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## **Section 219 Restrictive Covenant**

**Form C** is to accompany all covenants. For more information contact your legal professional or

B.C. Land Title office at:

Website: <https://ltsa.ca>

Phone 1-877-577-5872.

## TERMS OF INSTRUMENT - PART 2

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### WHEREAS:

- A. The Transferor is the registered owner in fee simple of the lands described in item 2, Part 1 of this Instrument (the "Lands");
- B. The Transferee is the Capital Regional District;
- C. The Transferee considers that the Lands may be subject to the risk of *[select one or more of: flooding, mud flows, debris flows, debris torrents, erosion, land slip, rock falls, subsidence or avalanche]*.
- D. The Transferor has obtained a report certified by a professional engineer or professional geoscientist with experience or training in geotechnical study and geohazard assessments (the "Qualified Professional") dated \_\_\_\_\_, a copy of which is attached hereto as Schedule 'A' recommending further geotechnical investigations to assess any proposed building location on the Lands to ensure it is safe from natural geohazards and to provide additional geotechnical recommendations in the safe use of land;
- E. The Transferee has requested and the Transferor has agreed to enter into this Agreement and to register it against the title to the Lands under section 219 of the *Land Title Act* to prohibit the construction, placement, alteration or addition of and to any building or structure on the Lands unless it has provided the Transferee with a report certified by Qualified Professional that the Lands may be used safely for the use intended if the Lands are used in accordance with the conditions specified in the Qualified Professional's report, and has entered into and registered against title to the Lands a covenant and indemnity pursuant to section 56 of the *Community Charter* and section 219 of the *Land Title Act*.
- F. The Transferor acknowledges that it is in the public interest that the development and use of the Lands be limited and wishes to grant this covenant and indemnity to the Transferee under Section 219 of the *Land Title Act*.

**NOW THEREFORE**, in consideration of the premises and the covenants herein contained and for other valuable consideration, receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereto covenant and agree with each other as follows:

- 1. The Transferor shall not construct, locate, or place any building or structure, or alter or add to any building or structure on the Lands unless the Transferor:
  - (a) provides a report certified by a Qualified Professional that the Lands may be used safely for the use intended by such construction, location, placement, alteration

or addition if used in accordance with the conditions specified in the Qualified Professional's report; and

- (b) enters into and registers against title to the Lands, in a form satisfactory to the Transferee, a covenant and indemnity pursuant to section 56 of the *Community Charter* and section 219 of the *Land Title Act*.
2. The Transferor shall, at its sole expense, do all that is necessary to ensure that this Agreement is registered against the Lands at the Victoria Land Title Office and in priority to all charges of a financial nature.
  3. The Transferor shall reimburse the Transferee for any expense that may be incurred by the Transferee as a result of a breach of a covenant under this Agreement.
  4. The Transferor acknowledges that the Transferee does not represent to the Transferor or any other person that any building or structure constructed or mobile home located on the Lands will not be damaged due to *[select one or more of: flooding, mud flows, debris flows, debris torrents, erosion, land slip, rock falls, subsidence or avalanche]*, and the Transferor covenants and agrees not to claim any damages or expenses from the Transferee or hold the Transferee responsible for damages or injury (including death) caused to the Lands or person(s) on the Lands or to any building, structure, mobile home, or improvement, built, constructed, located, or placed upon the Lands, and to any contents thereof.
  5. The Transferee may, at any time, without the consent of the Transferor or anyone, release or cause to be released or relax or cause to be relaxed, this Agreement as a charge against title to the Lands or any portion thereof and, upon such release or relaxation, this Agreement will be discharged and of no further force and effect or otherwise relaxed as the case may be.
  6. The Transferor and the Transferee agree that the enforcement of this Agreement will be entirely within the discretion of the Transferee and that the execution and registration of this Agreement against the title to the Lands must not be interpreted as creating any duty on the part of the Transferee to the Transferor or to any other person to enforce any provision or the breach of any provision of this Agreement.
  7. The Transferor hereby releases and forever discharges the Transferee of and from any claim, cause of action, suit, demand, expenses, costs and legal fees whatsoever that the Transferor can or may have against the Transferee for any loss or damage or injury that the Transferor may sustain or suffer arising out of the issuance of any permit or approval under this Agreement, the use of the Lands under this Agreement, the restrictions or requirements contained in this Agreement, or as result of *[select one or more of: flooding, mud flows, debris flows, debris torrents, erosion, land slip, rock falls, subsidence or avalanche]*.

8. The Transferor covenants and agrees to indemnify and save harmless the Transferee from any and all claims, causes of action, suits, demands, expenses, costs and legal fees whatsoever that anyone might have as owner, occupier or user of the Lands, or by a person who has an interest in or comes onto the Lands, or by any person that suffers loss of life or injury to its person or property, that arises out of the issuance of a permit or approval under this Agreement, the use of the Lands under this Agreement, the restrictions or requirements contained in this Agreement, or as a result of *[select one or more of: flooding, mud flows, debris flows, debris torrents, erosion, land slip, rock falls, subsidence or avalanche]*.
9. Nothing contained or implied herein will prejudice or affect the rights and powers of the Transferee 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 and delivered by the Transferor, and in particular, without limiting the generality of the foregoing, the Building Inspector of the Transferee may request further or additional reports be prepared by a Qualified Professional prior to the issuance of a building permit for the Lands.
10. It is mutually understood, acknowledged and agreed by the parties hereto that the Transferee has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Transferor other than those contained in this Agreement.
11. The Transferor agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
12. The Transferor shall pay the administration and legal fees and disbursements incurred by the Transferee in connection with this Agreement. This is a personal covenant between the parties.
13. The Transferor covenants and agrees for itself, its heirs, executors, successors and assigns, that it shall at all times perform and observe the requirements and restrictions hereinbefore set out and they are binding upon the Transferor as personal covenants only during the period of its respective ownership of any interest in the Lands.
14. The restrictions and covenants herein contained are covenants running with the Lands and will be perpetual, and continue to bind all of the Lands when subdivided, and must be registered in the Victoria Land Title Office pursuant to Section 219 of the *Land Title Act* as covenants in favor of the Transferee as a first charge against the Lands.
15. The expressions "Transferor" and "Transferee" are deemed to include the heirs, executors, administrators, successors and assigns of such parties; provided that all covenants herein contained and all agreements, provisos and other stipulations herein contained imposing an obligation or obligations on a party hereto are with the intent that the same are binding upon all persons who may for the time being be purchasers, assignees, transferees, lessees, occupiers or successors in title of the Transferor only

so long as any of them have any right, title or interest in or to the Lands, or any part thereof, as the case may be, either at law or in equity other than an interest by way mortgage or the interest of the vendor under an agreement for sale.

16. 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 is effective unless it is in writing signed by both parties.
17. Wherever the singular, masculine and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.
18. No remedy under this Agreement is to be deemed exclusive but is, where possible, cumulative with all other remedies at law or in equity.
19. 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.
20. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
21. This Agreement enures to the benefit of the Transferee and is binding upon the parties hereto and their respective heirs, executors, successors and assigns.
22. Wherever the expressions "Transferor" and "Transferee" are used herein, they must be construed as meaning the plural, feminine or body corporate or politic where the context or the parties so require.
23. *[If applicable:]* That \_\_\_\_\_, as the registered holder of a charge by way of Mortgage which said charge is registered in the Land Title Office at Victoria, British Columbia, under #\_\_\_\_\_, for and in consideration of the sum of One Dollar (\$1.00) paid by the Transferee to the said Chargeholder (the receipt whereof is hereby acknowledged), agrees with the Transferee, its successors and assigns, that the within Agreement will be an encumbrance upon the Lands in priority to the said charge in the same manner and to the same effect as if it had been dated and registered prior to the said charge.

**IN WITNESS WHEREOF** the parties hereto hereby acknowledge that this Agreement has been duly executed and delivered by the parties executing Form C (pages 1 and 2) and Form D (page 3) attached hereto.

**SCHEDULE 'A'**

*[insert the Qualified Professional's report referred to in Recital "D"]*

END OF DOCUMENT