

LICENCE TO USE

LA SELVA PLACE TRAIL

THIS AGREEMENT dated for reference the ____ day of _____, 2022.

BETWEEN:

THE OWNERS, STRATA PLAN VIS 4626

2498 Nuttall Drive
NanOOSE Bay, B.C.
V9P 9B4

(the "**Strata**")

OF THE FIRST PART

AND:

REGIONAL DISTRICT OF NANAIMO

6300 Hammond Bay Road
Nanaimo, B.C.
V9T 6N2

(the "**Regional District**")

OF THE SECOND PART

WHEREAS:

- A. The Strata are the owners of the common property of the land described in Schedule "A" and shown outlined in red on the map in Schedule "B" (the "Lands");
- B. The Regional District wishes to be granted a non-exclusive Licence to Use those portions of the Lands described in Schedule "C" (the "Trail Corridor") for the purpose of developing and operating a pedestrian and cyclist trail, and the Strata has agreed.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the fee paid by the Regional District to the Strata and in consideration of the premises and covenants and agreements contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree with each other as follows:

1.0 RIGHT TO USE THE TRAIL CORRIDOR

- 1.1 The Strata, subject to the performance and observance by the Regional District of the terms, conditions, covenants and agreements contained in this Agreement and to earlier termination as provided in this Agreement, grants to the Regional District a non-exclusive right by way of licence for the Regional District, its agents, employees, contractors, invitees, and members of the public to make use of the Trail Corridor for the purpose of maintaining, using and occupying the Trail Corridor as a publicly accessible pedestrian and bicycle trail.

2.0 RESERVATION OF RIGHTS

- 2.1 The Strata will not do or knowingly permit to be done any act or thing which will interfere with, damage or prevent access to or the use of the Trail Corridor contemplated under this Agreement. Without limiting the generality of the foregoing, the Strata will not construct any improvements or structures within the Trail Corridor that would interfere with, damage or prevent access to or the use of the Trail Corridor contemplated under this Agreement. The Strata will not carry out any blasting on or adjacent to the Trail Corridor without the consent in writing of the Regional District, and the consent shall not be unreasonably withheld.
- 2.2 The Regional District acknowledges that this Agreement creates no interest in the Lands and the Strata may fully use and enjoy all of the Lands subject only to the rights and restrictions of this Agreement.
- 2.3 The Strata from time to time and at all times at the reasonable request and at the cost of the Regional District, will do and execute or cause to be made, done or executed any further and other lawful acts, deeds, things, devices, conveyances and assurances in law required to ensure the Regional District of its rights under this Agreement.

3.0 LICENCE FEE

- 3.1 In consideration of the right to use the Trail Corridor, the Regional District shall pay to the Strata a licence fee of One Dollar (\$1.00), payable in advance, on the first day of the Term.

4.0 TERM

- 4.1 The Term of the Licence granted under this Agreement shall be five (5) years commencing on the _____ day of _____, 2022 and ending on the _____ day of _____, 2027, unless earlier terminated under this Agreement.

5.0 IMPROVEMENTS

- 5.1 The Regional District may improve the Trail Corridor by constructing the improvements and taking the steps described in Schedules "C" and "D". The Regional District may construct additional improvements with the permission of the Strata.
- 5.2 The Regional District shall not construct or place any buildings or structures or make any improvements on the Lands, except those existing at the date of this Agreement and referred to in Schedules "C" and "D", unless otherwise agreed to in writing between the parties.
- 5.3 The Regional District shall not fell or remove trees or large woody debris found on the Trail Corridor, or bring on or deposit any soil or fill on the Trail Corridor, or clear the Trail Corridor except for the purposes expressed in sections 5.1, 5.2, and Schedules "C" and "D" without the written permission of the Strata.
- 5.4 Notwithstanding anything in sections 5.1, 5.2, and 5.3 above and after making reasonable effort to contact the Strata, the Regional District shall have the right to take immediate action in removing any hazard on the Trail Corridor to public use of the Trail Corridor. Without limiting the foregoing, the Regional District may cut any tree that in its opinion constitutes a danger to users of the Trail Corridor, whether or not the tree is located within the Trail Corridor or elsewhere on the Lands. Except in the event of an emergency, no such tree shall be cut without reasonable notice to the Strata. The tree cut shall be the property of the Strata. In exercising its rights hereunder, the Regional District shall cause a minimum amount of damage and shall clean up and remove any debris.

5.5 Without limiting section 5.4 and notwithstanding section 5.3, in the event that a tree falls and blocks or obstructs the pedestrian and cycling trail contained within the Trail Corridor (the "Trail"), the Regional District is entitled to cut the tree and remove any parts which obstruct the Trail, Corridor however, the Regional District will leave the portions of the cut tree on the Lands and will not appropriate the timber for value.

5.6 The Strata agree that all approvals contemplated in this section are not to be unreasonably withheld.

6.0 OPERATIONS AND MAINTENANCE

6.1 The Regional District shall be solely responsible for the operation and maintenance of the Trail signage, structures and other improvements developed and installed along the Trail Corridor by the Regional District.

6.2 The Regional District may maintain the signage referred to in Schedule "D" and may post signage along the Trail Corridor as required to advise the public about conditions, hazards and user restrictions as they may occur from time to time.

6.3 The Regional District shall respond without delay whenever contacted by the Strata with a concern about the state of the Trail.

6.4 The Regional District shall also respond without delay to any complaints received from the Strata or the public about the public's use of the Trail Corridor, and shall be responsible for temporarily closing the Trail Corridor as required in order to deal with user issues.

7.0 PUBLICITY

7.1 The Regional District may promote the Trail within Electoral Area 'E' as community trail. The Regional District shall inform the public about the private ownership of the Lands and request that the public respect private property.

8.0 INDEMNIFICATION

8.1 The Regional District will indemnify and save harmless the Strata, their officers, employees and agents from and against all lawsuits, damages, costs, expenses, fees or liabilities which the Strata may incur, suffer or allege by reason of the use of the Trail Corridor by the Regional District, its officers, agents, employees, contractors, invitees or any member of the public or the carrying on upon the Trail Corridor of any activity in relation to the Regional District's use of the Trail Corridor, or the Regional District's non-compliance with any legal requirements, or breach of the Agreement by the Regional District except to the extent that such lawsuits, damages, costs, expenses, fees or liabilities are caused or contributed to by the Strata or any employees, agents or invitees of the Strata.

8.2 The Regional District agrees to take out and maintain during the Term, a policy of comprehensive general liability insurance against claims for personal injury, death or property damage arising out of the use and occupancy of the Trail Corridor by the Regional District in the amount of not less than Five Million Dollars (\$5,000,000.00) per single occurrence, naming the Strata as an additional insured party thereto and shall provide the Strata with a Certificate of Insurance.

9.0 NOTICES

9.1 It is hereby mutually agreed:

Any notice required to be given under this Agreement shall be deemed to be sufficiently given if mailed from any government post office in the Province of British Columbia by prepaid registered mail addressed as follows:

- (i) if to the Strata:
2498 Nuttal Drive
NanOOSE Bay, B.C. V9P 9B4
- (ii) if to the Regional District:
6300 Hammond Bay Road
Nanaimo, B.C. V9T 6N2

or at the address a party may from time to time designate, then the notice shall be deemed to have been received seventy-two hours after the time and date of mailing. If, at the time of mailing the notice, the delivery of mail in the Province of British Columbia has been interrupted in whole or in part by reason of a strike, slow-down, lock-out or other labour dispute, then the notice may only be given by actual delivery of it.

10.0 TERMINATION

- 10.1 If the Regional District is in default on the payment of the Licence fee, or the payment of any other sum payable under this Agreement, or is in breach of this Agreement, and if the default continues for a period of 30 days after the giving of notice by the Strata to the Regional District, then the Strata may terminate this Agreement and the rights of the Regional District with respect to the Lands shall lapse and be absolutely forfeited.
- 10.2 This Licence may be terminated for any reason by the Strata or the Regional District at any time upon one (1) month's written notice to the other party.

11.0 RENEWAL

- 11.1 This Agreement may be renewed for a term of five (5) years upon mutual agreement by both parties.

12.0 WAIVER

- 12.1 Waiver of any default by a party shall not be interpreted or deemed to be a waiver of any subsequent default.

13.0 FORFEITURE

- 13.1 The Strata, by waiving or neglecting to enforce any provision of this Agreement does not waive the Strata's rights upon any subsequent breach of the same or any other provision of this Agreement.

14.0 FIXTURES AND CLEAN UP

- 14.1 Should this Agreement be terminated and not replaced by a new agreement, the Regional District may remove any structures or improvements constructed on the Trail Corridor as referenced under this Agreement. Any structures or improvements not so removed by the Regional District shall become the sole property of the Strata at no cost to the Strata.
- 14.2 Should this Agreement be terminated and not replaced by a new agreement, the Regional District shall clean up and restore the Trail Corridor as reasonably as may be possible to the condition of the Trail Corridor prior to the development of the Trail Corridor, with the exception of structures

or improvements that the Regional District has not removed under section 14.1 of this Agreement.

15.0 INTERPRETATION

- 15.1 (a) Where the singular or neuter are used in this Agreement they include the plural or the feminine or the masculine or the body politic where the context or the parties require.
- (b) The headings to the clauses in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.
- (c) This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors, administrators and permitted assignees.
- (d) This Agreement shall be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- (e) All provisions of this Agreement are to be construed as covenants and agreements as though the word importing covenants and agreements were used in each separate paragraph.

IN WITNESS WHEREOF the parties hereto have set their hands as follows:

THE OWNERS, STRATA PLAN VIS4626, this _____ day
of _____ 2022, by its authorized
signatories:

Name:

Name:

The **REGIONAL DISTRICT OF NANAIMO**, this _____ day
of _____ 2022, by its authorized
signatories:

Board Chair

Corporate Officer

SCHEDULE "A"
Legal Description of the Lands

COMMON PROPERTY, DISTRICT LOT 52, NANOOSE DISTRICT, PLAN VIS4626

SCHEDULE "B" Map of the Lands



Area in red: COMMON PROPERTY, DISTRICT LOT 52, NANOOSE DISTRICT, PLAN VIS4626

SCHEDULE "C"
The Trail Corridor

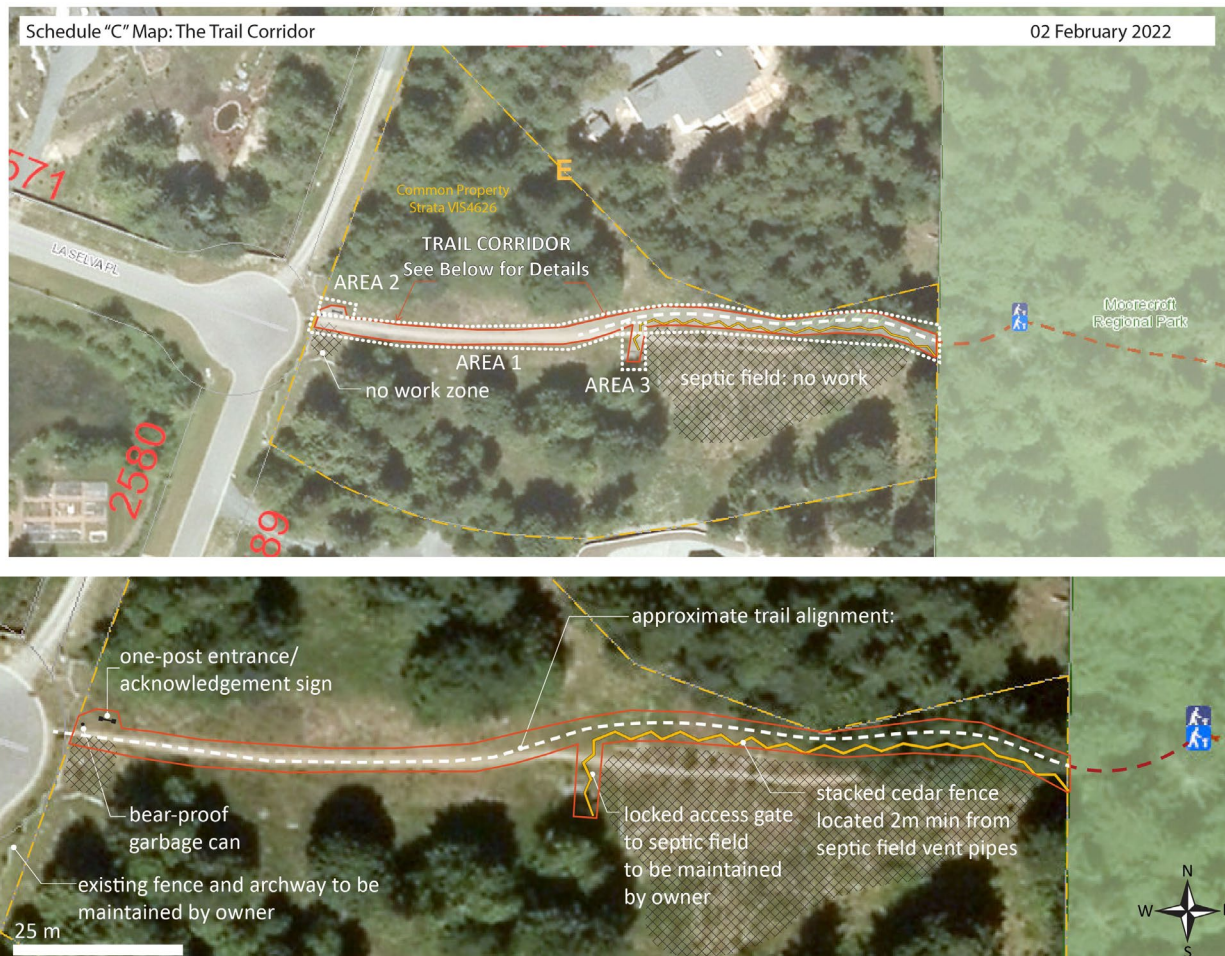
For the purpose of this Agreement, the Trail Corridor shall consist of the three areas depicted in Schedule "C" Map attached.

Area 1: An approximate four and one half (4.5) metre wide strip of land incorporating a developed fenced trail and running approximately 150 metres from the western to eastern boundaries of the Strata common property.

Area 2: An approximate six (6) metre long by two (2) metre wide area of land located at the western trailhead to accommodate trailhead amenities (garbage and sign).

Area 3: An approximate six (6) metre long by three (3) metre wide area of land located at the at the mid-way point of the trail corridor to accommodate additional fencing around the septic field.

SCHEDULE "C" Map The Trail Corridor



SCHEDULE "D"

Trail Improvements

1. Fencing

Beginning approximately mid-way across the Trail Corridor, a stacked 2-rail cedar fence is installed to direct trail users and provide a visual and physical barrier to the septic field area. The fence is a minimum distance of two (2) metres north of the septic field vents.

2. Trail General

Overall, the trail is approximately 150m long, and connects with an existing trail in Moorecroft Regional Park. The trail is surfaced with crushed gravel (cart path) and sloped to drain. Tread width is 1.2 to 1.5m. Vegetation within 0.5m of the trail margins (not including trees) will be maintained at near-ground level and to ensure a vertical clearance of 2.5m.

4. Garbage Receptacle

One bear-proof "Hid-A-Bag™" waste container is located at the La Selva Place trailhead as indicated in Schedule "C" Map.

5. Signage

An information and acknowledgement sign, including the Regional District's logo and phone number, the trail name, user restrictions and thanks to the Strata, is located at the La Selva Place trailhead as indicated in Schedule "C" Map.