

## **Complementary Agreement no. 10**

(CBJNQ)

BETWEEN

The CREE REGIONAL AUTHORITY, a corporation duly constituted under chapter A-6.1 of the Revised Statutes of Québec, 1977, herein acting and represented by Matthew Coon Come, its chairman, duly authorized to sign this Agreement;

and

MAKIVIK CORPORATION, a corporation duly incorporated under chapter S-18.1 of the Revised Statutes of Québec, 1977, herein acting and represented by Jackie Koneak, one of its vice-chairmen, duly authorized to sign this Agreement;

and

NASKAPI LANDHOLDING CORPORATION OF SCHEFFERVILLE, a corporation duly constituted under chapter A-13.1 of the Revised Statutes of Québec, 1977, herein acting and represented by Joe Guanish, duly authorized to sign this Agreement;

and

The GOUVERNEMENT DU QUÉBEC (hereinafter referred to as “Québec”), represented by the Minister of Recreation, Fish and Game, the Honourable Yvon Picotte.

WHEREAS Section 24 of the James Bay and Northern Québec Agreement (hereinafter referred to as the “Agreement”) provides for an outfitting regime for the Territory covered by the Agreement including a right of first refusal in favour of the Native people to operate as outfitters in Category III lands for a period of thirty (30) years from the execution of the Agreement;

WHEREAS Section 24 further provides that the Native people shall not exercise the right of first refusal with respect to at least three (3) non-Native applications out of every ten (10) applications respecting outfitting operations in Category III;

WHEREAS the Cree Regional Authority, Makivik Corporation, the Naskapi Landholding Corporation of Schefferville and Québec have undertaken negotiations in order to determine the manner in which the provisions of Section 24 of the Agreement relating to the right of first refusal with respect to outfitting operations shall be implemented;

WHEREAS the Cree Regional Authority, Makivik Corporation and the Naskapi Landholding Corporation of Schefferville executed an agreement on October 2, 1986 concerning the exercise of the Native people’s right of first refusal;

WHEREAS by Ministerial Order dated October 6, 1987 (MO, 1987), the Minister of Recreation, Fish and Game established administrative procedural rules concerning applications for outfitting operations in the James Bay and New Québec territories;

WHEREAS paragraph 24.9.7 of Section 24 of the Agreement provides that the right of first refusal in favour of the Native people shall apply to transfers of an outfitting operation and the parties consider it necessary and appropriate to clarify what constitutes a “transfer of an outfitting operation” for the purposes of Section 24 of the Agreement;

WHEREAS paragraph 24.9.3 of Section 24 of the Agreement provides that Native people shall have a right of first refusal to operate as outfitters in Category III for a period of thirty (30) years from the execution of

the Agreement but difficulties in implementing this provision have prevented the Native people from exercising this right since the execution of the Agreement;

WHEREAS the parties hereto have agreed that amendments to the outfitting regime established by Section 24 of the Agreement are necessary and appropriate;

WHEREAS the parties hereto wish to amend the James Bay and Northern Québec Agreement in the manner hereinafter set forth;

NOW, therefore, the parties hereto amend Section 24 of the James Bay and Northern Québec Agreement as specified in Schedule I attached hereto to form part hereof and agree that these amendments are to have effect from July 1, 1989.

**Annex I**

## Amendments to section 24 of the James Bay and Northern Québec Agreement

1 Paragraph 24.9.3 of Section 24 of the James Bay and Northern Québec Agreement is replaced by the following:

“24.9.3 Within their respective areas of primary and common interest for the Hunting, Fishing and Trapping Regime, the Crees, the Inuit and the Naskapis shall have a right of first refusal to operate as outfitters in Category III until November 10, 2015. The rights of the Crees, the Inuit and the Naskapis to harvest outside of their respective areas of primary and common interest shall not affect the application of the right of first refusal. ”

*[Amendment integrated]*

2 Paragraph 24.9.4 of the said Agreement is amended by replacing the said paragraph by the following:

“24.9.4 Upon the expiry of the period ending on November 10, 2015 stipulated in paragraph 24.9.3, Québec, the Crees, the Inuit and the Naskapis shall negotiate on the basis of past experience and actual and future need, whether the said right of first refusal shall be renewed. The Coordinating Committee shall be consulted and may make recommendations to the responsible Minister with respect thereto. ”

*[Amendment integrated]*

3 Paragraph 24.9.6 of the said Agreement is replaced by the following:

“24.9.6 Notwithstanding paragraph 24.9.3, the Crees, the Inuit and the Naskapis shall not exercise their right of first refusal referred to in the said paragraph with respect to at least three (3) outfitting applications in Category III from persons other than Crees, Inuit or Naskapis out of every ten (10) applications respecting such outfitting operations from any person.

The Cree, Inuit and Naskapi parties may decide in respect of which applications to establish and operate outfitting operations in Category III they shall exercise or shall not exercise the right of first refusal provided they do not exercise the said right of first refusal with respect to at least three (3) applications from persons other than Crees, Inuit or Naskapis out of every ten (10) applications from any person.

The Coordinating Committee shall oversee the implementation of the terms of this paragraph and shall, from time to time, inform the parties as to the requirements for such implementation. ”

*[Amendment integrated]*

4 Paragraph 24.9.7 of the said Agreement is amended by adding at the end of sub-paragraph a) the following:

“Every application for the issue or the renewal of a permit shall indicate, as the case may be, the names of the partners and their respective interests in the partnership or the names of the shareholders owning full voting shares, the number of shares held by each shareholder and the number of votes attached to each share. ”

*[Amendment integrated]*

5 Paragraph 24.9.7 of the said Agreement is amended by replacing sub-paragraph j) by the following:

“j) In the event of a proposed transfer of an outfitting operation, the holder of the outfitter’s permit shall submit an application to the responsible Provincial Minister. Such application shall contain all relevant information relating to the terms and conditions of the proposed transfer.”

*[Amendment integrated]*

6 Paragraph 24.9.7 of the said Agreement is amended by adding after sub-paragraph j) the following sub-paragraph jj):

“jj) The Native party that exercises the right of first refusal at the time of an application for the transfer of an outfitting operation replaces the intended transferee from the date on which the Native party informs the Coordinating Committee in conformity with sub-paragraph e). From that date, the Native party shall have the same rights and the same obligations as the intended transferee had at the time of the offer to transfer, with such changes as are necessary with respect to the delays stipulated therein. ”

*[Amendment integrated]*

7 Sub-Section 24.9 of the said Agreement is amended by adding, after paragraph 24.9.7, the following paragraphs:

“24.9.8 The right of first refusal shall apply and be exercisable only in respect of the assets of the outfitting operation in the case of

a) a transfer in which the assets to be transferred include assets relating to activities other than those of the outfitting operation;

b) a transfer of interests in a partnership or of shares of a corporation in which the assets include assets relating to activities other than those of the outfitting operation.

If the interested Native party exercises its right of first refusal, the owner shall transfer the assets of the outfitting operation to the interested Native party.

“24.9.9 In the case of a transfer of part of the interests in a partnership or part of the shares of a corporation, the right of first refusal of the interested Native party shall apply and be exercisable in respect of the interests of all the partners or the shares of all the shareholders.

If the interested Native party exercises its right of first refusal, all the partners or shareholders shall transfer their interests or shares to the interested Native party.

“24.9.10 For the purposes of the right of first refusal, in the case of a transfer of the assets of an outfitting operation made at the time of a judicial sale or a sale by a trustee in bankruptcy, a liquidator or a sequestrator, the acquirer shall, within sixty (60) days after the sale, submit an application for a transfer of permit to the responsible Provincial Minister, in accordance with paragraph 24.9.7.

If the interested Native party exercises its right of first refusal, the acquirer shall transfer the assets of the outfitting operation to the interested Native party for an amount equal to the sale price and costs plus ten per cent.

“24.9.11 For the purposes of the right of first refusal, in the case of a transfer of the assets of an outfitting operation to a creditor realizing on security for the repayment of a debt, the creditor shall, within sixty (60) days after the assets are transferred, submit an application for a transfer of permit to the responsible Provincial Minister, in accordance with paragraph 24.9.7.

If the interested Native party exercises its right of first refusal, the creditor shall transfer the assets of the outfitting operation to the interested Native party.

“24.9.12 In the cases referred to in paragraphs 24.9.8 to 24.9.11, the interested Cree, Inuit or Naskapi Native party and any person subject to the right of first refusal of the Native people shall determine the value of the assets of the outfitting operation or the value of the interests of the partners or shares of the shareholders in respect of which the right of first refusal of the Native people may be exercised.

The said value shall be determined by agreement between the interested parties or, if there is no agreement, by an evaluator appointed in accordance with paragraph 24.9.14.

The period of four (4) months referred to in sub-paragraph e) of paragraph 24.9.7 to inform the Coordinating Committee that a Native party intends to operate the outfitting operation referred to in the application for transfer shall be computed from the date on which the value of the assets of the outfitting operation or the value of the interests of the partners or shares of the shareholders that are subject to the right of first refusal is determined.

“24.9.13 Except where there is agreement as to the terms and conditions of the sale, the interested Native party shall pay, in cash, the sale price of assets sold under paragraphs 24.9.10 and 24.9.11 or the sale price of any part of the partnership interests or shares of the corporation that was not included in the transfer application but must be transferred pursuant to paragraph 24.9.9.

The payment shall be made within thirty (30) days of the date on which the interested Cree, Inuit or Naskapi Native party informs the Coordinating Committee in accordance with sub-paragraph e) of paragraph 24.9.7.

“24.9.14 Upon a request therefor, the responsible Provincial Minister shall appoint an evaluator acceptable to the parties or, if there is no agreement between the parties, an evaluator of his own choice

a) in the event of disagreement between the parties as to the proportional value of the assets of the outfitting operation in the cases referred to in paragraph 24.9.8;

b) in the event of disagreement between partners, shareholders or the interested Native party as to the value of any part of the interests or shares that was not included in the transfer application but must be transferred in the case referred to in paragraph 24.9.9;

c) in the event of disagreement between the parties as to the proportional value of the assets of the outfitting operation where the sale included assets other than those of the outfitting operation in the case referred to in paragraph 24.9.10;

d) in the event of disagreement between the parties as to the value of the assets of the outfitting operation in the case referred to in paragraph 24.9.11.

The decision of the evaluator shall be binding upon the parties and without appeal; the evaluation costs shall be borne equally by the parties.

“24.9.15 If the responsible Provincial Minister believes that a transfer of an outfitting operation has been made otherwise than in accordance with the procedure set out in this Sub-Section or as a result of false declarations, the Minister shall notify the permit holder who shall, on receiving the notice, inform the partners or shareholders, if any.

The notice of the Minister shall require the permit holder and the partners or shareholders, if any, to comply with the provisions of this Sub-Section within the period prescribed in the notice.

“24.9.16 If the permit holder or a partner or shareholder fails to comply with the notice of the Minister within the specified period, the Minister may, after giving the permit holder an opportunity to be heard, cancel the permit.

“24.9.17 The permit holder may appeal from the decision to the Court of Québec. An appeal shall suspend the execution of the decision, unless the court orders provisional execution.

“24.9.18a) Where an outfitter’s permit is cancelled and a new permit is issued to a third party for the site covered by the cancelled permit, the third party must acquire the buildings, facilities and equipment

situated thereon and used for the activities of the outfitting operation, and the party whose permit is cancelled must sell such buildings, facilities and equipment.

b) If there is no agreement between the parties as to the value of the property, the Minister shall appoint an evaluator acceptable to the parties or, if there is no agreement between the parties, an evaluator of his own choice. The decision of the evaluator shall be binding upon the parties and without appeal; the evaluation costs shall be paid equally by the parties.

“24.9.19 For the purposes of Sub-Section 24.9,

a) any direct or indirect transfer of the ownership of an outfitting operation including, in the case of a partnership or corporation that owns an outfitting operation, a change in the effective control of the partnership or corporation, shall constitute a transfer subject to the right of first refusal of the Native people;

b) changes in effective control include but are not limited to:

i) a change of the partner or shareholder holding a majority of the partnership interests or of the issued full voting shares;

ii) if no partner or shareholder holds a majority of the partnership interests or of the issued full voting shares,

1) a transaction whereby one of the partners or shareholders acquires a majority interest;

2) a transaction or the last in a series of transactions, within a period of four (4) years or less, that changes the ownership of a majority of the partnership interests or of the issued full voting shares of the corporation, except where there are no partners or shareholders other than the partners or shareholders who owned such interests or shares at the beginning of the said period;

c) any agreement for the lease or management of the outfitting operation or any other agreement to the same effect for a term of more than four (4) years shall also constitute a transfer subject to the right of first refusal of the Native people; in calculating the term of the agreement, the term of its renewal shall be taken into account if the lessee or the manager has the right to oblige the other party to renew the agreement.

“24.9.20 Notwithstanding paragraph 24.9.19, the following transfers are not subject to the right of first refusal of the Native people:

a) a transfer by succession;

b) a transfer in favour of the spouse, or an ascendant, a descendant or a collateral relation to the second degree of the holder of an outfitter's permit or, in the case of a partnership or a corporation holding such a permit, in favour of such a relative of a partner or shareholder;

c) a transfer in favour of a creditor for the sole purpose of securing the repayment of a debt;

d) a transfer where the transferor of an outfitting operation is a natural person and the transferee is a partnership or a corporation, if all the partnership interests or all the issued full voting shares of the capital stock become the property of the transferor immediately after the transfer;

e) a transfer where the transferor of an outfitting operation is a corporation or a partnership and the transferee is a natural person, if the person is, immediately before the transfer, the owner of all the partnership interests or all the issued full voting shares of the capital stock of the transferor;

f) a transfer where the transferee of an outfitting operation is a new partnership made up of two or more partnerships or a new corporation resulting from the amalgamation of two or more corporations, if all the

partnership interests or all the issued full voting shares of the capital stock of the transferee are owned by persons who owned all the partnership interests or all the issued full voting shares of the former partnerships or the amalgamated corporations;

g) a transfer where the transferee of an outfitting operation is the parent corporation of the transferor, a subsidiary of the transferor or a subsidiary of a corporation that is a subsidiary of the transferor;

h) a transfer where the transferor of an outfitting operation is a subsidiary of a corporation that is a subsidiary of the transferee;

i) a transfer where both the transferor and the transferee of an outfitting operation are subsidiaries of the same parent corporation or subsidiaries of one or more corporations that is or are, as the case may be, a subsidiary or subsidiaries of the same parent corporation;

j) a transfer where the transferor and the transferee of an outfitting operation are non-profit entities if, at the time of the transfer, all the members of one entity are members of the other entity.

For the purposes of sub-paragraphs g), h) and i), a corporation is a subsidiary, at a particular time, of another corporation, called the "parent corporation", where all the issued full voting shares of its capital stock are owned by the parent corporation. "

*[Amendment integrated]*

**SIGNATORIES (CBJNQ 10)**

EN FOI DE QUOI, les parties aux présentes ont dûment signé la présente Convention à la date et à l'endroit indiqués ci-dessous en six exemplaires.

IN WITNESS WHEREOF, the parties hereto have caused six copies of this Agreement to be duly signed on the date and at the place hereinbelow indicated.

Signée à Montréal, (Québec) le 18 avril 1989

Signed at Montréal, Québec April 18, 1989

L'ADMINISTRATION RÉGIONALE  
CRIE

THE CREE REGIONAL AUTHORITY

LA CORPORATION FONCIÈRE DES  
NASKAPIS DE SCHEFFERVILLE

NASKAPI LANDHOLDING  
CORPORATION OF SCHEFFERVILLE

\_\_\_\_\_  
Matthew Coon Come

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Joe Guanish

MAKIVIK CORPORATION

LE GOUVERNEMENT DU QUÉBEC

THE GOVERNMENT OF QUÉBEC

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Jackie Koneak

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Le ministre, Yvon Picotte, Minister