

TERMS OF INSTRUMENT - PART 2

WHEREAS:

- A. The Transferor is the registered owner in fee simple of those lands and premises more particularly described as:

[NTD- Include the legal description of lands that will be subject to the covenant]

(the “**Lands**”).

- B. The Transferee is the Capital Regional District.
- C. The Transferor wishes that the Transferee extend the Water Service to include the Lands with the intention of developing the Lands to supply Single Family Equivalent located on the Lands with water.
- 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, in respect of the use of land or the use of a building on or to be erected on land 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 premises and covenants contained herein and for the other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereto covenant and agree as follows:

1. In this Agreement, the following words have the following meanings:

“**Single Family Equivalent**” means any building, improvement or structure on the Lands that are supplied with water by the Water Service.

“**Single Family Equivalent Unit**” means the units of water supplied from the Water Service to a Single Family Equivalent as defined in the *Southern Gulf Islands and Juan de Fuca Electoral Areas Utilities and Street Lighting Fees and Charges Bylaw No. 1, 2012*, and as more particularly set out in Schedule “A” attached hereto.

“**Water Service**” means the local area service for the supply, treatment, conveyance, storage and distribution of water to a portion of the Juan de Fuca Electoral Area by Capital Regional District Integrated Water Services as established by the “*Port Renfrew Water Supply Local Service Establishment Bylaw No. 1, 1989*”, as amended.

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, or construct any building on the Lands, except in strict accordance with this Agreement.
3. The Transferor shall not, nor shall it allow any person to construct, install, place, use, or occupy any building, structure or improvement on the Lands if such construction,

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installation, use or occupation results in there being more than [NTD- Include the number of permitted units] Single Family Equivalent Units on the Lands, including any subdivided part of the Lands unless the Transferor has obtained the approval of the Transferee, acting in its sole discretion.

4. The Transferee shall not be obliged to issue a building permit or an occupancy permit with respect to any building or structure on the Lands unless the Transferee is, in its sole discretion, satisfied that the Transferor's obligations under section 3 of this Agreement have been fulfilled.
5. 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.
6. 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.
7. The Transferee may, at any time, without the consent of the Transferor or anyone, release or cause to be released, this Agreement as a charge against title to the Lands or any portion thereof and, upon such release, this Agreement shall be discharged and of no further force and effect.
8. The Transferor and the Transferee agree that the enforcement of this Agreement shall be entirely within the discretion of the Transferee and that the execution and registration of this Agreement against the 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 or the breach of any provision of this Agreement.
9. 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;
 - c. restrictions or requirements under this Agreement.
10. 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;
 - c. restrictions or requirements under this Agreement.
11. 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.

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12. 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.
13. Time is of the essence of this Agreement.
14. 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.
15. 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.
16. 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.
17. 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.
18. 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.
19. 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.
20. This Agreement shall run 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.
21. The Transferor agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
22. 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.
23. This Agreement is to be construed in accordance with and governed by the laws

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applicable in the Province of British Columbia.

24. 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.
25. The ***, the registered holder of a charges by way of **** against the Lands and registered under No. ***** (the "**Charge**") in the Land Title Office at Victoria, British Columbia, 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.

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

Schedule "A" Single Family Equivalent Units

Use	Number of Single Family Equivalent Units
Residential dwelling unit (including single family, apartment, condominium, duplex or other multi family facility)	1 Unit per dwelling unit
Bed and Breakfast	1 Unit per building
Hotel/Motel	1 Unit per room
Cabin	1 Unit per cabin
Mobile Home Space	1 Unit per space
Commercial Building with 1 Business and up to 3 employees	1.25 Units per building
Commercial Building with 1 Business and 4 or more employees	1.5 Units per building
Commercial Building with more than 1 Business and up to 3 Employees	1.25 Units per building
Commercial Building with more than 1 Business and 4 or more employees	1.5 Units per building
Restaurant	2 Units per building
Church	1 Unit per building
School	1 Unit per classroom
Other	1 Unit for each building with 1360 liters of daily winter consumption of water

If the Single Family Equivalent has not been designated in the table above, the unit calculation will be based on the **Minimum Daily Design Flow** as specified in the *Sewerage System Standard Practice Manual*, Version 2, September 21, 2007, prepared by the BC Onsite Sewerage Association

Single Family Equivalents shall be verified with the installation of water meter(s) at the proposed property lines.