



Making a difference...together

Section 219 Restrictive Covenant - Cannabis

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

WHEREAS:

- A. The Transferor is the registered owner in fee-simple of those lands and premises located within the Capital Regional District, in the Province of British Columbia, more particularly described as:

PID

(the "**Lands**");

- B. The Transferee is the Capital Regional District;
- C. The Transferor intends to lease space on the Lands to a tenant that has applied for a licence from Health Canada for Cannabis Cultivation and that intends to use the Lands for this purpose but has yet to obtain the licence;
- D. 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 to the Transferee;
- E. Section 219 of the *Land Title Act* provides that a covenant, whether of negative or positive nature, may be granted in favour of the regional district and may be registered as a charge against the title to land, and may contain provisions respecting the following:
- the use of land or the use of a building on or to be erected on land;
 - that land is to be built on in accordance with the covenant;
 - that land is not to be built on or subdivided except in accordance with the covenant;
 - that land is not to be used, built on or subdivided;

NOW THEREFORE THIS AGREEMENT WITNESSES that under Section 219 of the *Land Title Act*, and in consideration of the premises and the mutual covenants and agreements contained herein, and the sum of ONE (\$1.00) DOLLAR of lawful money of Canada now paid to the Transferor by the Transferee (the receipt and sufficiency of which is hereby acknowledged), and for other good and valuable consideration the parties covenant and agree each with the other as follows:

1. In this Agreement the following words have the following meanings:
 - (a) "Cannabis" means cannabis as defined under the Cannabis Act;
 - (b) "Cannabis Act" means the Cannabis Act, S.C. 2018 c. 16, as amended or replaced from time to time;
 - (c) "Cultivation" means commercial cultivation, synthesis, harvesting, altering, propagating, processing, packaging, storage, distribution, testing, or scientific

research, but excludes the growing of cannabis at a dwelling as permitted by any and all federal and provincial enactments.

2. The Transferor covenants and agrees with the Transferee that it shall not use or permit the use of the Lands or any building on the Lands for any purpose, construct any building or structure on the Lands, or permit the construction of any building or structure on the Lands, except in strict accordance with this Agreement.
3. The Transferor shall not occupy or permit the occupancy of any buildings or structures on the Lands, and shall not apply for an occupancy permit in respect of the Lands until:
 - (a) Health Canada or its successor in function has issued to the Transferor or its tenant a licence for Cannabis Cultivation in accordance with section 62 of the *Cannabis Act*, S.C. 2018 c. 16;
 - (b) the Transferor or its tenant has provided the Transferee with a copy of that licence; and
 - (c) the Transferor has provided to the Transferee certification from a registered professional acceptable to the Transferee that all improvements to the Lands have been completed in accordance with the 2018 British Columbia Building Code.
4. The Transferor acknowledges and agrees that the Transferee, its building inspectors and other officials, may withhold the issuance of an occupancy permit for any proposed building or structure on any part of the Lands if the Transferor has not complied with the requirements specified in section 3 of this Agreement.
5. The Transferor may apply for a building permit to construct a building on the Lands to use for Cannabis Cultivation. However, the Transferor agrees that the issuance of the building permit and the completion of the building will be solely at the Transferor's cost and risk.
6. The Transferor may apply for any and all permits, including occupancy permits, without restriction or condition precedent if the Transferor is obtaining such permit in order to allow the development of the Lands for a use that is:
 - (a) permitted under the current zoning for the Lands; and
 - (b) is other than Cannabis Cultivation or any use that includes any aspect of Cannabis Cultivation. For certainty, this includes but is not limited to the Cultivation of Cannabis for medical purposes.

For clarity, the purpose of this section is to ensure that the Lands are not sterilized in the event the Transferor does not elect to use the Lands for Cannabis Cultivation.

7. The Transferor shall indemnify and save harmless the Transferee 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 the Transferee or which the Transferee incurs as a result of any loss or damage or injury, including economic loss, arising out of or connected with:

- (a) the breach of any covenant in this Agreement;
 - (b) the use of the Lands contemplated under this Agreement; and
 - (c) restrictions or requirements under this Agreement.
8. The Transferor hereby releases and forever discharges the Transferee of and from any claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees whatsoever which the Transferor can or may have against the Transferee for any loss or damage or injury, including economic loss, that the Transferor may sustain or suffer arising out of or connected with:
- (a) the breach of any covenant in this Agreement;
 - (b) the use of the Lands contemplated under this Agreement; and
 - (c) restrictions or requirements under this Agreement.
9. At the Transferor's expense, the Transferor must do everything necessary to secure priority of registration and interest for this Agreement and the Section 219 Covenant it creates over all registered and pending charges and encumbrances of a financial nature against the Lands.
10. Nothing contained or implied in this Agreement shall 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.
11. Time is of the essence of this Agreement.
12. The Transferor covenants and agrees for itself, its heirs, executors, successors and assigns, that it will at all times perform and observe the requirements and restrictions set out in this Agreement and they shall be binding upon the Transferor as personal covenants only during the period of its respective ownership of any interest in the Lands.
13. 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.
14. The Transferor shall pay the legal fees of the Transferee in connection with the preparation and registration of this Agreement. This is a personal covenant between the parties.
15. 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.

16. 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.
17. No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.
18. The enforcement of this Agreement shall be entirely within the discretion of the Transferee and the execution and registration of the Agreement against title to the Lands shall 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 of the breach of any provision of this Agreement.
19. The restrictions and covenants herein contained shall be covenants running with the Lands and shall be perpetual, and shall continue to bind all of the Lands when subdivided, and shall be registered in the Victoria Land Title Office pursuant to section 219 of the *Land Title Act* as covenants in favour of the Transferee as a first charge against the Lands.
20. The Transferor agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
21. 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.
22. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
23. 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.
24. *, the registered holder of a charge by way of * against the Lands and registered under No. _____ (the "**Charge**") in the Land Title Office at Victoria, British Columbia, under number *, for and in consideration of the sum of One (\$1.00) Dollar 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 section 219 Covenant shall be an encumbrance upon the Lands in priority to the Charge in the same manner and to the same effect as if it had been dated and registered prior to the Charge.

The Transferor and Transferee acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D (pages 1 and 2) attached hereto.