

SCHEDULE "S": CONSTRUCTION COVENANT

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

TERMS OF INSTRUMENT - PART 2

THIS AGREEMENT is dated for reference the ____ day of _____, 2013.

BETWEEN:

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

("BCIMC")

AND

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

("3536696")

(BCIMC and 3536696 are collectively the "Owner")

AND

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

(the "Regional District")

WHEREAS:

- A. The Owner is the registered owner of those lands and premises 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 this Terms of Instrument is attached (the "Lands");
- B. Section 219 of the *Land Title Act*, R.S.B.C. 1996, c. 250 and amendments thereto (the "**Land Title Act**"), state that a covenant in favour of a municipality, may be registered as a charge against the title to the land and is enforceable against the covenantor and its successors in title even if the covenant is not annexed to land owned by the municipality; and

- C. The Owner wishes to subdivide the Lands, and the Owner has agreed to grant this Section 219 Covenant against the Lands in connection therewith.

NOW, THEREFORE, pursuant to Section 219 of the *Land Title Act* and in consideration of \$1.00 now paid by the Regional District to the Owner, the receipt and sufficiency of which is hereby acknowledged, and of the premises herein contained, the parties covenant and agree as follows:

1. Definitions.

In this Agreement:

- (a) “**CEMP**” means the Construction Environment Management Plan that is attached at Appendix “1” to this Agreement;
- (b) “**Qualified Environmental Professional**” or “**QEP**” means a Qualified Environmental Professional recognized as such in connection with the Riparian Areas Regulation (British Columbia);
- (c) “**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 is therefore 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;
- (d) “Subdivision Infrastructure Works” means works to service a subdivision of the Lands

2. Owner’s Covenant.

The Owner covenants and agrees with the Regional District that, except as may be consented to by the Regional District in writing:

Construction

- (a) the Lands shall be built on only in accordance with this covenant;

CEMP

- (b) the Owner will not construct Subdivision Infrastructure Works to service the subdivision of the Lands except:
 - (i) in compliance with the CEMP;
 - (ii) where the CEMP has been included in construction tender documents so as to require contractor adherence to the CEMP; and

- (iii) unless a Qualified Professional has been engaged to monitor the compliance of construction activities with the CEMP, and to prepare a written report on the compliance of construction activities with the CEMP after construction has been completed;

Wildlife trees

- (c) the Owner will not construct Subdivision Infrastructure Works to service the subdivision of the Lands except where the Owner has retained a Registered Professional Biologist to:
 - (i) identify the number of wildlife trees (being trees to which section 34 of the *Wildlife Act* apply) that are planned for removal;
 - (ii) determine equivalent compensation for the removal, which may include wildlife habitat restoration on adjacent land or nearby park land, including the provision of nest boxes or other wildlife habitat restoration;
 - (iii) provide for the salvaging of amphibians in and around wetlands, creeks and riparian habitats, to the extent considered appropriate by the Registered Professional Biologist; and
 - (iv) prepare a written report on the compliance of construction activities with the provisions of this subsection and subsection (d); and
- (d) the Owner will not construct Subdivision Infrastructure Works to service the subdivision of the Lands except where prior to the conclusion of the construction of Subdivision Infrastructure Works, the Owner carries out the equivalent compensation in keeping with the determination of the Registered Professional Biologist, provided however that if the Registered Professional Biologist determines that the compensation should occur on park land, then the carrying out of the compensation shall be subject to the permission of the Regional District, which the Regional District shall not unreasonably withhold;

Riparian Areas

- (e) where the Riparian Areas Regulation (British Columbia) requires
 - (i) a pre-construction assessment of tree retention and tree management by an arborist, and
 - (ii) disturbed riparian habitat to be restored in keeping with the recommendations of a QEP,

the Owner will cause such an assessment, and such restoration, to occur;

Heritage conservation

- (f) the Owner will not construct (or apply for a building permit to construct) a residential dwelling on a parcel that is identified in a Preliminary Field Reconnaissance as requiring an Archaeological Field Assessment until:
 - (i) a Heritage Inspection Permit has been issued by the British Columbia Archaeological Branch for an Archaeological Impact Assessment of the Lands, or such portion thereof as requires such a permit; and
 - (ii) the elements of the Archaeological Impact Assessment that could reasonably be impacted by the construction authorized by the building permit, if any, have been completed; and

Priority

- (g) the Owner will, at the sole expense of the Owner, do or cause to be done all acts reasonably necessary to register this Agreement in priority to all financial charges and encumbrances registered against the title to the Lands in the Lower Mainland Land Title Office, which for greater certainty does not include charges or encumbrances in favour of the Regional District or other governmental authority or those approved in writing by the Regional District.

3. **Indemnity.**

The Owner hereby agrees to indemnify and save harmless the Regional District, and its elected and appointed officials, officers, employees, and agents from and against any loss, damage, debts, claims, liabilities, obligations, costs or causes of action which the Regional District and its elected and appointed officials, officers, employees and agents, or any of them, may suffer, incur, or be put, arising, whether directly or indirectly, out of a breach of any covenant or condition of this Agreement by the Owner or its directors, officers, employees, or agents, or any other person for whom it is legally responsible.

4. **Other.**

It is further understood and agreed between the parties hereto that:

- (a) Covenants run with the Lands: The covenants contained in this Agreement charge the Lands pursuant to Section 219 of the *Land Title Act* and are covenants the burden of which run with the Lands. It is expressly agreed that the benefit of all covenants made by the Owner in this Agreement will accrue solely to the Regional District and this Agreement may only be modified or discharged by agreement of the Regional District, pursuant to the provisions of Section 219(9) of the *Land Title Act*;
- (b) Liability During Currency of Ownership: Notwithstanding anything contained in this Agreement, the Owner will not be liable under any of the covenants contained in this Agreement where such liability arises after the Owner ceases to have any further interest in the Lands;

- (c) Subdivision of Lands: This Agreement burdens and charges any parcel into which the Lands are subdivided by any means and upon which any portion of the Covenant Area is located;
- (d) Notice: Whenever it is required or desired that either party shall deliver or serve a notice on the other, delivery or service shall be deemed to be satisfactory if, and deemed to have occurred when:
 - (i) the Owner or the Corporate Officer of the Regional District has been served personally, on the date of service; or
 - (ii) mailed by prepaid registered mail, on the date received or on the sixth day after receipt of mailing by any Canada post office, whichever is earlier (except that in the event of interruption of mail service, notice shall be deemed to be delivered only when actually received by the party to whom it is addressed), so long as the notice is mailed to the party at the most recent address shown on title to lands in the records of the Lower Mainland Land Title Office for the party, or to whatever address the parties may from time to time advise in writing;
- (e) No Derogation of Power: Nothing contained or implied herein will prejudice or affect the rights and powers of the Regional District in the exercise of its functions under any public and private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner;
- (f) Applicable Law: This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia;
- (g) Enurement: This Agreement will enure to the benefit of and be binding upon the parties to this Agreement and their respective successors and assigns;
- (h) Number and Gender: Wherever the singular or masculine is used in this Agreement, the same will be construed as meaning the plural, feminine or body corporate or politic where the context of the parties so require;
- (i) Amendments only in Writing: It is expressly agreed that the benefit of all covenants made by the Owner herein shall accrue to the Regional District and that this Agreement may only be modified or discharged by agreement of the Regional District and the Owner witnessed in writing;
- (j) No Duty to Enforce: The Owner hereby covenants and agrees with the Regional District that the Regional District is under no obligation in law or equity to prosecute or enforce the terms of this Agreement in any way;
- (k) Further Documents: The parties will do and cause to be done all things and execute and cause to be executed all documents which may be necessary to give proper effect to the intention of this Agreement; and

- (l) Severance: If any section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion will be severed and the provision that is invalid will not affect the validity of the remainder of the Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement on Forms C and D to which this Agreement is attached and which form part of this Agreement, effective as of the date first above written.

APPENDIX "1"

[INSERT CONSTRUCTION ENVIRONMENT MANAGEMENT PLAN]