

**SCHEDULE "R": SECTION 219 COVENANT OVER OPTION TO PURCHASE LANDS**

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

**TERMS OF INSTRUMENT – PART 2**

This Covenant 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 certain lands situated, lying and being in the Regional District of Nanaimo, in the Province of British Columbia, described in Item 2 of Form C to which these Terms of Instrument are attached (the **"Lands"**);

B. Section 219 of the *Land Title Act* provides that the Owner may grant a Covenant to the Regional District of a negative or positive nature respecting the use of land; and

C. The Owner desires to grant this Covenant to restrict the use of a portion of the Lands on the terms and conditions set forth herein;

NOW THEREFORE THIS AGREEMENT WITNESSES that pursuant to Section 219 of the *Land Title Act*, and in consideration of the sum of \$10 of lawful money of Canada and other good and valuable consideration, the receipt of which is hereby acknowledged, the Owner does hereby covenant and agree with the Regional District as follows:

1. Owner's Covenant. The Owner covenants and agrees with the Regional District that during the [◆ for Notch Summit use five-year period; for Lookout use three-year period] commencing on the reference date of this Covenant [◆For Notch Summit use the date of the first Subdivision of the Lakes District Lands. For Lookout, use the date of the first Subdivision in Phase 1e of the Lakes District Lands] (the "**Term**"), except as may be consented to by the Regional District in writing subject to section 3 hereof, the Owner:

- (a) will not apply for, and the Regional District is not obliged to issue, any building permit in respect of; and'
- (b) will not engage in uses that would significantly devalue the utility of the land for parkland, including the use of the land for timber harvesting or as a source for fill for development sites, on

that portion of the Lands shown outlined in heavy dark line on Explanatory Plan EP◆ \_\_\_\_\_ , a copy of which is attached hereto as Schedule A.

2. Expiry and Release. At the expiry of the Term, this Covenant shall no longer be of any force or effect and the Owner shall be at liberty to apply to the Land Title Office to discharge this Covenant from title to the Lands. If required by the Land Title Office in order to discharge this Covenant from title to the Lands, then forthwith upon request by the Owner after the expiry of the Term, the Regional District shall provide the Owner with an executed release of this Covenant.

3. Infrastructure. Notwithstanding section 1 hereof, the Owner shall be entitled to build on or use the Lands for the purposes of constructing Infrastructure related to a subdivision that has been approved by the applicable Approving Officer under the *Land Title Act* (British Columbia).

4. Run with Lands. This Covenant is granted voluntarily by the Owner to the Regional District pursuant to Section 219 of the *Land Title Act* (British Columbia) and shall run with the Lands.

5. Binding Effect. This Covenant shall enure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns, provided however that nothing herein obliges the Regional District to enforce this Agreement.

6. Further Acts. The Owner and the Regional District shall do all further acts as may be necessary for carrying out this Covenant, including without limitation execution of all required documents and any alteration required to achieve registration at the Land Title Office. The Owner agrees to do everything reasonably necessary, at the Owner's expense, to ensure that this Agreement is registered against title to the Land with priority over all financial charges, liens and encumbrances registered, or the registration of which is pending, at the time of application for registration of this Agreement.

7. Severability. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.

8. Indemnity, Release and Liability. The Owner releases, and must indemnify and save harmless, the Regional District, its elected and appointed officials and employees, from and against all liability, actions, causes of action, claims, damages, expenses, costs, debts, demands or losses suffered or incurred by the Owner, or anyone else, arising from the granting or existence of this Agreement, or any default of the Owner under or in respect of this Agreement. The parties agree that this Agreement creates obligations arising out of the nature of this document as a section 219 covenant only. The parties agree that no tort obligations or liabilities of any kind exist between the parties in connection with the performance of, or any default under or in respect of, this Agreement. The intent of this section is to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law pertaining to section 219 covenants.

9. Interpretation. In this Covenant:

- (a) the headings and captions are for convenience only and do not form a part of this Covenant and will not be used to interpret, define or limit the scope, extent or intent of this Covenant or any of its provisions;
- (b) the word “including” when following any general term or statement is not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar terms or matters but rather as permitting it to refer to other items or matters that could reasonably fall within its scope;
- (c) a reference to a statute includes every regulation made pursuant thereto, all amendments to the statute or to any such regulation in force from time to time and any statute or regulation that supplements or supersedes such statute or any such regulation;
- (d) a word importing the masculine gender includes the feminine or neuter, and a word importing the singular includes the plural and vice versa; and
- (e) every reference to each party hereto shall be deemed to include the officers, employees, elected officials, agents, servants, successors and assigns of that party.

IN WITNESS WHEREOF the Owner and the Regional District have duly executed this Covenant as of the day, month and year first above written by executing the Form C attached hereto.

Schedule "A"

Reduced Copy of Explanatory Plan showing Covenant Area