

TERMS OF INSTRUMENT - PART 2  
**Section 219 Conservation Covenant and  
Section 218 Statutory Right of Way**

The Agreement is dated for reference the \_\_\_\_ day of September, 20\_\_ is

AMONG:

**OWNER  
ADDRESS**

(the "**Owner**")

AND:

**TLC The Land Conservancy of British Columbia,**  
P.O. Box 50054, RPO Fairfield Plaza, Victoria, B.C. V8S 5L8  
(**"TLC"**)

AND:

**COHOLDER (in this example, a District)  
ADDRESS**

(TLC and the District collectively the "**Covenant Holders**")

**RECITALS:**

- A. The **Owner** is the registered owner of the Land in the District with civic address of \_\_\_\_\_, and legal description of:  
PID:  
LEGAL DESCRIPTION  
(the "**Land**");
- B. The Land contains significant amenities, including flora, fauna and natural features, of great importance to the Owner, to the Covenant Holders, and to the public;
- C. The District is a local government. Section 219 of the *Land Title Act* provides, inter alia, that a covenant, whether of a negative or positive nature, in favour of the District may be registered as a charge against the title to that land. Section 218 of the *Land Title Act*, R.S.B.C. 1996, c. 250 enables the Owners to grant in favour of the District an easement without a dominant tenement to be known as a statutory right of way;
- D. TLC The Land Conservancy of BC, a society registered in British Columbia (Registration No. S-36826), has been designated by the minister under sections 218(1)(d) and 219(3)(c) of the *Land Title Act* as a person authorized to accept statutory rights of way and covenants;

- E. The Owner wishes and has agreed to grant the Covenant Holders a covenant pursuant to section 219 of the *Land Title Act*, to restrict the use, building and subdivision of the Land, and that land or a specified amenity in relation to it be protected, preserved, conserved, maintained, enhanced, restored or kept in its natural or existing state in accordance with the covenant, and to grant a statutory right of way pursuant to section 218 of the *Land Title Act* to facilitate access, inspection and enforcement in relation thereto;
- F. A statutory right of way pursuant to section 218 of the *Land Title Act* in favour of the Covenant Holders is necessary for the operation and maintenance of the undertakings of the Covenant Holders;

**NOW, THEREFORE** in consideration of the payment of one dollar (\$1.00) now paid by each of the Covenant Holders to the Owner, the receipt and sufficiency of which is acknowledged by the Owner, and in consideration of the promises exchanged below, the Parties agree as follows, in accordance with sections 218 and 219 of the *Land Title Act*:

## **1 Definitions and Interpretation**

### 1.1 In this Agreement:

- (a) "Administration Fee" means a fee charged by each Covenant Holder under Section 12.1, to cover administration costs for providing approvals, special inspections or other actions at the request of the Owner;
- (b) "Amenity" includes any natural, historical, heritage, cultural, scientific, architectural, environmental, wildlife or plant life relating to land;
- (c) "Business Day" means any day except Saturdays, Sundays and statutory holidays in British Columbia;
- (d) "Certificate" means a certificate issued by the Covenant Holders under Section 13.3;
- (e) "Contaminant" means any explosives, radioactive materials, asbestos materials, urea formaldehyde, chlorobiphenols, hydrocarbon contaminants, underground or above ground tanks, pollutants, contaminants, hazards, corrosive or toxic substances, special wastes, hazardous wastes or wastes of any kind or any other substances of which the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or release into the environment is prohibited, controlled, regulated or licensed under "Environmental Laws";
- (f) "CPI" means the All-Items Consumer Price Index published by Statistics Canada, or its successor in function, for Vancouver, British Columbia, where 2013 equals 100;

- (g) "Environmental Laws" means any and all statutes, laws, regulations, orders, bylaws, permits and other lawful requirements of any federal, provincial, municipal or other governmental authority having jurisdiction over the Lands, now or hereafter in force with respect to, in any way, the environment, health or occupational health and safety, product liability or transportation of dangerous goods, including all applicable guidelines and standards with respect to the foregoing as adopted by any of those governmental authorities from time to time and the principles of common law and equity;
- (h) "Footpath" means the existing trails as documented in the Report measuring no wider than 0.5 meters;
- (i) "Natural State" means the state of the Protected Area and the Amenities as described in the Report;
- (j) "Plan" means Reference Plan \_\_\_\_\_, certified correct by \_\_\_\_\_, B.C.L.S., field survey dated \_\_\_\_\_ and deposited in the Victoria Land Title Office under Plan \_\_\_\_\_, a reduced copy of which is attached to this Agreement as Schedule A;
- (k) "Protected Area" means the portion of Land outlined and labelled Area 1 on the Plan;
- (l) "Rent Charge" means the rent charge granted by the Owner under Article 11;
- (m) "Rent Charge Amount" means the amount set out in Article 11, the payment of which is secured by the Rent Charge;
- (n) "Report" means the baseline documentation report that describes the Land and the Amenities in the form of text, maps, videos, photographs and other records as of the date of registration of this Agreement, a copy of which is on file with each of the Parties and an overview of which is attached as Schedule B;
- (o) "Residential Area" means the portion of Land outlined and labelled Area 2 on the Plan;
- (p) "Successor" means a person who, at any time after registration of this Agreement, becomes the registered owner of the Land or any part of the Land by any means, and includes both registered and beneficial owners, and their heirs, executors and administrators.

1.2 Where this Agreement says something is in the "sole discretion" of a Party, that thing is within the sole, absolute and unfettered discretion of that Party.

1.3 This Agreement must be interpreted in accordance with the laws of British Columbia and the laws of Canada applicable in British Columbia and the Parties agree that the courts of British Columbia have exclusive jurisdiction over any proceeding concerning this Agreement and to attorn to the jurisdiction of such courts.

1.4 This Agreement is comprised of the recitation of the Parties, the recitals to this Agreement, the Schedules to this Agreement and Part 1 of the *Land Title Act* Form C to which this Agreement is attached.

1.5 In this Agreement:

- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- (b) where a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (c) reference to a particular numbered section or article, or to a particular lettered schedule, is a reference to the correspondingly numbered or lettered article, section or schedule of this Agreement;
- (d) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (e) the word "enactment" has the meaning given to it in the *Interpretation Act* on the reference date of this Agreement;
- (f) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- (g) reference to an enactment is to an enactment of the Province of British Columbia except where otherwise provided;
- (h) reference to a "Party" or the "Parties" is a reference to a Party, or the Parties, to this Agreement and their respective successors, assigns, trustees, administrators and receivers; and
- (i) reference to a "day", "month" or "year" is a reference to a calendar day, calendar month, or calendar year, as the case may be, unless otherwise expressly provided.

## **2 Representations and Warranties**

2.1 The Owner represents and warrants that the facts set out in Recital A, B and E are true as of the date of this Agreement.

2.2 TLC represents and warrants that the facts set out in Recital B, D and F are true as of the date of this Agreement.

## **3 Intent of Agreement**

3.1 The Parties each agree that the intent of this Agreement is to:

- (a) protect, preserve, conserve, maintain, enhance, restore and keep the Protected Area and the Amenities in a Natural State;

- (b) to restrict building and development on the Protected Area thereby conserving connective wildlife corridors;
- (c) to prevent any occupation or use of the Protected Area that will impair or interfere with the Natural State of the Protected Area or the Amenities; and
- (d) to protect the Land from being subdivided by any means;

and the Parties agree that this Agreement is to be interpreted, performed and applied accordingly.

**3.2** This Agreement must be perpetual to reflect the public interest in the protection, preservation, conservation, maintenance and enhancement of the Protected Area and the Amenities for ecological and environmental reasons.

#### **4 Covenant Restrictions**

**4.1 Land:** The Owner covenants and agrees that it must not, except with the prior written approval of all Covenant Holders, in the sole discretion of each of them:

- (a) use or permit the use of the Land for an activity or use which alters or interferes with the hydrology of the Land, including by the diversion of natural drainage or flow of water in, on or through the Land in a manner which may impact the Land or the Amenities;  
or
- (b) subdivide the Land by any means, including but not limited to subdivision under the *Land Title Act* and *Strata Property Act*.

**4.2 Protected Area:** Except as expressly permitted in this Agreement, the Owner must not do anything, omit to do anything, allow anything to be done or allow the omission of anything, that does or could reasonably be expected to destroy, impair, diminish, negatively affect or alter the Protected Area or the Amenities from the condition described in the Report.

**4.3** Without restricting the generality of Section 4.2, the Owner must not, except with the prior written approval of all Covenant Holders, in the sole discretion of each of them:

- (a) use or permit the use of the Protected Area for an activity or use which:
  - (i) causes or allows silts, leachates, fills or other deleterious substances to be released into any watercourse on the Protected Area;
  - (ii) causes the erosion of the Protected Area to occur;
  - (iii) causes or facilitates the loss of soil on the Protected Area;

- (iv) causes or allows fill, rubbish, ashes, garbage, waste, Contaminants or other materials foreign to the Protected Area to be deposited in, on or under the Protected Area;
  - (v) causes or allows any component of the Protected Area, including soil, gravel or rock, to be disturbed, explored for, moved, removed from or deposited in or on the Protected Area;
  - (vi) causes or allows pesticides, including but not limited to herbicides, insecticides or fungicides, to be applied to or introduced onto the Protected Area; or
  - (vii) causes or allows any indigenous flora (living or dead) in, on, or under the Protected Area to be cut down, removed, defoliated or in any way tampered with;
- (b) use or permit the use of the Protected Area for fishing, hunting or the gathering and grazing of domestic animals;
  - (c) use or permit the use of motorized or non-motorized vehicles on the Protected Area, other than emergency vehicle use;
  - (d) construct, build, affix or place on the Protected Area any buildings, structures, fixtures or improvements of any kind;
  - (e) permit firearms of any kind to be discharged in, on or over the Protected Area; or
  - (f) construct or maintain any new trails or Footpaths, other than those referred to in the Report and shown on the Report's *Appendix B. Anthropogenic and Natural Features of the Protected Area* plan.

## **5 Baseline Documentation Report**

- 5.1 The Parties agree that the Protected Area and the Amenities are described in the Report.
- 5.2 The Parties agree that the Report is intended to serve as an objective information baseline for monitoring compliance with the terms of this Agreement and the Parties each agree that the Report provides an accurate description of the Protected Area and the Amenities as of the date of this Agreement.
- 5.3 The Parties each acknowledge that the flora and fauna on the Protected Area will evolve through natural succession over time and, unless otherwise expressly stated, references to the Report in this Agreement are intended to take into account the natural succession of the flora and fauna over time, without human intervention other than as expressly permitted by this Agreement.

## **6 Owner's Reserved Rights**

- 6.1 Subject to Article 4 and 8, the Owner reserves all of its rights as Owner of the Land, including the right to use, occupy and maintain the Land in any way that is not expressly restricted or prohibited by this Agreement, so long as the use, occupation or maintenance are consistent with the intent of this Agreement.
- 6.2 Without limiting the generality of Section 6.1, the following rights are expressly reserved to the Owner:
- (a) to remove any non-native plants that pose a threat to the indigenous flora and fauna of the Protected Area after consultation with the Covenant Holders to ensure best management practices are followed;
  - (b) to install, maintain, restore, or replace signs for the purpose of public safety or informing the public about the Protected Area and its Amenities; and
  - (c) to remove the existing shed and its contents found within the Protected Area;
  - (d) to maintain the existing Footpaths delineated in the Report, at a maximum width of 0.5 meters, by trimming back vegetation and using only permeable materials in any maintenance including measures to manage drainage and erosion; and
  - (e) to maintain, repair, replace or remove fencing where it occurs within the Protected Area, not to exceed a height of five (5) feet to ensure wildlife passage is possible and subject to local bylaws, after consultation with Covenant Holders.
- 6.3 Subject to Section 6.4, nothing in this Agreement restricts or affects the right of the Owner to do anything reasonably necessary to:
- (a) prevent, abate or mitigate any damage or loss to any real or personal property; or
  - (b) prevent potential injury or death to any individual.
- 6.4 If the Owner intends to do anything described in Section 6.3, the Owner must give at least 30 days' prior written notice to each Covenant Holder, describing in reasonable detail the intended action, the reason for it, and its likely effect on the Land or the Amenities. Despite the rest of this Agreement, the Owner must permit each Covenant Holder to enter upon and inspect the Land if any such action is proposed. The Covenant Holders may comment on the proposed action and the Owner must take those comments into consideration before doing anything under Section 6.3.
- 6.5 Despite Section 6.4, in an emergency situation, where the Owner must take immediate action under Section 6.3, the Owner may do anything reasonably necessary to prevent potential injury or death without the consent of the Covenant Holders, but the Owner must notify the

Covenant Holders of the circumstances of such action within fifteen (15) days, including the actual or likely effect on the Land or the Amenities.

- 6.6 For greater certainty, the District is not obligated to comment under this Article, and the Owner is required at all times to comply with all District bylaws and enactments.

## **7 Owner's Obligations & Indemnity**

- 7.1 The Owner retains all responsibilities and bears all costs and liabilities related to the ownership, use, occupation and maintenance of the Land, including any improvements expressly authorized by this Agreement.

- 7.2 The Owner must indemnify the Covenant Holders, their elected officials, directors, officers, employees, agents and contractors, from and against any and all liabilities, damages, losses, personal injury or death, unjust enrichment or deprivation, causes of action, actions, claims, and demands by or on behalf of any person, arising out of any act or omission, negligent or otherwise, in the use, occupation and maintenance of the Land or the Amenities by the Owner.

- 7.3 The Owner is liable for any and all breaches of this Agreement, but the Owner is not liable for:

- (a) breaches of this Agreement which occurred prior to the Owner becoming the registered owner of any interest in the Land, provided that the Owner received a Certificate under Section 13.3;
- (b) injury or alteration to the Protected Area or the Amenities resulting from natural causes, or causes beyond the Owner's reasonable control, including accidental fire, flood, storm, pest or fungal infestation, vandalism, trespass and earth shifting or movement, but excluding injury or alteration resulting from actions of the Owner or any other person acting with the actual or constructive knowledge of the Owner;
- (c) any prudent action taken by the Owner under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Area or the Amenities resulting from natural causes, including accidental fire, flood, storm and earth movement; or
- (d) injury or alteration to the Protected Area or the Amenities caused by the Covenant Holders exercising their rights under this Agreement.

- 7.4 Without limiting the generality of Sections 7.1, 7.2 and 7.3, the Owner:

- (a) is solely responsible and liable for any loss or damage, or liability of any kind (whether civil, criminal or regulatory), in any way connected with the existence in, on, from, to or under the Land (whether through spill, emission, migration, deposit, storage, or otherwise) of any Contaminant; and



(b) must indemnify each Covenant Holder from and against any loss, damage, liability, cause of action, action, penal proceeding, regulatory action, order, directive, notice or requirement, including those of any government agency, incurred, suffered, brought against or instituted against the Covenant Holders, jointly or severally, in any way associated with anything described in Section 7.4(a).

7.5 Where, as provided under Section 7.3(b), the Owner is not responsible for damage or theft due to trespass or vandalism, the Owner will take all reasonable steps to identify and prosecute the person responsible and to seek financial restitution for the damage or theft.

7.6 For clarity, the indemnities granted by the Owner to the Covenant Holders under this Agreement are indemnities granted as an integral part of the section 219 *Land Title Act* covenant created by this Agreement.

## 8 Statutory Rights of Way

8.1 **Blanket SRW over Land:** The Owner grants to each of the Covenant Holders an uninterrupted right, licence, liberty, privilege, easement and a statutory right of way pursuant to section 218 of the *Land Title Act*, in common with the Owner on and over the Land, permitting each Covenant Holder to:

(a) access the Land to inspect the Protected Area:

(i) at least once each calendar year, with the date for each inspection to be agreed upon by the Parties before August 31 each year, but if the Parties cannot agree on those days by August 31 in any year, the Covenant Holders are entitled to enter upon the Land and inspect the Protected Area in accordance with Section 9.1(a)(ii); and

(ii) at all reasonable times upon prior notice by a Covenant Holder to the Owner of at least twenty-four (24) hours, unless, in the opinion and sole discretion of a Covenant Holder, there is an emergency or other circumstance which does not make giving such notice practicable;

(b) bring workers, vehicles (as reasonably necessary), equipment and other personal property onto the Land to access the Protected Area, and to implement the provisions under Section 8.2, when exercising their rights under this Agreement.

8.2 **Specific SRW over Protected Area:** The Owner grants to each of the Covenant Holders an uninterrupted right, licence, liberty, privilege, easement and a statutory right of way pursuant to section 218 of the

*Land Title Act*, over that Part of the Land shown as Area 1 on Plan EPP84615, permitting each Covenant Holder to:

- (a) as part of the inspection of the Protected Area, take soil, water or other samples, photographs, video and sound recordings as may be necessary to monitor compliance with and enforce the terms of this Agreement;
- (b) enter upon and protect, preserve, conserve, maintain, enhance, or restore, in the Covenant Holder's sole discretion and at that Covenant Holder's expense, the Protected Area or the Amenities to as near the condition described in the Report as is practicable if an act of nature or human agency other than as described in Section 8.1(d), destroys, impairs, diminishes or negatively affects or alters the Protected Area or the Amenities from the condition described in the Report;
- (c) in accordance with Section 9, enter upon and protect, preserve, conserve, maintain, enhance, restore or rehabilitate, in the Covenant Holder's sole discretion and at the Owner's expense, the Protected Area or the Amenities to as near the condition described in the Report as is practicable, if an action of the Owner or any other human agency acting with the actual or constructive knowledge of the Owner:
  - (i) destroys, impairs, diminishes, negatively affects or alters the Protected Area or the Amenities from the condition described in the Report; or
  - (ii) contravenes any term of this Agreement;
- (d) carry out or evaluate, or both, any program agreed upon among the Parties for the protection, preservation, conservation, maintenance, enhancement, restoration or rehabilitation of all or any portion of the Protected Area or the Amenities;
- (e) place survey pegs or other markings on the Land or to increase the visibility of existing survey pegs or other markings; and
- (f) enter upon the Land to access the Protected Area for any purpose necessary to monitor, implement or enforce this Agreement.

## **9 Dispute Resolution and Enforcement Remedies**

9.1 If either of the Covenant Holders, in their sole discretion, believes that the Owner has neglected or refused to perform any of the obligations set out in this Agreement or are in breach of any term of this Agreement, the Covenant Holder may deliver to the Owner a notice setting out:

- (a) the particulars of the breach,
- (b) actions required to remedy the breach, and

- (c) the Covenant Holder's estimated maximum costs of remedying the breach.
- 9.2 On receipt of a notice given under Section 9.1, the Owners must:
  - (a) immediately cease all activities giving rise to the breach; and
  - (b) remedy the breach or make arrangements satisfactory to the Covenant Holder for remedying the breach, including with respect to the time within which the breach must be remedied, within 60 days from the receipt of the notice or from the conclusion of a dispute resolution process under Section 6 if it is invoked.
- 9.3 For clarity, the requirement in Section 9.2 to remedy a breach requires the Owners to undertake such rehabilitation or restoration determined necessary by the Covenant Holder(s) in their sole discretion to remedy any damage done to the Protected Area or the Amenities contrary to this Agreement, at the Owner's sole expense.
- 9.4 If the Owners cannot remedy a breach described in Section 9.1 within the time acceptable to the Covenant Holder 9.2(b), then
  - (a) either Covenant Holder or the Owner may invoke the dispute resolution provisions under Article 11;
  - (b) TLC may enforce the Rent Charge under Article 12;
  - (c) either Covenant Holder may exercise any other enforcement remedies further to Article 21.
- 9.5 If the Owner does not comply with the requirements of Sections 10.2 and 10.3 within the time required or agreed upon, either or both Covenant Holders may enter upon the Land and remedy the breach or carry out the arrangements referred to in Section 9.2, and the Owner must reimburse that Covenant Holder(s) for any expenses incurred in doing so, up to the estimated maximum costs of remedying the breach as set out in the notice given under Section 9.1.
- 9.6 Expenses incurred by the Covenant Holder(s) under this Article, until paid, are a debt owed by the Owners to the Covenant Holder and the Owners agree to indemnify the Covenant Holder for such expenses.
- 9.7 The District shall have the option to invoke the provisions of this Article as a Covenant Holder, and for greater certainty, this Article places no obligations on the District unless the District in its sole discretion chooses to invoke the provisions of this Article.

## **10 Dispute Resolution and Mediation**

- 10.1 If a breach of this Agreement occurs or is threatened, or if there is disagreement as to the meaning of this Agreement, TLC or the Owner may give notice to the other requiring a meeting (in person or by teleconference) within fifteen (15) Business Days of receipt of the notice.

If Mediation is invoked further to Section 9.4, the provisions of Section 10.1-10.3 are not intended to be repeated.

- 10.2 Upon receipt of a notice given under Section 10.1, the Owner or TLC, as the case may be, must immediately cease all activities giving rise to a breach or threatening a breach of this Agreement, or giving rise to a disagreement as to the meaning of this Agreement.
- 10.3 The Owner and TLC must attempt to resolve the matter, acting reasonably and in good faith, within thirty (30) Business Days of receipt of the notice given under Section 10.1.
- 10.4 If the Owner and TLC are not able to resolve the matter within the time set out in Section 10.3, the Owner and TLC may appoint a mutually acceptable person to mediate the matter. If the Owner and TLC wish to proceed with voluntary mediation, but are unable to agree on the appointment of a mediator within 15 Business Days after the mediation process is invoked, either the Owner or TLC may apply to the Mediate BC Society, or its successor, or other such organization or person agreed to by the Owner and TLC in writing, for appointment of a mediator. The Owner and TLC must act reasonably and in good faith and cooperate with the mediator and with each other in an attempt to resolve the matter within 60 days after the mediator is appointed.
- 10.5 The cost of the mediation will be shared equally among the Owner and TLC, not including costs incurred for representation by counsel at the mediation.
- 10.6 The District shall have the option to invoke the provisions of this Article as a Covenant Holder, and if they do so, references to TLC in this Article shall include the District. For greater certainty, this Article places no obligations on the District, either to participate or to share in costs, unless the District in its sole discretion chooses to invoke the provisions of this Article.

## **11 Rent Charge and Its Enforcement**

- 11.1 As security for the performance of the Owner's obligations under this Agreement, the Owner grants to TLC a perpetual rent charge against the Land, ranking prior to all other financial charges and encumbrances registered against the Land, including options to purchase and rights of first refusal. The Rent Charge is granted both under section 219 of the *Land Title Act* as an integral part of the statutory covenant created by this Agreement and as a fee simple rent charge at common law.
- 11.2 The Rent Charge is suspended unless and until the Owner is in breach of any provision of this Agreement and in the sole discretion of TLC, has not cured the breach, is not diligently proceeding to cure the breach, or the breach has been deemed incurable.

- 11.3 If TLC wishes to enforce the Rent Charge, it shall provide a notice to that effect to the Owner and to the other Covenant Holder. The notice of enforcement of the Rent Charge may be given at any time after notice is given under Article 9.
- 11.4 The Rent Charge secures payment to TLC by the Owner of the sum of \$10,000 per year, subject to adjustment under section 11.5, for each violation occurring within that year. For clarity, only one Rent Charge Amount is payable by the Owner for each violation enforced under this Article, and not one to each of the Covenant Holders.
- 11.5 The Rent Charge Amount is to be adjusted on January 1 of each year by increasing or decreasing, as the case may be, the Rent Charge Amount by the amount determined by multiplying the Rent Charge Amount on December 31 immediately preceding by the percentage increase or decrease, as the case may be, in the CPI between the previous January 1 and that December 31 and adding the amount so determined to the Rent Charge Amount as it stands on that December 31. If Statistics Canada, or its successor in function, ceases to publish a CPI or comparable indicator as determined by TLC in their sole discretion, the Parties agree that the Rent Charge Amount will be increased each year by a factor of 3%.
- 11.6 The Rent Charge Amount shall be increased by a sum equal to 110% of the market value, at the date of any breach of this Agreement that is enforced under this Article, of any flora or fauna, soil, rock, gravel, minerals, or other Amenities, which have been altered, damaged, destroyed, moved, harvested or removed.
- 11.7 TLC may enforce the Rent Charge by one or more of the following in any combination:
- (a) an action against the Owner for the Rent Charge Amount;
  - (b) distraint against the Land to the extent of the Rent Charge Amount;
  - (c) an action for appointment of a receiver in respect of the Land; or
  - (d) an order for sale of the Land.
- 11.8 The Owner shall pay the full Rent Charge Amount within thirty (30) Business Days from receipt of notice given under this Article to the Covenant Holder giving the notice.
- 11.9 The Covenant Holders shall be entitled to recover from the Owner all reasonable expenses incurred as a result of enforcement of the Rent Charge.

## **12 Administration Fee**

- 12.1 The Owner agrees that TLC may charge the Owner an Administration Fee of \$200.00 for each and every request by the Owner to review, approve or assess any action of the Owner, prior to such review, visit or

assessment and irrespective of whether or not the Covenant Holder grants the requested approval, provided however that such request requires a visit to the Land or requires more than 3 hours to respond to. The Administration Fee is subject to any increase in the CPI which has occurred since the date of registration of this Agreement.

- 12.2 This provision does not relieve the Owner of responsibility for any fees charged by the District, if any, in accordance with its bylaws.

### **13 Successor of the Owner**

- 13.1 This Agreement must enure to the benefit of and be binding upon the Owner and the Owner's Successor.
- 13.2 The Owner must notify the Covenant Holders of any change of ownership or occupation, including the transfer of title to the Land, granting of a license or the registration of a lease prior to the transfer, occupation or registration of any such change.
- 13.3 The Owner may request TLC visit the Land immediately before or at the time of the proposed transfer and issue a Certificate indicating whether or not there are any violations of this Agreement as of the date of the Certificate. TLC may charge an Administration Fee for this visit and the issuance of a Certificate.
- 13.4 Failure by the Owner to comply with the provisions of this Article shall not affect the enforceability of this Agreement against the Owner or any Successor.

### **14 Assignment of Agreement or Dissolution of a Covenant Holder**

- 14.1 TLC may assign its rights and obligations under this Agreement, but agrees that it must first consult with the Owner and District, and consider their comments, with respect to the proposed assignee. TLC must give notice to the Owner and District of the proposed assignment, setting out in reasonable detail the identity of the proposed assignee and the relevant qualifications and experience of the proposed assignee. If the Owner or District do not provide comments regarding the proposed assignee within fifteen (15) Business Days, the Owner or District is conclusively deemed to have consented to the assignment.
- 14.2 In the event of the winding-up or dissolution of TLC, TLC must use its best efforts to assign and transfer all of its interest under this Agreement to a person or entity authorized to accept statutory rights of way under section 218 of the *Land Title Act* and covenants under section 219 of the *Land Title Act*. If TLC does not assign and transfer all of its interests under this Agreement as set out in this Section, it must be deemed to have assigned and transferred all of its interest under this Agreement to the other Covenant Holder, to hold until another qualified and suitable

covenant holder can be found. For clarity, the consultation process set out in Section 14.1 does not apply to this Section.

## **15 Notice**

15.1 Any notice or other communication (collectively "notice") required or permitted under this Agreement must be in writing and must be:

- (a) delivered in person;
- (b) sent by courier; or
- (c) sent by prepaid registered mail addressed to the Parties at their respective addresses as set out in Section 15.4.

15.2 Unless otherwise provided, a notice:

- (a) delivered in person or by courier is deemed received on the delivery date and the Party receiving the notice must forthwith acknowledge in writing, receipt of the notice; or
- (b) sent by pre-paid registered mail is deemed received on the fourth Business Day following the day on which the notice was sent.

15.3 If a Party refuses to sign an acknowledgment of receipt of notice, the person delivering the notice may swear an affidavit of service and the notice is deemed received on the date of service set out in the affidavit.

15.4 The addresses of the Parties' representatives for notice are as follows:

**OWNER  
ADDRESS**

provided that if the ownership of the Land has changed, to the registered owner in fee simple as indicated on title to the Land at the time of notice.

**Covenant Holders:**

**TLC The Land Conservancy of BC:**  
PO Box 50054 RPO Fairfield Plaza  
Victoria, BC  
V8S 5L8

And

**District  
Address**

15.5 Each Party agrees to give written notice immediately to the other Parties of any change in its address from that set out in Section 15.4.

## **16 Access**

- 16.1 No right of access by the general public to any portion of the Land is conveyed or created by this Agreement.

## **17 Notice of Covenant**

- 17.1 The Owner agrees to allow the Covenant Holders to publicize the existence of this Agreement in a tasteful manner.
- 17.2 Without restricting the generality of the foregoing, the Owner agrees to allow either or both of the Covenant Holders to erect a plaque or other sign on the Land, in a tasteful manner and at the expense of the respective Covenant Holder(s), indicating that they hold a covenant on the Land. The size, style and location of the plaque or sign must be approved by the Owner prior to its placement, such approval not to be unreasonably withheld.

## **18 No Liability in Tort**

- 18.1 The Parties agree that this Agreement creates only contractual obligations and obligations arising out of the nature of this Agreement as a covenant under seal. Without limiting the generality of the foregoing, the Parties agree that no tort or fiduciary obligations or liabilities of any kind are created or exist between the Parties in respect of this Agreement and nothing in this Agreement creates any duty of care or other duty on any of the Parties to anyone else. For clarity, the intent of this Section is to, among other things, exclude tort liability of any kind and to limit the Parties to their rights and remedies under the law of contract and the law pertaining to covenants under seal.

## **19 Waiver**

- 19.1 An alleged waiver of any breach of this Agreement is effective only if it is an express written waiver signed by each of the Covenant Holders, and is only effective to the extent of that express waiver and does not operate as a waiver of any other breach.
- 19.2 The failure of either or both Covenant Holders to require performance by the Owner at any time of any obligation under this Agreement does not affect either Covenant Holder's right to subsequently enforce that obligation.

## **20 Joint and Several Obligations**

- 20.1 Where there is more than one person comprising the Owner in this Agreement, the obligations of those persons are joint and several.



## **21 Remedies Not Exhaustive**

- 21.1 Exercise or enforcement by a Party of any remedy or right under or in respect of this Agreement does not limit or affect any other remedy or right that Party may have against the other Parties in respect of or under this Agreement or its performance or breach.

## **22 Covenant Runs with the Land**

- 22.1 Unless it is otherwise expressly provided in this Agreement, every obligation and covenant of the Owner in this Agreement constitutes a personal covenant and also a covenant granted under section 219 of the *Land Title Act* and a statutory right of way granted under section 218 of the *Land Title Act* in respect of the Land. This Agreement burdens the Land and runs with it and binds the Owner's Successors. This Agreement burdens and charges all of the Land and any parcel into which it is subdivided by any means and any parcel into which the Land is consolidated.

## **23 Registration**

- 23.1 The Owner agrees to do everything necessary, at the Owner's expense, to ensure that this Agreement, and the interests it creates, is registered against title to the Land, with priority over all financial charges, liens and encumbrances, including options to purchase and rights of first refusal, registered or pending registration in the applicable provincial land title office at the time of application for registration of this Agreement.

## **24 Severance**

- 24.1 If any part of this Agreement is held by a court to be invalid, illegal or unenforceable, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement is to remain in force unaffected by that holding or by the severance of that part as if the part was never part of this Agreement.

## **25 No Other Agreements**

- 25.1 This Agreement is the entire agreement between the Parties and it terminates and supersedes all other agreements and arrangements regarding its subject.

## **26 Amendments**

- 26.1 This Agreement is meant to be perpetual and may only be changed by a written instrument signed by all Parties and registered in the applicable provincial land title office.

## **27 Independent Advice**

- 27.1 The Owner acknowledges and agrees that the Owner has sought and obtained to the Owner's satisfaction, independent advice from an accountant or other income tax expert with respect to the income tax implications of this Agreement and acknowledges that it does not and has not relied on either Covenant Holder for advice in this regard and that they have given no representation or warranty in that regard.
- 27.2 The Owner acknowledges and agrees that the Owner has been advised by the Covenant Holders that the Owner should seek legal advice as to the meaning and effect of this Agreement and the Owner further acknowledges and agrees that no legal advisor of either of the Covenant Holders has advised the Owner on the meaning or effect of this Agreement or in connection with this Agreement.

## **28 Deed and Contract**

- 28.1 By executing and delivering this Agreement, each of the Parties intends to create both a contract and a deed and covenant executed and delivered under seal.

## **29 Rights of Covenant Holders**

- 29.1 A Covenant Holder may exercise its rights under this Agreement through its directors, officers, employees, agents or contractors.

As evidence of their Agreement to be bound by the above terms, the Parties each have executed and delivered this Agreement under seal by executing Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

**SCHEDULE A  
REFERENCE PLAN**

**SCHEDULE B**  
**ECOLOGICAL BASELINE REPORT**