

**FILED BY: REGIONAL DISTRICT OF NANAIMO**

**TERMS OF INSTRUMENT – PART 2**

**WHEREAS:**

- A. The Grantor is the registered owner in fee simple of the Lands set out in item 2, of the Form C General Instrument, and to which these standard charge terms form a part. Those lands are hereinafter referred to as the “Lands” in these standard charge terms.
- B. The Grantee is the Regional District of Nanaimo;
- C. The Grantor has developed or is intending to develop on the Lands a secondary suite in an accessory residential building, further to the “secondary suites” provisions of the Grantee’s “Electoral Area ‘F’ Zoning and Subdivision Bylaw No. 1285”, (“**Accessory Suite**”) and acknowledging that it is in the public interest that the subdivision and use of the Lands be limited, wishes to grant this Covenant to the Grantee;
- D. Section 219 of the *Land Title Act* provides that a covenant, whether of negative or positive nature, in respect of:
- 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;
  - that separate parcels of land are not to be sold or transferred separately;

may be granted in favour of a regional district and may be registered as a charge against the title to that land.

**NOW THEREFORE**, in consideration of the payment of the sum of \$1.00 by the Grantee to the Grantor and the premises and the covenants contained in this Agreement and for other valuable consideration, receipt and sufficiency of which is acknowledged by the parties, the parties covenant and agree as follows:

1. The Lands, or any building(s) on the Lands, must not be subdivided, including under the *Strata Property Act* (as amended from time to time).
2. The Grantor covenants and agrees that:
  - a) without limiting the generality of paragraph 1, an Accessory Suite use is only permitted as an accessory use to a residential use, as a principal permitted use on the Lands, and therefore may not be a use on a separately titled parcel, including a strata lot, regardless of whether the Accessory Suite is located in a detached building on the Lands; and
  - b) the Lands may not be used for an Accessory Suite, except for a secondary suite that is an accessory use to the principal residential use on the Lands; and

c) "secondary suite", "accessory", and "principal permitted use" have the same meaning as in "Electoral Area 'F' Zoning and Subdivision Bylaw No. 1285".

3. The Grantor and the Grantee agree that the enforcement of this Agreement shall be entirely within the discretion of the Grantee and that the execution and registration of this covenant against the title to the Lands shall not be interpreted as creating any duty on the part of the Grantee to the Grantor or to any other person to enforce any provision or the breach of any provision of this Agreement.

4. Nothing contained or implied herein shall prejudice or affect the rights and powers of the Grantee 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 Grantor.

5. The Grantor covenants and agrees that the Grantee may withhold development permits, building permits and occupancy permits as necessary to ensure compliance with the covenants in this Agreement, and that the issuance of a development permit or occupancy certificate does not act as a representation or warranty by the Grantee that the covenants of this Agreement have been satisfied.

6. It is mutually understood, acknowledged and agreed by the parties that the Grantee has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Grantor other than those contained in this Agreement.

7. The Grantor releases and forever discharges the Grantee of and from any claim, cause of action, suit, demand, expenses, costs and legal fees whatsoever which the Grantor can or may have against the said Grantee for any loss, damage, deprivation or injury, including economic loss, that the Grantor may sustain or suffer arising out of the restrictions or requirements in this Agreement (including, but not limited to restrictions on subdivision and use), or connected with the breach of any covenant in the Agreement.

8. The Grantor covenants and agrees to indemnify and save harmless the Grantee 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 anyone who suffers loss of life or injury to his person or property, or whatsoever which anyone has or may have against the Grantee or which the Grantee incurs as a result of any loss, damage, deprivation or injury, including economic loss, arising out of the restrictions or requirements in this Agreement (including, but not limited to restrictions on subdivision and use), or connected with the breach of any covenant in the Agreement.

9. This Agreement shall be registered as a first charge against the Lands and the Grantor agrees to execute and deliver all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.

10. The Grantor 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 Grantor as personal covenants only during the period of its respective ownership of any interest in the Lands.

11. The restrictions and covenants contained in this Agreement 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 Grantee as a charge in priority to all financial encumbrances on the Lands.

12. This Agreement shall enure to the benefit of the Grantee and shall be binding upon the parties hereto and their respective heirs, executors, successors and assigns.

13. Wherever the expressions "Grantor" and "Grantee" are used herein, they shall be construed as meaning the plural feminine or body corporate or politic where the context or the parties so require.

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

#### **CONSENT TO GRANT OF COVENANT BY CHARGEHOLDER**

**KNOW ALL MEN BY THESE PRESENTS** that \*, is the registered holder of a charge by way of mortgage against the within described property which said charge is registered in the Land Title Office, Victoria, B.C., under \*, for and in consideration of the sum of One Dollar (\$1.00) paid by the **Grantee** to the said Chargeholder (the receipt whereof is hereby acknowledged), agrees with the **Grantee**, its successors and assigns, that the within Covenant shall be an encumbrance upon the within described property 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 and does hereby **grant** such priority to the **Grantee** over the charge of the chargeholder.

**IN WITNESS WHEREOF**, the parties hereto hereby acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C & D (attached hereto).

**END OF DOCUMENT**