

SCHEDULE "V": DEVELOPMENT CAP COVENANT

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

TERMS OF INSTRUMENT - PART 2

This Covenant dated for reference the _____ day of _____, 20◆

BETWEEN:

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

("BCIMC")

AND

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

("3536696")

(BCIMC and 3536696 are collectively the "Owner")

AND

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

(the "Regional District")

WHEREAS:

- A. The Owner is the registered owner of the properties situated, lying and being in the Regional District of Nanaimo, in the Province of British Columbia, described in Item 2 of Form C to which these Terms of Instrument are attached (the "**Lakes District Development Land**") and set out in Appendix "1" to this Covenant;
- B. The Regional District has rezoned the Lakes District Development Land as provided for in "Regional District of Nanaimo Land Use and Subdivision Bylaw No. No. 500, 1987" (the "**Land Use and Subdivision Bylaw**");

- C. The Owner has, in connection with its application to rezone the Lakes District Development Land in keeping with the Land use and Subdivision Bylaw, agreed to apply to register a Covenant prior to any financial charges under Section 219 of the *Land Title Act* in favour of the Regional District against the Lakes District Development Land;
- D. Section 219 of the *Land Title Act* provides that the Owner may grant a covenant to the Regional District of a negative or positive nature respecting the use of land;
- E. The Owner desires to grant this Covenant to restrict the use of the Lakes District Development Land on the terms and conditions set forth herein;

NOW THEREFORE THIS AGREEMENT WITNESSES that pursuant to Section 219 of the *Land Title Act*, and in consideration of the promises hereby contained, the parties agree as follows:

1. Definitions. In this Agreement:

“Development Parcel” means a legal parcel of the Lakes District Development Land designated as a Development Parcel in a Development Plan that meets the requirements of section 3(a) hereto.

“Development Parcel Covenant” means a covenant under section 219 of the *Land Title Act* in substantially the form set out at Appendix “3” to this Agreement.

“Development Plan” means a plan submitted to the Regional District under sections 3 and 4 hereof.

“Infrastructure” means water, sanitary sewer, drainage, road, hydro, gas and telecommunications infrastructure works.

“Park Land” means land that is designated on the Site Plan as “Park Land”.

“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.

“Site Plan” means the plan appended as Appendix “2” to this Agreement.

2. Section 219 Covenant. Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees with the Regional District that, for so long as this Section 219 Covenant has not been released from title, the Owner shall not build on any portion of the Lakes District Development Land (or any parcel created therefrom) for any residential or commercial use, and the Regional District is not obliged to issue any building permit in respect thereof, until:

- (a) the subject parcel has been serviced to the standards required in the Regional District’s Land Use and Subdivision Bylaw, as it applies to the Lands in light of any applicable phased development agreement, or any other applicable variances; or
- (b) the Regional District holds security from the Owner under a servicing agreement to provide such services.

3. Release of Development Cap Covenant. The Regional District covenants and agrees that it will forthwith provide the Owner with an executed Release of this Section 219 Covenant as regards one or more parcels of land within the Lakes District Development Land, when:

- (a) the Owner has submitted a Development Plan to the Regional District that:
 - (i) marks the parcel or parcels as a Development Parcel or Development Parcels; and
 - (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 that the Land Use and Subdivision Bylaw permits for the Lakes District Development Land;
- (b) the Owner has provided the Regional District with an executed Development Parcel Covenant 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 land that is marked on the Site Plan as Park Land; and
- (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.

4. Greater Certainty. The parties further agree that:

- (a) a Development Plan need not mark all of the parcels in the Lakes District Development Land as a Development Parcel;
- (b) the allocation of the ♦ 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 addition dwelling units shall not be taken into account in calculating the aggregate number of dwelling units available to other parcels under section 3(a)(ii).

5. Release for other reasons. The Regional District will provide the Owner with an executed Release of this Section 219 Covenant:
 - (a) as against any portion of the Lakes District Development Land that the Regional District or any other government authority seeks to acquire by way of expropriation; and
 - (b) in its entirety, if the Land Use and Subdivision Amendment Bylaw is quashed or set aside by a Court of competent jurisdiction.
6. Infrastructure. Notwithstanding section 2 hereof, the Owner shall be entitled to build on or use the Lands for the purposes of constructing Infrastructure related to a subdivision that has been approved by the Approving Officer.
7. Impact on Market Value. If the Regional District or any other government authority seek to acquire any or all of the land that is subject to this Section 219 Covenant, other than by way of a required dedication or transfer under section 941 of the *Local Government Act*, the price of acquisition and market value of the land will be determined as if this Section 219 Covenant was not registered against it.
8. Run with Lands. This Covenant is granted voluntarily by the Owner to the Regional District pursuant to Section 219 of the *Land Title Act* of the Province of British Columbia and shall run with the Lands.
9. Binding Effect. This Covenant shall enure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns, provided however that nothing herein obliges the Regional District to enforce this Agreement.
10. Further Acts. The Owner and the Regional District shall do all further acts as may be necessary for carrying out this Covenant, including without limitation execution of all required documents and alterations required to achieve registration at the Land Title Office. The Owner agrees to do everything reasonably necessary, at the Owner's expense, to ensure that this Agreement is registered against title to the Land with priority over all financial charges, liens and encumbrances registered, or the registration of which is pending, at the time of application for registration of this Agreement.
11. Appendices. The following schedules are annexed to and form part of this Covenant:

Appendix "1" – Lakes District Development Land

Appendix "2" – Site Plan

Appendix "3" – Form for Development Parcel Covenant

12. Severability. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
13. Indemnity, Release and Liability. The Owner releases, and must indemnify and save harmless, the Regional District, its elected and appointed officials and employees, from and against all liability, actions, causes of action, claims, damages, expenses, costs, debts, demands or losses suffered or incurred by the Owner, or anyone else, arising from the granting or existence of this Agreement, or any default of the Owner under or in respect of this Agreement. The parties agree that this Agreement creates obligations arising out of the nature of this document as a section 219 covenant only. The parties agree that no tort obligations or liabilities of any kind exist between the parties in connection with the performance of, or any default under or in respect of, this Agreement. The intent of this section is to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law pertaining to section 219 covenants.
14. Interpretation. In this Covenant:
 - (a) the headings and captions are for convenience only and do not form a part of this Covenant and will not be used to interpret, define or limit the scope, extent or intent of this Covenant or any of its provisions;
 - (b) the word "including" when following any general term or statement is not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar terms or matters but rather as permitting it to refer to other items or matters that could reasonably fall within its scope;
 - (c) a reference to a statute includes every regulation made pursuant thereto, all amendments to the statute or to any such regulation in force from time to time and any statute or regulation that supplements or supersedes such statute or any such regulation;
 - (d) a word importing the masculine gender includes the feminine or neuter, and a word importing the singular includes the plural and vice versa; and
 - (e) every reference to each party hereto shall be deemed to include the officers, employees, elected officials, agents, servants, successors and assigns of that party.

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

APPENDIX "1": LAKES DISTRICT DEVELOPMENT LAND

[◆ This will set out the legal description of Lakes District Development Land.]

APPENDIX "2": SITE PLAN

The attached Appendix "2" shows the areas referred to as "Park Land"

[Insert a plan showing the Lakes District Park Land]