

TERMS OF INSTRUMENT – PART 2

Section 219 Conservation Covenant and Access Agreement

The Agreement is dated for reference this 2nd day of march, 2011 (the "Effective Date").

BETWEEN:

REGIONAL DISTRICT OF NANAIMO, with its office at 6300 Hammond Bay Road,
Nanaimo, BC V9T 6N2

(the "Owner")

AND:

THE NATURE CONSERVANCY OF CANADA, a society registered extra-provincially
in British Columbia (Registration No. XS0033684), with its registered office at 200-825
Broughton Street, Victoria, BC V8W 1E5

(the "Covenant Holder")

WHEREAS:

- A. The Owner is the registered owner of the Land, herein defined;
- B. After the Effective Date, the Owner may transfer a fractional interest in the Land to The Nature Trust of British Columbia (the "Trust"), subject to satisfaction of the terms of the Land Acquisition and Co-Owners Agreement for Camp Moorecroft Regional Park, which the Regional District of Nanaimo and The Trust executed on the 22nd day of October, 2010;
- C. The Land contains significant Amenities, herein defined, of great importance to the parties;
- D. The parties believe that the Amenities are of great importance to the public;
- E. The Owner and the Covenant Holder have a shared desire to protect, through conservation covenant, the natural habitats, and sensitive ecological features occurring on the Lands, including Coastal Douglas fir forest, wetlands and riparian areas, and species and plant communities at risk;
- F. The Owner wishes to grant the Covenant Holder a covenant pursuant to section 219 of the *Land Title Act* RSBC 1996, c.250;
- G. A right of access over the Land in favour of the Covenant Holder is necessary for the

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operation and maintenance of the undertakings of the Covenant Holder; and

- H. The Nature Conservancy of Canada has been designated by the Surveyor General of BC as an organization authorized to accept covenants under section 219 of the *Land Title Act*,

NOW THEREFORE in consideration of the payment of one dollar (\$1.00) now paid by the Covenant Holder to the Owner (the receipt and sufficiency of which is acknowledged by the Owner), and in consideration of the promises exchanged below, the parties agree as follows, in accordance with section 219 of the *Land Title Act*:

1. Definitions and Interpretation

1.1. In this Agreement:

- a) "Amenities" means the natural habitats, and sensitive ecological features occurring on the Land, as described in the Report;
- b) "Business Day" means a day on which the Land Title Office in Victoria, British Columbia is open for business;
- c) "Covenant Holder" means the Nature Conservancy of Canada, and includes its permitted successors and assigns;
- d) "CPI" means the All-Items Consumer Price Index published by Statistics Canada, or its successor in function, for Vancouver, British Columbia, where 2002 equals 100;
- e) "Harm" means to do anything, omit to do anything, or expressly allow anything to be done that does or could reasonably be expected to destroy, impair, diminish, negatively affect, or alter the Land or the Amenities from the condition described in the Report, but does not include actions, authorizations or other exceptions expressly permitted under this Agreement;
- f) "Land" means the parcels of land listed in Schedule 'A';
- g) "Land Acquisition and Co-Owners Agreement" means the Land Acquisition and Co-Owners Agreement for Camp Moorecroft Regional Park, which the Regional District of Nanaimo and The Nature Trust of British Columbia executed on the 22nd day of October, 2010 and which is attached hereto as Schedule 'C';
- h) "Management Plan" has the meaning ascribed to it in section 13 of this Agreement;
- i) "Nature Conservancy" means the Nature Conservancy of Canada, a society registered extra-provincially in British Columbia (Registration No. XS0033684), with its registered office at 200-825 Broughton, Victoria, BC V8W 1E5;

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- j) "Notice of Enforcement" means a notice of enforcement given under section 11;
 - k) "Owner" means the Regional District of Nanaimo, including all Successors of the Owner, and the Owner's permitted transferees and assigns;
 - l) "Regional Park" means a regional park as defined by the *Local Government Act*, RSBC 1996, c.323;
 - m) "Rent Charge" means the rent charge granted by the Owner under section 12;
 - n) "Rent Charge Amount" means the amount set out in section 12, the payment of which is secured by the Rent Charge;
 - o) "Report" means the baseline documentation report referred to in section 4 of this Agreement that describes the Land and the Amenities in the form of text, maps, photographs and other records of the Land and the Amenities as of the date of registration of this Agreement;
 - p) "Successor" means a person who, at any time after registration of this Agreement, becomes the registered owner of the Land or any part thereof by any means, including a beneficial owner;
 - q) "Terms of Reference" has the meaning ascribed to it in section 13 of this Agreement; and
 - r) "Trust" means The Nature Trust of British Columbia, which may become a fractional owner of the Land after the Effective Date pursuant to the terms of the Land Acquisition and Co-Owners Agreement.
- 1.2 Where this Agreement says something is in the "sole discretion" of a party, that thing is within the sole, absolute and unfettered discretion of that party.
- 1.3 This Agreement shall be interpreted in accordance with the laws of British Columbia and the laws of Canada applicable in British Columbia.
- 1.4 This Agreement is comprised of the recitation of the parties, the recitals to this Agreement, the Schedules to this Agreement and *Land Title Act* Form C to which this Agreement is attached.
- 1.5 In this Agreement:
- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;

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- (b) where a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
 - (c) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
 - (d) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
 - (e) the word “enactment” has the meaning given to it in the *Interpretation Act* RSBC 1996, c.238 on the reference date of this Agreement;
 - (f) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
 - (g) reference to a “party” or the “parties” is a reference to a party, or the parties, to this Agreement and their respective successors, assigns, trustees, administrators and receivers; and
 - (h) reference to a “day”, “month” or “year” is a reference to a calendar day, calendar month, or calendar year, as the case may be, unless otherwise expressly provided.
- 1.6 The parties acknowledge and agree that nothing in this Agreement prejudices or affects the statutory powers, rights, requirements and restrictions of the Owner, or functions to fetter the discretion of the Owner in its capacity as a regional district under the *Local Government Act*. Notwithstanding the foregoing, the Owner acknowledges and agrees that this Agreement is intended to be perpetual, and the Owner shall remain bound by its obligations hereunder and shall not permit Harm to the Amenities.

2 Representations and Warranties

- 2.1 The Owner warrants that the facts set out in Recitals A, B and F are true.
- 2.2 The Covenant Holder warrants that the facts set out in Recitals G and H are true.
- 2.3 The parties warrant that the facts set out in Recitals C, D and E are true.

3 Intent of Agreement

- 3.1 The parties each agree that the general intent of this Agreement is to allow for the use of the Land as a Regional Park in a manner that does not Harm the Amenities, and the parties agree that this Agreement is to be interpreted, performed and applied accordingly.

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3.2 This Agreement shall be perpetual to reflect the public interest in the ecological values of the Land and the Amenities for conservation.

4 Baseline Documentation Report

4.1 The parties agree that the Land, the location of current uses, and the Amenities, are described in the Report, a copy of which is on file with each of the parties at the addresses set out in section 17.4.

4.2 The parties each acknowledge that the flora and fauna on the Land will be subject to natural ecological processes over time and, unless otherwise expressly stated, references to the Report in this Agreement are intended to take into account the natural succession of the flora and fauna and natural disturbance regimes over time, without human intervention other than as expressly permitted by this Agreement.

4.3 Subject to section 4.2, the parties agree that the Report is intended to serve as an objective information baseline for monitoring compliance with the terms of this Agreement and the parties each agree that the Report provides an accurate description of the Land and the Amenities as of the date of this Agreement.

5 Restrictions on Use of the Land

5.1 The Owner shall:

- (a) designate and maintain the Land as a Regional Park;
- (b) manage the Land in accordance with the Management Plan;
- (c) not alter the Amenities before the Management Plan has been finalized and approved in writing by the Covenant Holder;
- (d) not subdivide the Land; and
- (e) not sell or transfer any of the Land without the prior written permission of the Covenant Holder, unless such sale or transfer is a sale or transfer of the whole of the Land to the same entity at the same time.

5.2 The Covenant Holder acknowledges and agrees that the Owner may transfer a fractional interest in the Land to the Trust pursuant to the terms of the Land Acquisition and Co-Owners Agreement. Provided such transfer is on the terms contemplated by this Agreement and the Land Acquisition and Co-Owners Agreement, such transfer shall not require the prior written permission of the Covenant Holder as set out in section 5.1(e) above.

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6. Dispute Resolution

- 6.1 If a breach of this Agreement has occurred or is threatened, or if there is disagreement as to the meaning of this Agreement or any part thereof, the Owner or the Covenant Holder may give notice to the other party requiring a meeting of the parties within 15 Business Days of receipt of the notice.
- 6.2 Upon receipt of the notice, when the activity constituting or threatening a breach of this Agreement is or will cause Harm, then the activity shall immediately cease, pending resolution of the matter.
- 6.3 The parties must attempt to resolve the matter, acting diligently, reasonably and in good faith, within 30 Business Days of receipt of the notice contemplated in section 6.1.
- 6.4 If the parties are not able to resolve the matter within that time, the parties may appoint a mutually acceptable person to mediate the matter and the parties must act reasonably and in good faith and cooperate with the mediator and with each other in an attempt to resolve the matter within 30 Business Days after the mediator is appointed. The cost of any such mediation shall be borne equally by the parties.
- 6.5 If the parties are not able to resolve the matter by mediation, or if either party refuses or fails to participate in mediation, the parties agree to submit the matter to a single arbitrator appointed jointly by the parties. Failing agreement upon an arbitrator, one shall be appointed pursuant to the *Commercial Arbitration Act*, RSBC 1996, c.55.
- 6.6 The decision of the arbitrator appointed pursuant to section 6.5 shall be final and binding upon the parties.
- 6.7 The cost of the arbitration shall be paid on the terms determined by the arbitrator.

7. Owner's Reserved Rights

- 7.1 Subject to section 5, the Owner reserves all of its rights as owner of the Land, including the right to use, occupy and maintain the Land in any way that is not expressly restricted or prohibited by this Agreement, so long as the use, occupation or maintenance are consistent with the intent of this Agreement as described in section 3.
- 7.2 Nothing in this Agreement restricts or affects the right of the Owner or any other party to do anything reasonably necessary under emergency conditions to:
- (a) prevent, abate or mitigate any damage or loss to any real or personal property; or
 - (b) prevent potential injury or death to any individual.

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8. Obligations

- 8.1 The Owner acknowledges and agrees that the Covenant Holder shall not be liable for any and all responsibilities, costs and liabilities related to the ownership, use, occupation and maintenance of the Land, including all improvements.
- 8.2 The Owner shall indemnify the Covenant Holder, its directors, officers, employees, volunteers, agents and contractors, from and against any and all liabilities, damages, losses, personal injury or death, causes of action, actions, claims, and demands by or on behalf of any person, arising out of any negligent act or omission, in the use, occupation and maintenance of the Land or the Amenities by the Owner.
- 8.3 The Owner shall obtain and maintain comprehensive general liability insurance in an amount considered sufficient by the Owner, acting reasonably, with the Covenant Holder being named as an additional insured thereunder and provide the Covenant Holder with evidence of such coverage upon request.
- 8.4 The Owner is liable for any and all breaches of this Agreement, but the Owner is not liable for:
- (a) breaches of this Agreement which occur while the Owner is not the registered owner of any interest in the Land;
 - (b) injury or alteration to the Land or the Amenities resulting from natural causes, or causes beyond the Owner's reasonable control, including accidental fire, drought, flood, storm, vandalism, trespass and natural earth movement events, but excluding injury or alteration resulting from actions of the Owner or any other person acting with the actual or constructive knowledge and permission of the Owner; or
 - (c) any prudent action taken by the Owner under emergency conditions to prevent, abate, or mitigate significant injury to the Land or the Amenities resulting from natural causes, including accidental fire, drought, flood, storm and natural earth movement events.
- 8.5 Without limiting the generality of sections 8.1, 8.2 and 8.3, the Owner:
- (a) acknowledges and agrees that the Covenant Holder shall not be responsible or liable for any loss or damage, or liability of any kind (whether civil, criminal or regulatory), in any way connected with the existence in, on, from, to or under the Land (whether through spill, emission, migration, deposit, storage or otherwise) of any pollutant, contaminant, waste, special waste, or any matter that impairs the environment ("Contaminant"); and
 - (b) shall indemnify the Covenant Holder from and against any loss, damage, liability, cause of action, action, penal proceeding, regulatory action, order,

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directive, notice or requirement, including those of any government agency, incurred, suffered, brought against or instituted against the Covenant Holder, jointly or severally, in any way associated with the environmental condition of the Land or any Contaminant on, or migrating from, the Land, except where the Covenant Holder has caused or contributed to the loss, damage, liability, cause of action, action, penal proceeding, regulatory action, order, directive, notice or requirement.

- 8.6 Where, as provided under section 8.4(b), the Owner is not responsible for damage or theft due to trespass or vandalism, the Owner will report the incident to the appropriate authority and will cooperate with that authority pursuant to any legal claim.
- 8.7 The Owner acknowledges and agrees that the Covenant Holder shall not be responsible for any taxes, assessments, levies, fees and charges of whatever description which may be levied on or assessed against the Land, or any arrears, penalties and interest in respect thereof.
- 8.8 The Owner shall indemnify the Covenant Holder from and against any fee, tax, or other charge which may be assessed or levied against the Owner or the Covenant Holder pursuant to any enactment, including the *Income Tax Act (Canada)* with respect to the Land or with respect to this Agreement, including any fee, tax or other charge which may be assessed or levied against the Owner or the Covenant Holder as a result of the amendment or termination of this Agreement.
- 8.9 Any debts or other amounts due from the Owner to the Covenant Holder under this Agreement, if not paid within 30 days after notice, shall bear interest at the annual interest rate that is one (1) percent greater than the prime rate of interest. For the purposes of this section, the "prime rate of interest" is the annual rate of interest charged from time to time by the Bank of Montreal, at its main branch in Vancouver, British Columbia, for demand Canadian dollar commercial loans made to its most creditworthy commercial customers and designated from time to time by the Bank of Montreal as its prime rate.
- 8.10 For clarity, the indemnities granted by the Owner to the Covenant Holder under sections 8.2, 8.5(b) and 8.8 are indemnities granted as an integral part of the section 219 covenant granted by this Agreement.
- 8.11 Except in accordance with the Land Acquisition and Co-Owners Agreement, the Owner covenants and agrees that it shall not sell or transfer the Land, or any portion thereof, without first granting a statutory right of way pursuant to section 218 of the *Land Title Act* in favour of the Covenant Holder, on terms acceptable to the Covenant Holder, acting reasonably, and depositing the statutory right of way in the Victoria Land Title Office for registration against the title to the Lands. For greater certainty, the Covenant Holder acknowledges and agrees that the Owner may transfer a fractional interest in the Land to the Trust and shall not be obligated to enter into a section 218 agreement with the Covenant Holder at that time.

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9. Covenant Holder's Obligations

- 9.1 The Covenant Holder shall obtain and maintain comprehensive general liability insurance in an amount considered sufficient by the Covenant Holder, acting reasonably, with the Owner being named as an additional insured thereunder and provide the Owner with evidence of such coverage upon request.

10. Access For Monitoring and Enforcement

- 10.1 The Owner hereby grants to the Covenant Holder, in perpetuity, the right, liberty and easement for the Covenant Holder and its officers, agents, employees, contractors and subcontractors, with or without equipment and on foot or with vehicles, on, over and across the Land, using existing roads and trails where possible, for the following purposes:
- (a) to enter upon and inspect the Land at all reasonable times upon prior notice by the Covenant Holder to the Owner of at least twenty-four (24) hours, unless, in the opinion of the Covenant Holder, there is an emergency or other circumstance which does not make giving such notice practicable, in the sole discretion of the Covenant Holder;
 - (b) as part of inspection of the Land, to take photographs and video recordings as may be necessary to monitor compliance with and to enforce the terms of the Agreement;
 - (c) to carry out or evaluate, or both, any program agreed upon among the parties for the protection, preservation, conservation, maintenance, enhancement, restoration or rehabilitation of all or any portion of the Land or the Amenities; and
 - (d) to place small wooden survey pegs or other markings on the Land or to increase the visibility of existing survey pegs or other markings.

- 10.2 When the Covenant Holder is not on the Land pursuant to Section 10.1, the Owner is entitled to quiet possession of the Land.

11. Enforcement Remedy of the Covenant Holder

- 11.1 If the Covenant Holder, in its sole discretion but acting reasonably, believes that the Owner has not complied with section 5 of this Agreement (a "breach"), then the Covenant Holder may give a Notice of Enforcement to the Owner. The Notice of Enforcement must describe the breach, must identify the steps the Owner must take to correct that breach, and must set out the estimated maximum cost of correcting the breach.
- 11.2 Within 60 days of receiving the Notice of Enforcement, or within 60 days of the conclusion of the dispute resolution process described in section 6 if the Owner disputes

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the Notice of Enforcement or such longer time as may be set by the arbitrator, the Owner must remedy the breach or make arrangements to remedy the breach. Such arrangements must be satisfactory to the Covenant Holder, including the amount of time it will take to remedy the breach or as ordered by the arbitrator.

- 11.3 If the Owner does not remedy a breach in the time and manner set under section 11.2, then the Covenant Holder may enter upon the Land and carry out the approved arrangements to remedy the breach. The Owner shall reimburse the Covenant Holder for any expenses incurred while remedying the breach, up to the maximum estimated costs described in section 11.1. Expenses incurred by the Covenant Holder under this section are a debt owed by the Owner to the Covenant Holder until paid.

12. **Rent Charge and Its Enforcement**

- 12.1 As security for the performance of the Owner's obligations under Section 5 of this Agreement, the Owner grants to the Covenant Holder a perpetual rent charge against the Land, ranking in priority to all other financial charges and encumbrances registered against the Land, including options to purchase and rights of first refusal. The Rent Charge is granted both under section 219 of the *Land Title Act* as an integral part of the statutory covenant created by this Agreement and as a fee simple rent charge at common law.
- 12.2 The Rent Charge is suspended and will not be enforced unless the Owner breaches this Agreement, has not remedied the breach after receipt of a Notice of Enforcement, and is not making diligent efforts to remedy the breach as described in section 11.
- 12.3 The Rent Charge secures payment to the Covenant Holder by the Owner of the sum of \$10,000, subject to adjustment under section 12.4 and 12.5, for each violation occurring in that year. For clarity, only one Rent Charge Amount is payable by the Owner for each violation.
- 12.4 The Rent Charge Amount shall be increased by a sum equal to 110% of the market value, determined at the date of any breach of this Agreement, of any profits that are realized by the Owner as a result of the breach.
- 12.5 The Rent Charge Amount is to be adjusted on January 1 of each year by increasing or decreasing, as the case may be, the Rent Charge Amount by the amount determined by multiplying the Rent Charge Amount on December 31 immediately preceding by the percentage increase or decrease, as the case may be, in the CPI between the previous January 1 and that December 31 and adding the amount so determined to the Rent Charge Amount as it stands on that December 31. If Statistics Canada, or its successor in function, ceases to publish a CPI or comparable indicator as determined by the Covenant Holder in its sole discretion, the parties agree that the factor to be used in determining the Rent Charge Amount for each year shall be an increase of an amount equivalent to the percentage increase in inflation during the previous year.

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- 12.6 The Covenant Holder shall be entitled to recover from the Owner all reasonable expenses incurred as a result of enforcement of the Rent Charge.
- 12.7 The Covenant Holder may enforce the Rent charge by any or all, of:
- (a) an action against the Owner for the Rent Charge Amount;
 - (b) distraint against the Land to the extent of the Rent Charge Amount;
 - (c) an action for appointment of a receiver in respect of the Land; or
 - (d) an order for sale of the Land to another Society having similar purposes to the Covenant Holder.
- 12.8 The Covenant Holder shall provide notice to the Owner of its intention to enforce the Rent Charge prior to commencing any action pursuant to section 12.7. Such Notice of Enforcement may be given at any time after a notice pursuant to section 11.1 is given.

13. **Management Plan**

- 13.1 Within two (2) years of the date of registration of this Agreement, or such date as otherwise agreed to by the parties, the Owner shall prepare and complete a management plan for the Land (the "Management Plan"). The Management Plan shall be based on terms of reference (the "Terms of Reference") drafted by a committee, the membership of which shall include representation from the Owner, the Trust, and, at its election, the Covenant Holder. Once the Terms of Reference have been agreed upon by all parties, the Owner shall prepare the Management Plan. The Management Plan shall not be deemed complete until it has been reviewed and approved in writing by the Covenant Holder, such approval not to be unreasonably withheld. The Management Plan and the Terms of Reference shall allow for recreational opportunities for the public, and shall be prepared in accordance with the following principles:
- (a) Conservation of the Amenities shall be the primary use in the area described as the Conservation Zone on the map attached hereto as Schedule 'B';
 - (b) For greater certainty, trail maintenance and improvement for non-motorized use, benches and resting areas and informational and directional signage for the public in locations to be mutually agreed by the parties, and boardwalks or other structures that are for the maintenance of and prevention of Harm to the Amenities shall be permitted uses in the Conservation Zone;
 - (c) Additional major infrastructure such as parking areas, new buildings and camping facilities shall be located in the area described as the Development Zone on the map attached hereto as Schedule 'B'.

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- 13.2 Once adopted, the Management Plan shall be reviewed and revised by the Owner as necessary at least once every ten (10) years, and each revision requires the written approval of the Covenant Holder.
- 13.3 The Management Plan and any revised versions shall be kept on file by the parties and provided to any Successors of the Owner.
14. **Successor of the Owner**
 - 14.1 This Agreement shall enure to the benefit of and be binding upon the Owner and any successors of the Owner.
 - 14.2 Subject to the Land Acquisition and Co-Owners Agreement, which contemplates the transfer of a fractional interest in the Land to the Trust, the Owner shall not lease, license or otherwise transfer control of the Land or any part thereof unless the lease, license or other agreement is expressly made subject to the provisions of this Agreement and unless the lease, license or other agreement expressly entitles the Owner to terminate the lease, license or other agreement and re-enter the Land if the tenant, licensee or occupant breaches any of the provisions of this Agreement.
 - 14.3 Failure by the Owner to comply with the provisions of this section shall not affect the enforceability of this Agreement against the Owner or any Successor.
 - 14.4 The Owner shall inform the Covenant Holder within five (5) Business Days of any accepted offer of purchase and sale of the Land.
 - 14.5 The Owner shall inform any potential purchaser of the Land of the existence of this Agreement and their obligations to be bound by it.
15. **Management of Land**
 - 15.1 The parties hereto acknowledge and agree that the Owner may enter into an agreement with a society or private contractor to manage or assist with the management of the Land provided that such agreement shall be in accordance with this Agreement and, once in effect, the Terms of Reference and the Management Plan.
 - 15.2 Notwithstanding any agreement entered into by the Owner pursuant to section 15.1 of this Agreement, the Owner acknowledges and agrees that the Owner shall (i) remain bound by and subject to the terms of this Agreement; (ii) remain fully responsible for complying with the terms of this Agreement and the Management Plan; and (iii) be liable for any acts of, omissions of or breaches of the Management Plan or this Agreement by any contractor employed or otherwise retained by the Owner in respect of the Land. For the purposes of this section, "Owner" includes all successors and assigns of the Owner and shall include the Trust if and when the Trust becomes an owner of the Land.

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16. Assignment of Agreement or Dissolution of the Covenant Holder

- 16.1 This Agreement shall be transferable by the Covenant Holder, provided that the Covenant Holder may only assign its rights and obligations under this Agreement to an entity or person qualified at the time of transfer to hold covenants under section 219 of the *Land Title Act* and any applicable regulation under it and with the prior written consent of the Owner. The Covenant Holder agrees that the Owner shall have the right to accept or reject any proposed assignment, such acceptance not to be unreasonably withheld. The Covenant Holder must give notice to the Owner of the proposed assignment, setting out in reasonable detail the identity of the proposed assignee and the qualifications and experience of the proposed assignee relevant to performance by the assignee of the rights and obligations of the Covenant Holder under this Agreement. If the Owner does not provide comments to the Covenant Holder regarding the proposed assignee within 30 days of receiving the notice, the Owner is conclusively deemed to have declined to comment on the proposed assignee and to have consented to the assignment.
- 16.2 In the event of the winding-up or dissolution of the Covenant Holder, the Covenant Holder shall use its best efforts to assign and transfer all of its interest under this Agreement to a person or entity authorized to accept covenants under section 219 of the *Land Title Act*. If the Covenant Holder does not assign and transfer all of its interests under this Agreement as set out in this section, it shall be deemed to have assigned and transferred all of its interest under this Agreement to Her Majesty the Queen in Right of the Province of British Columbia. For clarity, the consultation process set out in section 14.1 does not apply to this section.

17. Notice

- 17.1 Any notice or other communication (collectively "notice") required or permitted under this Agreement shall be:
- (a) delivered in person; or
 - (b) sent by pre-paid registered mail or courier to the address of the parties as set out in section 17.4.
- 17.2 If notice is delivered in person, the party receiving the notice shall forthwith acknowledge receipt of same in writing, and the notice shall be deemed to have been received on the earlier of the date of such acknowledgment and the date that is five (5) days after the notice is sent.
- 17.3 If notice is sent by pre-paid registered mail or courier, it shall be deemed to have been received on the fourth (4th) Business Day following the day on which the notice was sent.

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17.4 The addresses of the parties' representatives for notice are as follows:

The Owner

Regional District of Nanaimo
6300 Hammond Bay Road
Nanaimo, BC V9T 6N2

The Covenant Holder

Nature Conservancy of Canada
200 – 825 Broughton Street
Victoria, BC V8W 1E5

17.5 Each party agrees to immediately give written notice to the other of any change in its address from that set out in section 17.4 and that the new address should be substituted for the old for the purposes of this Agreement.

17.6 If a party refuses to sign an acknowledgment of receipt of notice, the person delivering the notice may swear an affidavit of service and the notice shall be deemed to have been received on the date of service set out in the affidavit.

18. **Access**

18.1 No right of access by the general public to any portion of the Land is conveyed or created by this Agreement.

19. **Notice of Covenant**

19.1 The Owner agrees to allow the Covenant Holder to publicize the existence of this Agreement, in consultation with the Owner.

19.2 Without restricting the generality of the foregoing, the Owner agrees to allow the Covenant Holder to erect plaques or other signage on the Land, at the Covenant Holder's expense, indicating that the Covenant Holder holds a covenant on the Land. All signage shall not exceed two (2) square meters for any individual sign.

20. **No Liability in Tort**

20.1 The parties agree that this Agreement creates only contractual obligations and obligations arising out of the nature of this Agreement as a covenant under seal. Without limiting the generality of the foregoing, the parties agree that no tort or fiduciary obligations or liabilities of any kind are created or exist between the parties in respect of this Agreement and nothing in this Agreement creates any duty of care or other duty on any of the parties to anyone else. For clarity, the intent of this section is to, among other things, exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract.

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21. Waiver

- 21.1 An alleged waiver of any breach of this Agreement is effective only if it is an express written waiver signed by the Covenant Holder, and is only effective to the extent of that express waiver and does not operate as a waiver of any other breach.
- 21.2 The failure of the Covenant Holder at any time to enforce any obligation of the Owner hereunder shall not affect the Covenant Holder's right to subsequently enforce that obligation.

22. Remedies not Exhaustive

- 22.1 Exercise or enforcement by a party of any remedy or right under or in respect of this Agreement does not limit or affect any other remedy or right that party may have against the other parties in respect of or under this Agreement or its performance or breach.

23. Covenant runs with the Land

- 23.1 Unless it is otherwise expressly provided in this Agreement, every obligation and covenant of the Owner in this Agreement constitutes a personal covenant and also a covenant granted under section 219 of the *Land Title Act* in respect of the Land. This Agreement burdens the Land and runs with it and binds the successors in title to the Land. This Agreement burdens and charges all of the Land and any parcel into which it is subdivided by any means and any parcel into which the Land is consolidated.

24. Severance

- 24.1 If any part of this Agreement is held by a court to be invalid, illegal or unenforceable, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement is to remain in force unaffected by that holding or by the severance of that part as if the part was never part of this Agreement.

25. Deed and Contract

- 25.1 By executing and delivering this Agreement, each of the parties intends to create both a contract and a deed and covenant executed and delivered under seal.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement under seal by executing Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

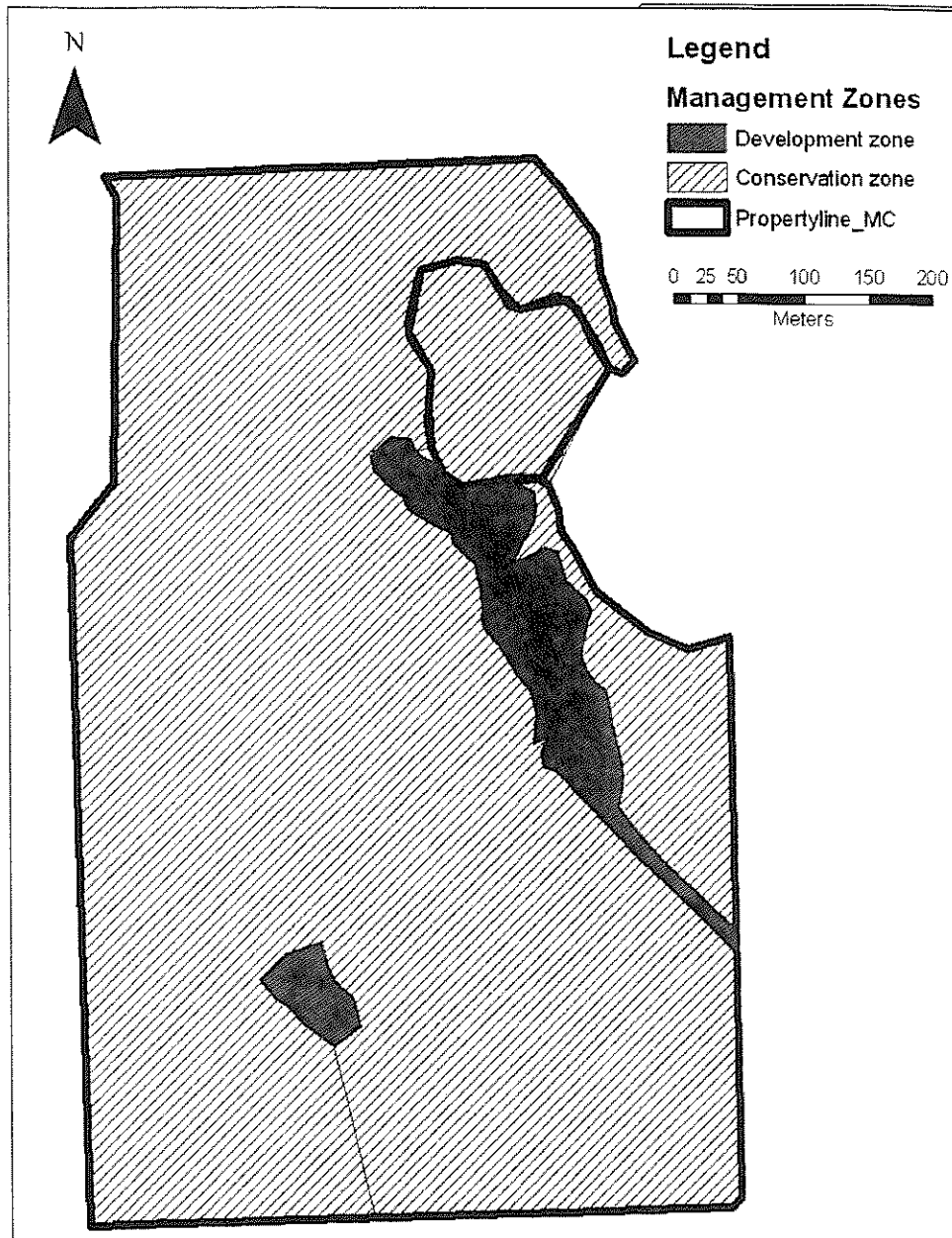
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SCHEDULE 'A'
The "Land"

PID	Legal
006-884-849	Lot A, District Lot 110, Nanoose District, Plan 1777
001-170-228	Lot 1 of District Lots 52 and 110, Nanoose District, Plan 31217

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SCHEDULE 'B'



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SCHEDULE 'C'

Land Acquisition and Co-Owners Agreement

LAND ACQUISITION AND CO-OWNERS AGREEMENT

CAMP MOORECROFT REGIONAL PARK

THIS AGREEMENT made this ²² day of *October*, 2010 .

BETWEEN:

THE NATURE TRUST OF BRITISH COLUMBIA

#260 – 1000 Roosevelt Crescent
North Vancouver, B.C. V7P 3R4

("The Nature Trust")

OF THE FIRST PART

AND:

REGIONAL DISTRICT OF NANAIMO

6300 Hammond Bay Road
Nanaimo, B.C. V9T 6N2

(the "RDN")

OF THE SECOND PART

WHEREAS:

- A. The RDN has an interest in establishing a regional park within its boundaries in order to secure, protect and steward lands and water features of environmental and wildlife habitat significance that will also provide rewarding public outdoor recreational opportunities.
- B. The Nature Trust has a mandate to promote and protect the natural values of the land in British Columbia.
- C. The Nature Trust and the RDN wish to work together to prepare a bid for the acquisition of lands and premises from the British Columbia Conference Property

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Development Council of the United Church of Canada, shown on Schedule A attached hereto and legally described as follows:

PID 001-170-228

Lot 1, of District Lots 52 and 110, Nanoose District, Plan 31217; and

PID 006-884-849

Lot A, District Lot 110, Nanoose District, Plan 1777

(together the "Camp Moorecroft Lands" and individually referred to as "Lot 1" and "Lot A", respectively),

for the purpose of operating and managing them as a regional park.

- D. The Nature Trust and the RDN agree that it is important to preserve, conserve, maintain and enhance the natural state of the Camp Moorecroft Lands and its amenities in perpetuity as habitat for waterfowl, fish, and wildlife; and wish to provide public recreation opportunities for the public within a regional park on the Camp Moorecroft Lands, consistent with the conservation and public recreation purposes for which the Camp Moorecroft Lands are to be purchased.
- E. If the RDN and The Nature Trust are successful in their bid to jointly acquire the Camp Moorecroft Lands, they wish to own and manage those lands as a regional park in accordance with and on the terms set out in this Agreement.

NOW THIS AGREEMENT WITNESSES that in consideration of the premises, the terms and conditions hereinafter contained, the sufficiency and receipt of which is hereby acknowledged, the parties covenant and agree each with the other as follows:

1.0 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing a corporate entity include individuals and vice versa.
- 1.2 Unless otherwise stated, any reference to an enactment includes and is a reference to such enactment including amendments thereto and in force from time to time, and to any enactment that may be passed which supplements or supersedes such enactment.
- 1.3 The language in all parts of this Agreement shall in all cases be construed as a whole and neither strictly for nor strictly against either of the parties to this Agreement.
- 1.4 This Agreement shall be governed by and construed in accordance with the law

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of British Columbia and the law of Canada applicable therein and all disputes and claims whether for damages, specific performance, injunction, declaration or otherwise, both at law and equity, arising out of, or in anyway connected with this Agreement will be referred to the Courts of British Columbia and each of the parties hereby attorns to the jurisdiction of the Courts of British Columbia.

- 1.5 Unless otherwise stated, a reference in this Agreement to a designated article, section, subsection, paragraph or other subdivision or to a schedule is to the designated article, section, subsection, paragraph or other subdivision of, or schedule to this Agreement.
- 1.6 A requirement in this Agreement that a party provide approval or consent means that approval is not to be unreasonably withheld or delayed unless the paragraph specifies that the approval is to be in the sole discretion of a party, in which case approval is to be in the exclusive, complete and unfettered discretion of the party.

2.0 MUTUAL COVENANTS

- 2.1 The parties agree that they will cooperate with each other to prepare a bid to jointly acquire the Camp Moorecroft Lands to be owned in fee simple as tenants in common with each party holding an undivided fractional interest therein in proportion to its respective contribution to the purchase price of the Camp Moorecroft Lands.
- 2.2 The Nature Trust shall endeavour to raise up to \$500,000.00 by October 31, 2012 (the "Funding Date") for the purpose of acquiring an interest in the Camp Moorecroft Lands as contemplated herein and the total amount of funds raised by The Nature Trust by the Funding Date shall be contributed to the purchase price for the acquisition of the Camp Moorecroft Lands. If The Nature Trust fails to raise any such funds by the Funding Date, it shall then be released of its obligation to acquire an interest in the Camp Moorecroft Lands as contemplated herein.
- 2.3 For certainty, each party agrees not to submit another bid, whether independently or with other parties, for the acquisition of the Camp Moorecroft Lands, without the prior written consent of the other party.
- 2.4 If the parties acquire the Camp Moorecroft Lands as contemplated in section 2.1, the parties agree that:
- (a) the RDN, on behalf of the parties, will manage the Camp Moorecroft Lands as a Regional District of Nanaimo regional park in a way that protects fish, wildlife and the natural ecosystems while providing recreational opportunities for the public;

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- (b) the RDN will complete a management plan by December 31, 2012 or such other date as agreed by the parties in writing (the "Management Plan"). Every ten (10) years thereafter, or as reasonably practical within a ten (10) year period, the parties will review and prepare a new Management Plan that will address in more detail the natural area conservation and wildlife protection values of the Camp Moorecroft Lands as well as determining and providing for the public passive recreation opportunities on the Camp Moorecroft Lands. In addition the Management Plan will address other land use issues associated with the Camp Moorecroft Lands that are identified as part of the planning process;
- (c) notwithstanding any provision in this Agreement, neither party shall transfer, assign, lease, sublease, licence nor otherwise dispose of their interest, or part thereof, in the Camp Moorecroft Lands for five (5) years beginning on the date the Camp Moorecroft Lands are acquired by the parties, and thereafter shall only so transfer, assign, lease, sublease, licence or otherwise dispose of such interest or part thereof, in accordance with this Agreement or with the prior written consent of the other party.

3.0 COVENANTS OF THE RDN

- 3.1 The RDN will, as soon as reasonably practical, install and maintain at key entry points to the Camp Moorecroft Lands signs that note the conservation and natural features of the Camp Moorecroft Lands.

4.0 RIGHT OF FIRST REFUSAL

- 4.1 Upon the parties acquiring the Camp Moorecroft Lands in accordance with this Agreement, the parties shall forthwith execute and cause to be registered at the Victoria Land Title Office a right of first refusal in favour of the RDN granting the RDN the first right to purchase and acquire all or part of The Nature Trust's interest in the Camp Moorecroft Lands (the "Right of First Refusal"), on the following terms:

- (a) the purchase price shall be the fair market value of the interest to be acquired, as determined by an appraiser selected by the parties;
- (b) the term of the Right of First Refusal shall have the same term as the lease contemplated in section 7.1 of this Agreement;
- (c) the right to purchase contained in the Right of First Refusal shall be for the acquisition of any or all of The Nature Trust's interest in the Camp Moorecroft Lands free and clear of all liens, charges and encumbrances,

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except those that are otherwise permitted by the RDN, acting reasonably;

- (d) if The Nature Trust receives a bona fide offer for part or all of its interest in the Camp Moorecroft Lands then The Nature Trust will not accept the bona fide offer but will immediately deliver a true copy of that offer to the RDN;
- (e) the RDN will have 180 days from receipt of the offer under section 4.1(d) to elect to acquire all of the Camp Moorecroft Lands, or any of them, from The Nature Trust for the purchase price in section 4.1(a);
- (f) if the RDN does not elect to acquire The Nature Trust's interests in the Camp Moorecroft Lands within the time frame set out in section 4.1(e) then The Nature Trust will have the right to sell all or part of its interest in the Camp Moorecroft Lands to the person identified in the bona fide offer under section 4.1(d) or to any other person.

5.0 OPTION TO PURCHASE

5.1 Upon the parties acquiring the Camp Moorecroft Lands in accordance with this Agreement, the parties shall execute and cause to be registered at the Victoria Land Title Office an option to purchase the Camp Moorecroft Lands in favour of the RDN (the "Option to Purchase") on the following terms:

- (a) the purchase price shall be the fair market value of the interest to be acquired, as determined by an appraiser selected by the parties;
- (b) the term of the Option to Purchase shall have the same terms as the lease contemplated in section 7.1 of this Agreement;
- (c) the Option to Purchase shall be for the acquisition of all or a part of The Nature Trust's interest in the Camp Moorecroft Lands free and clear of all liens, charges and encumbrances except those otherwise permitted by the RDN, acting reasonably.

5.2 For certainty, the costs associated with the preparation and registration of the Right of First Refusal and the Option to Purchase shall be borne equally by the parties.

6.0 GST - INDEMNITY BY NATURE TRUST

6.1 The Nature Trust hereby indemnifies and agrees to hold the RDN harmless in respect of any GST or HST payable by The Nature Trust or RDN in respect of the acquisition of any fractional interest in the Camp Moorecroft Lands purchased

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by The Nature Trust.

7.0 LEASE

7.1 The Nature Trust, upon the acquisition of the Camp Moorecroft Lands in accordance with this Agreement, shall grant a lease of its entire interest in the Camp Moorecroft Lands to the RDN, for:

- (a) a term of Ninety Nine (99) years;
- (b) a nominal lease amount of \$10.00;
- (c) the purpose of managing the Camp Moorecroft Lands as a regional park in accordance with the Management Plan,

and such lease shall be registered against the Camp Moorecroft Lands at the Victoria Land Title Office upon execution thereof.

7.2 The cost of preparation and registration of the lease granted herein shall be borne equally by the parties.

8.0 COOPERATION

8.1 For the purposes of this Agreement, the RDN and The Nature Trust agree to cooperate with one another and use their best efforts to ensure the most expeditious and effective implementation of the provisions of this Agreement and shall in good faith undertake to resolve any disputes that may arise between them in an equitable and timely manner.

9.0 CONDITIONS PRECEDENT

9.1 The obligations of the parties under this Agreement to jointly bid on and acquire the Camp Moorecroft Lands and all obligations subsequent thereto, are subject to the following conditions precedent:

- (a) approval of the proposed bid and acquisition of the Camp Moorecroft Lands contemplated herein, by the Board of the RDN;
- (b) the RDN having sufficient funds to purchase its interest in the Camp Moorecroft Lands, as contemplated herein;
- (c) approval of the acquisition of the Camp Moorecroft Lands as contemplated herein, by the Board of The Nature Trust; and

9.2 The conditions under sections 9.1(a) and (b) are for the sole benefit of the RDN and must be satisfied by the deadline for submitting bids for the acquisition of the

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Camp Moorecroft Lands.

- 9.3 The condition under section 9.1(c) is for the sole benefit of The Nature Trust and must be satisfied by the deadline for submitting bids for the acquisition of the Camp Moorecroft Lands.
- 9.4 As a further condition precedent, if, for whatever reason a party is unprepared, unable or unwilling to proceed with the submission of a joint bid to acquire the Camp Moorecroft Lands, that party shall notify the other in writing and upon receipt of notice this Agreement shall be deemed terminated without consequence or liability on the part of the parties.

10.0 WAIVER OF PARTITION AND SALE

- 10.1 During the period of co-ownership of the Camp Moorecroft Lands each party waives the benefit of all provisions of law relating to actions for a partition or sale in lieu of partition or administration of real and personal property including the *Partition of Property Act* (British Columbia). Each party agrees that it will not resort to any action at law or in equity for partition or sale in lieu of partition of the Camp Moorecroft Lands or seek administration in respect of the Camp Moorecroft Lands, except as provided in this Agreement.

11.0 DISPOSITIONS

- 11.1 During the period of co-ownership of the Camp Moorecroft Lands each party agrees that it shall not dispose of its interest except strictly in accordance with this Agreement.

12.0 DISCLAIMER OF PARTNERSHIP

- 12.1 Each party expressly disclaims any intention to create a partnership or to constitute the other party as its agent (except as expressly provided in this Agreement) with respect to the Camp Moorecroft Lands. Each party covenants with the other party that it will not, at any time, allege or claim that a relationship of partnership or agency has been created with respect to the subject matter of this Agreement. Except as specifically provided in this Agreement, no party will have any authority to act for or on behalf of the other party in respect of the Camp Moorecroft Lands or this Agreement.

13.0 TERM OF AGREEMENT

- 13.1 The term of this Agreement will continue in force and effect until the earlier of:
- (a) the Camp Moorecroft Lands, or any of them, being sold and transferred by one or both parties to a third party or parties; and

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- (b) this Agreement being terminated in accordance with section 9.4 or section 14.1.

14.0 TERMINATION

- 14.1 Following the acquisition of the Camp Moorecroft Lands pursuant to this Agreement, either party may terminate this Agreement with one (1) year written notice to the other party. For certainty, the RDN will have the right to exercise its Option to Purchase under article 5.0 or the Right of First Refusal under article 4.0 up to the date of termination provided in the notice given in accordance with this Agreement. No party will incur any liability as a result of termination pursuant to this section 14.1.

15.0 FURTHER ASSURANCES

- 15.1 Each of the parties agrees from time to time and upon any reasonable request of the other party, to make or cause to be made all such further acts, deeds, assurances and things as may be required to more effectually implement the true intent of this Agreement.

16.0 NOTICE

- 16.1 It is hereby mutually agreed that any notice required to be given under this Agreement will be deemed to be sufficiently given:

- (a) to be delivered at the time of delivery; and
- (b) if mailed from any government post office in the Province of British Columbia by prepaid registered mail addressed as follows:

if to THE NATURE TRUST:

#260 – 1000 Roosevelt Crescent
North Vancouver, B.C.
V7P 3R4

Attention: President and Executive Director

if to the RDN:

6300 Hammond Bay Road
Nanaimo, B.C.
V9T 6N2

Attention: General Manager, Recreation and Parks Services

Unless otherwise specified herein, any notice required to be given under this

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Agreement by any party will be deemed to have been given if mailed by prepaid registered mail, or sent by facsimile transmission, or delivered to the address of the other party set forth on the first page of this Agreement or at such other address as the other party may from time to time direct in writing, and any such notice will be deemed to have been received if mailed or faxed, 72 hours after the time of mailing or faxing and, if delivered, upon the date of delivery. If normal mail service or facsimile service is interrupted by strike, slow down, force majeure or other cause, then a notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the notice must utilize any other such services which have not been so interrupted or must deliver such notice in order to ensure prompt receipt thereof.

17.0 TIME

17.1 Time is to be the essence of this Agreement.

18.0 BINDING EFFECT

18.1 This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees.

19.0 WAIVER

19.1 The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

20.0 HEADINGS

20.1 Section and paragraph headings are inserted for identification purposes only and do not form a part of the Agreement.

21.0 LANGUAGE

21.1 Wherever the singular, masculine and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.

22.0 CUMULATIVE REMEDIES

22.1 No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.

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23.0 LAW APPLICABLE

This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

24.0 AMENDMENT

24.1 This Agreement may not be modified or amended except by the written agreement of the parties.

25.0 NO DEROGATION FROM STATUTORY POWERS

25.1 Nothing contained or implied herein shall prejudice or affect the rights and powers of the RDN in the exercise of its functions under any public or private statute, bylaw, order or regulation, all of which may be fully and effectively exercised in relation to this Agreement as if this Agreement had not been executed and this Agreement shall be subject to and consistent with the statutory restrictions imposed on the RDN under the *Local Government Act*, R.S.B.C., 1996, c. 323 and the *Community Charter*, S.B.C., 2003, c. 26.

26.0 SURVIVAL

26.1 All representations and warranties set forth in this Agreement and all provisions of this Agreement, the full performance of which is not required prior to a termination of this Agreement, shall survive any such termination and be fully enforceable thereafter.

27.0 NOTICE OF VIOLATIONS

27.1 Each party shall promptly notify the other party of any matter which is likely to continue or give rise to a violation of its obligations under this Agreement.

28.0 ENTIRE AGREEMENT

28.1 The whole agreement between the parties is set forth in this document and no representations, warranties or conditions, express or implied, have been made other than those expressed.

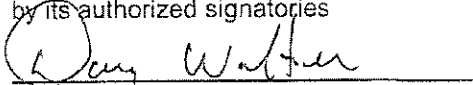
29.0 SEVERABILITY

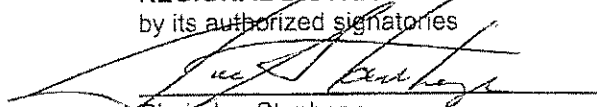
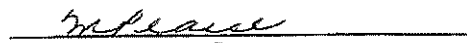
29.1 Each article of this Agreement shall be severable. If any provision of this Agreement is held to be illegal or invalid by a Court of competent jurisdiction, the provision may be severed and the illegality or invalidity shall not affect the validity of the remainder of this Agreement.

30.0 COUNTERPART

30.1 This Agreement may be executed in counterpart with the same effect as if both parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement.

IN WITNESS WHEREOF the parties hereto have set their hands and seals as of the day and year first above written.

The Nature Trust of British Columbia)
 by its authorized signatories)
)
 Name: _____)
 _____)
 Name: _____)

REGIONAL DISTRICT OF NANAIMO)
 by its authorized signatories)
)
 Chair Joe Stanhope)
)
 Senior Manager, Corporate)
 Administration Maureen Pearce)

	Initial	Date
Content (Mgt)	→	Dec 26/10
Approved (GM)	→	Dec 26/10
Legal Form (SMCA)	MA	26/10
Authority (CAU)	MA	26/10

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Schedule "A"

(Plan showing Camp Moorecroft Lands)

