

## LAND IMPROVEMENT AGREEMENT

**THIS AGREEMENT** made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the Cowichan Valley Regional District ("CVRD") and Schnitzer Steel Canada, Ltd. ("SSC"), collectively referred to as "the Parties".

**WITNESSETH:**

- A. **WHEREAS**, SSC is the registered tenant and operator of those lands and premises located within the CVRD, in the Province of British Columbia, more particularly described as:

PID 008-903-603

THAT PART OF LOT 9 OYSTER DISTRICT LYING TO THE WEST OF THE WESTERLY BOUNDARY OF LOT 1 PLAN 2169 AND TO THE SOUTH OF THE SOUTHERLY BOUNDARY OF LOT 3 OF SAID PLAN EXCEPT THE SOUTH 10 CHAINS THEREOF AND EXCEPT PLAN 50801 AND VIP76340

(the "Lands");

- B. **WHEREAS**, SSC has applied to the Board of the CVRD for an amendment to the terms of CVRD Official Community Plan Bylaw No.1497 (referred to as: "CVRD Bylaw No. 4194 – Electoral Area H – North Oyster/Diamond Official Community Plan Amendment Bylaw (13271 Simpson Road), 2018"), and for an amendment to the terms of CVRD Zoning Bylaw No. 1020 (referred to as: "CVRD Bylaw No. 4195 Electoral Area H – North Oyster/Diamond Zoning Amendment Bylaw (13271 Simpson Road), 2018")
- C. **WHEREAS**, to permit the use of the Lands for auto recycling and metal recycling including exterior storage (collectively referred to as the "Amendments");
- D. **WHEREAS**, the Parties wish to undertake, fully complete and/or oversee and approve certain improvements upon the Lands as condition subsequent to the Board of CVRD's approval of such Amendments; and therefore, set forth each Parties' rights, obligations, commitments, remedies and other such relief or actions in this Land Improvement Agreement ("Agreement").

**NOW THEREFORE**, the Parties mutually agree and consent as follows:

1. **Improvements.** SSC covenants and agrees that within 18 months following the Board of CVRD's approval of such Amendments, it shall:
  - a. Place pavement (asphalt or other impermeable material that is acceptable to CVRD), upon the areas of the Lands outlined and marked as "End-of Life Vehicle Storage Area" and "Equipment Maintenance Area" in Exhibit A, comprising, in total, an area of approximately 1858 square meters;

- b. Install an oil/water separator or catch basin sufficiently sized and designed to manage all storm water run-off from each paved area as described subsections 1(a) and (b), in compliance with applicable stormwater regulatory standards. Subsection 1(a), (b) and (c) are collectively referred to as "the Improvements";
- c. Complete all the Improvements set forth in Section 1 in accordance with standards generally accepted as good engineering practice, and to CVRD's satisfaction and approval, which will not be unreasonably withheld.
- d. This Agreement acknowledges that SSC has already placed pavement upon the areas of the Lands outlined and marked as "Non- Ferrous Storage Area" in Exhibit A, comprising, in total an area of approximately 1022 square meters;

2. **Letter of Credit.** SSC shall provide CVRD with a letter of credit (the "Letter of Credit") equaling 120% of the estimated cost to complete the Improvements, which is attached to this Agreement as Exhibit B. SSC further agrees that:

- a. the Letter of Credit must be kept in effect until CVRD issues written approval and acceptance of the Improvements, which will not be unreasonably withheld;
- b. CVRD may hold the Letter of Credit as security under this Agreement for the completion of the Improvements; and
- c. If SSC fails to complete the Improvements within the time specified under section 1 of this Agreement, unless extended by mutual agreement by the Parties in writing, CVRD may draw upon the Letter of Credit and utilize the funds for the completion of the Improvements.

3. **Access.** During the term of this Agreement, SSC shall permit CVRD, its agents or representatives to enter onto the Lands to inspect and evaluate whether the Improvements are being or have been constructed in accordance with the terms of this Agreement. CVRD shall give 72 hours written notice prior to entry and shall be conditioned upon approval by SSC, which shall not be unreasonably withheld. CVRD, its agents or representatives shall comply with all of SSC's safety requirements and guidelines while upon the Lands, which shall be provided prior to entry onto the Lands.

4. **Approval of Improvements & Agreement Termination.** Upon SSC's completion the Improvements set forth herein, CVRD shall be afforded the opportunity to conduct a final review subject to the terms and conditions in Section 3. Subsequent to the final review, the CVRD shall give final approval of the Improvements, in writing, and which will not be unreasonably withheld.

His Agreement shall terminate upon SSC's receipt of such final approval.

5. **Indemnification by SSC.** SSC shall indemnify and hold harmless CVRD from any and all claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees whatsoever which anyone has or may have against CVRD or which CVRD incurs as a result of any loss or damage or injury, including economic loss, arising out of or connected with:

- a. SSC's breach of any covenant in this Agreement; or
- b. any negligent, gross negligent or willful act or omission by SSC during completion of the Improvements contemplated under this Agreement.

6. **Indemnification by CVRD.** CVRD shall indemnify and hold harmless SSC from any and all claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees whatsoever which anyone has or may have against SSC or which SSC incurs as a result of any loss or damage or injury, including economic loss, arising out of or connected with:

- a. CVRD's breach of any covenant in this Agreement;
- b. any negligent, gross negligent or willful act or omission by CVRD while upon the Lands during completion of the Improvements contemplated under this Agreement.

7. **Non-Prejudicial.** Nothing contained or implied in this Agreement shall prejudice or affect the rights and powers of CVRD in the exercise of its functions under any public or private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands as if the Agreement had not been executed. Without limiting the foregoing, nothing in this Agreement relieves SSC from the requirements of the CVRD Bylaw No. 2570, Waste Stream Management Licensing Bylaw, 2004, as it may be amended or replaced from time to time, or from the requirement to apply for, obtain and comply with the terms and conditions of a Facility Licence under the said bylaw for SSC's recycling operations upon the Lands.

8. **Time.** Time is of the essence of this Agreement.

9. **Limitation of Representation.** It is mutually understood, acknowledged and agreed by the parties hereto that SSC has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with CVRD other than those contained in this Agreement.

10. **Waiver.** The waiver by a party of any breach of this Agreement or failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar, and no waiver shall be effective unless it is in writing signed by both

parties.

11. **Remedies.** No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law in in equity.

12. **Ancillary Documentation.** SSC agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.

13. **Severability.** If any part of this Agreement is found to be illegal or unenforceable, that part will be considered separate and severable and the remaining parts will not be affected thereby and will be enforceable to the fullest extent permitted by law.

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

15. **Execution.** This Agreement may be executed in counterpart with the same effect as if all parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement. This Agreement may be delivered by electronic means.

SSC and CVRD acknowledge this Agreement has been duly executed by signature of duly authorized representatives of the Parties below.

SIGNATURE BLOCK

SIGNATURE BLOCK

Schedule "A"  
Site Plan