This Land Code does not change:

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- (a) The by-law powers of Council pursuant to the *Indian Act*;
- (b) any Aboriginal, Treaty, inherent rights or other rights or freedoms that pertain now or in the future to the Temagami First Nation, its Members or the Teme-Augama Anishnabai; or
- (c) the fiduciary obligation of Canada to Temagami First Nation, its Members or the Teme- Augama Anishnabai.

Culture and traditions

- 3.5 The structures, organizations and procedures established by or under this Land Code shall be interpreted in accordance with the culture, traditions and customs of Temagami First Nation, unless otherwise provided.

Language

- 3.6 The language of the Temagami First Nation may be used to clarify the meaning of any provision in this Land Code, if the meaning of that provision is not clear in English.

Fair interpretation

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

Lands and interests affected

- 3.8 A reference to “Land” in this Land Code includes all the Interests and rights, as well as the resources that belong to that Land to the extent these are under the jurisdiction of Canada and are part of that Land, and includes:

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- (a) the water, beds underlying water, Riparian Rights, and renewable and non-renewable natural resources in and of that Land to the extent that these are under the jurisdiction of Canada; and
- (b) all the Interests and Licences granted by Canada listed in the Individual Agreement; and
- (c) all the Interest and Licences granted by Temagami First Nation after this Land Code comes into effect.

Eligible Reserve Land

3.9 Only Land that has reserve status is eligible to be governed under this Land Code.

4. Authority to Govern

Origin of authority

4.1 By enacting this Land Code, the Temagami First Nation can use the legal and administrative structure to assist in the special responsibility of governing its reserve Lands.

Flow of authority

4.2 The authority of the Temagami First Nation to govern its Lands and resources flows from the people of Temagami First Nation to Council according to the culture, traditions, customs and laws of the Temagami First Nation.

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5. Purpose

Purpose

- 5.1 The purpose of this Land Code is to set out the principles and administrative structures that apply to Temagami First Nation Land and by which Temagami First Nation will exercise authority over those Lands in accordance with the *Framework Agreement*.

6. Description of Temagami First Nation Land

Temagami First Nation Land

- 6.1 The Temagami First Nation Land that is subject to this Land Code is the Land known as Bear Island Indian Reserve #1.

Description of Land

- 6.2 Temagami First Nation Land includes all reserve Land listed in the Individual Agreement and such other Lands as may be described in the Individual Agreement as amended from time to time and as more particularly described as:

- (a) Bear Island Indian Reserve No. 1, District of Nipissing, all as shown on Plan 106071 CLSR recorded in the Canada Lands Survey Records at Ottawa; the herein described land containing 286 hectares (707 acres) more or less.

No Approval Required

- 6.3 For greater certainty, a vote by Members is not required for amending the description of reserve Land as outlined in clause 6.2 of this Land Code and the *Individual Agreement*, as amended from time to time. However, Member consultation is required.

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Land Exchange

- 6.4 For greater certainty, land acquired by voluntary land exchange is governed under clause 20 of this Land Code.

Inclusion of Land or Interest

- 6.5 Council may, by Resolution, declare Land or an Interest to be subject to this Land Code.

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PART 2
FIRST NATION LEGISLATION

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7. Land Law-Making Powers

Council may make Land Laws

- 7.1 Council may, in accordance with this Land Code, make Land Laws respecting:
- (a) the development, conservation, protection, management, use and possession of Temagami First Nation;
 - (b) Interests and Licences in relation to Temagami First Nation; and
 - (c) any matter necessary or ancillary to the making of Land Laws in relation to Temagami First Nation Land.

Examples of Land Laws

- 7.2 For greater certainty, Council may make Land Laws including but not limited to;
- (a) regulation, control and prohibition of zoning, Land use, subdivision control and Land development;

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- (b) creation, regulation and prohibition of Interests and Licences in relation to Temagami First Nation Land;
- (c) environmental assessment and protection;
- (d) provision of services for the resolution, outside the courts, of disputes in relation to Temagami First Nation Land;
- (e) enforcement of Temagami First Nation Land Laws;
- (f) provision of local services in relation to Temagami First Nation Land; and
- (g) Land Laws the Council deem necessary to maintain order and good governance within the Temagami First Nation relating to Temagami First Nation Land.

Regulatory Instruments

7.3 For greater certainty, in addition to Land Laws, Council may make other regulatory instruments, including, but not limited to, rules, regulations, standards, codes and policies to maintain order and good governance within Temagami First Nation.

8. Land Law-Making Procedure

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Introduction of Land Laws

8.1 A proposed Land Law may be introduced at a duly convened meeting of the Council by:

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- (a) the Chief or a Councillor;
- (b) the representative of the Lands Committee, or other body or authority composed of Members, that may be authorized by Council to do so; or

(c) any Member following protocol for addressing Council.

Procedure upon receipt of Land Law proposal

8.2 Upon receipt of a Land Law proposal, Council may:

- (a) table the Land Law proposal for further review or for enactment;
- (b) request that the proposer provide further information or attend before a future meeting of Council to speak to the Land Law proposal;
- (c) undertake or direct the preparation of a draft Land Law concerning matters raised in the Land Law proposal, for consideration by Council; or
- (d) decline the Land Law proposal.

Tabling and posting of proposed Land Laws

8.3 Before a proposed Land Law may be enacted by Council, it shall;

- (a) be presented at a duly convened meeting of the Council held at least (30) thirty days before the Land Law is to be voted on;
- (b) within a timeframe set by Council that reasonably reflects the complexity of the proposed Land Law, the Lands Committee shall prepare a report to Council on the proposed Land Law, which sets out:
 - (i) the history and /or rational behind the proposed Land Law;

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- (ii) any potential interaction between the proposed Land Law and any existing Land Law of the Temagami First Nation or other Land Law that has not yet been enacted but is in the process of research or development;
 - (iii) the Land Committee's recommendations to Council for the proposed Land Law; and
 - (iv) any other information requested by Council; and
- (c) it must be posted in public places on Temagami First Nation Land and distributed to Eligible Voters, at least thirty (30) days before the Land Law is to be voted on.

Emergency matters

8.4 Council may enact a Land Law without the preliminary steps required under clause 8.3 of this Land Code if Council is of the opinion that emergency measures are needed to protect Temagami First Nation Land or the health and safety of its Members. This Land Law expires one hundred and twenty (120) days after its enactment, unless re-enacted in accordance with clause 8.3 of this Land Code.

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Approval of Land Law

8.5 Subject to this Land Code, a Land Law is approved by a quorum of Council at a duly convened meeting of Council open to Members.

Certification of Land Laws

8.6 The original copy of any approved Land Law or Resolution concerning Temagami First Nation Land shall be signed by a quorum of the Council.

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Land Laws Taking Effect

8.7 A Land Law enacted by Council takes effect on the date of its enactment or such later date as specified by the Land Law.

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9. Publication of Land Laws

Publication

9.1 All Land Laws shall be published in the minutes of the Council.

Posting Land Laws

9.2 Within seven (7) days after a Land Law is enacted, Council shall:

- (a) post a copy of the Land Law in the administrative offices of Temagami First Nation; and
- (b) notify Members by means which are deemed to be appropriate by the Lands Committee and Council.

Registry of Land Laws

9.3 Council shall cause to be kept, at the administrative offices of the Temagami First Nation, a register of the original copy of all Land Laws and Resolutions, including Land Laws and Resolutions that have been repealed or are no longer in force.

Copies for any person

9.4 Any person may obtain a copy of a Land Law or Resolution on payment of a reasonable fee set by the Council, or a body designated by Council. Fees may be amended from time to time.

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10. Commencement of Land Laws

Land Laws taking Effect

- 10.1 A Land Law enacted by the Council takes effect on the date of its enactment or such later date as specified by the Land Law.

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11. Enforcement of Land Laws

Enforceability of Land Laws

- 11.1 Temagami First Nation shall have the power to enforce its Land Laws which may include:

- (a) establish comprehensive enforcement procedures consistent with federal law, including inspections, searches, seizures and compulsory sampling, testing and the production of information;
- (b) establish offences that are punishable on summary conviction; and
- (c) the provision of fines and/or imprisonment, restitution, community service, and alternate means for achieving compliance.

Prosecuting

- 11.2 For the purposes of prosecuting offences, Temagami First Nation shall follow one or more of the following options, including but not limited to:

- (a) retain its own prosecutor;
- (b) enter into an agreement with the government of the province of Ontario to arrange for a provincial prosecutor; or

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- (c) make laws with respect to the appointment of justices of the peace.

**PART 3
COMMUNITY INPUT AND APPROVALS**

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12. Participation of Members

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Participation of Members

- 12.1 Every Member is entitled to participate in the community consultation processes set out in PART 3 of this Land Code.

13. Participation of Eligible Voters

Eligibility to vote

- 13.1 Every Eligible Voter is entitled to participate in the Member approval processes set out in PART 3 of this Land Code.

14. Procedure for a Meeting of Members

Notice of meeting

- 14.1 The Council shall give written notice of the Meeting of Members and/or Member approval that:
- (a) specifies the date, time and place of the meeting or Member approval;
 - (b) contains a brief description of the matters to be discussed and/or decided on at the meeting; and
 - (c) such other information and material that Council may consider appropriate.

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Manner of notice

- 14.2 The notice of a Meeting of Members must be given to the Members by:
- (a) posting the notice of meeting or vote in a public place on Temagami First Nation Land at least twenty-one (21) days before the meeting or vote;
 - (b) mailing and emailing the notice to Members and taking reasonable steps to locate and inform Members who reside on and off-reserve at least twenty-one (21) days before the meeting or vote;
 - (c) publishing the notice on a website maintained by Temagami First Nation that is open and accessible by any person who may be entitled to attend, at least twenty-one (21) days before the meeting or vote;
 - (d) publishing the notice in the community newsletter or local newspaper at least twenty-one (21) days before the meeting or vote; and
 - (e) such any additional method as the Council may consider appropriate in the circumstances.

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Permission of Council

- 14.3 A person, other than a Member, may attend a Meeting of Members with the permission of Council.

Other meetings

- 14.4 Council may schedule more than one Meeting of Members as may be necessary to ensure that Members are well informed before making a decision on a proposed Land Law or Land matter.

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15. Consultation at a Meeting of Members

Prior to consultation at a meeting of members

15.1 Council shall convene a Meeting of Members to receive consultation prior to:

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- (a) conducting a Member approval process;
- (b) declaring Land or an Interest to be subject to this Land Code;
- (c) issuing any grant or disposition of an Interest or Licence in Temagami First Nation Land to a non-Member;
- (d) issuing any renewal of a grant or disposition of an Interest or Licence to a non-Member that extends the original term;
- (e) the enactment of any Land Laws including but not limited to:
 - (i) a community plan, subdivision plan, or general Land Use Plan;
 - (ii) environmental assessment and protection;
 - (iii) matrimonial real property referred to in clause 39 of this Land Code;
 - (iv) transfer and assignment or rights and Interests in Temagami First Nation Land;
 - (v) the rate and criteria for the payment of fees or rent for Temagami First Nation Land;
 - (vi) the rights and procedures on acquisitions under clause 18 of this Land Code; and

- (f) respecting any other matter, Land Law or class of law that Council, by Resolution, declares to be subject to this clause.

Process to implement Land Laws

- 15.2 The Lands Committee shall, within a reasonable time after this Land Code takes effect, establish a community process to develop and implement the Land Laws referred to in clause 7.2 of this Land Code.

Quorum not required

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- 15.3 For greater certainty, a Meeting of Members for input purposes does not require a quorum. AUG 2 5 2017

16. Approval at a Meeting of Members

Member approval

- 16.1 Member approval must be obtained for the following:

- (a) any master Land Use Plan;
- (b) any Land Law;
- (c) any amendment to an existing Land Law except where the amendment does not change the substance of the Land Law;
- (d) any deletion or development of a heritage site or Significant Site referred to in clause 19 of this Land Code;
- (e) any grant or disposition of any non-renewable natural resources on any Temagami First Nation Land;
- (f) issuing any new grant or disposition of an Interest or Licence in Temagami First Nation Land;

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- (g) issuing any renewal of a grant or disposition of an Interest of Licence in Temagami First Nation Land that extends the original term beyond twenty-five (25) years;
- (h) any voluntary exchange of Land referred to in PART 4 clause 20 of this Land Code;
- (i) an amendment to this Land Code, except for those items listed in clause 17.4 and clause 49.2 of this Land Code; and
- (j) any matter, Land Law or class of law that Council, by Resolution, declares to be subject to this clause.

Method of Voting

16.2 Member approval may be obtained by calling for a vote on Land Code matters by one or more of the following methods, including:

- (a) establishing polling stations;
- (b) show of hands;
- (c) mail-in ballot;
- (d) alternative voting methods, such as electronic and telephone voting; or

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(e) any other method outlined in voting policies. **CERTIFIED**

17. Procedure for a Member Approval

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Voting

17.1 Decisions at a Meeting of Members are to be made by a majority vote of the Eligible Voters present at the meeting whether in attendance in person or by other means.

- (a) Motions must have a mover and a seconder before discussion can take place on the motion.
- (b) 51% of Eligible Voters must be in favour or against a motion before it can be passed or defeated. Except as stated in the following clause:
- (c) Should 51% of Eligible Voters not be in favour or against, a vote will be taken on motions properly put forward and recorded results to be posted with a notice of another Meeting of Members not before fourteen (14) clear days after the first vote and no more than thirty (30) clear days after the first vote. Should a majority of Eligible Voters not be in favour or against at the second meeting, the same motions will be voted on and the result of this vote will be final.

Eligible Voters

17.2 For greater certainty, every Member of Temagami First Nation, whether resident on or off-reserve, who is at least eighteen (18) years of age, is eligible to vote at a Meeting of Members.

Member approval by Ratification Vote

17.3 Member approval must be obtained for any amendment to this Land Code, except for those items listed in clause 49.2 of this Land Code.

Exceptions

17.4 Member approval is not required for: MAR 2 5 2017 AD
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- (a) an amendment to the description of Land of this Land Code;

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- (b) revisions to this Land Code made pursuant to clause 49.2; and
- (c) an amendment to, or renewal of, the Individual Agreement.

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Verifier not required

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17.5 A Verifier is not required in any vote.

Policies Consultation, Approval and Ratification

- 17.6 For greater certainty, Council in consultation with the Lands Committee, may make Land Laws and policies:
- (a) for Meeting of Members;
 - (b) for Member consultation;
 - (c) for Member approvals; and
 - (d) respecting any other matter that Council, by Resolution, declares to be subject to PART 3 of this Land Code.

PART 4 PROTECTION OF LAND

18. Acquisition by Mutual Agreement

Acquisition by Mutual Agreement

- 18.1 The right of Temagami First Nation to acquire an Interest or Licence can only be exercised after a good faith effort to acquire, by mutual agreement, the Interest or Licence in Temagami First Nation Land, rather than by acquisition.

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Rights and Interests that may be acquired

- 18.2 An Interest or Licence in Temagami First Nation Land, or in any building or other structure on that Land, may only be acquired by Temagami First Nation in accordance with the *Framework Agreement* and any Land Law enacted for the purpose of establishing the rights and procedures for community acquisitions.

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Community purposes

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- 18.3 A community acquisition shall only be made for necessary community works or other Temagami First Nation purposes, including but not limited to, a fire hall, sewage or water treatment facility, community center, public works, utilities, roads, schools, daycare facility, hospitals, health-care facility, and retirement home.

Member approval

- 18.4 In the case of an acquisition of a Member's Interest, the acquisition must first receive Member approval at a Meeting of Members.

Acquisition Land Laws

- 18.5 Before proceeding to make any community acquisitions in accordance with this Land Code and the *Framework Agreement*, Council shall enact a Land Law respecting the rights and procedures for community acquisitions, including provisions respecting:

- (a) the taking of possession of the Interest or Licence;
- (b) transfer of the Interest or Licence;
- (c) notice of acquisition and service of the notice of acquisition;

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- (d) entitlement to compensation;
- (e) determination of the amount of compensation; and
- (f) the method of payment of compensation.

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Member notification

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- 18.6 In the case of an acquisition of a Member's Interest in Temagami First Nation Land, the affected Member or Members shall receive notification of the acquisition within a reasonable time prior to the release of the public report referred to in clause 18.7 of this Land Code.

Public report

- 18.7 Before Temagami First Nation acquires an Interest or Licence, it shall make a public report on the reasons justifying the acquisition.

Rights that may not be acquired

- 18.8 In accordance with clause 17.6 the *Framework Agreement*, any Interest of Canada or the province of Ontario in Temagami First Nation Land is not subject to acquisition by the Temagami First Nation.

Compensation for rights and Interests

- 18.9 Temagami First Nation shall, in accordance with its Land Laws and the Framework Agreement:
- (a) serve reasonable notice of the acquisition on each affected holder of the Interest or Licence to be acquired; and
 - (b) pay fair and reasonable compensation to the holders of the Interest or Licence being acquired.

Compensation calculations

18.10 In accordance with clause 17.4 the Framework Agreement, Temagami First Nation shall calculate the total value of the compensation under this clause based on the heads of the compensation set out in the *Expropriation Act, (Canada)*.

Market value

18.11 The “market value” of an Acquired Interest or License is equal to the amount that would have been paid for the Interest or License if it had been sold by a willing seller to a willing buyer under no duress.

Neutral evaluation to Resolve Disputes

18.12 The resolution of disputes concerning the right of the Temagami First Nation to acquire shall be determined by neutral evaluation, in the same manner as provided in Part IX of the *Framework Agreement*, and the sixty (60) day period referred to in clause 32.6 of the *Framework Agreement* shall be applied, as appropriate in the circumstance, by the neutral evaluator.

Arbitration to resolve Disputes

18.13 The resolution of the following disputes shall be determined by arbitration, in the same manner as provided in Part IX of the *Framework Agreement*:

- (a) disputes concerning the right of a holder of an acquired Interest or Licence to compensation; and
- (b) disputes concerning the amount of the compensation.

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19. Significant Sites

Member Approval of Development

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- 19.1 No development shall be allowed on any site designated as a heritage site or a Significant Site under the Land Use Plan, unless the development receives Member approval in accordance with Part 3 of this Land Code.

Land Use Plan

- 19.2 No amendment may be made to a Land Use Plan to delete a heritage site or a Significant Site unless the amendment receives Member approval in accordance with Part 3 of this Land Code.

Significant Sites

- 19.3 A Significant Site is a site set aside for protection and is identified as, but not limited to, a sacred site, culturally significant site, historical site, burial site, wetlands, environmentally sensitive area, sensitive nature site, and/or a species at risk area.

Other Land Laws

- 19.4 For greater certainty, Council may develop a policy or enact Land Laws to further implement this clause.

20. Voluntary Land Exchanges and Protections

Conditions for a land exchange

- 20.1 The Temagami First Nation may agree with another party to exchange a parcel of Temagami First Nation Land for a parcel of land from that other party in accordance with this Land Code and the *Framework Agreement*.

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20.2 A land exchange has no effect unless it receives Member approval in accordance with clause 14.2 of the *Framework Agreement* and Part 3 of this Land Code.

Land to be received

20.3 No land exchange may occur unless the land to be received in the exchange meets the following conditions:

- (a) it must be equal to or greater than the area of the Temagami First Nation Land to be exchanged;
- (b) it must be at least comparable to the appraised value of the Temagami First Nation Land; and
- (c) it must become a reserve and Temagami First Nation Land subject to this Land Code.

Negotiators

20.4 Council shall designate the person(s) by Resolution who will have the authority to negotiate a land exchange agreement on behalf of the Temagami First Nation

Additional land

20.5 The Temagami First Nation may negotiate to receive other compensation, such as money or additional parcels of land, in addition to the parcel which is intended to become a reserve. Such other parcels may be held by the Temagami First Nation in fee simple or some other manner.

Federal involvement

20.6 Before the Temagami First Nation concludes a land exchange agreement, it must receive a written statement from Canada, clearly stating that Canada:

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- (a) agrees to set apart as reserve, the land to be received in exchange, as of the date of the land exchange or such later date; and
- (b) agrees to the manner and form of the exchange as set out in the exchange agreement.

Community information

- 20.7 Once negotiations on the land exchange agreement are concluded, Council shall provide the following information to Eligible Voters at least twenty-one (21) days before the date of the Vote;
- (a) the reason(s) for the exchange;
 - (b) a description of the Temagami First Nation Land to be exchanged;
 - (c) a description of the land to be received in the exchange;
 - (d) a description of any other compensation to be exchanged;
 - (e) a report of a certified land appraiser setting out that the conditions in clause 20.3(b) of this Land Code have been met;
 - (f) a copy or summary of the exchange agreement; and
 - (g) a copy of the written statement referred to in clause 20.6 of this Land Code.

Process of land exchange

- 20.8 The land exchange agreement shall provide that:

- (a) the other party to the exchange must transfer to Canada the title to the land which is to be set apart as a reserve;
- (b) the Council must pass a Resolution authorizing Canada to transfer title to the Temagami First Nation Land being exchanged, in accordance with the exchange agreement;
- (c) a copy of the instruments transferring title to the relevant parcels of land must be registered in the First Nation Lands Register; and
- (d) the land to be set apart as a reserve has been subject to an environmental audit, and clearance or remediation as necessary, or that Council is satisfied that adequate provision has been made for such clearance or remediation at no cost to the Temagami First Nation and with full indemnification to the Temagami First Nation.

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**PART 5
ACCOUNTABILITY**

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21. Conflict of Interest

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Duty to report and abstain

21.1 If there is any actual or apparent financial, familial or personal conflict of interest in the matter being dealt with, the person:

- (a) shall disclose the interest to Council, board, committee or other body as the case may be;

- (b) shall not take part in any deliberations on that matter or vote on that matter; and
- (c) shall remove themselves from the proceedings.

Application of rules

21.2 The rules in clause 21.1 of this Land Code apply to the following persons:

- (a) each member of Council who is dealing with any matter before Council that is related to Temagami First Nation Land;
- (b) each member of the Dispute Resolution Panel;
- (c) each person who is an employee of the Temagami First Nation dealing with any matter that is related to Temagami First Nation Land; and
- (d) each person who is a member of a board, committee or other body of the Temagami First Nation dealing with any matter that is related to Temagami First Nation Land.

Apparent conflict of interest

21.3 A person to which this Part applies has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the person's ability to deliberate or decide on the matter has been affected by his or her private interest or the private interest of an Immediate Relative.

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Inability to act

- 21.4 If the Lands Committee or other body is unable to act due to a conflict of interest, the matter shall be referred to Council.

Meeting of Members

- 21.5 If Council is unable to vote on a matter, a proposed Land Law or Resolution due to a conflict of interest, Council may refer the matter to the Members for a decision to be made in accordance with the Temagami First Nation Tribal Constitution.

Specific Conflict Situations

- 21.6 No Immediate Relatives and not more than two (2) members from the same Extended Family shall be concurrent members of an appointed board, committee or other body dealing with any matter that is related to Temagami First Nation Land.

Elected Body

- 21.7 For greater certainty, Council or any other elected board, committee or body is not included under the rules set out in clause 21.6 of this Land Code.

Disputes

- 21.8 Questions about whether a breach of this clause has occurred may be referred to the Dispute Resolution Panel.

Other Land Laws

- 21.9 For greater certainty, Council may develop a policy or enact Land Laws to further implement this clause.

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22. Financial Management and Administration

Application

22.1 This clause applies only to financial matters relating to Temagami First Nation Land and natural resources.

Governing authority

22.2 Council may, in accordance with this Land Code, develop, adapt, adopt or revise the existing financial management policies, including but not limited to:

- (a) regulating the receipt, management and expenditure of moneys, including transfer payments, all capital and revenue moneys received from Canada, all Land revenue, and moneys received from a grant or disposition of any Interest or License in relation to Temagami First Nation Land and natural resources;
- (b) managing financial records and accounts;
- (c) preparing financial statements and audits;
- (d) preparing and implementing Land management budgets and annual presentation of budgets;
- (e) determining the general investment strategy;
- (f) contract notes, loans and other indebtedness;
- (g) establishing fees, fines, charges and levies; and
- (h) establishing and maintaining a recordkeeping system that ensures confidentiality, security of records and documentation retention.

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Administrative Structure

- 22.3 Council shall establish the administrative structure, including but not limited to:
- (a) implement all financial policies and procedures;
 - (b) oversee the day to day operational responsibilities for managing moneys related to Temagami First Nation Land and natural resources;
 - (c) ensure the accuracy of the accounting records;
 - (d) reconcile, review and approve bank statements;
 - (e) present the annual budgets to Members;
 - (f) present annually an audit of the financial statements to the Members; and
 - (g) prepare the annual report to Members.

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23. Annual Report

Publish report

- 23.1 An annual report on Land matters shall be published jointly with the Temagami First Nation annual report.

Contents

- 23.2 The annual report will include:
- (a) annual review of Temagami First Nation Land and natural resources management;
 - (b) an annual budget;

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- (c) a copy and explanation of the audit as it applies to Temagami First Nation Land and natural resources; and
- (d) any other matter as deemed necessary by Council or the Lands Committee.

24. Access to Information

Access

- 24.1 Any Member or person authorized by the Council may, during normal business hours at the main administration office of the Temagami First Nation, have reasonable access to:
- (a) the register of Land Laws;
 - (b) the auditor's report; and
 - (c) the annual report on Land and natural resources.

Copies for Members

- 24.2 Any Member may obtain a copy of the auditor's report or annual report on payment of a reasonable fee set by or under Resolution of the Council.

Access to records

- 24.3 Any person authorized by the Council may, at any reasonable time, inspect the financial records of Temagami First Nation related to Temagami First Nation Land.

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PART 6
LANDS AND NATURAL RESOURCES ADMINISTRATION

25. Lands Department Staff

Administration

- 25.1 Council may delegate administrative authority to staff to carry out functions necessary for day to day administrative operations of Temagami First Nation Land and natural resources.

26. Lands Committee

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Establishment of the Lands Committee

- 26.1 The Lands Committee is hereby established to:
- (a) assist and support the Temagami First Nation Land administration system;
 - (b) be an advisory body making recommendations to Council and its staff on matters respecting Temagami First Nation Land;
 - (c) hold regular and special Meetings of Members to discuss Land matters;
 - (d) recommend Land Laws, Resolutions, policies and procedures respecting Temagami First Nation Land to the Council;
 - (e) maintain the flow of information on Land matters between Members and the Council;
 - (f) oversee Meetings of Members and Member approvals required under this Land Code; and

- (g) perform other such duties as may be delegated or assigned by Resolution or Land Law under this Land Code.

Process to implement Land Laws

- 26.2 The Lands Committee shall, within a reasonable time after this Land Code takes effect, recommend to Council a community process to develop and implement Land Laws.

Development of Land related rules and procedures

- 26.3 Within a reasonable time after this Land Code takes effect, the Lands Committee shall, in consultation with the Members, ensure that Land Laws, rules and procedures, as may be appropriate, are developed that address the following matters:

- (a) environmental protection and assessment in relation to Temagami First Nation Land;
- (b) the protection of Significant Sites in relation to Temagami First Nation Land;
- (c) any outstanding issues on the resolution of disputes in relation to Temagami First Nation Land;
- (d) Land Use Planning and zoning;
- (e) clause 39 of this Land Code respecting matrimonial real property; and
- (f) any other matter referred by Council.

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Implementation of policies

- 26.4 The rules and procedures, once developed, shall be presented to the Council for consideration, approval and implementation as policies, Land Laws or amendments to this Land Code, whichever is most appropriate.

Internal Procedures

- 26.5 The Lands Committee may establish rules for the procedure at its meetings and generally for the conduct of its affairs, not inconsistent with those established in the Temagami First Nation Lands Committee Terms of Reference, or its successor, as approved by Council.

27. Implementation of the Lands Committee

First Lands Committee

- 27.1 Immediately upon the coming into effect of this Land Code, the existing Land Code Development Committee shall continue and serve for the first term for up to two (2) years until a policy governing the Lands Committee comes into force. Any Lands Committee seat vacancies upon the ratification of this Land Code shall be filled by appointment made by Council. The Lands Committee shall be composed of a maximum of five (5) Members, one (1) of which will be a Councillor with the Lands related portfolio.

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27.2 As soon as possible after the coming into force of this Land Code, Council, in consultation with the Lands Committee, shall develop a policy providing for Member involvement in the selection, election, or appointment of Eligible Voters to serve on the Lands Committee, and dealing with such matters as number of members, composition, eligibility, chair and deputy chair, functions of the chair, term of office, remuneration, conditions of service, termination, vacancies arising during term and such other matters as Council deems appropriate to the operation of the Lands Committee.

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PART 7 INTERESTS AND LICENCES IN LAND

28. Revenue From Lands and Natural Resources

Determination of fees and rent

28.1 The Lands Committee shall, in accordance with the policies and procedures of the financial policy and with the approval of Council, establish the process for determining:

- (a) the fees, rent for Interests and Licences in Temagami First Nation Land;
- (b) the fees for services provided in relation to Temagami First Nation Land; and
- (c) the fees and royalties to be paid for the taking of natural resources from Temagami First Nation Land.

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29. Registration of Interests and Licences MAR 25 2017
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Enforcement of interests and licenses

29.1 An Interest or Licence in Temagami First Nation Land created or granted after this Land Code takes effect is not enforceable unless it is registered in the Temagami First Nation Lands Register and the First Nation Lands Register.

Registration of consent or approval

29.2 An instrument granting an Interest or License in Temagami First Nation Land that requires the consent of Council, or Member approval, shall include a certified copy of the document indicating that the applicable consent or approval has been obtained.

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Instrument Void

29.3 An instrument registered in the separate Temagami First Nation Land Register and the First Nation Lands Register which does not include the certificate in 29.2 of this Land Code is void.

Duty to deposit

29.4 The Council shall ensure that an original copy of the following instruments is deposited in the Temagami First Nation Lands Register and the First Nation Lands Register:

- (a) any grant of an Interest or Licence in Temagami First Nation Land;
- (b) any transfer or assignment of an Interest or Licence in Temagami First Nation Land;
- (c) every Land Use Plan, subdivision plan or resource use plan; and

(d) this Land Code and any amendment to this Land Code.

30. Temagami First Nation Lands Register

Duty to maintain the Temagami First Nation Lands Register

30.1 Council shall establish and maintain the Temagami First Nation Lands Register and make Land Laws with respect to the Lands Register and the effect of registering documents in the Temagami First Nation Lands Register and the First Nation Lands Register.

Duty to deposit

30.2 Every person who receives an Interest or License in Temagami First Nation Land shall deposit an original copy of the relevant instrument in the Temagami First Nation Lands Register.

Priority

30.3 In the event of an inconsistency or a conflict between the Temagami First Nation Lands Register and the First Nation Lands Register, the Temagami First Nation Lands Register prevails to the extent of the inconsistency of conflict.

31. Limits on Interests and Licences

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All dispositions in writing

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31.1 An Interest or Licence in Temagami First Nation Land may only be created, granted, disposed of, assigned or transferred by a written document in accordance with this Land Code and any relevant Land Law.

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Standards

31.2 Council may establish mandatory standards, criteria and forms for Interests and Licences in Temagami First Nation Land as per this Land Code.

Improper transactions void

31.3 A deed, lease, contract, instrument, document or agreement of any kind, whether written or oral, by which the Temagami First Nation, a Member or any other person purports to grant, dispose of, transfer or assign an Interest or Licence in Temagami First Nation Land after the date this Land Code takes effect is void if it contravenes this Land Code.

No allocation of Land to non-Members

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31.4 A person who is not a Member is not entitled to be allocated Land or to hold a permanent Interest in Temagami First Nation Land. AUG 25 2017

Grants to non-Members

31.5 A transfer or disposition of all or any part of an Interest or Licence in Temagami First Nation Land to a person who is not a Member shall not be effective unless and until it is confirmed by a Resolution of Council, adopted with the advice of the Lands Committee.

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32. Existing Interests

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Continuation of existing Interests and Licenses

32.1 Any Interest or Licence in Temagami First Nation Land that existed when this Land Code takes effect will continue in force in accordance with its terms and conditions, subject to this Land Code.

Unregistered Interests

32.2 A policy shall be established as soon as practical after the coming into force of the Land Code to accommodate unregistered Interests.

Voluntary replacement of existing Interests and Licenses

32.3 For greater certainty, Interests or Licenses previously issued under the *Indian Act* shall continue in effect after the coming into force of this Land Code unless the Member or non-Member voluntarily agrees to have the Interest or Licence developed pursuant to the coming into force of this Land Code.

Replacing the role of the Minister

32.4 Immediately upon the coming into force of this Land Code, Canada transfers to Temagami First Nation all the rights and obligations of Canada as grantor in respect of existing Interests and Licences in, or in relation to, Temagami First Nation Land.

33. New Interests and Licences

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Authority to make dispositions

33.1 Subject to clause 16 of this Land Code, the Council may, on behalf of Temagami First Nation, grant:

- (a) Interests and Licences in Temagami First Nation Land, including Member allocation, leases, permits, easements and rights-of-ways; and
- (b) Licences to take natural resources from Temagami First Nation Land, including but not limited to cutting timber or removing minerals, stone, sand, gravel, clay, soil or other substances.

Conditional grant

33.2 The grant of an Interest or Licence may be made subject to the satisfaction of written conditions.

Role of the Lands Committee

33.3 The Lands Committee shall advise Council on the granting of Interests and Licences and may be authorized to act as a delegate of the Council under this clause.

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34. Allocation of Land to Members

Allocation of Land

34.1 Subject to the provisions of this Land Code, Council in consultation with the Lands Committee shall establish Land Laws, policies and procedures for the allocation of Land to Members.

Community input and/or approval not required

34.2 Council may, in accordance with this Land Code:

- (a) allocate Land to Members; or
- (b) issue an Interest to a Member for Land allocated to that Member.

Issuance of Member allocation

34.3 The Council may issue a Member allocation to a Member for a lot for which a Member has received an allotment once a Member has met any necessary conditions and requirements.

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35. Transfer and Assignment of Interests

Transfer of Member Interest

35.1 A Member may transfer or assign an Interest in Temagami First Nation Land to another Member without Member approval or consent of Council.

Consent of Council

35.2 There shall be no transfer or assignment of an Interest in Temagami First Nation Land without the written consent of Council, except for:

- (a) transfers under clause 35.1 of this Land Code;
- (b) transfers that occur by operation of law, including transfers of estate by testamentary disposition; and
- (c) transfers in accordance with the matrimonial real property on reserve law enacted pursuant to clause 39 of this Land Code.

36. Limits on Mortgages and Seizures

Protections

36.1 In accordance with the *Framework Agreement*, the following sections of the *Indian Act*, as amended from time to time, continue to apply to Temagami First Nation Land:

- (a) section 29;
- (b) section 87;
- (c) subsection 89(1); and
- (d) sub-section 89(2).

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Mortgage of Member Interest

36.2 The Interest of a Member in Temagami First Nation Land may be subject to a mortgage or charge, but only to a Member or, Temagami First Nation with the express written consent of Council.

Mortgages of leasehold interests with consent

36.3 A leasehold Interest may be subject to charge or mortgage, but only with the express written consent of the Council.

Time limit

36.4 The term of any charge or mortgage of a leasehold Interest shall not exceed the term of the lease.

Default in mortgage

36.5 In the event of default in the terms of a charge or mortgage of a leasehold Interest, the leasehold interest is not subject to possession by the chargee or mortgagee, foreclosure, power of sale or any other form of execution or seizure, unless:

- (a) the charge or mortgage received the written consent of the Council;
- (b) the charge or mortgage was registered in the Temagami First Nation Lands Register and the First Nation Lands Register; and
- (c) a reasonable opportunity to redeem the charge or mortgage is given to the Council on behalf of the Temagami First Nation.

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Power of redemption

- 36.6 Subject to prior redemption by the lessee or Member, Council may redeem the charge or mortgage from the charger or mortgagor in possession and shall thereupon acquire all the rights and Interests of the charger or mortgagor and of the lessee or Member for all purposes after the date of the redemption.

Waiver of redemption

- 36.7 Council may, by Resolution, waive the requirements of clause 36.6 of this Land Code for any charge or mortgage of a leasehold Interest or Licence.

37. Residency and Access Rights

Land Law for residency and access rights

- 37.1 A Land Law shall be established as soon as practical after the coming into force of the Land Code to address residency and access rights on Temagami First Nation Land.

38. Transfers on Death

Indian Act Application

- 38.1 Until the Temagami First Nation exercises jurisdiction in relation to wills and estates, the provision of the *Indian Act* dealing with wills and estates shall continue to apply with respect to Interests in Temagami First Nation Land.

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Registration of Transfer

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- 38.2 A person who receives an Interest in Temagami First Nation Land by testamentary disposition or succession in accordance with a written decision of the Minister, or his or her designate, pursuant to the *Indian Act*, is entitled to have that Interest registered in the Temagami First Nation Lands Register and the First Nation Lands Register.

Disposition of Interest

- 38.3 If no provision has been made by the deceased Member of the disposition of the Interest to another Member, the following rules apply:
- (a) the Minister or his or her delegate may make application to Council requesting that an instrument evidencing lawful possession or occupation of Temagami First Nation Land be issued; and
 - (b) a Member allocation or other instrument may be issued in accordance with procedures established by Council, or application of the Minister or his or her delegate, if the beneficiary or purchaser is a Member of the Temagami First Nation.

39. Matrimonial Real Property on Reserve Law

Development of rules and procedures

- 39.1 Council shall enact a matrimonial real property on reserve law providing rules and procedures applicable on the breakdown of a marriage, to:
- (a) the use, occupancy and possession of Temagami First Nation Land;
 - (b) the division of Interests in that Land; and

(c) the division of the value of improvements in that Land.

Enactment of rules and procedures

39.2 The rules and procedures contained in the matrimonial real property on reserve law shall be developed by the Lands Committee in consultation with the Members.

Enactment deadline

39.3 The matrimonial real property on reserve law shall be enacted within twelve (12) months from the date this Land Code takes effect.

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General principles

39.4 For greater certainty, the rules and procedures developed by the Lands Committee under this clause shall respect the following general principles:

- (a) each Spouse should have an equal right to possession of their matrimonial home;
- (b) each Spouse should be entitled to an undivided half Interest in their matrimonial home, as a tenant in common;
- (c) the rules and procedures shall not discriminate on the basis of sex; and
- (d) only Members are entitled to hold a permanent Interest in Temagami First Nation Land or a charge against a permanent Interest in Temagami First Nation Land.

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Immediate rules

39.5 In order that Members benefit immediately from the legislative authority of Council to address the issue of matrimonial real property under this Land Code, Council may enact an interim matrimonial real property on reserve law as soon as this Land Code comes into force without the preliminary steps ordinarily required.

Expiration

39.6 As this law would be enacted before the work of the Lands Committee and the community consultation is complete, the law will expire at the end of the twelve (12) month period after the coming into force of this Land Code, unless re-enacted, replaced or amended.

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**PART 8
DISPUTE RESOLUTION**

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40. Purpose

Intent

40.1 The intent of this Part is to ensure that all persons entitled to possess, reside upon, use or otherwise occupy Temagami First Nation Land do so harmoniously with due respect to the rights of others and of Temagami First Nation and with access to Temagami First Nation procedures to resolve disputes.

Purpose

40.2 The purpose of these rules is to enable the parties in a dispute to achieve a just, speedy and inexpensive settlement, taking into account the values which distinguish dispute resolution from litigation.

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41. Disputes

Dispute Prevention

41.1 The parties shall use best efforts to prevent disputes from arising and shall consider the use of dispute resolution processes at the earliest possible stage of any conflict.

Disputes Prior to Land Code

41.2 Disputes that arose before the Land Code takes effect could also be referred to this Part.

Decision of Council or Lands Committee

41.3 If a Member, or a non-Member with an Interest in Temagami First Nation Land, has a dispute with respect to a decision of Council or the Lands Committee, the person shall first attempt to resolve that dispute with Council or the Lands Committee, before referring the dispute to the Panel.

Settle a Dispute

41.4 Nothing in this Part shall be construed to limit the ability of any person to reach agreement to settle a dispute without recourse to this Part.

Settlement Agreement

41.5 Any settlement reached through dispute resolution shall not be legally binding until it has been put into writing and properly executed by, or on behalf of, the parties.

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Contractual Agreement

41.6 A contractual agreement made under this Land Code may establish that the dispute resolution outlined in this Land Code and its Land Laws may be mandatory or may to some degree prescribe for alternate dispute resolution processes if there is consensual agreement by the parties involved in that agreement. The dispute resolution clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.

Variation of Rules

41.7 The parties to a dispute to which these rules apply may to some degree, modify, vary or amend these rules by consensual agreement in writing, and notify the Panel in writing.

Civil Remedies

41.8 Notwithstanding clauses 41.6 and 41.7 of this Land Code, nothing in this Part shall be construed to prevent a party to a dispute from, at any stage of dispute resolution, applying to have the dispute resolved in a court of competent jurisdiction.

Challenge to Validity of Law

41.9 For greater certainty, nothing in this Part shall be construed to prevent a party to a dispute from challenging the validity of a Land Law, but such a challenge may be heard only in a court of competent jurisdiction.

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42. Processes

Staged Processes

42.1 Temagami First Nation intends that a dispute in relation to Temagami First Nation Land, except as otherwise provided, may progress through the following stages provided for in this Part:

- (a) facilitated discussions;
- (b) mediation;
- (c) negotiation; and
- (d) final arbitration by the Dispute Resolution Panel.

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Procedure to File a Dispute

42.2 A person who wishes to resolve a dispute with another person or Temagami First Nation in relation to the use or occupation of Temagami First Nation Land may file a written notice of dispute setting out:

- (a) the nature of the dispute;
- (b) a statement outlining the facts and supporting arguments of the dispute claim; and
- (c) the relief that is sought.

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Termination of Processes

42.3 Facilitated discussions, mediations and negotiations may be suspended upon any of the following occurrences:

- (a) the parties reach an agreement;

- (b) one of the parties refuses to continue with the facilitated discussion, mediation or negotiation;
- (c) the mediator assesses that nothing meaningful is to be gained in continuing the process; or
- (d) upon the request of both parties.

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Notice of Termination

42.4 A notice of termination is required when further facilitated discussions or mediation shall not resolve the dispute. The dispute may progress to the next stage of the dispute resolution process or to final arbitration.

Dispute resolution not available

42.5 Dispute resolution is not available under this Part for disputes in relation to:

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- (a) administration or distribution of an estate;
- (b) decisions relating to housing allocations;
- (c) decisions of Council to grant or refuse to grant an Interest or Licence in Temagami First Nation Land to a non-Member;
- (d) decisions on acquisition under clause 18 of this Land Code; and
- (e) prosecution or conviction of an offence under a Land Law or under criminal law.

Duty of Fairness

42.6 All persons involved in a dispute under this Part shall be:

- (a) treated fairly;

- (b) given a full opportunity to present their case; and
- (c) given reasons for a decision made under this Part.

Rules and Procedures

42.7 Council may prescribe such Laws, Resolutions, rules, policies, procedures, forms and reasonable fees, not inconsistent with this Land Code, as may be necessary to give effect to this Part including but not limited to:

- (a) facilitated discussions, mediations, negotiations and arbitrations;
- (b) terms of office for panelists;
- (c) remuneration of facilitators, mediators, arbitrators, expert advisors, professionals or other persons retained to assist in the resolution of disputes under this Part;
- (d) code of conduct for facilitators, mediators, arbitrators, panelists, expert advisors, professionals or other persons retained to assist in the resolution of disputes under this Part;
- (e) disclosure and confidentiality;
- (f) imposition of time limitations for submitting a notice of dispute and referring a matter or dispute to the Panel;
- (g) implementing recommendations of the Dispute Resolution Panel made under clause 46.2 of this Land Code; and
- (h) any other matter necessary to give effect to this Part.

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Waiver of Liability

42.8 By participating in this dispute resolution process, the parties agree that the facilitators, mediators, arbitrators and panelists shall not be liable to the parties for any act or omission in connection with the services provided by them in, or in relation to, the dispute resolution processes, unless the act or omission is fraudulent or involves willful misconduct.

43. Roster Panel Established

Appointment to Roster Panel

43.1 The roster Panel shall be composed of a maximum of twenty (20) panelists.

Ineligible

43.2 Notwithstanding clause 21 of this Land Code, in order to avoid conflict of interest, no Council member, or employee of Temagami First Nation or person already serving on another board, body, or committee related to Temagami First Nation Land shall sit on the roster Panel.

Representation

43.3 Council shall appoint the roster panelists, and shall ensure that, where possible, the roster panelists represent the various elements of the community.

Rules of Roster Panel

43.4 The roster Panel may establish rules for the procedure at its hearings and generally for the conduct of its affairs.

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44. Impartiality of the Dispute Resolution Panel

Duty to Act Impartially

- 44.1 The Panel shall act impartially and without bias or favour to any party in a dispute.

Offence

- 44.2 It is an offence for a person to act, or attempt to act, in a way to improperly influence a decision of the Panel.

Rejection of Application

- 44.3 In addition to any other sanction, the Panel may reject an application without hearing it if the Panel believes that the applicant acted, or attempted to act, in a way to improperly influence its decision.

Rules of Conduct for Parties to a Dispute

- 44.4 The roster Panel shall establish rules of conduct for the parties to a dispute.

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45. Arbitration by the Dispute Resolution Panel

Disputes

- 45.1 Any matter or dispute related to Temagami First Nation Land shall be submitted to the Lands Department but that such matter or dispute shall then be referred to the roster Panel for resolution.

Panel of Five Chosen from Roster Panel

- 45.2 Disputes referred to the roster Panel are to be heard by three (3) panelists chosen as follows:
- (a) one (1) panelist is to be chosen by each of the two (2) parties to the dispute;

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- (b) one (1) panelist, who is to be the chairperson, shall be chosen by the rest of the Panel; and
- (c) in the case of situations not adequately covered by clause (a) or (b), all three (3) panelists shall be chosen by the roster Panel as a whole.

Panel Established

45.3 The Panel is hereby established with jurisdiction to resolve disputes in relation to Temagami First Nation Land.

Dispute resolution not available

45.4 For greater certainty, disputes outlined in clause 42.5 of this Land Code shall not be heard by the Panel.

46. Powers of the Dispute Resolution Panel

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Power of the Panel

46.1 The Panel may, after hearing a dispute:

- (a) confirm or reverse the decision, in whole or in part;
- (b) substitute its own decision for the decision in dispute;
- (c) direct that an action be taken or ceased;
- (d) refer the matter or dispute back for a new decision; or
- (e) make an order to give effect to its decision, including any necessary order for the survey of an Interest in Temagami First Nation Land, the registration of an Interest in Temagami First Nation Land, and the allocation of the costs of any incidental measures to be taken to give effect to such an order.

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Recommendations by Panel

- 46.2 In addition to making a determination under clause 46.1 of this Land Code, the Panel may:
- (a) recommend to Council the suspension of any Land Law or decision made by Council for such period as is necessary for Council to reconsider, amend or repeal such Land Law or decision, provided that any amendment or repeal of a Land Law is made in a manner consistent with this Land Code; or
 - (b) make any other recommendation to Council that it deems reasonable and necessary in the circumstances.

Interim Decisions

- 46.3 The Panel may, in relation to a dispute over which it has jurisdiction under this Part, make any interim order it considers to be necessary as a matter of urgency to preserve the rights of the parties to the dispute or to preserve or protect an Interest in Temagami First Nation Land.

Professional Services

- 46.4 The Panel may obtain the service of professionals to assist it in fulfilling its functions, in which case it shall make best efforts to use professional services available in the community.

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Written Decisions

- 46.5 Decisions of the Panel shall be in writing, signed by the person chairing the Panel or by an officer designated by the Panel to do so. Where requested, the written decision shall be provided to a party to the proceeding within fourteen (14) days after the date of the decision.

Appeal of Decision

- 46.6 A decision of the Panel is binding but, subject to review by the Federal Court (Trial Division).

PART 9 OTHER MATTERS

47. Liability

Liability coverage

- 47.1 The Council shall arrange, maintain and pay, insurance coverage for its officers and employees engaged in carrying out any matter related to Temagami First Nation Land to indemnify them against personal liability arising from the performance of those duties.

Extent of coverage

- 47.2 The extent of the insurance coverage shall be determined by the Council.

48. Offences

Application of the Criminal Code

- 48.1 Unless some other procedure is provided for by a Temagami First Nation Land Law, the summary conviction procedures of Part XXVII of the *Criminal Code*, as amended from time to time, apply to offences under this Land Code or under a Temagami First Nation Land Law.

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Fines & Imprisonment

48.2 Any person who commits an offence under this Land Code or a Temagami First Nation Land Law is liable to a fine not to exceed \$5,000 and to a term of imprisonment not to exceed six (6) months or to both fine and imprisonment, provided however, that offences related to Temagami First Nation environmental protection laws may carry penalties consistent with similar environmental protection laws in force in Canada.

Penalties in Laws

48.3 A Temagami First Nation Land Law may provide for a penalty which is different than the penalties referred to in clauses 48.1 and 48.2 of this Land Code.

49. Revisions to Land Code

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Member approval

49.1 Any amendments to this Land Code that significantly change the substance of the document must be approved by the eligible voters in accordance with clause 17 of this Land Code.

Member approval not required

49.2 Member approval in accordance with clause 17 of this Land Code is not required for revisions made to this Land Code that do not change the substance of this Land Code. Council and/or the Lands Committee may 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 the Temagami First Nation Land subject to the Land Code and Individual Agreement, as amended from time to time;

- (b) a reference in this Land Code to a clause in another act or document that was amended and resulted in clause renumbering;
- (c) a reference in this Land Code to an Act or parts thereof that have expired, have been repealed or suspended;
- (d) changes in this Land Code as are required to reconcile seeming inconsistencies with other acts;
- (e) correct editing, grammatical or typographical errors; and
- (f) minor improvements in the language as may be required to bring out more clearly the intention of the Temagami First Nation without changing the substance of the Land Code.

50. Commencement of *Land Code*

Preconditions

50.1 This Land Code shall take effect if the Members approve this Land Code and the Individual Agreement with Canada, and this Land Code has been certified by the Verifier pursuant to the *Framework Agreement*.

Commencement date

50.2 This Land Code shall take effect on the first day of the month following the certification of this Land Code by the Verifier.

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