

## PHASED DEVELOPMENT AGREEMENT

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## PHASED DEVELOPMENT AGREEMENT

THIS AGREEMENT dated for reference \_\_\_\_\_, 2014

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 in the Regional District that are legally described in Schedule “A” hereto (the “**Owner’s Land**”), the total area of which is 288 hectares more or less;
- B. The Owner has proposed a project for the future use of the Owner’s Land, elements of which include, as outlined in this Agreement:
  - the development of 165 hectares more or less of the Owner’s Land for certain residential, commercial and other related uses;

- the transfer by the Owner to the Regional District of 121 hectares more or less, being approximately 42% of the Owner’s Land, at no cost, for park and public access use;
  - the construction of substantial park improvements; and
  - substantial investments by the Owner in infrastructure works (including, but not limited to, road, water, sanitary sewer and drainage works) both on-site and off-site of the Owner's Land, undertaken at an early stage of the development;
- C. On October 25, 2011, the Regional District, following a substantial public input and public hearing process, and the consideration of numerous technical reports, adopted two Official Community Plan Bylaw amendments to guide the future use of the Owner’s Land, by way of Lakes District Neighbourhood Plan Bylaw No 1400.03 and Schooner Cove Neighbourhood Plan Bylaw No 1400.04;
- D. As anticipated by, and subsequent to the adoption of, the Lakes District Neighbourhood Plan and the Schooner Cove Neighbourhood Plan, the Owner and the Regional District have engaged a further more detailed review of land use, infrastructure and other regulatory considerations;
- E. Further to that review, the Owner has applied for changes to the land use and servicing provisions that apply to the Owner’s Land , being those set out in:
- “Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.384, 20\_\_”, establishing Lakes District Comprehensive Development Zone CD 44;
  - “Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.385, 20\_\_”, establishing Schooner Cove Comprehensive Development Zone CD 45;
  - “Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.388, 20\_\_”, amending Subdivision Regulations related to sewage disposal and water supply
- (collectively the “**Land Use and Subdivision Amendment Bylaws**”);
- F. The Owner can only viably proceed with:
- the development provided for in the Land Use and Subdivision Amendment Bylaws;
  - the provision of the amenities contemplated herein, at the times contemplated herein; and
  - the expenditure of necessary on and off-site infrastructure costs,
- if the Owner:
- can do so in phases over an extended period of time; and
  - obtains the assurances provided herein that subsequent changes to the regulations and requirements governing the development of the Owner's Land are restricted as provided herein;

- G. The Regional District wishes to establish a comprehensive mechanism to guide the future of the Owner's Land that reflects the environmental, social and economic elements of sustainability, in keeping with its Regional Growth Strategy and Official Community Plan Bylaw and Neighbourhood Plan objectives, and to secure the amenities provided for herein, including the parks and park improvements, all of which is integral to the adoption by the Regional District of the Land Use and Subdivision Amendment Bylaws; and
- H. In view of the foregoing, the parties are prepared to enter into this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES that, pursuant to section 905.1 of the *Local Government Act*, and in consideration of the promises hereby contained, the parties agree as follows:

**A. Definitions**

1. In this Agreement:

**"Amenity Land"** means that portion of the Lakes District Land comprising the Notch Summit, and other Regional Park land, and Community Park land;

**"Approving Officer"** means the Approving Officer having jurisdiction for subdivision approval under the *Land Title Act* and *Strata Property Act*;

**"Archaeological Impact Assessment"** means an Archaeological Impact Assessment under the *Heritage Conservation Act*;

**"Assumed Road Right of Way Areas"** means the assumed road right of way areas provided for at Schedule "T" hereof;

**"Assumption Agreement"** means an assumption agreement under section 69(g), (h) and (i) hereof;

**"CEMP"** means a Construction Environmental Management Plan prepared as provided for at section 44(d) hereof;

**"Community Park"** means land to be dedicated or transferred as "Community Park" as shown on the Lakes District Parks Phasing Plan (Schedule "D");

**"Construction Covenant"** means a covenant under section 219 of the *Land Title Act* substantially in the form that is attached at Schedule "S" hereto;

**"Development Cap Covenant"** means a covenant under section 219 of the *Land Title Act* substantially in the form that is attached at Schedule "V" hereto;

**"Development Parcel"** means a legal parcel within the Lakes District Development Land that is designated as a Development Parcel in a Development Plan that meets the requirements of section 52 hereof;

**"Development Parcel Covenant"** means a covenant under section 219 of the *Land Title Act* substantially in the form that is attached at Schedule "W" hereto;

**“Development Plan”** means a plan submitted to the Regional District in respect of the Lakes District Development Land, under sections 52 and 53 ♦ hereof;

**“Integrated Stormwater Management Plan”** means the Integrated Stormwater Management Plan referenced at sections 31, 32, 42 and 43 hereof, that is attached at Schedule “DD”;

**“Jib Crane Hoist”** means a crane having an arm guyed at a horizontal angle to the head of a rotating mast, with a mechanical hoist, and situated so as to be capable of launching and retrieving boats having a weight of at least six tonnes between trailers and the water;

**“Lakes District Community Parks Conceptual Program”** means those certain terms of reference for the development of the Lakes District Community Parks Development Plan that are attached at Schedule “CC”;

**“Lakes District Community Parks Development Plan”** means guidelines for the construction of park improvements in each of the three Community Parks provided for on the Lakes District Parks Phasing Plan (Schedule “D”), which guidelines are to be established on a phased basis further to the Lakes District Community Parks Conceptual Program (Schedule “CC”) as provided for herein;

**“Lakes District Development Land”** means that portion of the Lakes District Land that is not the Amenity Land;

**“Lakes District Infrastructure Phasing Plan”** means that certain plan for the infrastructure on the Lakes District Land that is attached at Schedule “G”;

**“Lakes District Land”** means that portion of the Owner’s Land that comprises 283 hectares more or less, including the Amenity Land, which is further described as the “Lakes District Land” at Schedule “A”;

**“Lakes District Land Use Phasing Plan”** means that certain plan for the phasing of the development of Lakes District Land that is attached at Schedule “C”. (For greater certainty, the dwelling unit attribution by phase set out on the Lakes District Land Use Phasing Plan is simply an example of a potential outcome and is not intended to be in any way binding or limiting);

**“Lakes District Park Improvements Phasing Plan”** means that certain plan that illustrates the location of park improvements to Community Parks and Regional Parks attributable to each Sub-Phase of each Phase of the development of the Lakes District Land, as attached at Schedule “E”;

**“Lakes District Parks Phasing Plan”** means that certain plan that illustrates the transfers of legal interest regarding Community Parks and Regional Parks attributable to each Sub-Phase of each Phase of the development of the Lakes District Land, as attached at Schedule “D”;

**“Lakes District Regional Park Masterplan and Development Guidelines”** means those certain guidelines in respect of the construction of park improvements in the Regional Parks provided for on the Lakes District Parks Phasing Plan, which guidelines are attached at Schedule “F”;

**“Land Use and Subdivision Bylaw”** means Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987 as it stands on the date of this Agreement with the inclusion of



the Land Use and Subdivision Amendment Bylaws as defined in Recital E of this Agreement, a copy of which is attached as Schedule “Y” to this Agreement;

**“Lookout Option to Purchase”** means an Option to Purchase the Lookout Option to Purchase Lands substantially in the form attached at Schedule “Q” hereto, which relates to possible additional park land;

**“Lookout Option to Purchase Lands”** means that portion of the Lakes District Lands located in Lakes District Phase 1 (Dolphin Ridge), as shown on the Lakes District Parks Phasing Plan, that is the subject of the Lookout Option to Purchase, being 0.8 hectares;

**“Notch Option to Purchase”** means an Option to Purchase the Notch Option to Purchase Lands substantially in the form attached at Schedule “P” hereto, which relates to possible additional park land;

**“Notch Option to Purchase Lands”** means that portion of the Lakes District Land located in Lakes District Phase 4 (Gateway), as shown on the Lakes District Parks Phasing Plan, that is the subject of the Notch Option to Purchase being 10.2 hectares;

**“Notch Summit”** means those lands shown as the “Notch Summit 1A” on the Lakes District Parks Phasing Plan and on the Site Plan;

**“Notch Trail (Permanent)”** means a permanent trail in the approximate location shown as “Notch Trail (Permanent)” on the Site Plan, and provided for at section 14 hereof;

**“Notch Trail (Temporary)”** means a temporary trail in the approximate location shown as “Notch Trail (Temporary)” on the Site Plan, and provided for at sections 11 and 15 hereof;

**“Options to Purchase”** means the Notch Option to Purchase (Schedule “P”) and the Lookout Option to Purchase (Schedule “Q”) collectively;

**“Park”** means land that is marked as either a Regional Park or a Community Park on the Lakes District Parks Phasing Plan;

**“PDA Amenities”** means the amenities provided for at sections 4 through 41 hereof;

**“PDA Bylaw”** means the bylaw authorizing the entering into of this Agreement, being the “Regional District of Nanaimo Phased Development Agreement Bylaw No. ♦ – 2013”;

**“Phase”** means a portion, and “Phase [number or letter]” means a specifically numbered or lettered portion, of the Lakes District Land, or the Schooner Cove Land, as the case may be, as shown on the Lakes District Land Use Phasing Plan and the Schooner Cove Land Use Phasing Plan, as the case may be, provided however that Phase boundaries are approximate and the area of a Phase may be changed by the Owner by up to 15 % of its land area at the time of lot creation (to accommodate parcel boundary alterations required by the Approving Officer, road alignments required by the Minister of Transportation and Infrastructure, or other technical considerations supported by a professional engineer), provided however that no Phase will include lands that are not contained within the Owner’s Land;

**“Public Access Open Space”** means the public access open space shown on the Schooner Cove Public Open Space Phasing Plan (Schedule “I”);

**“Qualified Environmental Professional”** or **“QEP”** means a Qualified Environmental Professional recognized as such in connection with the Riparian Areas Regulation (British Columbia);

**“Qualified Professional”** or **“QP”** means an applied scientist or technologist registered with a professional organization enabled under an Act, who must follow a code of ethics issued by the professional organization, and can be subject to disciplinary action by the organization. For example, a Registered Professional Biologist, or “RPBio”, is registered with the College of Applied Biology enacted under the *College of Applied Biology Act*, must follow a code of ethics and is subject to disciplinary action, and therefore is a QP. A Qualified Profession may act alone or together with another qualified professional. Such professionals include professional Biologists, Agrologists, Foresters, Geoscientists, Engineers, or Technologists;

**“Regional Park”** means land marked as a Regional Park on the Lakes District Parks Phasing Plan;

**“Release”** means a release or discharge sufficient to remove a charge or other interest registered against the title to land at the Land Title Office;

**“Schooner Cove Infrastructure Phasing Plan”** means that certain plan for the infrastructure on the Schooner Cove Land that is attached at Schedule “K”;

**“Schooner Cove Land”** means that portion of the Owner’s Land that comprises 4.9 hectares more or less, which is further described as the “Schooner Cove Land” at Schedule “A”, and for greater certainty does not include the “Schooner Cove Water Lot” described at Schedule “A”;

**“Schooner Cove Land Use Phasing Plan”** means that certain plan for the phasing of the development of Schooner Cove Land that is attached at Schedule “H”;

**“Schooner Cove Pathways Standards”** means those certain guidelines in respect of the construction of the pathways provided for on the Schooner Cove Public Open Space Phasing Plan that is attached at Schedule “J”;

**“Schooner Cove Public Open Space Phasing Plan”** means that certain plan that identifies publicly accessible open space transfers of interest, and pathway and trail improvements, to each Phase of the development of Schooner Cove Land, that is attached at Schedule “I”;

**“Site Plan”** means the plan attached as Schedule “B” to this Agreement;

**“Specified Bylaw Provisions”** means:

- (a) any and all provisions of the Land Use and Subdivision Bylaw that are applicable to the Owner’s Land as of the date of this Agreement, that regulate:
  - (i) the use of land, buildings and other structures;
  - (ii) the density of the use of land, buildings and other structures;
  - (iii) the siting, size and dimensions of:

- A. buildings and other structures; and
  - B. uses that are permitted on the land; and
- (iv) the location of uses on the land and within buildings and other structures;
  - (v) the shape, dimensions and area, including the establishment of minimum and maximum sizes, of parcels of land that may be created by subdivision; or
  - (vi) the conditions that will entitle an owner to different density regulations,
- as set out in the copy of the bylaw provisions attached at Schedule “Y” to this Agreement; and
- (b) the subdivision and development standards set out at section 4.1 to 4.9 of the Land Use and Subdivision Bylaw as at the date of this Agreement, following the amendments to the water and sanitary sewage standards made by the Land Use and Subdivision Amendment Bylaws, as set out within the bylaw provisions attached at Schedule “Y” to this Agreement;

**“Statutory Right of Way for Public Access (Regional District Maintained)”** means a statutory right of way for a public access that will be maintained by the Regional District, under section 218 of the *Land Title Act* and substantially in the form that is attached at Schedule “L” hereto;

**“Statutory Right of Way for Public Access (Strata Maintained)”** means a statutory right of way for a public access that will be maintained by a strata corporation, under section 218 of the *Land Title Act* and substantially in the form that is attached at Schedule “M” hereto;

**“Strata Subdivision”** means the registration of a subdivision under the *Strata Property Act*;

**“Streamside Protection and Enhancement Area”** means a Streamside Protection and Enhancement Area under the Riparian Areas Regulation;

**“Subdivision”** means the registration of a subdivision plan, including under the *Land Title Act* or *Strata Property Act*, that creates one or more additional parcels, and also includes a change of parcel boundaries that is the result from an application voluntarily made by the Owner, and for greater certainty does not include a change of parcel boundaries that results from an expropriation (including by way of section 3 agreement under the *Expropriation Act*) or other statutory or regulatory requirement or an order of a Court;

**“Sub-Phase”** means a portion of a Phase of the Lakes District Land as shown on the Lakes District Land Use Phasing Plan, provided however that Sub-Phase boundaries are approximate and the area of a Sub-Phase may be changed by the Owner by up to 15 % of its land area at the time of lot creation (to accommodate parcel boundary alterations required by the Approving Officer, road alignments required by the Minister of Transportation and Infrastructure, or other technical considerations supported by a professional engineer), provided however that no Sub-Phase will include lands that are not contained within the Owner’s Land;

**“Substantially Complete”** means, as regards:

- (a) park land transfers, that all of the area to be transferred for park use within a Phase has been transferred to the Regional District; and
- (b) park improvements, that all of the improvements have been constructed or a letter of credit has been provided by the Owner to the Regional District to secure 125% of the cost of construction;

**“Term”** means twenty (20) years from the date of adoption of the PDA Bylaw;

**“Terms of Reference – Enos Lake Protection and Monitoring Program”** means those certain terms of reference for the development of the Enos Lake Protection and Monitoring Program that are attached at Schedule “BB”;

**“Terms of Reference – Garry Oaks Meadows Management Plan”** means those certain draft terms of reference for the development of the Garry Oaks Meadows Management Plan that are attached at Schedule “AA”;

**“Terms of Reference – Lakes District Regional Park Management Plan”** means those certain terms of reference for the development of the Lakes District Regional Park Management Plan that are attached at Schedule “Z”;

**“Waterfront Pathway / Boardwalk”** means the waterfront pathway / boardwalk shown on the Schooner Cove Public Open Space Phasing Plan (Schedule “I”); and

**“Walking Pathway”** means the walking pathway shown on the Schooner Cove Public Open Space Phasing Plan (Schedule “I”).

## **B. Phasing**

### **B.1 Lakes District Land**

- 2. The phasing of the development of the Lakes District Land shall be in keeping with the following:
  - (a) the phasing of the development of Phases 1 to 4 shall be such that, unless consented to by the Regional District, the Owner will not make application for registration of a Subdivision within:
    - (i) Phase 4 (Gateway) until after the park land transfers or dedications and park improvements provided for in the Lakes District Parks Phasing Plan (Schedule “D”) for Phase 3 (Terraces) are Substantially Complete;
    - (ii) Phase 3 (Terraces) until after the park land transfers or dedications and park improvements provided for in the Lakes District Parks Phasing Plan for Phase 2 (Enos Basin) are Substantially Complete;

- (iii) Phase 2 (Enos Basin) until after the park land transfers or dedications and park improvements provided for in the Lakes District Parks Phasing Plan for Phase 1 (Dolphin Ridge) are Substantially Complete;
- (b) independent Phases I (Enos Lakehead) and II (Dolphin Lakehead) may proceed in either order, and at any time, irrespective of Phases 1 to 4;
- (c) Sub-Phases within a Phase may proceed in any order; and
- (d) Sub-Phases may proceed concurrently.

## **B.2 Schooner Cove Land**

3. The phasing of the development of the Schooner Cove Land shall be in keeping with the following:

- (a) the development of Phases 1SC to 3SC shall be such that, unless consented to by the Regional District, the Owner will not make application for registration of a Subdivision within:
  - (i) the Phase 3SC (the Commons) until after:
    - the statutory rights of way for the portions of the Waterfront Pathway / Boardwalk, and Walking Pathway, located on the Owner’s Land within Phase 2SC (the Waterfront) as shown on the Schooner Cove Public Open Space Phasing Plan (Schedule “I”) have been granted as set out in section 12 and in section 13 hereof; and
    - the portions of the Waterfront Pathway / Boardwalk, and Walking Pathway, located on the Owner’s Land within Phase 2SC (the Waterfront) as shown on the Schooner Cove Public Open Space Phasing Plan have been constructed as set out in section 17 hereof, and
    - the portion of the Waterfront Pathway / Boardwalk located on the lands of Schooner House Strata VIS745 within Phase 2SC (the Waterfront) as shown on the Schooner Cove Public Open Space Phasing Plan has either been constructed as set out in section 18 hereof or security for same has been provided as set out in section 19 hereof; and
  - (ii) the Phase 2SC (the Waterfront) until after:
    - the statutory rights of way for the portion of the Waterfront Pathway / Boardwalk, Walking Pathway and Public Access Open Space located within Phase 1SC (the Village) as shown on the Schooner Cove Public Open Space Phasing Plan have been granted as set out in section 12 and section 13 hereof;
    - the portion of the Waterfront Pathway / Boardwalk, Walking Pathway and Public Access Open Space located within Phase 1SC (the Village) as

shown on the Schooner Cove Public Open Space Phasing Plan have been constructed as set out in section 17 hereof;

- the Jib Crane Hoist has been constructed or security for same has been provided as set out in section 22 hereof; and
- 1,163 square metres of the commercial area within Phase 1SC (the Village) has been constructed; and

(b) Phases may otherwise proceed concurrently.

**C. Amenities, Amenity Payments and related items**

4. The Owner shall provide to the Regional District the amenities set out in sections 5 through 41 hereof, being:

- (a) amenity land (C.1 herein);
- (b) built amenities (C.2 herein);
- (c) amenity payments, and amenity work (C.3 herein);
- (d) the Options to Purchase (C.4 herein); and
- (e) the construction of certain specified private facilities (C.5 herein),

upon the occurrence of the events specified in those sections.

**C.1 Amenity Land**

**(1) Notch Summit**

5. The Owner shall concurrently with the registration of first Subdivision of the Lakes District Land, transfer or dedicate to the Regional District, at no cost, title to the Notch Summit.

**(2) Park Land in Sub-Phases of Lakes District Land**

6. The Owner shall concurrently with the registration of the first Subdivision within each Sub-Phase shown on the Lakes District Parks Phasing Plan (Schedule “D”), transfer or dedicate to the Regional District:

- (a) the land that is marked as “Park”, excluding those lands marked as Notch Park Lands Subject to Option to Purchase, for that Sub-Phase on the Lakes District Parks Phasing Plan; or
- (b) if the boundary of a Sub-Phase differs from the boundary of the Sub-Phase as shown in the Lakes District Parks Phasing Plan, and includes land that is marked as “Park”, excluding those lands marked as Notch Park Lands Subject to Option to Purchase, in another Sub-Phase shown in the Lakes District Parks Phasing Plan, the land that is

marked as “Park”, excluding those lands marked as Notch Park Lands Subject to Option to Purchase, in the area covered by the final form of the Sub-Phase.

**(3) Choice of dedication or transfer**

7. In sections 5 and 6, the choice of dedication or transfer is at the discretion of the Regional District:

- (a) if the servicing requirements related to same, as determined by the Approving Officer, do not differ, or,
- (b) if the servicing requirements, as determined by the Approving Officer, differ, the Regional District chooses the lower cost option or pays or reimburses the Owner for the additional servicing costs of the higher cost option;

provided however that

- (c) the Regional District must notify the Owner of its choice in writing no later than 30 days after being provided by the Owner with a copy of its proposed subdivision application; and
- (d) if the servicing requirements determined by the Approving Officer are greater for the option that the Regional District has chosen, then Regional District must confirm its choice, or notify the Owner that it has changed its choice, in writing within 15 days after being advised by the Owner in writing of the additional servicing costs of the higher cost option; and
- (e) if the Regional District does not advise the Owner of its choice in writing within the time limits set out in subsections (c) and (d), then the Owner may proceed on the basis that the Regional District has chosen dedication.

**(4) Access to Park Land by the Owner**

8. The Regional District shall, at no cost to the Owner, grant to the Owner and its agents, designates and employees a licence to enter the Park transferred to the Regional District further to sections 5 and 6 hereof as and when the Owner requires for the purpose of constructing, or completing the construction of, the park improvements and infrastructure improvements provided for herein including, without limiting the generality of the foregoing, construction of:

- (a) a trail across the site for the Nanoose Bay Pollution Control Centre sewage treatment plant operated by the Regional District;
- (b) stormwater works, and sediment control ponds, including Dolphin Marsh Park, within Dolphin Lake Park; and
- (c) public access across Dolphin Lake Park to Rockhampton Road,

all as shown on the Site Plan (Schedule “B”), which licence may provide that the Owner shall:

- (d) indemnify and save harmless the Regional District from and against any loss, damage or liability suffered by the Regional District as a result of the use of the licenced area by the Owner and its agents, designates and employees;
- (e) obtain comprehensive general liability insurance, which includes the Regional District as a named insured, in respect of the use of the licenced area by the Owner and its agents, designates and employees, in an amount of no less than \$5 million; and
- (f) act reasonably expeditiously to limit the length of time during which such licence is required.

9. The Regional District:

- (a) shall grant the Owner, at the time of transfer of title to the Regional District of the Enos Lake bed, a registerable easement, substantially in the form set out in Schedule "N", to allow the Owner, and its agents, designates and employees, to operate, maintain, upgrade and replace, as the Owner requires, the irrigation system for the Fairwinds Golf Course (which receives and pumps Enos Lake water from an intake through a submerged pipe to Dolphin Lake for use in golf course irrigation), as referenced on the Site Plan including, without limiting the foregoing, the dam, intake, pump and pumphouse located on the west side of Enos Lake, outlet weir, water line, and road providing access to same; and
- (b) may call upon the Owner to provide a Release of the easement in the event the Owner's water licence for golf course irrigation is cancelled and the Owner is unable to obtain a renewal or replacement of same within 5 years after the cancellation, and the Owner will promptly provide same.

10. The Regional District shall grant the Owner, at the time of transfer of title to the Regional District of the Enos Lake lake bed, an irrevocable licence, substantially in the form set out in Schedule "O", to allow the Owner, and its agents, designates and employees, to construct, operate, maintain, upgrade, replace and utilize dock improvements in the vicinity of the Lake House shown on the Site Plan, which irrevocable licence will include 4 metres by 7 metres of water area, a deck on floats, a gangway providing access from the foreshore, and a 1.75 metre wide access path from the end of the public walking trail to the gangway, subject at all times to the obligation to provide public access as set out in the licence.

**(5) Notch Trail (Temporary)**

11. The Owner shall concurrently with the transfer of the Notch Summit, as provided for at section 5 hereof, grant to the Regional District a 1.75 metre wide statutory right of way, substantially in the form attached at Schedule "L", for temporary pedestrian public access over land in the approximate area of that marked as "Notch Trail (Temporary)" on the Site Plan; which the Regional District agrees to release upon the completion of the construction of the Notch Trail (Permanent) to the Notch Summit, as shown on the Lakes District Park Improvements Phasing Plan (Schedule "E"), and the provision of an equivalent statutory right of way over that trail where it is located on private land.



**(6) Schooner Cove public access**

12. The Owner shall, concurrently with the registration of the first Subdivision within:

(a) Phase 1SC (the Village) shown on the Schooner Cove Land Use Phasing Plan (Schedule "H"); or

(b) Phase 2SC (the Waterfront) as shown on the Schooner Cove Land Use Phasing Plan,

as the case may be:

(c) grant to the Regional District a 3.0 metre wide statutory right of way, substantially in the form set out in Schedule "L", for public access over those lands within the Schooner Cove Land in that Phase that are marked on the Schooner Cove Public Open Space Phasing Plan (Schedule "I") for a Waterfront Pathway / Boardwalk;

(d) as part of its design of the first Subdivision in Phase 1SC (the Village), ensure that a 2.5 metre wide access route is available to the Regional District at all times that will allow Regional District maintenance vehicles to access the Waterfront Pathway / Boardwalk from Dolphin Drive after the construction of the Waterfront Pathway / Boardwalk in Phase 1SC (the Village) is complete, and grant to the Regional District a 2.5 metre wide statutory right of way, for that public access.

13. The Owner shall, concurrently with the registration of each Strata Subdivision within:

(a) Phase 1SC (the Village);

(b) Phase 2SC (the Waterfront); and

(c) Phase 3SC (the Commons),

as the case may be, all as shown on the Schooner Cove Land Use Phasing Plan (Schedule "H"), grant to the Regional District:

(d) a 1.75 metre wide statutory right of way, substantially in the form set out in Schedule "M", for public access over those lands within the Schooner Cove Land in that Strata Subdivision, if any, that are marked on the Schooner Cove Public Open Space Phasing Plan (Schedule "I") for a Walking Pathway; and

(e) a statutory right of way, substantially in the form set out in Schedule "M", for public access over those lands within the Schooner Cove Land in that Strata Subdivision, if any, that are marked on the Schooner Cove Public Open Space Phasing Plan as Public Access Open Space.

**C.2 Built amenities**

**(1) Lakes District Park and Trail Improvements**

**(a) Park Improvements**

14. The Owner shall, not more than 12 months after the transfer or dedication of title to each segment of Park land referred to in sections 5 and 6 hereof, construct, at its own cost, the park improvements to be built on that segment of Park land:

- (a) in the location shown on the Lakes District Park Improvements Phasing Plan (Schedule "E"); and
- (b) to the standards set out in the Lakes District Regional Park Masterplan and Development Guidelines, if the land is Regional Park; or
- (c) to the standards set out in the Lakes District Community Parks Development Plan for the park, if the land is Community Park,

provided however that if the Park land at issue is a community park, and the Lakes District Community Parks Development Plan applicable to the park is not approved by the Regional District further to section 25(d) hereof within six months after the transfer or dedication of the land for the community park, the Owner's obligation to construct the community park improvements will be delayed until six months after the approval by the Regional District of the Lakes District Community Parks Development Plan, so long as the amount of security provided is no less than \$200,000 per acre of community park land.

15. For greater certainty, the Owner shall, not more than 12 months after the granting of the statutory right of way for the Notch Trail (Temporary) as provided for at section 11 hereof, construct, at its own cost, the improvements to that trail:

- (a) in the location shown on the Site Plan (Schedule "B") for the Notch Trail (Temporary); and
- (b) to the standards set out in the Lakes District Regional Park Masterplan and Development Guidelines.

**(b) Trail Intersections**

16. The Owner shall, in conjunction with the approval of each Subdivision where a trail intersects with a road:

- (a) construct, in conjunction with the construction of the trail section that intersects the road, a fence located on private property separating the lot adjacent to the trail from the trail; and
- (b) grant a section 219 covenant to the Regional District whereby the owner of the adjacent parcel undertakes not to tear down, remove or damage the fence and to maintain the fence.

**(2) Schooner Cove Waterfront Pathway / Boardwalk, Walking Pathway and Public Access Open Space Improvements**

**(a) Owner's Land**

17. The Owner shall, not more than 12 months after the registration of each statutory right of way over a segment of public open space referred to in sections 12 and 13 hereof, complete the construction of, at its own cost, the Waterfront Pathway / Boardwalk, Walking Pathway, and Public Access Open Space, to be built on that segment:

(a) in the locations shown on the Schooner Cove Public Open Space Phasing Plan (Schedule "I"); and

(b) to the standards set out in the Schooner Cove Pathway Standards (Schedule "J").

**(b) Schooner House Strata section**

18. The Owner shall:

(a) concurrently with the construction of the Waterfront Pathway / Boardwalk provided for at section 17 hereof; or

(b) so soon thereafter as the Owner is able, using reasonable commercial efforts, to secure a statutory right of way in favour of the Regional District for the Waterfront Pathway / Boardwalk at the Owner's cost,

construct, at its own cost, the Waterfront Pathway / Boardwalk improvements:

(c) in the location shown for the section of the Waterfront Pathway / Boardwalk within Phase 2SC (the Waterfront) on the Schooner Cove Public Open Space Phasing Plan (Schedule "I") that is on the lands of Schooner House Strata VIS745; and

(d) to the standards set out in the Schooner Cove Pathway Standards (Schedule "J").

19. In the event that permission has not been provided by the owner of the Schooner House Strata VIS745 lands for the construction of the section of the Waterfront Pathway / Boardwalk within Phase 2SC (the Waterfront) on the Strata's land prior to the registration of the first Subdivision within Phase 3SC (the Commons), the Owner shall provide security for 125% of the cost of construction and materials of the section of the Waterfront Pathway / Boardwalk within Phase 2SC (the Waterfront) that is on the lands of Schooner House Strata VIS745 by way of a clean irrevocable letter of credit, and shall renew same prior to its expiry until construction is complete.

**(3) Management of park and public access**

20. For greater certainty:

(a) the Lakes District park land and improvements, the Notch Trail (Temporary), and the Schooner Cove Waterfront Pathway Boardwalk shall be managed and operated by the Regional District as a Regional District service, at its cost;

- (b) the Schooner Cove Walking Pathways and the Public Access Open Space shall be managed and operated by the applicable strata corporation or corporations.

**(4) Public art and interpretive signage**

21. The Owner shall, no later than one year after the first Strata Subdivision within Phase 1SC (the Village) of Schooner Cove as shown on the Schooner Cove Land Use Phasing Plan (Schedule "H") that creates a commercial strata lot, construct and install in areas of the strata lands that are generally accessible to the public:

- (a) public art, as determined and located by the Owner in consultation with the Regional District to support the maritime character of schooner cove village; and
- (b) interpretive signage,

and that have a combined market value of no less than \$25,000, provided however that that dollar amount reflects costs as of the date this agreement is entered into, and will be adjusted to reflect current dollars at the time of providing the noted amenity, applying the change in the British Columbia Consumer Price Index (CPI) from the date this agreement is entered into to the date of provision of the amenity.

**(5) Security**

22. The Owner agrees to provide the Regional District with security for the construction of the improvements provided for in sections 14, 15, 16, 17, 18 and 40, as a precondition to approval of the subdivision to which the construction obligation relates, which security shall cover 125% of the cost of construction and materials, and shall be by way of a clean irrevocable letter of credit, which the Owner shall renew prior to its expiry until construction is complete.

**C.3 Amenity Payments, and amenity work**

**(1) Park development and management plans**

23. The Owner shall provide to the Regional District, either prior to or within 30 days after the execution by all parties of this Agreement, \$40,000 plus applicable taxes towards the cost of the preparation by the Regional District of the Regional Park Management Plan.

24. The Regional District shall:

- (a) prepare the Regional Park Management Plan in keeping with the Terms of Reference – Regional Park Management Plan (Schedule "Z");
- (b) provide the Owner with a copy of the draft Regional Park Management Plan for comment during preparation, and provide for two representatives determined by the Owner to be on any committee it establishes to assist with the preparation; and
- (c) complete the Regional Park Management Plan, including the naming for the Regional Park within nine months of the provision by the Owner of the funds provided for at section 23.

25. The Owner shall:
- (a) concurrently with the first application for a Subdivision in a Sub-Phase that includes land that is designated on the Lakes District Parks Phasing Plan (Schedule "D") for a Community Park, commence the preparation of the Community Parks Development Plan for that park;
  - (b) prepare the Community Parks Development Plan in keeping with the Lakes District Community Park Conceptual Program (Schedule "CC");
  - (c) provide the Regional District with a copy of the draft Community Parks Development Plan for comment during preparation; and
  - (d) tender to the Regional District a complete Community Parks Development Plan.
26. The Regional District shall review the Community Parks Development Plan in good faith, and approve it if it complies with the Lakes District Community Park Conceptual Program.
27. The Owner shall:
- (a) within 30 days after the execution by all parties of this Agreement, commence the preparation of a Garry Oaks Meadows Management Plan;
  - (b) prepare the Garry Oaks Meadows Management Plan in keeping with Terms of Reference – Garry Oaks Meadows Management Plan (Schedule "AA");
  - (c) provide the Regional District with a copy of the draft Garry Oaks Meadows Management Plan for comment during preparation; and
  - (d) tender to the Regional District a complete Garry Oaks Meadows Management Plan within six months of the provision by the Owner of the funds provided for at section 23.
28. The Regional District shall review the Garry Oaks Meadows Management Plan in good faith, and approve it if it complies with the Garry Oaks Meadows Management Plan Terms of Reference.
29. The Owner shall:
- (a) within 30 days after the execution by all parties of this Agreement, commence the preparation of an Enos Lake Protection and Monitoring Program;
  - (b) prepare the Enos Lake Protection and Monitoring Program in keeping with the Terms of Reference – Enos Lake Protection and Monitoring Program (Schedule "BB");
  - (c) provide the Regional District with a copy of the draft Enos Lake Protection and Monitoring Program for comment during preparation; and
  - (d) tender to the Regional District a complete Enos Lake Protection and Monitoring Program within six months of the provision by the Owner of the funds provided for at section 23.

30. The Regional District shall review the Enos Lake Protection and Monitoring Program in good faith, and approve it if it complies with the Enos Lake Protection and Monitoring Program Terms of Reference.

**(2) Storm drainage**

31. The Owner has prepared an Integrated Stormwater Management Plan and provided it to the Regional District, and, prior to 30 days after the execution by all parties of this Agreement, provided the Regional District with \$30,000 towards the cost of a third party professional engineering review of the Integrated Stormwater Management Plan.

32. The Regional District confirms that it received the \$30,000 provided for at section 31.

**(3) Transit shelters**

33. The Owner shall provide the Regional District with \$40,000 for four bus shelters to be installed by the Regional District at locations on or in the immediate vicinity of the Lakes District Land and the Schooner Cove Land, such payment to be provided when the Regional District has commenced a regularly scheduled daily bus service to the Lakes District Land or the Schooner Cove Land, and the Regional District shall construct all four transit shelters within six months after the receipt of \$40,000.

**(4) Fire safety**

34. The Owner shall, prior to 30 days after the execution by all parties of this Agreement, provide the Regional District with \$10,000 towards the cost of a third party study of fire risks and emergency planning for Electoral Area "E".

35. The Regional District hereby confirms that it has already received the \$10,000 provided for at section 34.

**C.4 Options to Purchase**

36. The Owner shall grant to the Regional District:

- (a) concurrent with the first Subdivision of the Lakes District Land:

- (i) the Notch Option to Purchase (Schedule "P"), over the Notch Option to Purchase Lands, having a five year term; and
- (ii) a Section 219 Covenant precluding construction on the Notch Option to Purchase Lands commencing upon the first Subdivision of the Lakes District Land and expiring at the expiry of the Notch Option to Purchase, substantially in the form attached as Schedule "R" to this Agreement.

- (b) concurrent with the first Subdivision in Phase 1e of the Lakes District Land:

- (i) the Lookout Option to Purchase (Schedule "Q"), over the Lookout Option to Purchase Lands, having a three year term; and

- (ii) a Section 219 Covenant precluding construction on the Lookout Option to Purchase Lands commencing upon the first Subdivision of Phase 1e of the Lakes District Land and expiring at the expiry of the Lookout Option to Purchase, substantially in the form attached as Schedule "R" to this Agreement.

37. The Regional District shall, in the event it does not exercise:

- (a) the Notch Option to Purchase, provide the Owner with a Release of same and of the Section 219 Covenant provided for at section 36(a)(ii) of this Agreement, duly executed by the Regional District and in a form that is registrable in the Land Title Office, on or before that certain date which is no later than five years after the registration of the Notch Option to Purchase; and
- (b) the Lookout Option to Purchase, provide the Owner with a Release of same and of the Section 219 Covenant provided for at section 36(b)(ii) of this Agreement, duly executed by the Regional District and in a form that is registrable in the Land Title Office, on or before that certain date which is no later than three years after the registration of the Lookout Option to Purchase.

38. In the event the Regional District exercises the Notch Option to Purchase before the expiry of its five year term, the Owner shall, with the consent of the Regional District (which the Regional District shall provide):

- (a) apply to the Approving Officer to add the Notch Option to Purchase Lands to the adjacent park parcel comprising the Notch Summit, if that park is in the form of a parcel; or
- (b) apply to the Approving Officer to dedicate the Notch Option to Purchase Lands as part of the adjacent dedicated park comprising the Notch Summit, if that park has been dedicated; and
- (c) subject to Approving Officer approval of the application, complete the addition or dedication at the Owner's cost.

39. In the event the Regional District exercises the Lookout Option to Purchase before the expiry of its three year term, the Owner shall, with the consent of the Regional District (which the Regional District shall provide):

- (a) apply to the Approving Officer to add the Lookout Option to Purchase Lands to the adjacent park parcel containing the Lookout, if that park is in the form of a parcel; or
- (b) apply to the Approving Officer to dedicate the Lookout Option to Purchase Lands as part of the adjacent dedicated park containing the Lookout, if that park has been dedicated; and
- (c) subject to Approving Officer approval of the application, complete the addition or dedication at the Owner's cost.

## **C.5 Improvements for private commercial operations**

40. The Owner shall:
- (a) construct a Jib Crane Hoist in the location shown on the Site Plan (Schedule “B”), to be accessible to the public on a commercial basis by no later than three months after the first Subdivision in Phase 1SC (the Village) shown on the Schooner Cove Land Use Phasing Plan (Schedule “H”); and
  - (b) provide security to the Regional District further to section 22 hereof, concurrently with the first Subdivision in Phase 1SC (the Village), in order to secure the provision of same.
41. The Owner shall construct a boat access dock with a surface area of approximately 4 metres by 7 metres, with wood or plastic decking, in the vicinity of the “Lake House”, as shown on the Site Plan (Schedule “B”), by no later than one year after the first Subdivision in the Sub-Phase of the Lakes District land that is closest to the location for such dock, with the intention that it will be accessible to the public.

## **D. Subdivision and Development**

### **D.1 Subdivision and development infrastructure**

#### **(1) Infrastructure works**

42. The Owner shall in connection with the subdivision of the Owner's Land satisfy, at its own cost, all requirements that the Regional District and the Approving Officer lawfully require (further to federal or provincial statute or federal, provincial or local regulation, but subject to the grandparenting provided for at Part F [Bylaw changes and development permits] hereof) including, without limiting the generality of the foregoing:
- (a) storm drainage works, including, subject to the qualification above, rainwater creeks, regional raingardens, and controlled storage, and regional wetlands, and other works set out in the Lakes District Infrastructure Phasing Plan (Schedule “G”) and the Schooner Cove Infrastructure Phasing Plan (Schedule “K”), and the Integrated Stormwater Management Plan (Schedule “DD”);
  - (b) highway works, including, subject to the qualification above, as set out in Lakes District Infrastructure Phasing Plan and the Schooner Cove Infrastructure Phasing Plan;
  - (c) water supply works in keeping with the Specified Bylaw Provisions, and including, subject to the qualification above, trunk mains and pump stations as set out in the Lakes District Infrastructure Phasing Plan and the Schooner Cove Infrastructure Phasing Plan; and
  - (d) sanitary sewer works in keeping with the Specified Bylaw Provisions, and including, subject to the qualification above, trunk mains, force mains, and pump stations as set out in the Lakes District Infrastructure Phasing Plan and the Schooner Cove Infrastructure Phasing Plan.



43. Without limiting the generality of section 42 and subject to the qualification set out therein, the Owner agrees to the incorporation of the following infrastructure requirements into subdivision approvals for the Owner's Land:

**Traffic**

- (a) the construction of trail crossings where trails intersect with roads, at the Owner's cost, if acceptable to the Ministry of Transportation and Infrastructure;
- (b) a prohibition against the gating of strata roads within strata titled residential subdivisions, to be secured by section 219 covenant; and

**Stormwater**

- (c) registration of a section 219 covenant providing that there shall be no irrigation of landscaping in any area unless there is a minimum depth of topsoil of at least 300 mm.

44. The Owner further agrees to provide the supporting material from a Qualified Professional, Qualified Environmental Professional, or qualified archaeologist set out in subsections (a) through (d) below as part of its subdivision applications:

**Heritage conservation**

- (a) if so required by the *Heritage Conservation Act*, the Owner shall, prior to submitting an application for subdivision in connection with the first Subdivision of the Owner's Land, cause a qualified archeologist to conduct a preliminary field reconnaissance to determine which portions of the areas of potential risk identified in the Archeological Overview Assessment conducted by I. R. Wilson Consultants Ltd. dated March 2008, if any, will require an Archeological Impact Assessment;
- (b) if so required by the *Heritage Conservation Act*, the Owner shall provide to the Province, concurrently with each subdivision application, an Archeological Impact Assessment prepared by a qualified archaeologist;

**Riparian areas**

- (c) if so required by the Riparian Areas Regulation, the Owner shall, as part of each application for the subdivision of land that contains a lake, pond or creek, provide to the Approving Officer a pre-construction assessment prepared by a Qualified Environmental Professional, defining protection methods for the Streamside Protection and Enhancement Areas, which will include a report from a qualified arborist identifying tree retention and management within the Streamside Protection and Enhancement Areas; and

**Construction Environmental Management Plan**

- (d) the Owner shall, as part of each subdivision application, provide to the Approving Officer a CEMP, prepared by a Qualified Professional, which includes the following sections:

- (i) erosion and sediment control plan;
- (ii) spill contingency and response practices;
- (iii) terrain management practices;
- (iv) fire protection practices;
- (v) tree management and vegetation restoration measures;
- (vi) protection measures for works near water, riparian areas and Garry Oak Meadows;
- (vii) any mitigation from plant species at risk surveys;
- (viii) any mitigation measures from the Archaeological Impact Assessment;
- (ix) a construction schedule and requirement to avoid or limit activities during the January 1 to July 31 period (general bird and raptor nesting season), unless pre-clearing nest surveys by a qualified wildlife biologist, according to Ministry of Environment / Canada Wildlife Service protocol have been conducted, to identify any mitigation required;
- (x) water quality parameters and targets for sediment control as determined in the Enos Lake Protection & Monitoring Program;
- (xi) practices for amphibian salvages where necessary; and
- (xii) construction traffic management.

**(2) Construction Covenant**

45. Without limiting the generality of section 42, subject to the qualifications set out therein, the Owner further agrees to the incorporation of a requirement for a Construction Covenant, substantially in the form attached as Schedule "S" hereto, speaking to the following matters, as a precondition to subdivision approval:
- (a) compliance with the CEMP, including a requirement to for the Owner monitor the adherence of construction activities to the CEMP;
  - (b) the identification of any wildlife trees that are to be removed, and the provision of compensation for same through the creation of habitat providing equivalent habitat benefits;
  - (c) arborist assessment of tree retention and tree management in Streamside Protection and Enhancement Areas where a pre-construction assessment is required by the Riparian Areas Regulation; and
  - (d) archaeological assessment.

**(3) Park Land**

46. Further to section 905.1(4) and (4.1) of the *Local Government Act*, the Regional District agrees that, when it exercises its authority under section 941 of the *Local Government Act* as regards a subdivision of all or part of the Owner's Land, it:
- (a) shall require only the dedication or transfer to the Regional District of that land, within the Development Parcels being created by subdivision, that is shown as Park on the Site Plan (Schedule "B") and the Lakes District Parks Phasing Plan (Schedule "D"); and
  - (b) shall not require the dedication of any other land for park, or the payment of cash in lieu monies for park land.
47. In so providing, the Regional District confirms that the Park shown on the Site Plan and the Lakes District Parks Phasing Plan amply provides for all park needs related in any way to the subdivision or development of the Owner's Land, such that no additional park land or cash in lieu will be required in connection with the subdivision or development of the Owner's Land, beyond the park land provided for herein.
48. Notwithstanding sections 5, 6, 38 and 39 and the Schedules, and without limiting in any way the effect of section 47, all references to the dedication or transfer of land for park in the Lakes District Land provided for in this Agreement including its Schedules:
- (a) are calculated on the basis of the Assumed Road Right of Way Areas within each Sub-phase that are set out at Schedule "T" to this Agreement;
  - (b) to the extent that more area is taken up by road rights of way in the approved form of the registered subdivision plan in a Sub-Phase by an amount that is greater than 2% of the total road right of way area set out in the Schedule "T" for that Sub-Phase, then the Owner may reduce the park area transfer or dedication associated with that Sub-Phase by the amount of the increase in road right of way area above the area set out in Schedule "T", up to a maximum reduction of 5% of transferred or dedicated park area in that Sub-Phase; and
  - (c) the Owner is not required to remove any of the non-financial encumbrances that are registered against title as of the date of the Agreement from any of the land this Agreement provides for the Owner to transfer or dedicate for park.

**D.2 Schooner Cove Parking**

49. The Owner and the Regional District agree that:
- (a) the Owner will, no more than 30 days after the execution by both parties of this Agreement, register the Easement for Parking (Schedule "U") against the land comprising Phase 3SC (the Commons) in favour of the land comprising Phase 1SC (the Village), as shown on the Schooner Cove Land Use Phasing Plan (Schedule "H"); and
  - (b) while the Land Use and Subdivision Bylaw provides that the Owner shall provide, upon the first Subdivision in Phase 3SC (the Commons), an additional 20 parking spaces for

trailerable watercraft on the land comprising Phase 3SC (the Commons), the Regional District agrees to consider the elimination of the requirement for those parking spaces, 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 additional parking spaces after taking into account a complete May 1 to September 1 period after Phase 1SC (the Village) has been completed to the extent that the Walking Pathways and Public Access Open Space provided for in Phase 1SC (the Village) have been fully constructed.

### **D.3 Educational initiatives**

50. The Owner shall develop and provide to the Regional District for comment, concurrently with the registration of the first Subdivision of the Lakes District Land, for posting or circulation as the Regional District wishes:
- (a) an environmental education initiative for recreational users, which will include education on locally sensitive areas and their value, and will provide direction and methods of protection, and promote involvement and stewardship; and
  - (b) a home owner's manual that will provide guidance for ecologically responsible landscaping, water conservation, recreation, respect for locally sensitive areas and participation in community based stewardship.

## **E. Development Cap Covenant, and its Release**

### **E.1 Registration of Development Cap Covenant**

51. No more than 30 days after the execution by both parties of this Agreement, the Owner will apply to register the Development Cap Covenant (Schedule "V") against title to the Lakes District Land, to the benefit of the Regional District and in priority to any financial charges.

### **E.2 Replacement of the Development Cap Covenant with Development Parcel Covenants as development proceeds**

52. The Regional District will forthwith provide the Owner with an executed Release of the Development Cap Covenant as regards one or more parcels of land within the Lakes District Land when:
- (a) the Owner has provided the Regional District with a copy of a Development Plan that:
    - (i) marks the parcel or parcels as a Development Parcel or Development Parcels;
    - (ii) indicates, for each Development Parcel in respect of which a Release is sought, the maximum number of dwelling units for which the owner of a Development Parcel can apply for a building permit, and the number of units for which the owners of all of the Development Parcels can apply for a building permit, in aggregate is not more than the 1,675 dwelling units that the Zoning Bylaw permits for the Lakes District Land; and

- (b) the Owner has provided the Regional District with an executed Development Parcel Covenant (Schedule "W") that limits the number of dwelling units, to the number provided for in the Development Plan, for each Development Parcel that is being released from the Development Cap Covenant;
- (c) the parcel or parcels shown on the Development Plan do not include any dwelling units on any portion of the Lakes District Land that is marked on the Site Plan as "Regional Park" or "Community Park";
- (d) if the parcel or parcels that are the subject of the Development Parcel Covenant are being created concurrently with the provision of the Release, the Owner has obtained the Approving Officer's signature on a subdivision plan creating the parcel or parcels, that it undertakes to file at the Land Title Office concurrently with:
  - (i) the executed Release of the Development Cap Covenant; and
  - (ii) the executed Development Parcel Covenant.

53. The parties further agree that:

- (a) a Development Plan need not mark all of the parcels on the Lakes District Land as a Development Parcel;
- (b) the allocation of the 1,675 dwelling units is a matter for the Owner in its sole discretion, and more particularly neither a Development Plan, nor an amendment to a Development Plan that marks additional parcels as Development Parcels, requires approval by the Regional District; and
- (c) in the event that the Regional District:
  - (i) rezones any parcel that has a Development Parcel Covenant registered against it, such that more dwelling units can be built on that parcel than the Development Parcel Covenant that the Owner originally registered against title provides for, and
  - (ii) allows the owner of the rezoned parcel to amend the Development Parcel Covenant registered against the parcel in a manner that increases the number of dwelling units that can be built on the parcel;

then such additional dwelling units shall not be taken into account in calculating the aggregate number of dwelling units available to other parcels under section 52(a)(ii).

**F. Bylaw Changes and Development Permits**

**F.1 Specified Bylaw Provision Protection**

54. Changes to the definition of the Specified Bylaw Provisions can only be made by amending this Agreement.

55. Changes made to provisions of the Regional District's Land Use and Subdivision Bylaw (Schedule "Y") that fall within the definition of the Specified Bylaw Provisions will not apply to the development of:
- (a) the Lakes District Development Land, including any parcels created therefrom, or
  - (b) the Schooner Cove Land;
- during the Term, unless:
- (c) the changes fall within the limits established by section 905.1(6) of the *Local Government Act*, being:
    - (i) changes to enable the Regional District to comply with an enactment of British Columbia or of Canada;
    - (ii) changes to comply with the order of a Court or arbitrator or another direction in respect of which the Regional District has a legal requirement to obey;
    - (iii) changes that, in the opinion of the Regional District, are necessary to address a hazardous condition of which the Regional District was unaware at the time it entered into this Agreement; and
    - (iv) other changes that may be made as a result of an amendment to section 905.1(6) of the *Local Government Act*;
  - (d) this Agreement has been terminated pursuant to sections 63 or 64 hereof; or
  - (e) the Owner has agreed in writing that the changes apply, in accordance with section 57 hereof.
56. In the event of the repeal by the Regional District of the Land Use and Subdivision Bylaw in its entirety, including where that bylaw is replaced by one or more bylaws under section 903 or 938 of the *Local Government Act*, the Owner and the Regional District agree that the Specified Bylaw Provisions continue to apply to the Owner's Land for the balance of the term of this Agreement, despite such repeal.
57. (a) The agreement of the Owner that changes to provisions of the Regional District's Land Use and Subdivision Bylaw that fall within the definition of the Specified Bylaw Provisions will apply to the Lands will only be effective if it is in writing and includes the terms set out in Schedule "X";
- (b) Following execution of the agreement that includes the terms set out at Schedule "X", section 55 of this Agreement will continue to apply, and further or subsequent changes made by the Regional District to its Land Use and Subdivision Bylaw that fall within the definition of the Specified Bylaw Provisions will not apply to the development of the Owner's Land unless the Owner agrees in writing that they apply, by way of a further agreement that includes the terms set out at Schedule "X"; and

- (c) In the event of the transfer of title to a portion of the Owner’s Land, the right of consent of the transferee is limited to the lands acquired by the transferee, and the transferee shall not have any right of consent as regards lands that it has not acquired.

58. Changes made to the provisions of the Land Use and Subdivision Bylaw that do not fall within the definition of the Specified Bylaw Provisions will apply to the development of the Lands, including any parcels created therefrom.

59. For certainty, the interpretation of whether a section in the Land Use and Subdivision Amendment Bylaw or the Land Use and Subdivision Bylaw is one of the Specified Bylaw Provisions is not impacted by the headings used in the Land Use and Subdivision Amendment Bylaw or the Land Use and Subdivision Bylaw.

**F.2 Development Permit Protection**

60. In the event of the transfer of title of a portion of the Owner’s Land, the right of consent of the transferee under section 905.1(7) is limited to the lands acquired by the transferee, and the transferee shall not have any right of consent as regards any land that the transferee has not acquired.

**G. Amendment, Termination, Enforcement and Title Transfer**

**G.1 Amendment**

61. (a) No amendment to this Agreement shall be effective unless it is made in writing and is duly executed by the Owner and the Regional District.

(b) The Regional District, by resolution without a new public hearing, and the Owner, may agree to “minor amendments” of this Agreement. For the purposes of this Agreement, a “minor amendment” is any amendment other than one that proposes the renewal or extension of this Agreement or changes to any of the following provisions of this Agreement:

- (i) the lands that are the subject of this Agreement (Recital A);

- (ii) the definition of the Specified Bylaw Provisions (section 1);

- (iii) the Term of this Agreement (section 62);

- (iv) the provision of this Agreement regarding what cannot constitute a minor amendment (section 61); or

- (v) the provisions of this Agreement regarding transfer (section 69).

(c) Nothing in subsection (b) prevents the Regional District from deciding to hold a public hearing in advance of a minor amendment to this Agreement if it so chooses.

(d) A public hearing is required as a precondition to an amendment to this Agreement that is not a minor amendment.

## **G.2 Term, termination, enforcement and arbitration**

### **(1) Term**

62. The Term of this Agreement is 20 years, unless otherwise terminated in accordance with the provisions hereof.

### **(2) Termination**

63. The parties may terminate this Agreement by mutual written agreement at any time before the transfer of a subdivided parcel within the Owner's Land to a third party.

64. The Regional District may, but is not obliged to, terminate this Agreement before the expiry of the Term if the Owner does not

- (a) register the Development Cap Covenant as provided for at Section 51; or
- (b) register any Development Parcel Covenant as provided for at Section 52; or
- (c) provide the Amenities provided for at
  - (i) section 5 [transfer of Notch Summit];
  - (ii) section 6 [transfer of Park land];
  - (iii) section 3 [statutory right of way for Waterfront Pathway / Boardwalk]; or
  - (iv) section 36 [granting of Notch Option to Purchase, Lookout Option to Purchase, and Section 219 Covenant over Option to Purchase Lands];

hereof when required, provided however that, in the event of a default in performance of those sections, the Regional District will give the Owner written notice within thirty days after it becomes aware that any default has occurred, and the Owner will have an additional ninety days to correct the default.

65. Section 79 hereof shall survive the termination of this Agreement.

66. The Owner and the Regional District agree that neither party may terminate this Agreement before the expiry of the Term, except as provided in sections 63 and 64.

### **(3) Interpretation and enforcement**

67. The Owner and the Regional District agree that the following enforcement procedures and remedies will be available if the other does not comply with any other section hereof when required:

- (a) apart from disputes related to the particulars related to construction access, improvements, security terms and amounts, or park development and management plans and other such matters that are referred to in section 68, either party may commence proceedings for a declaration or to otherwise enforce against any breach,



and, if successful, will be entitled to recover costs from the other on a solicitor and his own client basis;

- (b) either party may commence proceedings for injunctive relief in connection with a breach, and, if successful, will be entitled to receive costs from the other on a solicitor and his own client basis; and
- (c) the Owner or the Regional District, as the case may be, will be responsible to the other for the cost, losses and damages that flow from any breach of the terms of the Agreement by the other,

provided however that, in the event of a default in performance of any such sections, each will give the other written notice within thirty days after it becomes aware that any default has occurred, and the other will have an additional thirty days to correct the default.

**(4) Arbitration for certain matters**

- 68. (a) In the event of any dispute related to the particulars related to construction access, improvements, security terms and amounts, park development and management plans and other such matters under the following provisions:
  - (i) section 7 [whether Owner is correct as to amount of additional servicing costs]
  - (ii) section 8 [construction access by Owner];
  - (iii) section 12(d) [access route]
  - (iv) section 14 [Lakes District Park improvements];
  - (v) section 15 [Notch Trail (Temporary) improvements];
  - (vi) section 16 [trail / road intersection construction];
  - (vii) sections 17, 18 and 19 [Schooner Cove Waterfront Pathway / Boardwalk, Walking Pathway, and Public Access Open Space improvements];
  - (viii) section 21 [public art and signage];
  - (ix) section 22 [provision of security];
  - (x) sections 24 through 30 [Park Development and Management Plans];
  - (xi) section 33 [transit shelters];
  - (xii) section 40 [construction of Jib Crane Hoist];
  - (xiii) section 41 [construction of boat dock]; and
  - (xiv) section 69 (g) to (j) [Assumption Agreement terms]

and any failure to reach agreement on any matter related thereto, such dispute or disagreement may be submitted by either party to and be finally settled by a single arbitrator pursuant to the *Arbitration Act* (British Columbia), provided that it is understood and agreed that:

- (xv) the Owner's ability to proceed with Subdivision and construction is not to be delayed while any arbitration related to any of the above matters other than Assumption Agreement terms occurs, but rather the Owner may proceed on the basis of the position it takes on any such matter, provided it first provides security to the Regional District by way of a clean irrevocable letter of credit securing the difference in cost of satisfying the matter according to the Owner's position and the costs of satisfying the matter according to the Regional District's position; and
  - (xvi) this section 68 is not intended to, nor is to be construed as, preventing the parties hereto, or either of them, from seeking relief from the courts, including further to section 67(b) hereof, to establish appropriate terms on which the Owner may proceed with Subdivision and construction pending an arbitration regarding Assumption Agreement terms;
- (b) If the parties cannot agree to a single arbitrator, then such arbitrator shall be chosen by reference to a Judge of the Supreme Court of British Columbia;
  - (c) The parties shall share equally in the costs of:
    - (i) referring the choice of an arbitrator to a Judge of the Supreme Court of British Columbia, and
    - (ii) any arbitration;
  - (d) The determination made by a single arbitrator will be final and binding upon the Owner and the Regional District; and
  - (e) The provisions of this section will be deemed to be a submission to arbitration within the provisions of the *Arbitration Act* (British Columbia), except on the question of arbitrator remuneration.

### **G.3 Rights and obligations upon title transfer**

#### **Rights of Owner**

- 69. (a) Nothing in the Agreement in any way limits the right of the Owner to sell all, or any portion of, the Owner's Land.

#### **Rights of transferees – generally**

- (b) In the event of a sale, the "class of persons" by whom the rights set out in this Agreement may be exercised without further consent by the Regional District, as contemplated by section 905.2(5)(b) of the *Local Government Act*, is any company,

partnership, individual or other entity to whom the Owner transfers the Owner's Land, or individual parcels subdivided therefrom, other than companies, partnerships, individuals or entities that are in receivership or bankruptcy. By signing this Agreement, the Regional District gives its consent to the assignment of such rights to any party within such 'class of persons' consent, with such rights being as more particularly set out in subsections (d) through (j) inclusive of this section.

- (c) A company, partnership, individual or entity that is in receivership or bankruptcy may only exercise the rights set out in this Agreement if it first obtains the consent of the Regional District to the assignment of such rights.

**Obligations of transferees – generally**

- (d) Further to sections 905.6 and 927(4) of the *Local Government Act*, the terms of this Agreement are binding on all persons who acquire an interest in the land affected by this Agreement, with such obligations being as more particularly set out in subsections (e) through (j) inclusive of this section.

**Obligations of the Owner and transferee – transfer of the whole of the Owner's Land**

- (e) In the event of a transfer of the whole of the Owner's Land, then:
  - (i) the obligations of the Owner to the Regional District under this Agreement (as compared to the obligations of the transferee to the Regional District) will cease if the Owner provides the Regional District with an acknowledgement signed by the transferee that the transferee assumes the obligations of the Owner under this Agreement, provided however that
  - (ii) the Owner will not be released as regards any breach of this Agreement that occurred while the Owner was the owner of the Owner's Land, unless the Regional District provides the Owner with a release to that effect.

**Rights of transferee – transfer of a subdivided portion of the Owner's Land**

- (f) In the event of a transfer of any subdivided portion of the Owner's Land:
  - (i) the transferee shall have all right, title, benefit, interest, privilege and advantage of the Owner further to Part F [Bylaw changes and development permits] of this Agreement in respect of the portion of the Owner's Land transferred to the transferee, but only in respect of that portion of the Owner's Land transferred; and
  - (ii) for greater certainty, the agreement of the transferee is not and will not be required under Part F [Bylaw changes and development permits] of this Agreement on the issue of whether a change made to the Specified Bylaw Provisions is applicable to the development of lands other than the portion of the Owner's Land transferred to the transferee;

- (iii) subject to subsection (h), the transferee:
  - (A) shall not have any rights under any provision of this Agreement other than those in Part F [Bylaw changes and development permits], as against either the Owner or the Regional District; and
  - (B) notwithstanding subsection (a), the transferee shall have no rights, or remedies against either the Owner or the Regional District, in the event of the termination of this Agreement further to the provisions hereof.

**Obligations of the Owner – transfer of a subdivided portion of the Owner’s Land**

- (g) Unless an Assumption Agreement is entered into between the Regional District, the Owner and the transferee, a transfer of a subdivided portion of the Owner’s Land does not in any way affect:
  - (i) the rights and obligations of the Regional District as against the Owner (as compared to the transferee) under Parts A through E inclusive of this Agreement;
  - (ii) the rights and obligations of the Owner (as compared to the transferee) as against the Regional District under Parts A through E inclusive of this Agreement; or
  - (iii) the Regional District’s right to terminate this Agreement (and by doing so terminate the rights of the transferee) under section 64 of this Agreement.
- (h) An Assumption Agreement under subsection (g), entered into between the Regional District, the Owner and the transferee, can provide that some or all of the rights and obligations of the Owner to the Regional District under Parts A through E inclusive, of this Agreement are transferred to the transferee and cease to be rights or obligations of the Owner, as set out in the Assumption Agreement;
- (i) Unless otherwise provided for in an Assumption Agreement under subsections (g) and (h), the obligation of the transferee in respect of a subdivided portion of the Owner’s Land is limited to an obligation to:
  - (i) cooperate fully and promptly execute all documentation that the Owner may require; and
  - (ii) provide all authorizations, access and information that the Owner may require to facilitate or enable the performance and discharge by the Owner of its rights and obligations under this Agreement.
- (j) In the event that a transferee transfers all or any part of the transferee’s land to a subsequent transferee, the respective rights and obligations of the transferee and the subsequent transferee in respect of such part of the transferee’s land, will, insofar as

the matters dealt with in subsections (f), (g) and (h) are concerned, be on the basis as set out in those subsections.

## **H. Other**

### **Binding Effect**

70. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and, subject to section 69, permitted assigns.
71. This Agreement does not restrict any discretion of the Regional District's Board or officials under its or their statutory powers, apart from the restrictions expressly provided for herein and as provided for at section 905.1 of the *Local Government Act*.

### **Further Acts**

72. The Owner and the Regional District shall do all further acts as may be necessary for carrying out this Agreement, including without limitation execution of all required documentation and alterations required to achieve registration at the Land Title Office.

### **No Other Agreements**

73. This Agreement is the entire agreement between the parties regarding its subject. It is mutually understood, acknowledged and agreed by the parties that the Regional District has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Owner other than those contained in this Agreement.

### **Time of the Essence**

74. Time is of the essence of this Agreement.

### **Force Majeure**

75. All obligations of the parties shall be suspended so long as the performance of such obligation is prevented, in whole or in part, by reason of labour dispute, fire, act of God, unusual delay by common carriers, earthquake, act of the elements, riot, civil commotion or inability to obtain necessary materials on the open market, and the period in which any party is required to perform any such obligation is extended for the period of such suspension. The impact of the Owner's financial circumstances upon the Owner's ability to perform this Agreement does not suspend the Owner's obligations under this Agreement. This provision does not extend the Term.

### **Statutory approvals**

76. All obligations of the Owner hereunder are subject to being able to obtain all statutorily required approvals therefore, including approval from the Approving Officer.

## **No Waiver**

77. No provision of this Agreement is to be considered to have been waived by a party unless the waiver is expressed in writing by the party. The waiver by a party of any breach by another party of any provision is not to be construed as or constitute a waiver of any further or other breach.

## **Severability**

78. If any part of this Agreement other than:
- (i) Part F [Bylaw changes and development permits]; and
  - (ii) section 69 [Rights and obligations upon title transfer]

are 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. In the event that Part F and section 69 are held to be invalid, illegal or unenforceable by a Court having jurisdiction to do so, such a holding shall not limit such nonconforming use protection as has accrued to the Owner or transferee in connection with the subdivision and development of the Owner's Land in keeping with the Site Plan, including by way of the doctrine of "commitment to use", nor the application of the law related to unjust enrichment.

## **Interpretation**

79. In this Agreement:
- (a) the headings and captions are for convenience only and do not form a part of this Agreement and will not be used to interpret, define or limit the scope, extent or intent of this Agreement 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 currency means Canadian currency;
  - (d) 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;
  - (e) a reference to time or date is to the local time or date in Nanaimo, British Columbia;
  - (f) a word importing the masculine gender includes the feminine or neuter, and a word importing the singular includes the plural and vice versa;

- (g) a reference to approval, authorization, consent, designation, waiver or notice means written approval, authorization, consent, designation, waiver or notice;
- (h) a reference to a section means a section of this Agreement, unless a specific reference is provided to a statute; and
- (i) as the lands that are the subject of this Agreement are held variously by one or the other, but not both, of the two parties comprising the Owner, the obligations set out in each of the agreements which are Schedules to this Agreement will apply only to the party that holds an interest in the lands to which such agreement applies. Before any such agreement is finalized and becomes effective, it shall be modified to reflect the applicable owner.

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

### **Notice**

81. A notice, demand, statement, request or other evidence required or permitted to be given hereunder must be written and will be sufficiently given if delivered in person, transmitted by facsimile or mailed in Canada by registered mail addressed as follows:

- (a) if to the Owner:

BCIMC REALTY CORPORATION and 3536696 CANADA INC.  
c/o Bentall Kennedy (Canada) LP  
Suite 1800, 1055 Dunsmuir Street  
Vancouver, BC V7X 1C4  
Fax: 604-646-2805

Attention: Attention: Russell Tibbles,  
Vice President, Development & Operations – Fairwinds

With copies to:

Clark Wilson LLP  
900-885 West Georgia Street  
Vancouver, BC V6C 3H1  
Fax: 604-687-6314

Attention: Peter Kenward

Stikeman Elliott LLP  
Suite 1700 – 666 Burrard Street  
Vancouver BC V6C 2X8  
Fax: 604-681-1825

Attention: Rachel Hutton; and

(b) if to the Regional District:

REGIONAL DISTRICT OF NANAIMO  
6300 Hammond Bay Road  
Nanaimo, BC V9T 6N2  
Fax: 250-390-4163

Attention: Director of Corporate Services

in which case such notice, demand, statement, request or other evidence will be considered to have been given to the party to whom it is addressed on the third business day following the date of mailing, and a party at any time may give notice to the others of a change of address after which the address so specified will be considered to be the address of the party who gave the notice. Any notice, demand, statement, request or other evidence delivered in person will be considered to have been given at the time of personal delivery and any notice, demand, statement, request or other evidence transmitted by facsimile will be considered to have been given to the party to whom it is addressed on the next business day following the date of such transmission.

**I. Schedules**

82. The following schedules are annexed to and form part of this Agreement:

Schedule "A" – Owner's Land

Schedule "B" – Site Plan

Schedule "C" – Lakes District Land Use Phasing Plan

Schedule "D" – Lakes District Parks Phasing Plan

Schedule "E" – Lakes District Park Improvements Phasing Plan

Schedule "F" – Lakes District Regional Park Masterplan and Development Guidelines

Schedule "G" – Lakes District Infrastructure Phasing Plan

Schedule "H" – Schooner Cove Land Use Phasing Plan

Schedule "I" – Schooner Cove Public Open Space Phasing Plan

Schedule "J" – Schooner Cove Pathway Standards

Schedule "K" – Schooner Cove Infrastructure Phasing Plan

Schedule "L" – Statutory Right of Way for Public Access (Regional District Maintained)

Schedule "M" – Statutory Right of Way for Public Access (Strata Maintained)

Schedule "N" – Easement for Golf Course Irrigation



Schedule "O" – Licence for Commercial Dock

Schedule "P" – Notch Option to Purchase

Schedule "Q" – Lookout Option to Purchase

Schedule "R" – Section 219 Covenant Over Option to Purchase Lands

Schedule "S" – Construction Covenant

Schedule "T" – Assumed Road Right of Way Areas

Schedule "U" – Easement for Parking

Schedule "V" – Development Cap Covenant

Schedule "W" – Development Parcel Covenant

Schedule "X" – Form for Agreement to Bylaw Changes

Schedule "Y" – Land Use and Subdivision Bylaw

Schedule "Z" – Terms of Reference – Lakes District Regional Park Management Plan

Schedule "AA" – Terms of Reference – Garry Oaks Meadows Management Plan

Schedule "BB" – Terms of Reference – Enos Lake Protection and Monitoring Program

Schedule "CC" – Lakes District Community Parks Conceptual Program

Schedule "DD" – Integrated Stormwater Management Plan

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

**BCIMC REALTY CORPORATION**

Per: \_\_\_\_\_  
(Authorized Signatory)

Per: \_\_\_\_\_  
(Authorized Signatory)

**3536696 CANADA INC.**

Per: \_\_\_\_\_  
(Authorized Signatory)

Per: \_\_\_\_\_  
(Authorized Signatory)

**REGIONAL DISTRICT OF NANAIMO**

Per: \_\_\_\_\_  
(Authorized Signatory)

Per: \_\_\_\_\_  
(Authorized Signatory)

APPROVED BY THE INSPECTOR OF MUNICIPALITIES THE \_\_\_\_ DAY OF \_\_\_\_\_,  
\_\_\_\_\_.