

SCHEDULE "U": EASEMENT FOR PARKING

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

TERMS OF INSTRUMENT - PART 2

This Easement dated for reference the _____ day of _____, _____.

BETWEEN:

bcIMC Realty Corp.
c/o Bentall Kennedy (Canada) LP
Suite 1800, 1055 Dunsmuir Street
Vancouver, BC
V7X 1C4

(the "**Grantor**")

AND

bcIMC Realty Corp.
c/o Bentall Kennedy (Canada) LP
Suite 1800, 1055 Dunsmuir Street
Vancouver, BC
V7X 1C4

(the "**Grantee**")

AND

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

(the "**Regional District**")

WHEREAS:

- A. The Grantor is the registered owner of those lands and premises situate in the Province of British Columbia more particularly known and described as:

PID: 001-760-068



(the "**Servient Lands**");

- B. The Grantee is the registered owner of those lands and premises situate in the Province of British Columbia, more particularly known and described as:

PID: 028-022-998



(collectively, the “**Dominant Lands**”);

- C. The Grantor has agreed to grant to the Grantee an easement over the Servient Lands for the benefit of the Dominant Lands, on the terms and subject to the conditions contained herein, to allow the Grantee and its licencees, permittees, invitees, agents, servants, guests, successors and assigns, to use, maintain and operate, on the terms set out herein, up to 88 vehicular parking spaces to be installed on the Servient Lands;
- D. The Regional District wishes to ensure that such parking for the Dominant Lands is available on the Servient Lands as set out herein;
- E. Pursuant to subsection 18(5) of the *Property Law Act* (British Columbia), a registered owner in fee simple may grant to itself an easement over land that it owns for the benefit of other land that it owns in fee simple; and
- F. Section 219 of the *Land Title Act* (British Columbia), states that a covenant, in favour of a Regional District, may be registered as a charge against title to the land and is enforceable against the covenantor and its successors in title even if the covenant is not annexed to land owned by the Regional District

NOW THEREFORE, THIS INDENTURE WITNESSES that in consideration of the premises and the mutual grants and covenants herein contained and the sum of Ten Dollars (\$10.00) and other valuable consideration now paid by each of the parties to the other, the receipt of which is hereby acknowledged, the parties covenant and agree as follows:

1. **Grant of Easement**

- (a) The Grantor, for itself, its successors and assigns, hereby grants and conveys in perpetuity, to and in favour of and for the benefit of the Grantee and its licencees, permittees, invitees, agents, servants, guests, successors and assigns, the non-exclusive, full, free and uninterrupted right, licence, liberty, easement, privilege and permission at all times to enter upon, pass and re-pass on, across, over the Servient Lands (the “**Easement Area**”) with or without vehicles, machinery or equipment for the following purposes:
- (i) gaining access to and egress from the Dominant Lands and adjacent roadways to and over the Easement Area;
 - (ii) the parking of motor vehicles on 68 parking spaces to be installed in accordance herewith;
 - (iii) the parking of trailerable watercraft on 20 parking spaces to be installed for such purpose in accordance herewith, if applicable; and

- (iv) inspection, maintenance, repair and replacement of such parking spaces, access drives and related facilities and improvements installed by the Grantor in connection herewith for the foregoing purposes and for all activities necessary or incidental thereto.

(the parking spaces, access drives and related facilities referred to in Section 1(a) are herein referred to as the “**Parking Works**”)

2. **Use and Enjoyment of Parking Works**

The Grantor and the Grantee agree that, notwithstanding the granting of this Easement over the entirety of the Servient Lands, it is understood that that is a temporary measure pending final installation of the Parking Works in a location determined by the Grantor in its sole discretion. At such time, the Easement Area will be reduced in accordance with Section 6. In the meantime, the Grantee’s actual use of the Easement Area is to be restricted, insofar as reasonably possible, to use and enjoyment of the Parking Works installed from time to time within the Easement Area by the Grantor in accordance herewith.

3. **Initial Installation of Parking Works**

When the Grantee is required by the Regional District’s Land Use and Subdivision Bylaw (subject to any applicable Phased Development Agreement) to make parking available within the Easement Area as a result of the Grantee’s development of the Dominant Lands, the Grantee will provide written notice thereof to the Grantor. The Grantor will:

- (a) promptly following receipt of such notice, at the Grantor’s expense and in a location within the Easement Area as determined by the Grantor, install roadway access, drive aisles and 68 parking spaces for motor vehicles for the purposes of Section 1(a)(ii) ; and
- (b) subject to Section 7, at the Grantor’s expense and in a location within the Easement Area as determined by the Grantor, install 20 parking spaces for trailerable watercraft and necessary roadway access and drive aisles.

4. **Relocation of Parking Works**

The Grantor reserves the right at any time, at its sole option and expense:

- (a) to relocate or reinstall the Parking Works elsewhere within the Easement Area, provided such work is done expeditiously and without undue interruption of the Grantee’s use and enjoyment of the Parking Works;
- (b) to reasonably and temporarily restrict the use and enjoyment of the Parking Works to enable the Grantor to construct and maintain water, sewer, drainage and any other utility services and any necessary mains, drains, conduits, lines, ducts, poles, guys, wires, cable and pipes and appliances of every kind for the purpose of conveying, draining and protection gas, water, sanitary sewers, storm sewage, liquid waste, electric energy, communications services, gas or any other service or thing that may be transmitted in any of them, in, under, upon or through the Easement Area;

5. **Maintenance of Parking Works**

The Grantee will, at its own expense, keep clean, maintain and repair the Parking Works, provided no major maintenance and repair may be carried out without reasonable prior written notice to the Grantor, in accordance with all reasonable requests of the Grantor and with as little inconvenience and disruption as possible for the Grantor.

6. **Reduction of Easement Area**

Once the Grantor has installed the Parking Works in a final location, as determined by and acceptable to the Grantor, the Grantor will give written notice thereof to the Grantee. The Grantor will, at its sole option and at the Grantor's expense, cause a necessary survey or explanatory plan to be prepared of that area of the Servient Lands containing the completed Parking Works, and the Grantor, the Grantee and the Regional District will execute and deliver a modification hereof, in registerable form, restricting the Easement Area to the area of the Servient Lands containing the Parking Works, as shown in such plan.

7. **Trailerable Watercraft Parking Spaces**

The Grantor and Grantee acknowledge and agree that:

- (a) the Land Use and Subdivision Bylaw of the Regional District may oblige the Grantor in accordance herewith, at the request of the Grantee upon the subdivision of the Dominant Lands, to provide 20 parking spaces for trailerable watercraft on the Servient Lands;
- (b) by way of a Phased Development Agreement entered into dated ♦, the Nanaimo Regional District has agreed to consider the elimination of the requirement for such 20 parking spaces for trailerable watercraft, in whole or in part, in the event the Owner provides a parking study prepared by a qualified traffic consultant analysing the use of and need for such parking spaces; and
- (c) the obligation of the Grantor to install and provide parking spaces for trailerable watercraft on the Servient Lands will be eliminated or reduced if, and to the full extent that, the Nanaimo Regional District amends its Land Use and Subdivision Bylaw or grants a variance that serves to reduce (or eliminate) the requirement for those 20 parking spaces for trailerable watercraft.

8. **General**

The Grantor and the Grantee further agree that:

- (a) Nothing contained in this Agreement will be interpreted so as to restrict or prevent the Grantor from using the Easement Area in any manner which does not interfere with the rights of the Grantee under the Easement;
- (b) Subject to Section 4(b), the Easement will not be suspended, interrupted or terminated by reason of any breach, default, trespass or other wrong, whether by commission or omission on the part of the Grantee, or any person claiming through or under them or

any one of them, and the parties will refrain from seeking any judgment, order or declaration to that effect.

- (c) Nothing herein will prevent any party from applying to enjoin or restrain any wrongful action or seeking damages therefor;
- (d) The Grantee will, insofar as reasonably possible, restrict its activities and use and those of its licencees, permittees, invitees, agents, servants, guests, successors and assigns to those portions of the Easement Area containing the Parking Works;
- (e) Subject only to temporary interruption pursuant to Section 4(b), the Grantor will not erect, construct or place or permit to be erected, constructed or placed on the Easement Area any improvements which will preclude the Grantee's free and uninterrupted use of the Easement Area at all times for the purposes herein contemplated, subject to the terms set out herein;
- (f) From time to time and at all times upon every reasonable request and at the sole cost and expense of the Grantee, the Grantor will do and execute or cause to be made, done or executed all such further and other lawful acts, deeds, things, devices, conveyances and assurances in law whatsoever for the better assuring unto the Grantee of the rights, liberties and easement hereby granted;
- (g) From time to time and at all times upon every reasonable request and at the sole cost and expense of the Grantor, the Grantee will do and execute or cause to be made, done or executed all such further and other lawful acts, deeds, things, devices, conveyances and assurances in law whatsoever for the better assuring unto the Grantor the limitations on the rights, liberties and easement hereby granted that are set out herein.
- (h) The Grantor will not be responsible or liable for any loss, damage or injury caused to the Grantee or anyone else using the Easement Area, including the Grantee's licencees, permittees, invitees, agents, servants, guests, successors and assigns, unless same arises as a result of the gross negligence of the Grantor.
- (i) The Grantee covenants and agrees to indemnify and save harmless the Grantor from and against any loss, damage or liability suffered by the Grantor as a result of the use of the Easement Area by the Grantee and its licencees, permittees, invitees, agents, servants, guests, successors and assigns.
- (j) All references to any party, whether a party to this Agreement or not, will be read with such changes in number and gender as the context or reference requires. When the context hereof makes it possible, the word "person" appearing in this Agreement includes in its meaning any firm and any body corporate or politic.
- (k) Neither party hereto will be liable for any breach of covenant or agreement contained herein occurring after it has ceased to be the owner of the Servient Lands or the Dominant Lands, as the case may be.

- (l) The right, liberty and easement herein granted by the Grantor and the Grantee will be construed as being extended to and may be exercised by the Grantee, and its successors and assigns.
- (m) The easement herein granted will be construed as running with the lands but no part of the fee simple thereof will pass to or be vested in the Grantee under or by these presents.

9. **Section 219 Covenant**

The Grantor, the Grantee and the Regional District agree as follows:

- (a) In consideration of the sum of \$1.00 now paid by the Regional District to the Grantor, the receipt and sufficiency of which is hereby acknowledged:
 - (i) the Grantor covenants with the Regional District, pursuant to Section 219 of the *Land Title Act*, that:
 - A. the Grantor will not use or allow to be used the Easement Area for any purpose that would prevent the use of the Easement Area for the purposes herein provided; and
 - B. this Agreement will not be modified, terminated or discharged without the prior written consent of the Regional District,
 - (b) Notwithstanding Section 9(a)(i)B, the Regional District hereby agrees that the Regional District will consent to reduction of the Easement Area and will execute and deliver a modification hereof in registerable form as contemplated and for the purposes of Section 6.
 - (c) The Grantor will only be liable for breaches of this covenant caused or contributed to by the Grantor or which the Grantor permits or allows while the Grantor is the registered owner of the Servient Lands.
 - (d) The Grantor and its successors and assigns hereby release and indemnify and save harmless the Regional District and its elected and appointed officials, officers, employees, agents, contractors, licensees, invitees and other persons for whom the Regional District is in law responsible from and against any and all actions, causes of actions, suits, claims (including claims for injurious affection or nuisance), costs (including legal fees and disbursements), expenses, debts, demands, losses (including economic loss) and liabilities of whatsoever kind (collectively, the “**Claims**”) arising out of the non-performance by the parties of the obligations, covenants and agreements contained herein, except as a result of a wrongful act, omission or negligence of the Regional District or a breach of this Agreement by the Regional District.
 - (e) The Grantor will forthwith after the execution of this Agreement and at its own expense do or cause to be done all acts and things necessary to ensure that the easement and Section 219 covenant are registered against title to the Servient Lands in the applicable Land Title Office in priority to all financial charges or financial interests, if any.

- (f) The covenants contained in this Section 9 will run with the Servient Lands and are binding on Grantor, and its successors in title in accordance herewith.

10. **Notice**

Whenever it is required or desired that any party will deliver or serve a notice on another party, delivery or service will be deemed to be satisfactory if, and deemed to have occurred when:

- (a) the Grantor, Grantee or the Corporate Officer of the Regional District has been served personally, on the date of service; or
- (b) 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 will 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 Victoria Land Title Office for the party, or to whatever address the parties may from time to time advise in writing.

11. **Powers of Regional District**

Nothing contained or implied herein will prejudice or affect the rights and powers of the Regional District in the exercise of its functions under any public and private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Servient Lands as if this Easement had not been executed and delivered by the Servient Lands owner.

12. **Applicable Law**

This Indenture will be governed by and construed in accordance with the laws of British Columbia.

13. **Other Assurances**

The parties hereto will do and cause to be done all things and execute and cause to be executed all documents, instruments and agreements that may be necessary to give proper effect to the intention of this Indenture.

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