

TERMS OF INSTRUMENT – PART 2
SECTION 219 COVENANT

This COVENANT dated for reference [*insert month, day, year*], is

BETWEEN:

[*Insert as applicable name(s) of Landowner(s), company(s), the name of the Act the company is incorporated under, full address*]

(the “Owner”)

AND:

GABRIOLA ISLAND LOCAL TRUST COMMITTEE, a local trust committee incorporated under the *Islands Trust Act* (British Columbia), having an office at 200 – 1627 Fort Street, Victoria, British Columbia, V8R 1H8

(“Local Trust Committee”)

WHEREAS:

A. The Owner is the owner in fee simple of that parcel of land on Gabriola Island, in the Province of British Columbia, more particularly known and described as:

PID: [*insert PID number*]
[*insert legal description*]

(the “Lands”);

- B. Gabriola Island Land Use Bylaw, 1999, as amended, permits the construction and use of a secondary suite only if the owner has registered a covenant under Section 219 of the *Land Title Act* prohibiting subdivision of secondary suite by stratification;
- C. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of a municipality, in respect of the use of land, the building on land, the subdivision of land and the preservation of land or a specific amenity on the land;

THIS AGREEMENT is evidence that in consideration of payment of \$1.00 by the Local Trust Committee to the Owner (the receipt and sufficiency of which are acknowledged by the Owner), and in consideration of the promises exchanged below, the Owner covenants and agrees with the Local Trust Committee in accordance with Section 219 of the *Land Title Act* as follows:

GRANT OF SECTION 219 COVENANT

1. The Owner covenants with the Local Trust Committee that:
 - (a) the Lands shall not be subdivided by subdivision plan under the *Land Title Act*, by a strata plan or bare land strata plan under the *Strata Property Act*, or in any other manner, that creates a separate parcel for the secondary suite located on the Lands; and
 - (b) if the Lands are not designated as being within the Agricultural Land Reserve, there shall be no more than two dwellings permitted on the Lands, including the principal dwelling.

INDEMNITY

2. The Owner releases, and must indemnify and save harmless the Local Trust Committee, its elected and appointed officials and employees, from and against any and all liability, actions, causes of action, claims, costs, damages, expenses (including actual legal fees), costs, debts, demands or losses suffered or incurred by the Owner, or anyone else, arising from the performance by the Owner of this Agreement, or any default of the Owner under or in respect of this Agreement.

NO EFFECT ON LAWS OR POWER

3. Wherever in this Agreement the Local Trust Committee is required or permitted to form an opinion, exercise discretion, express satisfaction, make any determination, or give its consent, the Owner agrees that the Local Trust Committee may do so in accordance with the provisions of this Agreement and is under no public law duty of fairness or natural Justice, and agrees that the Local Trust Committee may do any of those things in the same manner as if it were a private party and not a public body.

4. This Agreement does not:
 - (a) affect or limit the discretion, rights or powers of the Local Trust Committee under any enactment (as defined in the Interpretation Act on the reference date of this Agreement) or at common law, including in relation to the use or subdivision of the Lands;
 - (b) affect or limit any enactment relating to the use or subdivision of the Lands; or
 - (c) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Lands.

RUNS WITH THE LANDS

5. Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted under Section 219 of the *Land Title Act* in respect of the Lands and runs with the Lands and binds the successors of title to the Lands. This Agreement burdens the Lands and every part parcel into which the Lands may be subdivided by any means and any parcel into which the Lands are consolidated. The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Lands.

WAIVER

6. An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach. A waiver by the Local Trust Committee of any default by the Owner shall not be deemed to be a waiver of any subsequent default.

SEVERANCE

7. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.

ENTIRE AGREEMENT

8. This Agreement is the entire agreement between the parties regarding its subject.

ENUREMENT

9. This Agreement binds the parties to it and their respective successors, heirs, executors and administrators.

DEED AND CONTRACT

10. By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

FURTHER ASSURANCES

11. The Owner agrees to do everything reasonably necessary at the Owner's expense to ensure that this Agreement is registered against the title to the Lands with priority over all financial charges, liens, and encumbrances registered or the registration of which is pending, at the time of application for registration of this Agreement.

12. The Owner must do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.

INVESTIGATION BY LOCAL TRUST COMMITTEE

13. The Owner hereby irrevocably authorizes the Local Trust Committee to make such inquiries as it considers necessary and reasonable in order to confirm that the Owner is complying with this Agreement and irrevocably authorize and direct the recipient of any request for information from the Local Trust Committee to provide such information to the Local Trust Committee.

As evidence of their agreement to be bound by the terms of this instrument, the parties hereto have executed the Land Title Form C which is attached hereto and forms part of this Agreement.

[attach priority agreement, if property burdened by mortgage, assignment of rents or other financial charge]