

**SETTLEMENT AGREEMENT
DATED FOR REFERENCE NOVEMBER 20, 2001**

BETWEEN

THE ACADIA FIRST NATION

AND

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

*AB
VR.*

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SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT dated for reference November 20, 2001.

BETWEEN:

ACADIA BAND

also known as Acadia First Nation

(hereinafter called the "First Nation")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the
Minister of Indian Affairs and Northern Development

(hereinafter called "Canada")

WHEREAS:

- A. In 1982, the First Nation submitted a Claim to Canada under Canada's Specific Claims Policy alleging outstanding lawful obligations on the part of Canada with respect to the subsequent use and disposition of four lots of approximately 100 acres each, on the east side of the river at Ponhook, Queens County, Nova Scotia.
- B. The four lots in question were originally set aside in 1842 "for the use of the Indians who frequent the main Liverpool River" and included "their fishing grounds"; "some slight improvements already made", and which also included "the Indian Burial ground":
 - (a) Lot 1 - Joseph Moltie
 - (b) Lot 2 - Ellick Davis
 - (c) Lot 3 - Ellick Jeremy
 - (d) Lot 4 - Peter Toney
- C. Since the submission of the original claim in 1982, the First Nation has alleged, among other things, that Canada owes the Acadia First Nation compensation:

- (a) in relation to the illegal alienation of Lots 1 and 2 in 1871 without a surrender;
 - (b) in relation to the illegal alienation of a burial ground comprising approximately ½ acre and located in the western portion of Lots 1 and 2 [See Schedule No. 1, Plan 4974].
- D. Canada and the First Nation have negotiated this Settlement Agreement in order to settle the First Nation's Claim against Canada, as described herein, pursuant to the Specific Claims Policy.

**NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES
CONTAINED IN THIS SETTLEMENT AGREEMENT, THE PARTIES AGREE AS
FOLLOWS:**

ARTICLE 1

DEFINITIONS AND SCHEDULES

1.1 In this Settlement Agreement:

- (a) **"Acquired Lands"** means those lands referred to in Article 3.1 of the Settlement Agreement;
- (b) **"Additions to Reserve Policy"** means the Additions to Reserve Policy of the Department, being Chapter 10 of the Land Management and Procedures Manual (dated November 1991), as may be amended or replaced from time to time;
- (c) **"Article"** means an Article of this Settlement Agreement;
- (d) **"Ballot Question"** means the question asked of the Eligible Voters in a Ratification Vote substantially as set out in Schedule 2;
- (e) **"Band Council Resolution"** means a duly signed written resolution of the Council adopted at a duly convened meeting;
- (f) **"Band List"** means a list of persons that is maintained by the Department pursuant to section 8 of the *Indian Act*;
- (g) **"Canada"** means Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian Affairs and Northern Development;

- (h) **"Claim"** means all the facts, matters and issues arising or resulting from, or set forth in the First Nation's specific claim submission to Canada in 1982, including all supplemental submissions, relating to the illegal alienation of Lots 1 and 2 in 1871, including all claims relating to the illegal alienation of the burial ground, comprising approximately ½ acre and located in the western portion of Lots 1 and 2 [see Schedule No. 1] including, without limitation, all claims of the First Nation with respect to Lots 1 and 2, more particularly described as:

All those parcels of land, situate, lying and being in the County of Queens, Province of Nova Scotia, shown as Lots 1 and 2 on a plan recorded in the Canada Lands Surveys Records at Ottawa as 4974.

Said parcels containing together about 80.9 hectares (200 acres).

- (i) **"Compensation"** means the sum to be paid by Canada to the First Nation as set out in Article 2;
- (j) **"Council"** means the Council of the First Nation, which is a "council of the band" within the meaning of the *Indian Act*;
- (k) **"Councillor"** means a member of the Council;
- (l) **"Department"** means the Department of Indian Affairs and Northern Development, as established pursuant to the Department of Indian Affairs and Northern Development Act, R.S.C. 1985, c.I-6;
- (m) **"Effective Date"** means the later of the dates on which this Settlement Agreement is signed by at least a quorum of Council on behalf of the First Nation, as authorized by ratification of this Settlement Agreement, and by the Minister;
- (n) **"Eligible Voter"** means a Member who is 18 years of age or older on the Voting Day;
- (o) **"First Nation"** means the Acadia First Nation which is a "band" composed collectively of its members listed from time to time on its "Band List";
- (p) **"Indian Act"** means the Indian Act, R.S.C. 1985, c.I - 5; and its regulations as amended or replaced from time to time;
- (q) **"Information Meeting"** means a meeting held pursuant to section 4.3 of the Referendum Regulations;

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- (r) **"Institution"** means any bank or trust company that is a member institution for which the Canada Depository Insurance Corporation has a duty to insure deposits pursuant to the Canada Deposit Insurance Corporation Act, R.S.C. 1985, c.C-3;
- (s) **"Labrador Lands"** All the parcel of land situate, lying and being in the County of Queens, Province of Nova Scotia, shown as the estate of Thomas Labrador on a plan of survey by Robert L. Hunt, N.S.L.S., dated October 17, 1996. Said parcel containing about 62.15 hectares (153.5 acres);
- (t) **"Member"** means a person whose name appears on the First Nation's Band List on the Voting Day;
- (u) **"Minister"** means the Minister of Indian Affairs and Northern Development or the Minister's duly authorized representative;
- (v) **"Municipal Taxes"** means all applicable taxes levied by a municipality for municipal purposes in respect of land, improvements and businesses within the rural or urban municipality, grants-in-lieu of taxes paid to rural or urban municipalities pursuant to federal or provincial government policy, or taxes for municipal purposes levied by a municipality upon occupants of such lands in respect of such occupation pursuant to the *Assessment Act* R.S.N.S., 1989, c. 23, and its regulations as amended or replaced from time to time;
- (w) **"Negotiation Costs"** means the sum to be paid by Canada to the First Nation as set out in Article 2.8;
- (x) **"Parties"** means the First Nation and Canada;
- (y) **"Ponhook Trust"** means the agreement between the First Nation and Trustees voted upon in a Ratification Vote pursuant to Article 8 and as varied from time to time in accordance with the Ponhook Trust [Appendix A];
- (z) **"Ratification Vote"** means a vote on the Ballot Question, conducted in accordance with the Referendum Regulations;
- (aa) **"Referendum Regulations"** means the *Indian Referendum Regulations*, C.R.C. 1978, c.957, as amended SOR/94-369 and SOR/2000-392;
- (bb) **"Settlement Agreement"** means this Settlement Agreement including Schedules 1-5;

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- (cc) **"Specific Claims Policy"** means Canada's policy on specific claims as set out in the government of Canada 1982 publication entitled "Outstanding Business, A Native Claims Policy" as amended or replaced from time to time;
- (dd) **"Surrendered Lands"** means those lands described in Article 1.1(h) of this Agreement;
- (ee) **"Toxic Substance"** means a toxic substance as defined under the *Canadian Environmental Protection Act*, S.C. 1999, c. 33, and its regulations as amended or replaced from time to time;
- (ff) **"Trust Account"** means any account opened at an Institution by the Trustees in trust for the First Nation in accordance with the Ponhook Trust;
- (gg) **"Trustee"** means a person identified as a trustee in the Ponhook Trust;
- (hh) **"Voting Day"** means the day set for holding the Ratification Vote.
- 1.2 Except as otherwise defined in this Settlement Agreement, any words used in this Settlement Agreement which are defined in the *Indian Act* retain the same meaning that have in the *Indian Act*.
- 1.3 The following Schedules are attached to this Settlement Agreement:
1. Schedule No. 1, Plan 4974, Burial Ground;
 2. Schedule No. 2, Ballot Question;
 3. Schedule No. 3, Band Council Resolution dated August 8, 1996;
 4. Schedule No. 4, Solicitor's Certificate;
 5. Schedule No. 5, Financial Advisor's Certificate.

ARTICLE 2

COMPENSATION

- 2.1 Canada agrees to pay to the First Nation, subject to the terms and conditions set out in this Settlement Agreement, as Compensation for the illegal alienation of Lots 1 and 2, and in full compensation for all claims whatsoever in relation to Lots 1 and 2, and in relation to all claims pertaining to the illegal alienation of the burial grounds, one million,

A handwritten signature in black ink, appearing to be 'A.B.' or similar, with 'Y.R.' written below it.

nine hundred and fifty-six thousand, four hundred and fifty dollars (\$1,956,450). Payment is also subject to the conditions precedent that:

- 2.1.1 The Ponhook Trust has been signed by the authorized signatories and;
- 2.1.2 A Ponhook Trust Account has been opened.
- 2.2 Subject to the conditions precedent specified in Article 2.1, the Compensation shall be paid into the Trust Account as specified in the Ponhook Trust (Appendix 1) within sixty (60) calendar days of the Effective Date.
- 2.3 The Parties acknowledge that the Ponhook Trust shall be consistent with the provisions of this Settlement Agreement.
- 2.4 The parties agree that out of the compensation monies referred to in article 2.1 the sum of one hundred and seventy-six thousand, four hundred and fifty dollars (\$176,450) shall be set aside in a separate account (the 'Land Acquisition Account') pursuant to the Ponhook Trust.
- 2.5 The parties acknowledge that the fifty thousand dollars (\$50,000) advanced by Canada to purchase the Labrador Lands shall be repaid to Canada by the First Nation by being deducted from the compensation money referred to in article 2.1 (see Schedule 3 Acadia First Nation Band Council Resolution dated 8 August, 1996).
- 2.6 The parties acknowledge that if the Acadia First Nation sells the Labrador Lands following the completion of this Agreement, any proceeds of sale will be deposited into the Land Acquisition Account referred to in Article 2.4 for the benefit of the First Nation.
- 2.7 For greater certainty, the parties acknowledge that any loss or gain resulting from the sale of the Labrador Lands will be borne or enjoyed by the First Nation.
- 2.8 In addition to the Compensation, Canada agrees to pay the sum of two hundred thousand dollars (\$200,000) to the First Nation for Negotiation Costs incurred by the First Nation for research, preparation, negotiation, and settlement of the Claim and ratification of the Settlement Agreement, including legal fees, and any other costs related to the Claim.
- 2.9 The parties further agree that Canada shall deduct from the Negotiation Costs the sum of fifty-five thousand nine hundred and three dollars (\$55,903), representing the full and final payment of all monies previously loaned to the First Nation by Canada to negotiate the Claim.

- 2.10 Canada agrees that if the Compensation and Negotiating Costs are not paid in full within the time frames set out in Articles 2.2, then Canada agrees to pay to the First Nation interest at the Bank of Canada's prime lending rate plus two (2%) per annum on any unpaid amounts from the date such payment was due and payable until payment is made by Canada.
- 2.11 If the First Nation votes in favour of the Settlement Agreement and the Ponhook Trust, as set out in Article 8, then:
- (a) the First Nation authorizes and directs Canada to deposit the Compensation into a Trust Account established pursuant to the Ponhook Trust;
 - (b) the Parties agree that the Compensation is not "Indian moneys" within the meaning of the *Indian Act* and accordingly the provisions of the *Indian Act* with respect to the management of Indian moneys shall not apply to the Compensation; and
 - (c) the Parties agree that the Compensation paid to the First Nation pursuant to this Settlement Agreement is to be held in accordance with this Settlement Agreement and the Ponhook Trust (see Appendix A).
- 2.12 The Parties acknowledge that Canada will have no responsibility for the management of the Compensation. The Compensation will be managed by the Trustees pursuant to the Ponhook Trust.

ARTICLE 3

NEW RESERVE LANDS

- 3.1 The Minister shall recommend to the Governor in Council that up to 250 acres of land acquired by the First Nation in the Province of Nova Scotia (Acquired Lands) be set apart by Canada as reserve lands for the use and benefit of the First Nation, subject to the following conditions:
- (a) the First Nation is responsible for acquiring the Acquired Lands, not Canada;
 - (b) requests in the form of a Band Council Resolution by the First Nation to Canada to have the Acquired Lands set apart as reserve land under this Settlement Agreement shall be made within 15 years of the Effective Date;
 - (c) the title to the Acquired Lands is satisfactory to Canada and the lands have been transferred to Canada;

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- (d) the setting apart of the Acquired Lands as reserve has been approved by Canada pursuant to its policy respecting reserve lands, in particular, Canada's Additions to Reserve Policy as may be amended from time to time; and
 - (e) where requested by a municipality or the First Nation, to negotiate in good faith toward arrangements, where reasonable, in such areas as joint land use planning/by-law harmonization, tax considerations, service provision, and future dispute resolution.
- 3.2 The First Nation shall have an environmental site assessment done in accordance with the environmental considerations as outlined in the Additions to Reserve Policy to determine the state of the existing site. This assessment shall be conducted by an independent and competent environmental assessor.
- 3.3 If Toxic Substances or contaminants, in excess of the criteria used by Canada at the time the environmental review is conducted, are discovered on or in the Acquired Lands to be set apart as reserve lands, the First Nation shall advise Canada whether it still wishes to have the lands set apart as reserve. If so, the First Nation shall, at its own expense, arrange for the removal or remediation of the Toxic Substances or contaminants and the reconditioning of the lands so affected in accordance with the applicable standards.
- 3.4 Any costs associated with the environmental considerations as set out in articles 3.2 and 3.3 shall be paid by the First Nation.
- 3.5 In the event the land does not include all mines and minerals or where mines and minerals are included, but are subject to an existing mineral disposition, the First Nation agrees to provide surface access in order to work the mines and minerals to such persons or entities who own the mines and minerals or hold any interest or mineral disposition in such mines and minerals and their duly authorized servants and agents, such agreement to be evidenced by a Band Council Resolution. For greater certainty, Canada agrees, provided the First Nation agrees to provide surface access, to set apart the proposed reserve lands as reserve without any further action or agreement from the First Nation in relation to the mines and minerals.
- 3.6 Canada acknowledges that it will undertake, on a best efforts basis, to set aside the Acquired Lands as reserve lands following a Band Council Resolution request by the First Nation.
- 3.7 In consultation with the Council, Canada shall cause to be prepared, by a qualified Canada Land Surveyor, a plan of the Acquired Lands to be set apart as reserve if Canada determines that a plan is required. If Canada determines that a plan is not required, Canada shall cause to be prepared a legal description of the Acquired Lands to be set apart as reserve. The plan and/or description shall be prepared in accordance with the

standards of the Surveyor General for Canada. The cost of the preparation of the plan and/or description shall be paid by the First Nation, shall be conducted in a timely fashion and Canada shall provide a copy of the plan or description to the First Nation.

- 3.8 Except as otherwise noted in this Article 3, the First Nation agrees to pay all costs related to acquiring the lands, complying with the Additions to Reserve Policy and setting apart the lands as reserve including, but not limited to, the following costs:
- (a) all conveyances, including clearance of title (if required), removal of encroachments or encumbrances (if any), searches, surveys, land title registration, legal fees, commissions, applicable taxes and tax adjustments, feasibility studies, environmental reviews and appraisals;
 - (b) payment, if any, arising from agreements between the First Nation and municipalities for services provided by those municipalities;
 - (c) payment to urban municipalities (defined as any city, town or village or other built-up area as defined in the Additions to Reserve Policy) and to rural municipalities (defined as any municipality other than an urban municipality), if required, to compensate for any Municipal Taxes any urban and rural municipalities may lose and to pay urban municipalities for municipal services; but
 - (d) nothing in this Article requires the First Nation to pay for costs internal to the Government of Canada for which a fee would not in the normal course be charged to a band.
- 3.9 Nothing in this Settlement Agreement restricts the First Nation from being eligible to apply for and to receive funding under government programs and other forms of assistance provided by Canada, in accordance with the criteria established from time to time for the application of such programs and funding.
- 3.10 Canada agrees that federal programs and services shall continue to apply to the First Nation on the same basis as to other bands in Canada as if this Settlement Agreement had not been signed, in accordance with the criteria established from time to time for the application of such programs and funding.
- 3.11 The Parties further understand and agree that there is no obligation on the part of Canada to sell or convey any federal real property including any mines and minerals or to set apart any federal real property including mines and minerals for the use and benefit of the First Nation, at any time, nor shall mines and minerals be set apart as reserve without the surface rights having been set apart as reserve.

ARTICLE 4

SURRENDER

- 4.1 The First Nation hereby absolutely surrenders to Canada, pursuant to the provisions of sections 38 and 39 of the *Indian Act*, all rights and interests of whatsoever kind and nature which the First Nation and its members and their heirs, descendants, executors, successors and assigns, past, present and future, may have had, or may now have, in the lands described as follows:

In the Province of Nova Scotia all those parcels of land, situate, lying and being in the County of Queens, Province of Nova Scotia, shown as Lots 1 and 2 on a plan recorded in the Canada Lands Surveys Records at Ottawa as 4974.
Said parcels containing together about 80.9 hectares (200 acres).

TO HAVE AND TO HOLD the same unto Canada, its successors and assigns, in perpetuity.

- 4.2 The First Nation's agreement to absolutely surrender to Canada all rights and interests of whatsoever kind and nature which the First Nation and its members and their heirs, descendants, executors, successors and assigns, past, present and future, may have had, or may now have, in the lands described in Article 4.1 shall be null and void and of no effect unless:
- (a) the Settlement Agreement and absolute surrender have been approved and assented to pursuant to Article 8; and
 - (b) the Settlement Agreement has been executed by Canada and the First Nation pursuant to Article 9.

ARTICLE 5

RELEASE

- 5.1 In consideration of the Compensation paid by Canada to the First Nation and the mutual fulfilment of the promises in this Settlement Agreement, but subject to Article 5.2, the First Nation agrees to:
- (a) forever release and discharge Canada and any of its Ministers, officials, servants, employees, agents, successors and assigns from any action, cause of action, suit, claim or demand whatsoever, whether known or unknown, and whether in law, in equity or otherwise, which the First Nation and the past, present and future members of the First Nation and any of their respective heirs, descendants, legal

representatives, successors and assigns may ever have had, may now have or may in the future have against Canada and any of its Ministers, officials, servants, employees, agents, successors and assigns with respect to the Claim, including all costs incurred by the First Nation for research, preparation, negotiation and settlement of the Claim, and ratification of the Settlement Agreement, including legal fees;

- (b) forever release and discharge Canada and any of its Ministers, officials, servants, employees, agents, successors and assigns from any past, present or future obligation or liability, whether in law, in equity or otherwise, to the First Nation and the past, present and future members of the First Nation and any of their respective heirs, descendants, legal representatives, successors and assigns may ever have had, may now have or may in the future have against Canada and any of its Ministers, officials, servants, employees, agents, successors and assigns, relating to or arising from the fact that Canada has paid the Compensation and Negotiation Costs pursuant to Article 2, or related to or arising from the deposit by Canada of the Compensation pursuant to Article 2, and any subsequent deposit, withdrawal, use, management or any other dealings with respect to the Compensation by the trustees pursuant to the Ponhook Trust; and
- (c) not assert any action, cause of action, suit, claim or demand whatsoever, whether in law, in equity or otherwise, which the First Nation and the past, present and future members of the First Nation and any of their respective heirs, descendants, legal representatives, successors and assigns may ever have had, may now have or may in the future have against Canada and any of its Ministers, officials, servants, employees, agents, successors and assigns with respect to:
 - (i) the Claim and all costs incurred by the First Nation for research, preparation, negotiation and settlement of the Claim, and ratification of the Settlement Agreement, including legal fees;
 - (ii) the procedures followed pursuant to the Referendum Regulations as well as the execution of this Settlement Agreement by the First Nation;
 - (iii) the deposit of the Compensation into a Ponhook Trust Account and the management of the Compensation by the Trustees; and
 - (iv) the representations and warranties of the First Nation under Article 12.

5.2 Notwithstanding Articles 5.1(a), (b) and (c), nothing in this Article is intended, nor shall it be construed, as affecting any action, cause of action, suit, claim or demand whatsoever whether known or unknown, and whether in law, in equity or otherwise, which the First Nation and the past, present and future members of the First Nation and any of their

respective heirs, descendants, legal representatives, successors and assigns may ever have had, may now have, or may in the future have against Canada and any of its Ministers, officials, servants, employees, agents, successors and assigns with respect to any other claim that the First Nation may have that does not relate directly to the Claim.

- 5.3 The releases set out in this Article do not release Canada from the due performance of its obligations arising from this Settlement Agreement, including, without limiting the generality of the foregoing, the obligation set out in Article 3 of this Settlement Agreement that the Minister shall recommend to the Governor in Council that up to 250 acres of land obtained by the First Nation to be set apart as reserve lands for the use and benefit of the First Nation subject to the conditions set out in Article 3, and nothing herein shall prevent or restrict the First Nation from pursuing any legal remedies for non-performance by Canada. Furthermore, Canada shall not be entitled to and it shall not rely on this Article if Canada fails to pay the Compensation and Negotiation Costs in accordance with the provisions of Article 2 of this Agreement.

ARTICLE 6

INDEMNITY

- 6.1 For the purposes of this Article 6, "Claimant" means a person, including a band, who has or has had, or may in the future have, a claim to an interest in the Claim, where such claim is based upon an interest that is or was held by such a band, or a person as a member of any other band, or as a member of the Acadia First Nation, or as descendant of such a member or as a person eligible to be a member.
- 6.2 Subject to the provisions of Article 6.7, the First Nation agrees to indemnify and forever save harmless Canada and any of its Ministers, officials, servants, employees, agents, successors and assigns from and against any and all obligation, liability, duty, loss or damage resulting directly or indirectly from any action, cause of action, suit, claim or demand whatsoever, whether known or unknown, and whether in law, in equity or otherwise, brought by any Claimant against Canada and any of its Ministers, officials, servants, employees, agents, successors and assigns with respect to:
- (a) the Claim, but not including those losses and matters set out in Article 5.2, including all costs incurred by the First Nation for research, preparation, negotiation and settlement of the Claim, and ratification of the Settlement Agreement, including legal fees;
 - (b) the procedures followed pursuant to the Referendum Regulations as well as the execution of this Settlement Agreement by the First Nation;

- (c) the deposit of the Compensation into the Trust Account as set out in the Ponhook Trust and the management of the Compensation by the Trustees;
 - (d) the representations and warranties of the First Nation under Article 12; provided
 - (e) that such obligation, liability, duty, loss or damage has been awarded or determined by a decision or order of a court or other tribunal of competent jurisdiction, or by a settlement (whether or not court proceedings have been instituted) consented to by the First Nation, and notice has been given to the First Nation pursuant to Article 6.3.
- 6.3 Canada shall provide notice to the First Nation by registered mail of any claim which may reasonably give rise to indemnification under this Article. Such notice shall be sufficient to enable the First Nation to identify the claim and the Claimant and to protect its interests in a court proceeding or settlement, and will include copies of all pleadings, documents and offers of settlement filed with a court or tribunal by the Claimant.
- 6.4 Canada shall assume and control the defense and any negotiations relating to any action, cause of action, suit, claim or demand referred to in Articles 6.1 and 6.2. Canada agrees that it will not refuse to defend itself based solely on the existence of this Article and that it will provide to the First Nation copies of all pleadings, documents and offers of settlement filed by it with a court or tribunal.
- 6.5 Any demand by Canada for indemnification shall be made in writing, and if the amount so claimed is not paid by the First Nation within one hundred twenty (120) days of receipt of such notice, Canada shall be entitled to invoke all rights and remedies provided by law to recover any amounts owed by the First Nation.
- 6.6 The First Nation shall be entitled to defend, at its own expense, against any claim against Canada which may give rise to a right of indemnity under this Article, and may make such investigation, negotiation and settlement of any claim as it deems expedient. Canada shall consent to the First Nation being added as a Defendant or Intervenor if the First Nation makes such an application. This entitlement, however, shall in no way:
- (a) mean that the First Nation is entitled to represent Canada, and any of its Ministers, officials, servants, employees, agents, successors and assigns; or
 - (b) affect the rights or abilities of Canada, and any of its Ministers, officials, servants, employees, agents, successors and assigns to defend any such claim including, without limitation, the appointment of counsel.
- 6.7 Notwithstanding Articles 6.1 to 6.6, inclusive, Canada agrees that it shall not be entitled to, and it shall not, rely on the indemnity provided by this Article if Canada fails to pay

the Compensation in accordance with Article 2 of this Settlement Agreement.

ARTICLE 7

EFFECTIVE DATE OF SETTLEMENT AGREEMENT

- 7.1 This Settlement Agreement shall come into effect and bind the Parties only upon the later of the following dates:
- (a) the date on which this Settlement Agreement is signed by at least a quorum of the Council in accordance with Article 9; and
 - (b) the date on which this Settlement Agreement is signed by Canada in accordance with Article 9.

ARTICLE 8

RATIFICATION BY THE FIRST NATION

- 8.1 The First Nation agrees to and approves the terms and conditions of the Settlement Agreement and the Ponhook Trust, and authorizes at least a quorum of the Council to sign the Settlement Agreement and Ponhook Trust if, at the Ratification Vote, a majority (over 50%) of the Eligible Voters vote and a majority (over 50%) of the votes cast by the Eligible Voters are in favour of the Settlement Agreement and the Ponhook Trust.
- 8.2 If, at the Ratification Vote held pursuant to Article 8.1, a majority (over 50%) of the Eligible Voters do not vote, but a majority (over 50%) of the votes cast are in favour of the Settlement Agreement and Ponhook Trust, then a second Ratification Vote at the request of the First Nation shall be called by the Minister.
- 8.3 Where a second Ratification Vote is held pursuant to Article 8.2, the First Nation agrees to and approves the terms and conditions of the Settlement Agreement and Ponhook Trust, and authorizes at least a quorum of the Council to sign the Settlement Agreement and Ponhook Trust if, at the second Ratification Vote, a majority (over 50%) of the votes cast by the Eligible Voters are in favour of the Settlement Agreement.
- 8.4 If the required approval and assent pursuant to Article 8.1 (or, in the case of a second vote, Article 8.3) is not obtained:
- (a) the Settlement Agreement shall not be signed on behalf of the First Nation and shall have no effect; and

- (b) the Ponhook Trust shall not be signed on behalf of the First Nation and shall have no effect;
- (c) for greater certainty, the surrender described in Article 4 shall have no force and effect.

8.5 Canada and the First Nation agree that all Ratification Votes with respect to the Settlement Agreement and Ponhook Trust shall be conducted in accordance with the Referendum Regulations.

ARTICLE 9

SIGNING

- 9.1 This Settlement Agreement shall be signed by at least a quorum of the Council on behalf of the First Nation following ratification of this Settlement Agreement in accordance with Article 8.
- 9.2 This Settlement Agreement shall be signed by the Minister on behalf of Canada after the conditions precedent set out in Article 10 have been met.

ARTICLE 10

CONDITIONS PRECEDENT

- 10.1 Canada and the First Nation agree that the following are conditions precedent to any obligation by Canada to sign this Settlement Agreement:
 - (a) approval and assent to the Settlement Agreement by the First Nation in accordance with Article 8;
 - (b) signing of the Settlement Agreement by the First Nation in accordance with Article 9;
 - (c) the Ponhook Trust is satisfactory to Canada;
 - (d) approval of the Ponhook Trust by the First Nation in accordance with Article 8;
 - (e) the surrender referred to in Article 4 has been approved by the Governor in Council;

- (f) signing of this Settlement Agreement by the Minister on behalf of Canada has been authorized by the Governor in Council;
- (g) funds for the payment of the Compensation have been approved and appropriated for that purpose by Canada;
- (h) receipt by Canada of the Solicitor's Certificate from the First Nation's legal counsel, dated as of the date of signing of this Settlement Agreement by the First Nation, substantially in the form attached as Schedule 4; and
- (i) receipt by Canada of the Financial Advisor's Certificate from the First Nation's financial advisor, dated as of the date of signing of this Settlement Agreement by the First Nation, substantially in the form attached as Schedule 5.

ARTICLE 11

DISPUTE RESOLUTION

- 11.1 If a dispute arises out of or in connection with this Settlement Agreement, and the Parties do not resolve some or all of the dispute through discussions, then either Party may provide written notice to the other, containing a request to negotiate. This notice shall be given promptly in order to prevent further damages resulting from delay and shall specify the issues in dispute.
- 11.2 If the Parties do not resolve some or all of the issues in dispute within 30 days from the notice set out in Article 11.1, the Parties agree to attempt to resolve those issues through mediation.
- 11.3 The Parties will jointly select a mediator. If they are unable to do so within 15 days, then the Parties shall request the Arbitration and Mediation Institute of Canada to select a mediator on their behalf.
- 11.4 All information exchanged during the negotiation and mediation procedures shall be regarded as "without prejudice" communications for the purposes of settlement negotiations and shall be treated as confidential by the Parties and their representatives unless otherwise required by law. However, evidence that is independently admissible or discoverable shall not be rendered inadmissible or non-discoverable by virtue of its use during negotiation or mediation.
- 11.5 The Parties agree that the representatives selected to participate in the dispute resolution process will have the authority required to resolve the dispute, or a rapid and accessible means of obtaining that authority.

- 11.6 The Parties agree that they will each be responsible for the costs of their own legal counsel and personal travel associated with the negotiation and mediation. Fees and expenses of the mediator and all administrative costs of the mediation, such as the cost of a meeting room, if any, will be borne equally by the Parties.
- 11.7 If within 60 days of the appointment of a mediator, the Parties do not resolve some or all of the issues in dispute, the Parties shall discuss the option of jointly submitting those issues to binding arbitration pursuant to the *Commercial Arbitration Act*, R.S.C. 1985, c.17 (2nd Supp.) as amended from time to time. The Parties agree that, regardless of the foregoing, no issue of law shall be submitted to binding arbitration.
- 11.8 The arbitral proceeding shall commence on a date agreed to by the Parties.
- 11.9 The Parties will jointly select an arbitrator. If they are unable to do so within 15 days, then the Parties shall request the Arbitration and Mediation Institute of Canada to select an arbitrator.
- 11.10 The arbitration shall take place at Halifax, Nova Scotia.
- 11.11 The Parties agree that they will each be responsible for the costs of their own legal counsel and other costs incurred in preparing each Party's case for arbitration. The administrative costs of the arbitration, such as the expenses and fees for the arbitrator, the cost of the hearing room, if any, shall be borne equally by the Parties.
- 11.12 Within 20 days of the selection of the arbitrator, the Parties shall submit written statements to the arbitrator and each other, containing a statement of facts, issues in dispute and remedies sought. Within 10 days of a Party receiving the other Party's written statement, a response to the other Party's written statement may be provided to the arbitrator and the other Party.
- 11.13 The Parties shall jointly select a date for the hearing that is no later than 40 days from the date following the submission of the Parties' statements to the arbitrator or written responses, if any.
- 11.14 Each Party shall deliver to the other and to the arbitrator, no later than 10 days prior to the date set for a hearing, a copy of all documents and other materials on which the Party intends to rely during the arbitral hearing.
- 11.15 The arbitrator shall make every reasonable effort consistent with Article 18 of the Commercial Arbitration Code to complete the proceedings and render the award within six months of the commencement date. The arbitral award shall be in writing and include reasons for the decision.

ARTICLE 12

REPRESENTATIONS AND WARRANTIES OF THE FIRST NATION

12.1 The First Nation represents and warrants that:

- (a) the First Nation, via its Council, has retained independent legal counsel qualified to practice law in the Province of Nova Scotia to advise the First Nation with regard the signing and delivery of the Settlement Agreement and the Ponhook Trust;
- (b) the First Nation's legal counsel has provided to the First Nation, via its Council, independent legal advice with respect to the preparation, signing and delivery of the Settlement Agreement, and advice with respect to the preparation, signing, management and administration of the Ponhook Trust, including, without limited to, the implications of deposit by Canada of the Compensation into the Trust Account rather than into an account for the First Nation managed by the Department;
- (c) the First Nation, via its Council, has retained an independent financial advisor qualified as an investment dealer under the Securities Act of the Province of Nova Scotia, and a member of the investment firm Scotia McLeod Inc. to provide investment financial advice to the First Nation with regard to the Ponhook Trust;
- (d) the First Nation's financial advisor has provided the First Nation, via the Negotiating Team, with independent financial advice of the kind included in the practice of an investment dealer with respect to the investment strategies of the Ponhook Trust, the definition of Authorized Investments under the Ponhook Trust, and a consideration of the financial consequences of the deposit of the Compensation into the Trust Account established pursuant to the Ponhook Trust rather than into an account for the First Nation managed by the Department of Indian Affairs and Northern Development including, without limitation, financial advice which contrasts the potential rates of return, potential investment risks, and the impact on the rate of return and the investment risk factors of any potential differential tax implications associated with placing the Compensation into the Trust Account rather than into an account managed by the Department;
- (e) they are the sole band entitled to share in the compensation for the Claim and that all rights and causes of action in the Claim are solely vested in the Acadia First Nation and that no other band or First Nation has any right or interest in the Claim whatsoever.

ARTICLE 13

FURTHER ASSURANCES

- 13.1 The Parties shall in good faith execute such further documents and take such further measures as may be necessary to carry out and implement the terms, conditions, intent and meaning of this Settlement Agreement. For greater certainty, this includes executing such further documents and taking such further measures as may be necessary to allow for the possible application of any future applicable legislation respecting the implementation of claim settlements in Nova Scotia this Settlement Agreement.
- 13.2 The First Nation confirms that by the Ratification Vote held on January 30, 2002, it has authorized at least a quorum of the present Council, and succeeding Councils, to act for and on behalf of the First Nation and its descendants, legal representatives, successors and assigns to do such things, sign such further documents and take such further measures as may be necessary to carry out and implement the terms, conditions, intent and meaning of this Settlement Agreement.
- 13.3 This Settlement Agreement shall not be construed so as to abrogate or derogate from the protection provided for existing aboriginal and treaty rights of the First Nation or the Members of the First Nation by the recognition and affirmation of those rights in Section 35 of the Constitution Act, 1982.

ARTICLE 14

NOTICE

- 14.1 Any notice or other written communication required or permitted to be given under this Settlement Agreement will be given as follows:

- (a) to Canada:

Claims and Indian Government
Department of Indian Affairs and Northern Development
Les Terrasses de la Chaudiere
10 Wellington Street
HULL QC K1A 0H4

FAX: (819) 953-0545

LB
V.R.

(b) to the First Nation:

Chief and Council
Acadia First Nation
RR #4, Box 5914C
Yarmouth, NS B5A 4A8

FAX: (902) 742-8854

14.2 Any notice may be delivered personally or sent by facsimile or registered mail to either Party at the addresses set out in Article 14.1. The notice will be presumed to have been received by the Party:

- (a) if delivered personally, on the day that it was delivered;
- (b) if sent by facsimile, on the next business day after it was transmitted; and
- (c) if sent by registered mail, on the earlier of the day it was received and the fifth day after it was mailed.

14.3 During an actual or anticipated postal disruption or stoppage, the mail will not be used by either Party, and if used, such notice will be of no effect.

ARTICLE 15

GENERAL PROVISIONS

Binding on the Parties

15.1 This Settlement Agreement is for the benefit of and is binding upon Canada and any of its Ministers, officials, servants, employees, agents, successors and assigns and upon the First Nation and any of their respective heirs, descendants, legal representatives, successors and assigns.

Members of House of Commons

15.2 No member of the House of Commons shall be admitted to any share or part of this Settlement Agreement or to any benefit arising from this Settlement Agreement.

No Admission of Fact or Liability

- 15.3 This Settlement Agreement is entered into by Canada and the First Nation without any admission of fact or liability whatsoever with respect to the Claim.

Headings and Table of Contents

- 15.4 The insertion of headings and recitals and the provision of a table of contents, are solely for convenience and in no way modify or explain the scope or meaning of any part of this Settlement Agreement.

Expanded Meanings

- 15.5 Words in the singular include the plural and words in the plural include the singular.
- 15.6 Words importing male persons include female persons and corporations.

No Presumption of Ambiguity

- 15.7 There shall be no presumption that any ambiguity in any of the terms of this Settlement Agreement should be interpreted in favour of any Party.

Assignment

- 15.8 The Parties agree that the rights and obligations of the Parties to this Settlement Agreement may not be assigned or otherwise transferred without the prior written consent of the other Party.

Amendment

- 15.9 This Settlement Agreement may only be varied, changed, amended, added to or replaced by written agreement between the Parties, approved through the same procedures as this Settlement Agreement was approved, save and except that the Council and Canada may agree in writing from time to time to amend this Settlement Agreement, without further approval, for any of the following purposes:
- (a) to remove any conflicts or inconsistencies which may exist between any of the terms of this Settlement Agreement and any provision of any applicable law or regulation, so long as the Council and Canada agree that such amendments will not be prejudicial to the interests of the First Nation or Canada; or

- (b) to correct any typographical error in this Settlement Agreement, or to make corrections or changes required for the purpose of curing or correcting clerical omission, mistake, manifest error or the ambiguity arising from defective or inconsistent provisions contained in this Settlement Agreement.

15.10 Amendments made pursuant to Article 15.9(a) or (b) will be made by written agreement between a quorum of the Council on behalf of the First Nation, and by the Deputy Minister of the Department on behalf of Canada.

Waiver

15.11 No waiver of any provision of this Settlement Agreement shall have any legal effect unless such waiver is expressed in writing and has been duly signed by the Party making the waiver in the same manner as this Settlement Agreement was signed by that Party.

Applicable Law

15.12 This Settlement Agreement shall be governed by the applicable laws of Canada, the First Nation and Nova Scotia.

References to Statutes and Regulations

15.13 All references in this Settlement Agreement to statutes and regulations of Canada shall include, unless a contrary intention is expressed, any such statute or regulation as may be amended, re-enacted or replaced from time to time.

AB
V.R.

IN WITNESS WHEREOF the Minister of Indian Affairs and Northern Development, on behalf of Her Majesty The Queen in Right of Canada has executed this Settlement Agreement on _____, 2002, and at least a quorum of the Council of the Acadia First Nation, on behalf of the Acadia First Nation, have hereunto set their respective hands on _____, 2002.

SIGNED on behalf of HER MAJESTY

THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of Indian Affairs and Northern Development, in the presence of:

Signature: _____

Name of Witness: _____

Address: _____

Minister of Indian Affairs and
Northern Development

SIGNED on behalf of the
ACADIA FIRST NATION as represented by
at least a quorum
of the Council of the First Nation in the
presence of:

Signature: _____

Name of Witness: _____

Address: _____

(As to all signatures)

)
) Per: _____
) Chief
)
) Per: _____
) Councillor
)
) Per: _____
) Councillor
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) Councillor

LB
V.R.



Natural Resources
Canada

Ressources naturelles
Canada

SCHEDULE "1"

Legal Surveys Division
136 Victoria Street, East
AMHERST, Nova Scotia
B4H 1Y1
Telephone/Téléphone:
Fax/Télécopieur:

Division des levés officiels
136, rue Victoria est
AMHERST (Nouvelle Écosse)
B4H 1Y1
(902) 661-6766
(902) 661-6769

Your file / Votre référence

November 5, 2001

Our file / Notre référence

SM8202-06030 2001-16-048

Ms. Barb Maloney,
Lands and Trusts Senior Policy Analyst
Atlantic Regional Office
Indian and Northern Affairs Canada
40 Havelock Street
Amherst (NS)
B4H 3Z3

Dear Ms. Maloney:

Re: Legal Description for Lots 1 and 2, Ponhook Lake, Queens County, NS

The attached legal description is for the purpose of a land claim settlement related to Lots 1 and 2 situated at Ponhook Lake, Queens County, Nova Scotia as shown on Plan 4974 C.L.S.R. Plan 4974 reflects the four 100 acre lots surveyed by deputy surveyor Whitman Freeman in 1843 for the following Indians: Lot 1 for Joseph Mattie, Lot 2 for Ellick Davis, Lot 3 for Ellick Jeremy and Lot 4 for Peter Toney.

If this description is to be registered in the provincial registry office, a copy of Plan 4974 should be attached to the description as Plan 4974 is recorded only in the Canada Lands Surveys Records and not in the provincial registry.

Enclosed are two copies of Plan 4974 CLSR together with the legal description for Lots 1 and 2.

Sincerely,

Claude F. Bonnell, CLS
Atlantic Client Liaison Unit
Legal Surveys Division

-25-

RB
V.R.

Canada

Geomatics Canada • Géomatique Canada
Earth Sciences Sector • Secteur des sciences de la Terre



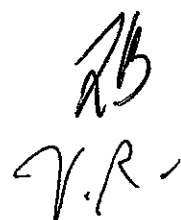
Legal Description

All those parcels of land, situate, lying and being in the County of Queens, Province of Nova Scotia, shown as Lots 1 and 2 on a plan recorded in the Canada Lands Surveys Records at Ottawa as 4974.

Said parcels containing together about 80.9 hectares (200 acres).

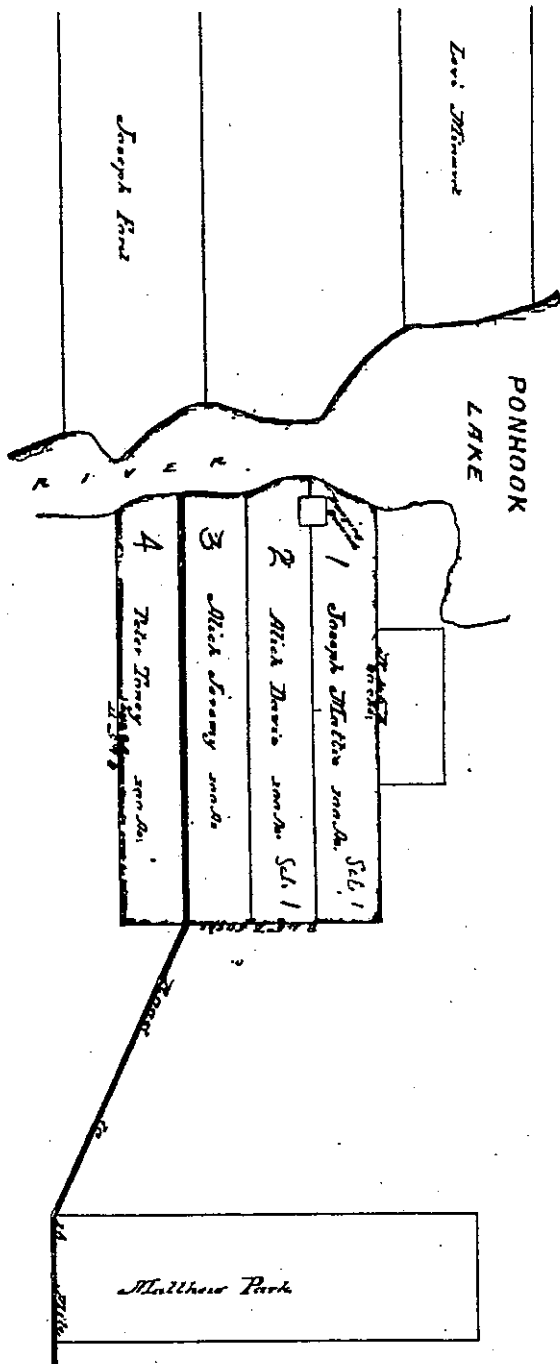


Claude F. Bonnell, CLS
Atlantic Client Liaison Unit
Legal Surveys Division
Natural Resources Canada
November 05, 2001



INDIAN AFFAIRS SURVEY RECORDS
No. 4974

PLAN OF A. RITE CONSIDERING AND HERE FOR THE PURPOSE OF THE
THIRTEEN THE LIVERMORE RIVER IN QUEENS COUNTY -

[illegible]

KB
Y.R.

0

SCHEDULE "2"

to

SETTLEMENT AGREEMENT

dated for reference November 20, 2001.

BALLOT QUESTION

As a Voter of the Acadia Band, do you:

- (a) **agree to** absolutely surrender, to Canada, pursuant to sections 38 and 39 of the *Indian Act*, all rights and interests of any kind to and in all the lands described in Article 4.1 of this Final Settlement Agreement; and
- (b) **agree to authorize and direct** present and future Councils of the Acadia Band to act on behalf of the Acadia Band and its members, to sign all documents and take all necessary measures as required to give effect to the absolute surrender; and
- (c) **approve of the terms and conditions** set out in the Acadia Specific Claim Settlement Agreement, and the Ponhook Trust and do you authorize at least a quorum of Council to sign all documents necessary to give effect to these Agreements, on behalf of the Acadia First Nation?

YES

☐

NO

☐

Mark this Ballot by placing an "X" in the box under the word "YES" or "NO".

*LB
V.R.*

SCHEDULE "3"

APPENDIX "A"

Acknowledgement of Receipt of Funds

To: The Department of Indian Affairs and Northern Development (hereinafter "DIAND")

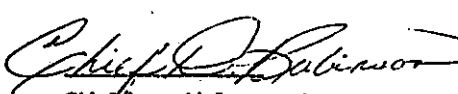
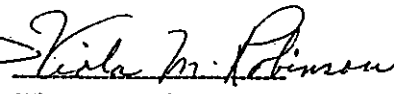
From: The Acadia First Nation (hereinafter the "First Nation")

Dated: August 8, 1996

Whereas:

- A. In October, 1982, the First Nation submitted a land claim relating to Lots 1, 2, 3, and 4 of the Ponhook Indian Reserve No. 10 (the "Claim");
- B. On July 23, 1985, DIAND accepted the claim in relation to Lots 1 and 2 for negotiation, without prejudice to the First Nation's right to present new arguments in the future with respect to Lots 3 and 4;
- C. Lots 1 and 2 (the "Land") are currently occupied by the Estate of Tom Labrador (the "Vendor");
- D. The First Nation has entered into an agreement of purchase and sale with the Vendor to acquire the Land from the Vendor for the price of \$45,000. Provided that the Vendor agrees to pay 1/2 the cost of the survey of the Land;
- E. DIAND has agreed, prior to the final resolution of the Claim, to advance the funds necessary to complete the purchase of the Land (which funds shall include the purchase price and legal and survey costs);
- F. The First Nation acknowledges that any and all funds received from DIAND to complete the purchase of the Land shall be deducted from any compensation that may subsequently be paid to the First Nation in relation to the Claim; and
- G. Once the Land has been purchased, the First Nation intends to make application to have the Land granted reserve status under the *Indian Act* subject to the additions to Reserves Policy;

NOW THEREFORE; in consideration of the advancement of settlement monies by DIAND, the Chief, on behalf of the Council and First Nation, acknowledges receipt of the sum of \$45,000. from DIAND, and agrees that this money and all other funds received from DIAND to complete the purchase of the Land shall be deducted from any compensation that may subsequently be paid to the First Nation in relation to the Claim.

 
Chief (insert his/her name) Witness to the signature of Chief
(Insert name)

ACADIA FIRST NATION BAND COUNCIL RESOLUTION

Whereas in October 1982, the Acadia First Nation submitted a land claim relating to Ponhook Indian Reserve No. 10 (hereinafter the "Claim"), accepted in part for negotiation by the Department of Indian Affairs on July 23, 1985; and

Whereas a portion of the land claimed by the First Nation (hereinafter the "Land") is currently occupied by the Estate of Tom Labrador (hereinafter the "Vendor"); and

Whereas the First Nation has entered into an agreement of purchase and sale with the Vendor to acquire the Land from the Vendor for the price of \$45,000., provided that the Vendor agrees to pay 1/2 the cost of the survey of the Land; and

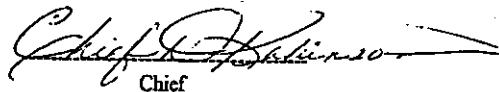
Whereas the Department of Indian Affairs has agreed, prior to the final resolution of the Claim, to advance the funds necessary to complete the purchase of the Land (which funds shall include the purchase price and legal and survey costs) and

Whereas the First Nation acknowledges that any and all funds received from the Department of Indian Affairs to complete the purchase of the Land shall be deducted from any compensation that may subsequently be paid to the First Nation in relation to the Claim; and

Whereas once the Land has been purchased, the First Nation intends to make an application to have the Land granted reserve status under the *Indian Act* subject to the Additions to Reserves Policy;

Now therefore it is unanimously resolved as a Resolution of the Council of the First Nation as follows:

- 1) That the Chief of the First Nation is authorized by and on behalf of this Council, to purchase the Land in trust for the Band for the price of \$45,000. And to negotiate and execute any agreements or documents that may be necessary to complete the said purchase, on terms and conditions which are consistent with the intent of this Resolution.
- 2) That the Chief of the First Nation is authorized by and on behalf of this Council, to Apply to the Department of Indian Affairs for all funds necessary to complete the purchase, including the purchase, price and legal and survey costs.
- 3) That the Chief of the First Nation is authorized by and on behalf of this Council, to execute and deliver an Acknowledgement of Receipt of Funds, which acknowledgement will provide that any and all funds received by the First Nation from the Department of Indian Affairs to complete the purchase of the Land shall be deducted from any compensation that may subsequently be paid to the First Nation in relation to the Claim. A copy of the Acknowledgement is attached to this Resolution as Appendix "A".
- 4) That once the Land has been purchased, the Chief of the First Nation is authorized by and on behalf of this Council, to apply to the Department of Indian Affairs to have the Land granted reserve status under the *Indian Act* subject to the Additions to Reserves Policy.
- 5) The Council approves and authorizes the entering into of agreements with the children of Tom Labrador to the extent of the legal rights of the Acadia First Nation to the lands, from time to time, to allow them the unassignable right to the exclusive use of the cabin on the Labrador lands for their lifetime and the Chief of the Acadia First Nation shall execute such agreements and documents as may be necessary in her discretion to carry out the intent of this Resolution.


Chief

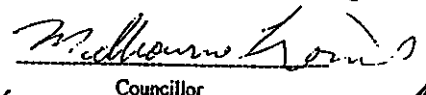

Councillor


Councillor


Councillor


Councillor


Councillor


Councillor

-30-

August 8, 1996
7:30 P.M.

At the Band Office, Harnmouth, N.S. N.R.

SCHEDULE "4"

to

SETTLEMENT AGREEMENT dated for reference November 20, 2001

SOLICITOR'S CERTIFICATE

I, D. BRUCE CLARKE, on behalf of Burchell Green Hayman Parish, Barristers and Solicitors, of the Province of Nova Scotia, state as follows:

1. **THAT I** am a member in good standing of the Nova Scotia Barristers' Society.
2. **THAT BURCHELL GREEN HAYMAN PARISH** has been retained by the Council of the Acadia First Nation (the "First Nation") to act as independent legal counsel to the First Nation to advise the First Nation with regard to the negotiation, preparation, execution and delivery of the Acadia First Nation Settlement Agreement (the "Settlement Agreement"); the preparation, execution, management and administration of the Ponhook Trust (the "Ponhook Trust"); and advice with respect to the surrender of lots 1 and 2.
3. **THAT BURCHELL GREEN HAYMAN PARISH** has provided the First Nation, via the Negotiating Team, independent legal advice with respect to the negotiation, preparation, execution and delivery of the Settlement Agreement and the surrender of lots 1 and 2, and the preparation and execution of the Ponhook Trust and the management and administration of the Ponhook Trust including the deposit of the Compensation payable pursuant to the Settlement Agreement into the Trust Account established pursuant to the Ponhook Trust rather than into an account for the First Nation managed by the Department of Indian Affairs and Northern Development including, without limitation, the tax implications associated with placing the Compensation into the Trust Account rather than into an account managed by the Department.
4. **THAT I**, or another lawyer from **BURCHELL GREEN HAYMAN PARISH** familiar with the Settlement Agreement and Ponhook Trust, was present at the following information meeting(s) which were called by the First Nation for the purpose of explaining to the members of the First Nation the Settlement Agreement and Ponhook Trust:

Location of Meetings:

Dates:

Yarmouth
Shelburne
Milton

January 15, 2002
January 16, 2002
January 17, 2002

Gold River
Halifax

January 21, 2002
January 22, 2002

5. **THAT I**, or another lawyer from **BURCHELL GREEN HAYMAN PARISH** familiar with the Settlement Agreement and Ponhook Trust, provided each Voting Member, as defined in the Settlement Agreement, with a copy of the Investment Information Form attached hereto and further advised any person who raised questions or concerns that were not satisfied or resolved by the Investment Information Form that an Investment Dealer would be present at the information meeting held in Halifax on January 22, 2002 to respond in person to such questions or concerns.

6. **THAT I**, or another lawyer from **BURCHELL GREEN HAYMAN PARISH** familiar with the Settlement Agreement and Ponhook Trust, was present at the information meetings and made a presentation at the information meetings, to the members of the First Nation then present, consisting of an overview of the terms and conditions of the Settlement Agreement and the Ponhook Trust, including the deposit of the Compensation payable pursuant to the Settlement Agreement into the Trust Account established pursuant to the Ponhook Trust rather than into an account for the First Nation managed by the Department of Indian Affairs and Northern Development, which provided an explanation of the contents of the Settlement Agreement and the Ponhook Trust to the members of the First Nation then present, the surrender of lots 1 and 2 and answered any relevant legal questions raised at the information meetings to the best of our professional ability.

7. That it is understood and agreed by Canada that neither **BURCHELL GREEN HAYMAN PARISH**, nor any lawyer from **BURCHELL GREEN HAYMAN PARISH**, owe any type of legal or other duty or obligation to Canada and that providing this Certificate in no way alters this situation. Furthermore, that the representations set out in this Certificate are intended for the sole purpose of documenting the fact that the First Nation has received, in the ways described above, independent legal advice in this process, and are not intended to create any additional duties, obligations or liabilities on our part to any of the parties to the Settlement Agreement or the Ponhook Trust or to any third party with respect to the same.

DATED at Halifax, Nova Scotia, this _____ day of _____, 2002.

Witness to the signature of

WITNESS

D. Bruce Clarke
Barrister & Solicitor

SCHEDULE "5"

to

SETTLEMENT AGREEMENT dated for reference November 20, 2001

FINANCIAL ADVISOR'S CERTIFICATE

I, _____, on behalf of _____, of the Province of Nova Scotia, state as follows:

1. **THAT** I am a licenced Investment Dealer under the Securities Act of the Province of Nova Scotia and am a member of the investment firm Scotia McLeod Inc.

2. **THAT** I have been retained by the Council of the Acadia First Nation (the "First Nation") to act as independent financial advisor to the First Nation to provide investment financial advice to the First Nation with regard to the Acadia First Nation Ponhook Trust (the "Ponhook Trust").

4. **THAT** I have provided the First Nation, via the Negotiating Team, independent investment financial advice of the kind included in the practice of an investment dealer with respect to the investment strategies of the Ponhook Trust, the definition of Authorized Investments under the Ponhook Trust, and a consideration of the financial consequences of the deposit of the Compensation into the Trust Account established pursuant to the Ponhook Trust rather than into an account for the First Nation managed by the Department of Indian Affairs and Northern Development including, without limitation, financial advice which contrasts the potential rates of return, potential investment risks, and the impact on the rate of return and the investment risk factors of any potential differential tax implications associated with placing the Compensation into the Trust Account rather than into an account managed by the Department.

5. **THAT** I was present at the following information meeting which was called by the First Nation for the purpose of explaining to the members of the First Nation the matters set out in paragraph 4:

Location of Meeting:
Halifax

Date:
January 22, 2002

6. **THAT** I made a presentation at the information meeting to the members of the First Nation then present, consisting of a description of the matters set out in paragraph 4, to the best of my professional ability.

7. **THAT** it is understood and agreed by Canada that neither I nor Scotia McLeod Inc. owe any type of legal or other duty or obligation to Canada and that providing this Certificate in no way alters this situation. Furthermore, that the representations set out in this Certificate are intended for the sole purpose of documenting the fact that the First Nation has received, in the ways described above, independent investment financial advice in this process, and are not intended to create any additional

duties, obligations or liabilities on our part to any of the parties to the Ponhook Trust or to any third party with respect to the same.

DATED at _____, this _____ day of _____, 2002.

Witness to the signature of

WITNESS

INVESTMENT DEALER

LB
V.R.

APPENDIX A

ACADIA FIRST NATION'S PONHOOK TRUST

AB
V.R.

THIS TRUST AGREEMENT is made this ____ day of _____, 2001

V.R.
[Signature]

B E T W E E N:

ACADIA BAND, also known as **Acadia First Nation**,

(called "the Settlor" or "Acadia First Nation" as the context requires)

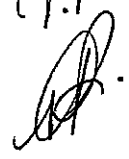
- and -

THE CHIEF AND COUNCIL OF THE ACADIA FIRST NATION,

(called the "Original Trustees")

PART I - FACTS UPON WHICH THIS AGREEMENT IS MADE

1. Acadia First Nation has entered a settlement agreement dated for reference the ____ day of _____ with Her Majesty the Queen in right of Canada ("Canada").
2. The Ponhook Trust is the agreed upon mechanism for managing the compensation money paid pursuant to the Settlement Agreement. Acadia First Nation acknowledges that it has pursued this trust arrangement based upon independent legal and financial advice and with the full knowledge and consent of its members.
3. As part of its obligations under the settlement agreement, Canada has agreed to pay to the Acadia First Nation the net sum of \$1,876,450.00 by way of compensation.
4. Acadia First Nation wishes to create a trust fund to be known as the Ponhook Trust which will hold and invest the compensation paid to the Acadia First Nation by Canada. The Ponhook

N.R.


Trust shall be administered by Trustees on terms and conditions now set out herein for the use and benefit of the present and future Beneficiaries of the Ponhook Trust, all as herein defined.

5. Acadia First Nation may add additional funds to this trust fund to be held and invested for the purposes of the Ponhook Trust.

6. The Original Trustees have agreed to act as Trustees under this Agreement until the appointment of the Trustees under Article 9.01.

PART II - THE AGREEMENT

In consideration of the premises and the covenants contained in this Agreement it is agreed between the Settlor and the Original Trustees as follows:

1. NAME OF THE TRUST

The Trust created by this Agreement shall be known as the "Ponhook Trust".

2. DEFINITIONS

"Authorized Investments" means investments that the Trustees consider appropriate, including units or other interests of any mutual funds, common trust funds, unit trusts, or similar investments, without being limited to those investments authorized by law for trustees under the laws of Nova Scotia and Canada, and that are consistent or equivalent, in the discretion of the Trustees after consultation with the Investment Dealer, to the following:

V.R.
[Signature]

- (a) debt instruments issued or guaranteed by the Government of Canada, a Province of Canada, or a Municipality in Canada;
- (b) debt instruments issued or guaranteed by any Canadian chartered bank;
- (c) investment Grade Commercial Paper issued by corporations rated R-1 or A-1 by the Dominion Bond Rating Service or Canadian Bond Rating Service;
- (d) investment Grade Corporate Bonds rated BBB or higher by the Dominion Bond Rating Service or the Canadian Bond Rating Service;
- (e) mortgage backed securities which are guaranteed by federal or provincial government agencies or by any Canadian chartered bank;
- (f) mutual or pooled funds of any Canadian chartered bank or trust corporation incorporated under the laws of Canada or Nova Scotia;
- (g) for the purposes of the Investment Account only, equity shares publicly traded on a stock exchange in Canada recommended for purchase by the Investment Dealer.

"Band Council Resolution" has the meaning provided by the Indian Act, from time to time, or any successor legislation thereto;

"Beneficiaries" means the Acadia First Nation and the Members (herein defined). **"Beneficiary "** means one of the Beneficiaries.

"Community Consultation" means the process conducted in accordance with the procedures set out in Article 7.

"Council" means the Chief and Council of the Acadia First Nation.

"Councillor" means an elected member of the Council, including the Chief. **"Councillors"** means more than one Councillor.

"Acadia First Nation" means the Acadia Band, as represented by its duly elected Chief and Council, and any successor entity to the Acadia First Nation.

"Financial Institution" means a chartered bank of Canada which holds banking accounts for the Ponhook Trust.

"Investment Dealer" means a licensed investment dealer in the Province of Nova Scotia retained, from time to time, by the Trustees to provide investment advice to the Trustees for the benefit of the Ponhook Trust.

"Members of the Acadia First Nation" and **"Members"** shall have the same meaning and shall mean members of the Acadia First Nation from time to time recorded during the term of the Ponhook

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Trust on the membership list, and such persons who are entitled to have their names appear on the membership list, as maintained by the federal government (or as otherwise maintained in the future if the federal government ceases to maintain such a list) during the term of the Ponhook Trust.

"Member" and **"Member of the Acadia First Nation"** shall have corresponding meanings.

"Original Trustees" shall mean the Chief and Councillors of the Acadia First Nation as at the date of the signing of this Agreement.

"Reserve" shall mean the various reserves of the Acadia First Nation as at the date of this Agreement, any lands added to the Reserve lands of the Acadia First Nation from time to time, and any other lands that may be reserved under the *Indian Act* for the use and benefit of the Acadia First Nation from time to time.

"Fixed Income Account" means an account or accounts established by the Trustees under Article 5.01(a) herein.

"Investment Account" an account or accounts established by the Trustees under Article 5.01(b) herein.

"Land Acquisition Account" means an account or accounts established by the Trustees under Article 5.01(c) herein and which consists of \$176,450.00 as of the date of this Agreement and in addition may include net proceeds received in the event of the sale of the Labrador Estate lands.

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"Trust Property" means the compensation of \$1,876,450.00 together with all amounts accumulated on such compensation prior to the coming into effect of the Ponhook Trust and all amounts accumulated by the Trustees thereafter, and such additional property which the Acadia First Nation may with the approval of the Trustees, pay and transfer to the Trustees from time to time, and shall include all property in which the original Trust Property may be invested by the Trustees, or into which the same may be converted by the Trustees, at any time, as well as any additions or accretions thereto.

"Trustees" means Trustee pursuant to the terms of the Ponhook Trust from time to time and includes the Original Trustees until the appointment of Trustees under Article 9.01.

"Voter" means a Member of the Acadia First Nation who is at least 18 years old on the date of the Vote. **"Voters"** has a corresponding meaning.

3. CREATION OF TRUST

3.01 The Acadia First Nation and each of the Trustees acknowledge that the terms of the Ponhook Trust are binding upon the Acadia First Nation and the Trustees.

3.02 The Acadia First Nation shall appoint the Trustees and the Trustees shall agree to hold the Trust Property in trust for the Beneficiaries upon the trusts set out in the Ponhook Trust.

3.03 All beneficial right, title, and interest in the Trust Property shall vest in the Beneficiaries under the terms hereof.

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3.04 The Ponhook Trust shall come into effect when the Trustees have received the compensation.

4. PURPOSE OF THE TRUST

4.01 The Acadia First Nation and the Trustees acknowledge and agree that the Trust Property is intended to be used for the purposes set out herein for the benefit of the Beneficiaries. The Ponhook Trust is the agreed upon mechanism for managing the compensation money paid pursuant to the Settlement Agreement. Acadia First Nation has pursued this trust arrangement based upon independent legal and financial advice and with the full knowledge and consent of its members.

PART III - APPLICATION OF THE TRUST PROPERTY

5. TRUST PROPERTY

5.01 The total compensation money will be paid into the Fixed Income Account and thereafter the Trustees shall maintain the Trust Property in the following manner:

(a) Fixed Income Account

The Trustees shall expend such sums of the Trust Property as are required to purchase Authorized Investments which will be anticipated, based on advice from the Investment Dealer, to pay to the Acadia First Nation the sum of \$340,000 per year each year for five years.

(b) Investment Account

The Trustees shall invest the difference between the sum of \$1,700,000 and the amount used to acquire the Authorized Investments under Article 5.01 (a) in such Authorized Investments as may be recommended from time to time by the Investment Dealer, with the joint goals of preserving

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capital, enhancing return and maintaining accessibility and liquidity.

(c) Land Acquisition Account

The Trustees shall invest the sum of \$176,450.00 in such Authorized Investments as may be recommended from time to time by the Investment Dealer, with the joint goals of preserving capital and enhancing return. In the event that the Labrador Estate lands currently owned in fee simple by the Acadia First Nation are sold within fifteen years from the date of this agreement, the net proceeds from such sale shall be added to the Land Acquisition Account.

(d) Designated Account

The Trustees shall pay such amounts out of the Fixed Income Account as come due from the Authorized Investments on an annual basis which shall be paid to a designated account of the Ponhook Trust with the Financial Institution.

5.02 The Trust Property shall be held in bank accounts with the Financial Institution and the Trustees shall provide the Financial Institution with a copy of the Ponhook Trust Agreement at the time of opening of the accounts.

6. USE OF THE TRUST FUNDS

Use of the Fixed Income Account and Investment Account

6.01 After completion of the community consultation process set out in Article 7, these funds may be used for the following purposes:

- (a) paying the Trust's expenses, including the expenses associated with Community Meetings;

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- (b) investing in Authorized Investments;
- (c) for the purchase of land in the name of the Acadia First Nation, for investment or development purposes, whether or not the land is to be added to the Reserve;
- (d) to provide housing for Members;
- (e) to promote the enhancement of education, including but not limited to providing funding for the Acadia First Nation's building, establishment and operation of school or schools, and scholarships and bursary funds for Members
- (f) for constructing and maintaining roads, bridges, ditches, water-courses, fences, buildings or permanent improvements, works or infrastructure on the Reserve;
- (g) for the purchase of industrial or manufacturing equipment or machinery to be owned by the Acadia First Nation;
- (h) for the payment of expenses necessarily incidental to the management of lands, buildings or businesses which are owned by the Acadia First Nation;
- (i) for the acquisition, establishment, and building of a credit union or a bank or a trust company to be owned by the Acadia First Nation;
- (j) to promote the health of Members;
- (k) to promote or establish a business or commercial operation owned by the Acadia First Nation;
- (l) to promote, establish or enhance of recreational facilities for Members;
- (m) to promote the preservation, study or promotion of the language and cultural heritage of the Acadia First Nation;
- (n) paying of the reasonable expenses of the Trustees and the Trust in connection with the administration and operation of the Trust, including any form of education which will assist them

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in their duties as Trustees, such as financial and investment training;

- (o) for relief in the event of a natural or similar disaster.

Use of the Land Acquisition Account

6.02 After completion of the community consultation process set out in Article 7.01, the Land Acquisition Account may, for a fifteen year term commencing on the date of this Agreement, be used by the Acadia First Nation for only the following purposes:

- (a) For the Acadia First Nation's purchase of land which the Trustees in their absolute discretion shall consider appropriate from time to time consistent with the laws and policies of the Acadia First Nation.

PROVIDED THAT after the expiry of the fifteen year term commencing on the date of this Agreement, any funds not disbursed in accordance with this Article may be used for any of the purposes set out in Article 6.01.

6.03 The Trustees are authorized to advance such amounts out of the Ponhook Trust to pay the expenses and costs of buying land pursuant to Article 6.01 or 6.02, including paying any costs of surveys, legal fees, title searches, environmental reviews and all applicable taxes.

6.04 The Trustees shall, if requested by Council, exercise their best efforts to the extent possible under the Department of Indian and Northern Development Additions to Reserve Policy in effect from time to time to ensure that land that is acquired pursuant to the Ponhook Trust under Article

6 is added to the Reserve.

6.05 For greater certainty it is not the intention of the Ponhook Trust that the Trustees shall be the legal owners of any land or other capital assets (other than Authorized Investments) or that the Trustees carry out proposals and projects pursuant to Articles 6.01 and 6.02, but rather the Trustees shall distribute funds from time to time for the specific purposes set out herein which the Trustees shall consider appropriate from time to time consistent with the laws and policies of the Acadia First Nation for its Members, and which is approved, where required hereunder, in accordance with the terms of the Ponhook Trust.

7. APPROVAL FOR SPENDING TRUST PROPERTY

The following are the requirements for Community Consultations:

7.01 Purchase of Land or expenditures in excess of \$10,000.00

For any purchase of land or for any expenditure in excess of \$10,000.00 the following are the requirements:

(a) A proposal shall be submitted in writing, giving a description of the requested expenditure, including a budget and demonstrating the expected benefit to the Members of the Acadia First Nation.

(b) The Trustees shall at their next Trustees' meeting consider such proposal, and shall in their absolute discretion accept or reject such proposal, including requiring amendments or additions or restrictions to it.

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(c) If the Trustees accept such a proposal, they shall recommend the proposal to the Acadia First Nation and a Vote shall be called at a date and time of their choosing. Each proposal shall be voted upon by the Voters through a show of hands at community meetings.

(d) The proposal shall be put in question format for the consideration of the Members prior to the community meetings. Notice of the purpose, date, place and time of the Vote shall be posted at locations on or off the Reserve that are used for posting during Band elections and at such other places as the Trustees consider appropriate and shall be published in a newsletter mailed to Members, at least 30 days before the date set for the Vote. The Notice shall state the purpose of the Vote and provide a summary of the proposal and its budget, and include a statement of whether or not matching or additional funding is available for the proposal from other sources. The Notice shall state that the Trustees have recommended that the proposal is worthy of consideration by the Acadia First Nation.

(e) Community meetings shall be held in all areas with at least 50 Voters. At each community meeting, details concerning each proposal shall be presented and explained prior to a vote.

(f) For a proposal to be approved, a majority of the cumulative Votes from all community meetings is required. There is no quorum requirement.

(g) If the Acadia First Nation approves a proposal, the Trustees shall provide funding up to, but not more than, the specified amount for the proposal, and the funding shall be paid out of the appropriate account of the Ponhook Trust in such manner and on such terms as the Trustees in their

absolute discretion shall consider appropriate.

- (h) More than one proposal may be considered at any Community Meeting.

7.02 Expenditures other than the Purchase of Land or for less than \$10,000.00

For expenditures other than the purchase of land or for less than \$10,000.00, the following process shall be followed:

- (a) Acadia First Nation shall develop policies regarding expenditures for less than \$10,000.00 in the community consultation process set out in Article 7.01.
- (b) A proposal from a Member shall be submitted in writing, giving a description of the requested expenditure, including a budget and demonstrating the expected benefit to the Members of the Acadia First Nation.
- (c) The Council shall have the absolute authority to accept or reject any proposal, in accordance with policies developed by the Acadia First Nation under Article 7.02 (a), provided that each such expenditure is for less than \$10,000.00, that no more than 10 such expenditures are made within any one calendar year and that no Member may be approved for any more than one such proposal within any one calendar year.

7.03 Purchase of Authorized Investments

Articles 7.01 and 7.02 do not apply to the purchase of Authorized Investments inside the Ponhook Trust.

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PART IV - THE TRUSTEES

8. GENERAL PROVISIONS FOR THE TRUSTEES

8.01 Each Trustee shall act as a Trustee according to the terms and conditions of the Ponhook Trust. The Trustees shall have all the legal obligations of trustees, whether those obligations are part of the common law or are set out in any statute of Nova Scotia regulating the conduct and obligations of Trustees, unless modified by the terms of the Ponhook Trust. All the powers, discretions and authorities of the Ponhook Trust shall vest in the Trustees who are acting from time to time as the Trustees.

8.02 Each Trustee accepts his or her appointment as a Trustee and accepts the duties of the Trustees as set out herein. The Trustees agree to carry out their duties according to the terms and conditions of the Ponhook Trust.

8.03 It is a condition of becoming a Trustee after the execution of the Trust, whether in substitution or replacement of a Trustee, that a proposed Trustee shall, prior to taking office, agree in writing to become a Trustee, and agree to be bound by the terms and conditions of the Trust.

8.04 A Trustees' Certificate executed in the form set out in Schedule "A" and certified by the Council shall be conclusive evidence for any person, government, and corporation dealing with the Trustees that the Trustees named therein are the current Trustees of the Ponhook Trust, provided that such Trustees' Certificate is dated not more than 30 days prior to the date upon which the Trustees'

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Certificate is to be relied upon by such person or corporation.

8.05 The Trustees shall not be compensated for acting as trustees but shall be entitled to reimbursement of reasonable expenses.

9. TRUSTEES' TERM OF OFFICE

Trustees

9.01 The Original Trustees shall act as the Trustees until the first Council meeting takes place, which shall be held at least 30 days after the Ponhook Trust comes into effect. At this first meeting, the Council shall appoint four members of the Council as Trustees, one of whom will be selected as the chairperson of the Trustees. The Council shall also select at the same meeting three other individuals who are not members of or related to members of Council to act as Trustees. The seven Trustees appointed hereunder shall act as Trustees until such time as three external Trustees are selected, pursuant to Article 9.03.

9.02 There shall be seven Trustees, consisting of four members of the Council appointed as Trustees by Council and three persons as external Trustees who are not members of or related to members of the Council to be elected by the Members of the Acadia First Nation in accordance with Article 9.03. The Trustees who are members of Council shall be appointed and replaced from time to time by Band Council Resolution. The Chairperson of the Trustees shall not have a vote at a meeting of Trustees unless there is a tied vote but the presence of the Chairperson will count towards the quorum of a meeting of Trustees.

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9.03 The three external Trustees shall be selected in the following manner:

- (a) At a date prior to September 1, 2002 and at dates in the future no later than 60 days prior to the expiry of the term of the external Trustees, the Trustees shall set a date no later than 60 days from that date for a Vote for external Trustees. The Trustees shall notify Members by posting a Notice for Nominations at such places as are used for posting during Band elections and at such other places as the Trustees consider appropriate and by publication in a newsletter of the Acadia First Nation mailed to Members, at least 30 days before the date set for the Vote.
- (b) Nominations shall be submitted in writing to the Trustees and must be seconded by a Member. Nominations must be signed by the nominee and the seconder.
- (c) The Trustees shall at their next Trustees' meeting consider such a nominee, and shall in their discretion accept or reject nominees if they do not qualify under Article 9.02 or if they would be disqualified under Article 9.05 (c), (d) or (g).
- (d) Any nominations not disqualified shall be submitted for a Vote at a community meeting on the date set for the Vote. For the purpose of such Votes, community meetings may be held at any time in the 2 weeks prior to or on the date set for the Vote.
- (e) Notice of the nomination, date, place and time of the Vote and the names of all nominees as Trustee shall be posted at locations on or off the Reserve that are used for posting during Band elections and at such other places as the Trustees consider appropriate, at least 30 days before the date set for the Vote.

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(f) Community meetings shall be held in all areas with at least 50 Voters.

(g) Votes shall be conducted by a show of hands at community meetings. For a nominee to be approved as a Trustee, a majority of the cumulative Votes from all community meetings is required.

There is no quorum requirement.

9.04 Trustees shall serve a three year term. A Trustee may serve more than one term as a Trustee.

9.05 A Trustee shall serve until:

(a) his or her term expires;

(b) he or she resigns upon 30 days' written notice to the remaining Trustees;

(c) he or she becomes deceased or incapacitated;

(d) he or she during his or her term becomes bankrupt, or is charged with an indictable offence, fraud, or any offence involving the Trust Property or the exercise of his or her responsibilities as a Trustee, subject to being eligible to be a Trustee upon being acquitted of such a charge or upon being discharged from bankruptcy;

(e) he or she fails to attend three consecutive meetings of the Trustees, of which meetings he or she has received notice, and the other Trustees vote to remove him or her;

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- (f) he or she fails to disclose a conflict of interest, or votes on any resolution in which he or she has a conflict of interest, pursuant to Article 13;
- (g) he or she is declared by a court of competent jurisdiction to be mentally incompetent or incapable of managing his or her affairs;
- (h) in the case of a Trustee who is a member of Council, when replaced or removed by Band Council Resolution.

9.06 If one or more of the events described in Article 9.04 (b) through (g), occur(s) and there is a vacancy among the elected Trustees which reduces the number of Trustees to less than seven, the vacancy shall be filled by the remaining Trustees by resolution appointing a replacement Trustee, in accordance with Article 9.02, as soon as reasonably possible, but in any event within 15 days of the date that the vacancy occurs. A Trustee appointed in this manner shall serve out the term of the Trustee he or she replaced. Any Trustee may serve more than one term as a Trustee.

10. POWERS and AUTHORITY OF THE TRUSTEES

General

10.01 Without limiting the powers and authorities and discretions available to the Trustees, by law or otherwise, the Trustees, original and substituted, shall have the following powers and authorities and discretions, which shall be exercised in their absolute discretion and as to which their decisions shall be final and binding upon all persons interested in the Trust Property.

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Investments

(a) The Trustees may invest and re-invest from time to time the Trust Property in Authorized Investments and for that purpose may sell or otherwise dispose of any part or all of the Authorized Investments at such times, prices and terms, as the Trustees in their absolute discretion, after consultation with the Investment Dealer, may deem advisable.

It shall be an obligation of the Trustees to consider the impact of inflation on the real value of the Trust Property, and they may structure any transaction or distribution out of the Trust Property so as to minimize the effect of such inflation as in their absolute discretion they consider appropriate. The Trustees are authorized to delegate some or all of their authority to make investments pursuant to Article 10.01(i) to some other person and to revoke or suspend such delegation to ensure that the investing of the Trust Property is managed by professional investment advisers.

The Trustees shall seek and if in their absolute discretion they consider it appropriate act upon competent advice on the best ways to invest the Trust Property and to minimize paying tax on the Trust Property.

Retention of Assets

(b) The Trustees may make or retain any Authorized Investment whether or not such investments may be permitted by the *Trustee Act* of Nova Scotia or any jurisdiction of Canada.

Securities Transactions

(c) The Trustees may vote all investments forming the Trust Property, and exercise all rights

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incidental to their ownership. They may sell or exercise any subscription rights and in connection with the exercise of subscription rights may use any portion of the Trust Property for such purpose. They may consent to and join in any plan for reconstruction, reorganization, amalgamation, or consolidation of any company. They may consent to and join in the sale of the assets of any such company. In pursuance of any such plan they may accept any shares or securities in exchange.

Proxy

- (d) The Trustees may appoint one or more Trustees or the Investment Dealer as their proxy or proxies to vote shares and securities.

Title to Assets

- (e) The Trustees may register any Authorized Investment in the name of the Ponhook Trust.

Distributions

- (f) The Trustees may make distributions which may be required pursuant to Articles 6.01 & 6.02 in whole or in part in assets forming the Trust Property. Every distribution, and valuation thereof, shall be binding upon the Beneficiaries.

Valuation of Assets

- (g) The Trustees may in their absolute discretion determine in the case of investments purchased or sold at a premium or discount or in the case of any monies received, whether such premium, discount or amount received shall be credited to or charged against capital or income.

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Execution of Documents

(h) The Trustees may execute and deliver any instruments necessary in the opinion of the Trustees for the settlement or administration of the Trust, and to execute any such instrument without warranty by or without recourse to the Trustees. The Trustees may delegate authority to sign cheques and withdraw moneys from the Ponhook Trust accounts to no fewer than three of the Trustees of which any two must sign any cheque for the purposes permitted by the Ponhook Trust.

Agents

(i) The Trustees may employ and compensate agents, accountants, solicitors, brokers and other assistants and advisors deemed by them to be helpful, for the proper settlement or administration of the Trust, and without any liability for any neglect or default of any such employed person, if such agent was selected and retained with reasonable care. The Trustees may retain, dismiss and replace agents, including lawyers, accountants, bookkeepers, investment advisors, realtors, appraisers, auctioneers, architects, engineers and other independent advisors or organizations qualified in the field for which their advice and opinions are sought, to assist the Trustees in carrying out their responsibilities and duties under the Ponhook Trust, and the Trustees shall not be bound to act upon such advice, and shall not be responsible for any loss caused by acting or not acting, provided the decision to act or not act was taken in good faith. They may pay reasonable salaries, wages, fees and costs for the services of the persons or organizations referred to in the Ponhook Trust, including any amounts associated with the research, preparation, negotiation, settlement and implementation of the Ponhook Trust and all related documentation;

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Situs of Assets

(j) The Trustees may hold the Trust Fund or any part at any place or places, and move the same from time to time from place to place inside or outside Nova Scotia for the purpose of minimizing any taxes payable by the Ponhook Trust or any Member.

Procedure

(k) The Trustees may make and alter from time to time such rules as they shall consider appropriate to govern their meeting, voting and other similar procedures, provided that such procedural rules shall not be inconsistent with the Ponhook Trust or any laws which govern Trustees generally.

Suits by the Trustees

(l) The Trustees may institute, prosecute, settle and defend any lawsuits or other proceedings affecting them as Trustees, or the Trust Property or any part of it, and make application to any Court of competent jurisdiction in respect of the Ponhook Trust.

11. DUTIES OF THE TRUSTEES

11.01 The Trustees may execute and deliver any instruments necessary in the opinion of the Trustees for the settlement or administration of the Ponhook Trust.

11.02 The Trustees shall from time to time institute procedures, and vary, amend, or revoke such procedures, to govern the management and administration of the Ponhook Trust, all as the Trustees in their absolute discretion shall consider appropriate, provided that such procedures do not result

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in a derogation by the Trustees of their powers, discretions and authorities hereunder.

11.03 The Trustees shall maintain a written record of all decisions made by the Trustees and make these records available to the Council and to Members on request.

11.04 The Trustees shall on an annual basis obtain an audited statement of their administration of the Trust Property, and supply a certified copy of those reports to the Council.

11.05 (a) The Trustees shall prepare a written annual report on the investments of the Trust Property, and shall attach the annual audited statement to the annual report. A copy of the annual report and audited statement shall be sent by mail to each adult Member at the address of that Member last known to the Trustees.

(b) The Trustees shall prepare a semi-annually written report of the decisions made by them with respect to the Ponhook Trust, and shall post such Report in the administration office of the Acadia First Nation, and shall publish such Report in a newsletter of the Acadia First Nation mailed to Members.

11.06 The Trustees shall meet and consult with the Council when requested by the Council to do so.

12. MEETINGS OF THE TRUSTEES

12.01 The Trustees shall meet at least once a month. The conduct of all their meetings shall be

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governed by the following rules:

- (a) (i) A quorum at each such meeting shall be 2/3rds of all the Trustees;
- (ii) Decisions and actions of the Trustees with respect to spending the Trust Property shall be made by a majority of Trustees present at each meeting.
- (iii) If any one or more of the Trustees at a meeting cannot vote because of an interest or interests in a contract or proposed contract, pursuant to Article 13, it shall be sufficient if the remaining Trustees at the meeting vote in favour of the decision.
Such a declaration of conflict shall not affect the quorum of the meeting.
- (b) All meetings of the Trustees shall take place in Nova Scotia. Any Trustee may attend a meeting by electronic or telephone conferencing.
- (c) The chairperson is one of the Trustees appointed by the Council. The chairperson shall not have any right to vote on any matter, except in the event of a tie. If the chairperson is not in attendance at a meeting, the Trustees who are present shall appoint one Trustee present to chair the meeting.
- (d) The chairperson shall have the right to call additional meetings of the Trustees as he or she decides are necessary.
- (e) All Trustees shall be given at least 15 days notice in writing of the place, date and time of every meeting, unless all Trustees agree to shorter notice.

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(f) Minutes of the meetings of the Trustees shall be kept in writing and shall be signed by each Trustee present at the meeting.

12.02 If the Council calls a public meeting of Members concerning the Trust, the Trust Property, or its administration, all of the Trustees shall attend the public meeting unless excused for good reason and shall fully and fairly answer all questions that are asked of them concerning the administration of the Ponhook Trust.

13. DISCLOSURE OF INTEREST

13.01 If a Trustee acting on a decision pursuant to Article 7.01 or a Councillor acting on a decision pursuant to Article 7.02:

- (a) is a party to a contract or proposed contract which the Trustees or Council have executed or which the Trustees or Council propose to execute pursuant to the Ponhook Trust, or
- (b) is an applicant or related to an applicant, or may materially benefit from a proposal pursuant to Articles 7.01 or 7.02, or
- (c) is a director, an officer or materially interested in, or has close connection (including as being the spouse/partner, child, sibling, parent, aunt or uncle, or niece or nephew) to any person (including a corporation) who is a party to a material contract or proposed contract which the Trustees or Council have executed or which the Trustees or Council propose to execute pursuant to the Ponhook Trust, or who is an applicant or may materially benefit from a proposal under Articles 7.01 or 7.02, (any of the foregoing (a), (b) or (c) hereinafter referred to as "being interested in") such Trustee or

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Councillor shall disclose in writing to the Trustees the nature and extent of his or her interest in the contract or proposed contract, or his or her directorship, position as officer, material interest or close connection as the case may be.

13.02 The disclosure of interest described in Article 13.01 shall be made:

- (a) at the meeting at which a proposed contract or proposal is first considered by the Trustees or Council;
- (b) if the Trustee or Councillor was not interested in the proposed contract or proposal at the time of that meeting, then at the first meeting after he or she becomes so interested;
- (c) if the Trustee or Councillor becomes interested in a contract or proposal after it is made, then at the first meeting after he or she becomes so interested; and
- (d) if a person who is interested in a contract or proposal is appointed or elected as a Trustee, or elected as a Councillor after that contract is executed, then at the first meeting after he or she becomes a Trustee or Councillor.

13.03 A Trustee or Councillor who has an interest or interests as described above shall not take part in any discussions, deliberations or votes of the Trustees or Council concerning any such contract or proposal.

13.04 A contract or approval of a proposal is not void if a Trustee or Councillor with such an

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interest or interests in the contract or proposal was present at the meeting for the purpose of securing a quorum, provided that the Trustee or Councillor in question did not take part in discussions, deliberations or votes on the contract or proposal, and provided the contract or proposal was approved by the other Trustees and Councillors and in the absolute discretion of the other Trustees and Councillors was reasonable and fair at the time it was approved.

13.05 Where one or more Trustees or Councillors have such an interest or interests and cannot vote or take part in discussions or deliberations on that contract or proposal, the contract or proposal may be approved if all the remaining Trustees or Councillors who are present at the meeting approve it. If such a contract or proposal has been approved, the Trustees or Councillors shall execute all necessary documents after the approval, whether or not such Trustees or Councillors have a conflict of interest.

13.06 If a Trustee or Councillor fails to disclose a conflict of interest, a contract or approval of a proposal is not void if all of the remaining Trustees or Councillors who are present at the meeting approve it following the discovery of the conflict. However, the Trustee who fails to disclose a conflict of interest shall immediately be removed as a Trustee and shall not be compensated in any manner for his or her Trusteeship.

PART V - GENERAL

14. HOW LONG THE TRUST SHALL LAST

14.01 Since Canadian law contains a "rule against perpetuities", which limits how long a trust can last, the Ponhook Trust, unless terminated sooner, shall terminate twenty years after the death of the

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last surviving Member of the Acadia First Nation who is alive at the date this Agreement comes into effect.

14.02 When the Ponhook Trust is terminated in accordance with Article 14.01, the Trust Property shall be transferred to the Acadia First Nation.

14.03 Within three months after the termination of the Ponhook Trust, the Trustees shall prepare a final report of the Trust's activities, purchases and financial dealings, and shall present that report to the Council, along with all the records, account books and other documents of the Trust.

15. LIABILITY OF TRUSTEES

15.01 The Trustees shall not be liable for any loss or damage resulting from the exercise of a discretion or their refusal to exercise a discretion, and shall only be liable for money and securities that are actually received by them. One Trustee shall not be accountable for the acts, neglects or defaults of any other Trustee and shall not in any case be liable for any loss of money or security or other property unless the same happens through his or her own fraudulent or negligent act. Due care and good faith of each Trustee shall be presumed unless it is rebutted by evidence to the contrary.

15.02 The Trustees' duties shall not be considered to have been breached, and no Trustee shall be liable, whether for damages or otherwise unless the Trustee has acted with a fraudulent intent or with negligence resulting in actual loss to the Trust Property.

15.03 It shall not be considered a breach of a Trustee's responsibility if that Trustee carries on

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a business which competes with any business that the Trust carries on or invests in, or if that Trustee, directly or indirectly, owns, acquires or disposes of shares or securities in any corporation in which the Trust also owns shares or securities.

15.04 If the Trustees make a payment in good faith to a Member of the Acadia First Nation by making that Member's payment to his or her parent or legal guardian, *de facto* guardian, or personal representative, and obtains a receipt for such payment, the Trustees shall not be liable for any loss or damage suffered directly or indirectly by the Member as the result of that payment.

16. CHANGING TERMS OF THE TRUST

16.01 The terms of the Ponhook Trust shall not be changed prior to the first anniversary of the date of the Ponhook Trust.

16.02 At any time after the first anniversary of the date of the Ponhook Trust, the terms of the Ponhook Trust may be changed, provided that in no circumstance shall such changes affect the determination of the Beneficiaries, and provided that in no circumstance shall the purposes for which the Ponhook Trust was established shall be changed. Such change or changes may be made following the process set out in Article 7.01 and if two-thirds of the Voters who cast Votes vote in favour of the change. Such changes shall not revoke the Trust, or cause the Trust to be revoked.

16.03 All changes shall be endorsed upon the Ponhook Trust and signed by all the Trustees.

Y.R.
[Signature]

17. NOTICE

17.01 Whenever in the Ponhook Trust it is required that notice be given to any party, such notice shall be given in writing by delivering it personally or sending it by registered mail:

(a) To the Council at:

Acadia First Nation

[address]

(b) To each Trustee at the addresses set out in Schedule "B"

Any notice or communication shall be sufficient if delivered personally, or if delivered by registered mail, and shall be effective on delivery if delivered personally or within 4 business days after mailing, if mailed. In the event of an anticipated or actual stopping of postal service, registered mail shall not be used.

18. INTERPRETATION

18.01 The headings in the Ponhook Trust are inserted only for convenience and shall not control or affect the meaning or interpretation of any part of the Ponhook Trust.

18.02 In the Ponhook Trust words in the singular include the plural and words in the plural include the singular.

V.R.
P.R.

18.03 The Ponhook Trust shall be construed under and be regulated by the laws applicable from time to time to the Reserve, and the parties agree that at all times the principal place of administration of the Trust created by the Ponhook Trust shall be the Reserve.

IN WITNESS WHEREOF the Settlor and Trustees have set their hands and seals on the day first above written.

SIGNED, SEALED AND DELIVERED
(In the Presence of:)

Acadia First Nation

TRUSTEES

Witness

Chief/Trustee

Witness

Councillor/Trustee

Witness

Councillor/Trustee

Witness

Councillor/Trustee

Witness

Councillor/Trustee

Witness

Councillor/Trustee

Witness

Councillor/Trustee

SCHEDULE "A"

Sample of Trustees' Certificate

TRUSTEES' CERTIFICATE

This certificate shall be conclusive evidence for any person(s) or corporation(s) dealing with the Trustees of the Ponhook Trust that the Trustees named in this Certificate and the signatures thereto:

- (a) are the current Trustees of the Ponhook Trust, and
- (b) are authorized to deal with any third party.

PROVIDED THAT SUCH CERTIFICATE IS DATED NOT MORE THAN 30 DAYS PRIOR TO THE DATE UPON WHICH SUCH CERTIFICATE IS TO BE RELIED ON BY ANY PERSON, CORPORATION OR OTHERWISE.

AND PROVIDED THAT SUCH CERTIFICATE IS CERTIFIED BY THE COUNCIL OF Acadia First Nation.

1. Name of Trustee:

Address of Trustee:

Signature of Trustee:

7.R.
Q.

-33-

2. Name of Trustee:

Address of Trustee:

Signature of Trustee:

3. Name of Trustee:

Address of Trustee:

Signature of Trustee:

4. Name of Trustee:

Address of Trustee:

Signature of Trustee:

5. Name of Trustee:

Address of Trustee:

Signature of Trustee:

6. Name of Trustee:

Address of Trustee:

Signature of Trustee:

V.R.
AR

Certification by the Council:

The Council of the Acadia First Nation hereby certifies that the information contained in this Trustees' Certificate is true and accurate.

Date:

Signatures of the duly appointed signing officers of the Acadia First Nation.

Y.R.
[Signature]

SCHEDULE "B"

TRUSTEES' ADDRESSES FOR SERVICE

1. Name of Trustee:

Address of Trustee:

Date elected as a Trustee:

Date ceased to be a Trustee:

2. Name of Trustee:

Address of Trustee:

Date elected as a Trustee:

Date ceased to be a Trustee:

3. Name of Trustee:

Address of Trustee:

Date elected as a Trustee:

Date ceased to be a Trustee:

4. Name of Trustee:

Address of Trustee:

Date elected as a Trustee:

Date ceased to be a Trustee:

5. Name of Trustee:

Address of Trustee:

Date elected as a Trustee:

Date ceased to be a Trustee:

Y.R.
P.

6. Name of Trustee:

Address of Trustee:

Date elected as a Trustee:

Date ceased to be a Trustee:

SCHEDULE "C"

NOMINATION FORM

I, _____, hereby apply to be elected as a Trustee of the Ponhook Trust.

CERTIFICATION

I hereby certify to each of the following facts.

I am a registered member of the Acadia First Nation. I am over the age of 18 years. I am not an undischarged bankrupt.

I have not been convicted of an indictable offence, within the 5 year period immediately preceding my nomination.

I have not been convicted of fraud.

I have never been convicted of any offence, including fraud, involving the Trust Property of the Ponhook Trust nor the exercise of responsibilities as a Trustee of the Ponhook Trust.

I have not been declared by a court of competent jurisdiction to be mentally incompetent or incapable of managing my affairs.

CONSENT

I hereby consent to the conduct of any background checks by the Council and the Trustees into my credit-worthiness and my criminal record, if any.