

SCHEDULE "L": STATUTORY RIGHT OF WAY FOR PUBLIC ACCESS (REGIONAL DISTRICT MAINTAINED)

[attach *Land Title Act* Form C General Filing Instrument – Part 1]

TERMS OF INSTRUMENT - PART 2

THIS AGREEMENT is dated for reference the ___ day of _____, 20__.

BETWEEN:

BCIMC REALTY CORPORATION
c/o Bentall Kennedy (Canada) LP
Suite 1800, 1055 Dunsmuir Street
Vancouver, BC
V7X 1C4

("BCIMC")

AND

3536696 CANADA INC.
c/o Bentall Kennedy (Canada) LP
Suite 1800, 1055 Dunsmuir Street
Vancouver, BC
V7X 1C4

("3536696")

(BCIMC and 3536696 are collectively the "Owner")

AND

REGIONAL DISTRICT OF NANAIMO
6300 Hammond Bay Road
Nanaimo, BC
V9T 6N2

(the "Regional District")

WHEREAS:

- A. The Owner is the registered owner of those lands and premises situate in the Regional District in the Province of British Columbia, described in Item 2 of Form C to which this Terms of Instrument is attached (the "Lands");
- B. Section 218 of the *Land Title Act* allows a statutory right-of-way to be granted over land without a dominant or servient tenement, and the statutory right-of-way hereinafter provided for is essential to the operation and maintenance of the Regional District's undertaking; and

- C. To provide and facilitate public access, as provided for herein, and the reconstruction, improvement, alteration, operation, repair, maintenance and use of a [◆ a Waterfront Pathway / Boardwalk; or temporary Notch Trail] by the Regional District, the Owner has agreed to grant the statutory right-of-way hereinafter mentioned.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the mutual covenants and agreements herein contained and the sum of One Dollar (\$1.00), now paid by the Regional District to the Owner (the receipt and sufficiency whereof is hereby acknowledged), the Owner and the Regional District hereby covenant and agree as follows:

Definitions.

1. In this Agreement:
 - (a) "Plan" means the plan of the Statutory Right of Way area prepared by ◆, B.C.L.S., and attached as Appendix "1" to this Agreement; and
 - (b) "Statutory Right-of-Way Area" means the entirety of the Lands until the Final Area is established under section 7(a) hereof, following which it means the Final Area.

Grant.

2. THE OWNER, for himself, his heirs, executors, administrators, successors and assigns, DOES HEREBY GIVE AND GRANT, except as set out in section 3 of this Agreement, unto the Regional District, and its successors and assigns, a statutory right-of-way and the full, free and unrestricted right and liberty for the Regional District, its licencees, permittees, invitees, agents, guests, servants, officials and workmen at any time and at their will and pleasure for the benefit of the Regional District, to:
 - (a) enter, labour, go, return, pass and repass upon the Statutory Right-of-Way Area by the Regional District and, as the Regional District determines, the public, for the purposes of public access, provided however that the public shall not have access to the Statutory Right-of-Way Area with motor vehicles and may not use the Statutory Right-of-Way Area as an access road;
 - (b) free and uninterrupted access to the Statutory Right-of-Way Area to reconstruct, alter, improve, renew, repair, maintain, and inspect an improved walkway, which improved walkway shall have a maximum width of [◆ 3 metres for the Schooner Cove Waterfront Pathway / Boardwalk; or 1.75 metres for the Notch Trail (Temporary)] (the "**Works**"), for the purposes aforesaid at the Regional District's sole expense;
 - (c) clear the Statutory Right-of-Way Area or any part thereof of any or all trees, shrubs, plants, buildings, fences, or obstructions of any kind, now or hereafter; and
 - (d) generally do all acts reasonably necessary or incidental to the business of the Regional District in connection with the Works and the use of the Statutory Right-of-Way Area for the aforesaid purposes;

TO HAVE AND TO HOLD unto the Regional District, its successors and assigns, from and after the date hereof, forever.

3. The right of way granted herein is subject to the restrictions and limitations hereinafter set forth in favour of the Owner, being the right at all times hereafter and from time to time to eject from the Statutory Right-of-Way Area any member of the public who:
 - (a) acts in a disorderly or offensive manner, molests, pesters, interferes with or obstructs (except if authorized to install, inspect, maintain or repair the Works) any other person from having access to the Statutory Right-of-Way Area, or commits an illegal act;
 - (b) presents a real and substantial threat to the safety of others or to the security of any improvements on the Statutory Right-of-Way Area or the Lands;
 - (c) takes up abode overnight on the Statutory Right-of-Way Area or attempts such abode; or
 - (d) lights any fires or burns any material on the Statutory Right-of-Way Area.

4. Owner's Covenants.

THE OWNER HEREBY COVENANTS AND AGREES with the Regional District that the Owner:

- (a) will not erect, place or maintain any building, structure, driveway, patio, foundation or footings or any other obstruction of a permanent nature, on or above any portion of the Statutory Right-of-Way Area;
- (b) except as provided in section 3, will not do or knowingly permit to be done any act or thing in connection with the Statutory Right-of-Way which will interfere with the purpose of the Statutory Right-of-Way or interfere or damage the Works; and
- (c) at the sole expense of the Owner, do or cause to be done all acts reasonably necessary to grant priority to this Agreement over all financial charges and encumbrances which are registered against the title to the Lands in the Land Title Office, which for greater certainty does not include charges or encumbrances in favour of the Regional District or other governmental authority or those specifically approved in writing by the Regional District.

5. Regional District's Covenants.

THE REGIONAL DISTRICT COVENANTS AND AGREES with the Owner that the Regional District:

- (a) will, as far as reasonably necessary, carry out the maintenance, repair, replacement, renewal, reconstruction, improvement and inspection of the Works in a proper and workmanlike manner, and at the Regional District's own expense, so as to cause as little disturbance as possible to the Lands; and
- (b) will indemnify and save harmless the Owner and its heirs, executors, administrators, successors and assigns from and against any and all actions, causes of actions, claims,

suits, proceedings, costs and expenses of whatever kind, for any loss, damage, injury or death to any person or persons of any public or private property arising directly or indirectly out of the use by the Regional District, the public or any persons claiming through or under the Regional District arising from the Statutory Right-of-Way, save and except to the extent that such loss, injury, damage or death is caused by the negligence or wilful act of the Owner or its servants and agents or is to private property of the Owner. [and, ♦ in the case of the Notch Trail (Temporary)]

- (c) the Regional District agrees to release this Statutory Right-of-Way upon completion of the construction of the Notch Trail (Permanent) to the Notch Summit, and the provision of a statutory right of way, having substantially the same terms as this statutory right of way, over that Notch Trail (Permanent) in any areas where it is located upon private land.]

6. Additional Remedy for the Regional District.

In the event that the Owner erects, places or maintains any building, structure, or obstruction of a permanent nature contrary to section 4(a) hereof, including any fencing, trees, shrubs or significant plants on, under or above any portion of the Statutory Right-of-Way Area and such erection, placement or maintenance interferes with the purposes of the Statutory Right-of-Way, the Regional District and its employees, agents or contractors may enter upon the Statutory Right-of-Way Area at any time to undertake any work which it deems necessary to remove such building, structure, or obstruction, and any costs which the Regional District may incur in doing so including any administrative and interest costs, shall be due and payable by the Owner on demand from the Regional District, or recoverable by the Regional District as part of any tax payment, levies or any other fees in respect to the Lands. In carrying out such removal work, the Regional District shall, as far as reasonably necessary, carry out such work in a proper and workmanlike manner so as to do as little injury as possible.

7. Survey.

- (a) It is mutually understood and agreed that, provided the location of the [♦ Waterfront Pathway / Boardwalk; the Notch Trail (Temporary)] is, as generally shown on the Plan, the precise location of same is within the discretion of the Owner.
- (b) It is further mutually understood and agreed that the granting of this Statutory Right-of-Way over all of the Lands is a temporary measure undertaken for the convenience of the Owner and with the intent that it will be amended, supplemented, modified or replaced at the discretion of the Owner so as to include only those portions of the Lands that comprise the [♦Waterfront Pathway / Boardwalk; Notch Trail (Temporary)], such that the amended, supplemented, modified or replaced Statutory Right-of-Way registered against the Lands will be a ♦-metre wide strip (the “**Final Area**”);
- (c) For the purposes hereof, the parties agree as follows:
 - (i) the Regional District shall use all reasonable efforts to restrict its activities and those of the public on Lands to the [♦Waterfront Pathway / Boardwalk; Notch Trail (Temporary)];

- (ii) the Owner may at any time in its sole discretion cause to be completed a registrable legal survey (the “**Survey Plan**”) of the portion of the Lands comprising the Final Area;
- (iii) forthwith upon the completion of the Survey Plan, the Owner and the Regional District shall cause the Survey Plan to be registered in the applicable Land Title Office and shall amend, supplement, modify or replace this Agreement as required to identify the Final Area and so as to restrict the rights of the Regional District hereunder solely to the Final Area. The Owner acknowledges and agrees that, except for redefining the Statutory Right-of-Way and defining the Final Area, the instruments amending, supplementing, modifying or replacing this Agreement shall not diminish any of the rights of the Regional District hereunder;
- (iv) the Owner shall pay all costs of completing and registering the Survey Plan and of amending, supplementing, modifying or replacing this Agreement; and
- (v) upon the registration of the Survey Plan the Statutory Right-of-Way shall be deemed to be modified and redefined to include only the portion of the Lands identified as the Final Area.

8. Other.

IT IS MUTUALLY UNDERSTOOD, agreed and declared by and between the parties hereto that:

- (a) Covenants Run with the Land: This Agreement shall be construed as running with the Lands and that none of the covenants herein contained shall be personal or binding upon the parties hereto, save and except during the Owner’s seisin or ownership of any interest in the Lands and with respect only to that portion of the Lands of which the Owner shall be seised or which he shall have an interest, but that the Lands shall, nevertheless, be and remain at all times charged therewith;
- (b) Liability During Currency of Ownership: Notwithstanding anything herein contained, neither the Owner named herein or any future owner of the Lands, or any portion thereof, shall be liable under any of the covenants and agreements contained herein where such liability arises by reason of an act or omission occurring after the Owner named herein or any future owner ceases to have a further interest in the Lands;
- (c) Subdivision of Lands: This Agreement burdens and charges any parcel into which the Lands are subdivided by any means and upon which any portion of the Statutory Right-of-Way is located;
- (d) Use by the Owner: Save as aforesaid, nothing in this Agreement shall be interpreted so as to restrict or prevent the Owner from using the Statutory Right-of-Way Area in any manner which does not interfere with the unobstructed access through the Statutory Right-of-Way by the Regional District and the public;
- (e) Installations Remain Chattels: Any and all chattels and fixtures installed by the Regional District on or over the Statutory Right-of-Way shall be and shall remain chattels, any

rule of law to the contrary notwithstanding and shall belong solely and exclusively to the Regional District;

- (f) Notice: Whenever it is required or desired that either party shall deliver or serve a notice on the other, delivery or service shall be deemed to be satisfactory if, and deemed to have occurred when:
 - (i) the Owner or the Corporate Officer of the Regional District has been served personally, on the date of service; or
 - (ii) mailed by prepaid registered mail, on the date received or on the sixth day after receipt of mailing by any Canada post office, whichever is earlier (except that in the event of interruption of mail service, notice shall be deemed to be delivered only when actually received by the party to whom it is addressed), so long as the notice is mailed to the party at the most recent address shown on title to lands in the records of the Land Title Office for the party, or to whatever address the parties may from time to time advise in writing;
- (g) No Derogation of Power: Notwithstanding anything contained in these presents, there are hereby reserved to the Regional District all its rights and powers of expropriation or other powers or privileges granted to the Regional District, or enjoyed by it, by or under any act or the legislature of the Province of British Columbia;
- (h) Applicable Law: This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia;
- (i) Enurement: This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns;
- (j) Number and Gender: Wherever the singular or the masculine is used in this Agreement, the same shall be construed as meaning the plural or the feminine or the body corporate or politic where the context or the parties hereto so require;
- (k) Amendments only in Writing: It is expressly agreed that the benefit of all covenants made by the Owner herein shall accrue to the Regional District and that this Agreement may only be modified or discharged by agreement of the Regional District and the Owner witnessed in writing;
- (l) No Duty to Enforce: The Owner hereby covenants and agrees with the Regional District that the Regional District is under no obligation in law or equity to prosecute or enforce the terms of this Agreement in any way;
- (m) Further Documents: The parties will do and cause to be done all things and execute and cause to be executed all documents which may be necessary to give proper effect to the intention of this Agreement; and
- (n) Severance: If any section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the

invalid portion will be severed and the provision that is invalid will not affect the validity of the remainder of the Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day, month and year first above written by executing the Form C attached hereto.

APPENDIX "1"

SKETCH PLAN – STATUTORY RIGHT OF WAY