

**LICENCE TO USE
LANDS FOR TRANS CANADA TRAIL**

THIS AGREEMENT dated for reference the ____ day of _____, 2018.

BETWEEN:

**GAYLE ANNE BRASE and
PETER CHRISTOPHER BRASE**

5775 David Road
Ladysmith, B.C.
V9G 1M1

(the "**Landowners**")

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 Landowners are the owners of that parcel of land described in Schedule "A" and shown outlined in red on the map in Schedule "B" (the "**Lands**"); and
- 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 pedestrian, mountain biking and equestrian trail, part of the Trans Canada Trail, and the Landowners have agreed.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the fee paid by the Regional District to the Landowners 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 Landowners, 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, grant to the Regional District a non-exclusive right by way of licence for the Regional District, its agents, employees, contractors, and invitees to make use of the Trail Corridor for the purpose of publicly accessible recreational trail operated by the Regional District under its regional parks function.

2.0 RESERVATION OF RIGHTS

- 2.1 The Landowners reserve to themselves from the grant and the covenants made by them to the Regional District under clause 1.1 above, the right for the Landowners, their agents, employees, contractors and invitees to have full and complete access to the Lands with respect to all of the Landowners' purposes and activities.
- 2.2 The Regional District acknowledges that this Agreement creates no interest in the Lands and that in the event the Landowners sell the Lands, the Regional District would be responsible for securing a new agreement with the new landowners or removing the Trail Corridor as per Section 12.0 below before a change in the possession of the Lands occurs.

3.0 RIGHTS OF WAY

- 3.1 The Landowners and the Regional District acknowledge the existence on the Lands of the non-exclusive Statutory Right of Way ES116196 in favour of Island Timberlands GP Ltd., and Island Timberlands' endorsement attached hereto as Schedule "D" of the use of this right of way for the purpose of Trail Corridor.

4.0 LICENSE FEE

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

5.0 TERM

- 5.1 The Term of the License granted under this Agreement shall be two (2) years commencing on the ____ day of _____, 2018 and ending on the ____ day of _____, 2020 unless earlier terminated under this Agreement.

6.0 IMPROVEMENTS

- 6.1 The Regional District shall not construct or place any structures on or make any improvements to the Lands unless agreed to in writing between the parties.
- 6.2 The Regional District shall not fell or remove trees or large woody debris found on the Lands, or bring on or deposit any soil or fill on the Lands, or clear the Lands without the written permission of the Landowners. The Regional District shall have the right to trim vegetation in order to ensure clear passage along the Trail Corridor.

- 6.3 The Regional District shall maintain signage along the Trail Corridor that identifies and highlights the location of the public trail route and user restrictions, provides Regional District and emergency contact information, and gratefully acknowledges the Landowners' permission to allow private lands to be used for public trail access.
- 6.4 Notwithstanding anything in Section 6.1, 6.2 and 6.3 above and after making reasonable effort to contact the Landowners, the Regional District shall have the right to take immediate action in removing any hazard on the Lands to public use of the Trail Corridor.
- 6.5 The Landowners agree that all approvals contemplated in this section are not to be unreasonably withheld.

7.0. OPERATIONS AND MAINTENANCE

- 7.1. The Regional District shall be solely responsible for the operation and maintenance of the trail and signage along the Trail Corridor.
- 7.2. The Regional District shall undertake quarterly inspections of the Trail Corridor in order to ensure the trail is free of hazards and signage is in place and in good order. The Regional District shall contact the Landowners semi-annually to review condition and discuss any required improvements.
- 7.3. Notwithstanding anything in Section 7.2 above, the Regional District shall respond without delay whenever contacted by the Landowners with a concern about the state of the Trail Corridor.
- 7.4. The Regional District shall also respond without delay to any complaints received from the Landowners 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 problems.
- 7.5. When the Coastal Fire Centre advises that wildfire risk is becoming extreme, the Regional District posts "no-smoking" signs at all parks and trails managed by the Regional District and issues public notices about the smoking ban and elevated wildfire risk. The Regional District shall ensure such "no-smoking" signs are posted on the Trail Corridor section of the Trans Canada Trail.
- 7.6. During periods of extreme wildfire risk and at the direction of the Landowners, the Regional District shall close the Trans Canada Trail by posting "trail closed" signs on the Trail Corridor and elsewhere on the Trans Canada Trail between Timberlands Rd and the Haslam Creek Bridge, issuing public notices to that effect, and maintaining information about trail access on the Regional District web site.
- 7.7. The Regional District shall notify the Landowners of any plans to change the location of the Trans Canada Trail route either side of the Trail Corridor in particular plans to use the Fortis BC statutory right-of-way flanking the Lands to the north and west and showing in Schedule B Map of Lands.

8.0 REGULATION

- 8.1 The Regional District shall regulate and enforce public use of the Trail Corridor in accordance with *Park Use Regulations Bylaw No. 1399, 2004* and *Park Use Regulations Amendment Bylaw 1399.01, 2009*, as well as any subsequent *Bylaw No. 1399* amendments.
- 8.2 Bylaw 1399 provides for special use of parks and trails for events and other uses, and the Regional District shall notify the Landowners when application is made for a special use of the Trans Canada Trail that involves the Trail Corridor.

9.0 PROMOTION

- 9.1 The Regional District may promote the Trail Corridor as part of the Trans Canada Trail, also known as The Great Trail, a regional trail situated in Electoral Area C of the Regional District. The Regional District shall inform the public about the private ownership of lands used for the Trans Canada Trail and advocate for respect of private property.

10.0 INDEMNIFICATION

- 10.1 The Regional District releases and will indemnify and save harmless the Landowners, their officers, employees and agents from and against all lawsuits, damages, costs, expenses, fees or liabilities which the Regional District or anyone else 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 Lands of any activity in relation to the Regional District's use of the Lands, 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 Landowners or any employees, agents or invitees of the Landowners.
- 10.2 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 Landowners as an additional insured party thereto and shall provide the Landowners with a Certificate of Insurance.

11.0 NOTICES

- 11.1 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 Landowners:
- 5775 David Road
Ladysmith, B.C.
V9G 1M1

(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.

12.0 TERMINATION

12.1 If the Regional District is in default on the payment of the License 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 Landowners to the Regional District, then the Landowners may terminate this Agreement and re-enter the Lands and the rights of the Regional District with respect to the Lands shall lapse and be absolutely forfeited.

12.2 This Licence may be terminated for any reason by the Landowners or the Regional District at any time upon one (1) month's written notice to the other party.

13.0 RENEWAL

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

14.0 WAIVER

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

15.0 FORFEITURE

15.1 The Landowners, by waiving or neglecting to enforce the right to forfeiture of this Agreement or the right of reentry upon breach of this Agreement, do not waive the Landowners' rights upon any subsequent breach of the same or any other provision of this Agreement.

16.0 FIXTURES AND CLEAN UP

16.1 Should this Agreement be terminated and not replaced by a new agreement, the Regional District will remove any signage placed 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 Landowners at no cost to the Landowners.

17.0 INTERPRETATION

17.1 (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) This Agreement shall not be interpreted as granting any interest in the Land to the Regional District.
- (f) 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:

Signed this _____ day of _____, 2018)

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Gayle Anne Brase

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Peter Christopher Brase

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The **REGIONAL DISTRICT OF NANAIMO,**

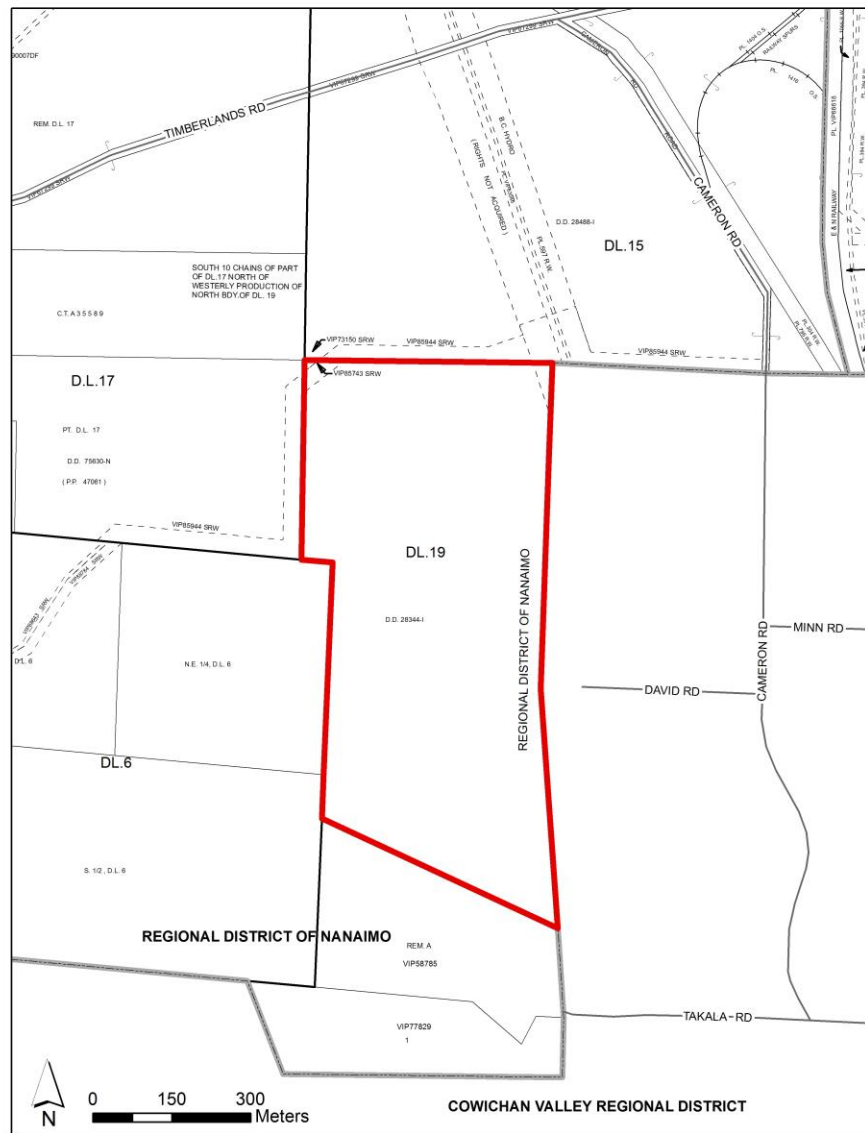
this _____ day of _____ 2018,

by its authorized signatories:

SCHEDULE "A" Legal Description of the Lands and Parcel Identifier

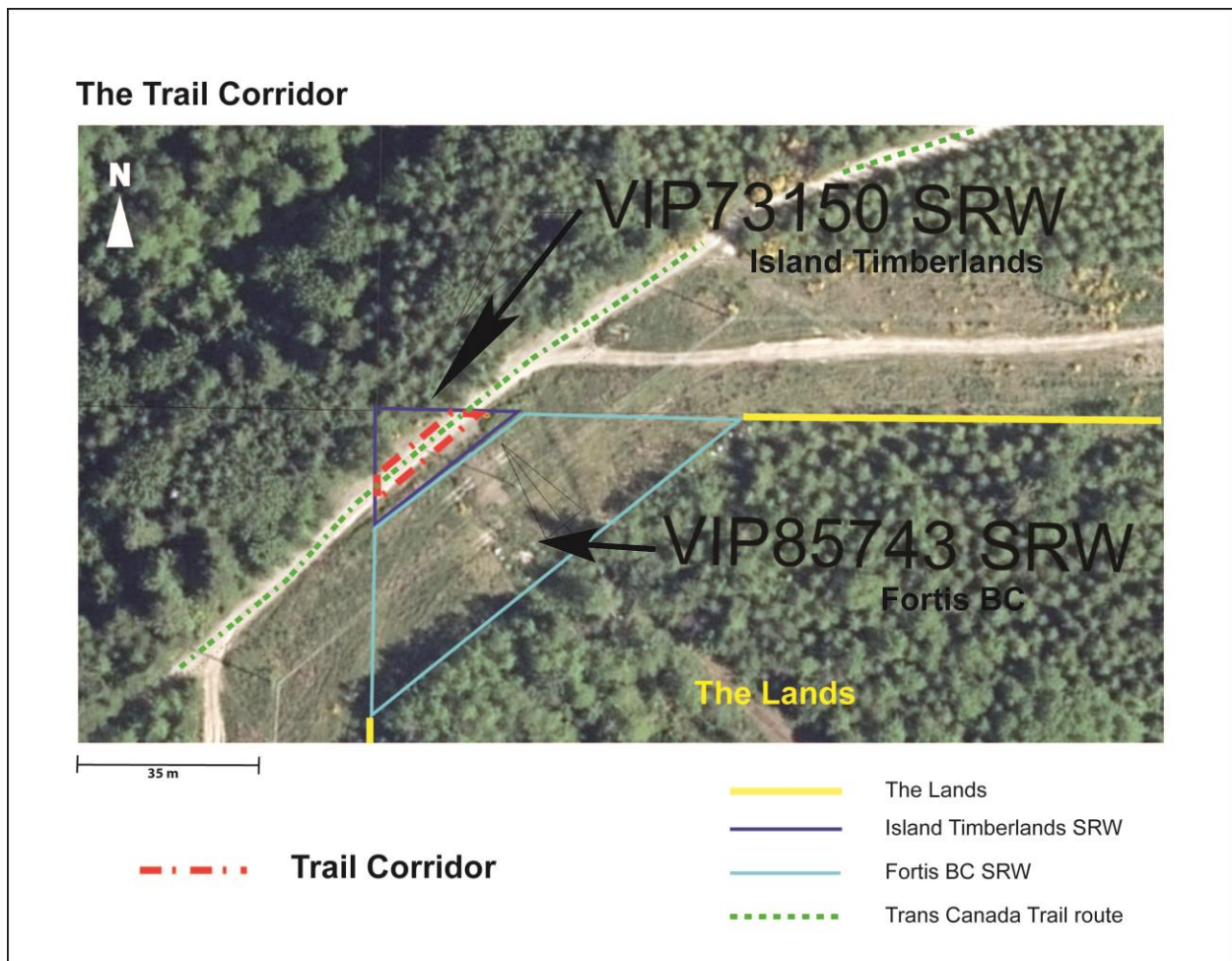
That part of District Lot 19, Bright District, lying to the north of a straight boundary joining a point on the westerly boundary of said Lot 19 distant 16 chains northerly from the south east corner of Lot 6, of said District to a point on the westerly boundary of Lot 12 of said District distant 14 chains northerly from the south east corner of said Lot 19. Parcel identifier 000-875-872.

SCHEDULE "B" Map of the Lands



SCHEDULE "C" The Trail Corridor

For the purpose of this Agreement, the Trail Corridor shall consist of approximately 25 m of existing gravel road running through Statutory Right of Way ES116196 (VIP73150 SRW) and shown in red in the map below.



SCHEDULE "D"

Island Timberlands Endorsement of Use of SRW ES116196 For Trans Canada Trail

From: [White, Pip](#)
To: [Michel, Joan](#)
Subject: Statutory Right of Way ES116196
Date: Thursday, August 16, 2018 11:44:51 AM
Attachments: [jmae001.png](#)

To whom it may concern:

This is to confirm that Island Timberlands recognizes and supports the use of the existing road through Statutory Right of Way ES116196 for the purpose of the Trans Canada Trail

Pip White
Director, Real Estate



65 Front Street, 4th Floor, Nanaimo, BC, Canada, V9R 5H9
M: 250.588.7683 T: 250.755.3546 F: 250.755.3540
pwhite@islandtimberlands.com

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