

TERMS OF INSTRUMENT - PART 2

SECTION 219 COVENANT – ACCESSORY RESIDENTIAL DWELLING UNIT

THIS AGREEMENT dated for reference the ____ day of _____, _____ is

BETWEEN:

[INSERT OWNER NAME AND ADDRESS]

(the “Grantor”)

AND:

DISTRICT OF UCLUELET

Box 999

200 Main Street

Ucluelet BC V0R 3A0

(the “District”)

WHEREAS:

- A. The Grantor is the registered owner of the land legally described in Item 2 of Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement (the “Lands”);
- B. Section 219 of the *Land Title Act* of British Columbia 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 specified amenity on the land;
- C. The Grantor has made an application to the District for a building permit to construct an accessory residential dwelling on the Lands (the “Accessory Residential Dwelling Unit”); and
- D. In connection with the Grantor’s application for a building permit to construct the Accessory Residential Dwelling Unit, the District’s zoning bylaw requires, and the Grantor has agreed to grant to the District, a covenant under section 219 of the *Land Title Act* prohibiting any subdivision that would create a separate title for the Accessory Residential Dwelling Unit or the area of the Lands on which the Accessory Residential Dwelling Unit is or will be constructed.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the covenants herein contained and the sum of one dollar (\$1.00) paid by the District to the Grantor, the receipt and

sufficiency of which the Grantor acknowledges, the Grantor and the District agree, pursuant to section 219 of the *Land Title Act* as follows:

1. **Definitions** – In this agreement:

- (a) **“Parcel”** has the meaning assigned to it the *Land Title Act*.
- (b) **“Principal Residence”** means a dwelling or building that is the principal building or dwelling on a Parcel for the purposes of the Zoning Bylaw, and:
 - (i) if the resident owns the property on which the residence is located, the dwelling or building where the resident lives and claims the provincial home owner grant; or
 - (ii) if the resident does not own the property on which the residence is located, the dwelling or building where the resident lives, makes their home, and conducts their daily affairs including, without limitation, paying bills and receiving mail and is generally the dwelling unit with the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver’s licences, personal identification, vehicle registration and utility bills
- (c) **“Subdivision”** means to divide, apportion, consolidate or subdivide land or any building on land, or the ownership or right to possession or occupation of land or any building on land, into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization or development of “cooperative interests” or a “shared interest in land” as defined in the *Real Estate Development Marketing Act*.
- (d) **“Zoning Bylaw”** means District of Ucluelet Zoning Bylaw No. 1160, 2013.

2. **Subdivision Restrictions** – The Lands shall not be Subdivided if such Subdivision will result in the Accessory Residential Dwelling Unit, land containing the Accessory Residential Dwelling Unit, or any portion thereof, being located on or within a Parcel that is separate from the Parcel containing the Principal Residence located on the Lands.

3. **Inspection** – The District, its officers, employees, contractors and agents, shall have reasonable access to the Lands and any buildings thereon at all reasonable times in order to ascertain compliance with Agreement.

4. **Bylaws to the Contrary** – This Agreement shall restrict use of the Lands in the manner provided herein despite any right or permission to the contrary contained in any bylaw or permit of the District.

5. **Municipal Permits** – The Grantor agrees that the District may withhold building permits and occupancy permits with respect to any building or other structure from time to time constructed or proposed to be constructed on the Lands, as the District may, in its sole discretion, consider necessary to ensure compliance with this Agreement.
6. **Indemnity** – As an integral part of this Agreement, pursuant to section 219(6)(a) of the *Land Title Act*, the Grantor hereby indemnifies the District and each of its elected or appointed officials, officers, employees or agents:
 - (a) from and against any and all liability, actions, causes of action, claims, suits, proceedings, judgements, damages, expenses, legal fees, demands and losses at any time suffered or incurred by, or brought against, the District, or any of its elected or appointed officials, officers, employees or agents, arising from or in connection with the granting or existence of this Agreement, the performance of any of the Grantor’s obligations under this Agreement, any breach of any provision under this Agreement; and
 - (b) for all costs, fees and expenses, including legal fees, incurred by the District in the enforcement of this Agreement as result of any breach of any provision of this Agreement by the Grantor.
7. **Release** – The Grantor, on its behalf, hereby releases and forever discharges the District and each of its elected or appointed officials, officers, employees or agents, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of or which would or could not occur but for the terms and operation of this Agreement, or, except to the extent arising from the negligence or wilful misconduct of the District or those for whom it is at law responsible, the exercise by the District of any of its right under this Agreement.
8. **Survival** – The indemnity and release set out in this Agreement will survive termination or discharge of this Agreement.
9. **Specific Relief** – The Grantor agrees that the public interest in ensuring that all of the provisions of this Agreement are complied with strongly favours the award of a prohibitory or mandatory injunction, or an order for specific performance or other specific relief, by the Supreme Court of British Columbia at the instance of the District, in the event of an actual or threatened breach of this Agreement.
10. **No Effect on Powers** – Nothing in this Agreement shall:
 - (a) affect or limit the discretion, rights or powers of the District or the District’s Approving Officer under any enactment or at common law, including in relation to the use, development or subdivision of the Lands;

- (b) affect or limit any enactment relating to the use, development or subdivision of the Lands; or
- (c) relieve the Grantor from complying with any enactment, including in relation to the use, development or subdivision of the Lands;

And the Grantor covenants and agrees to comply with all such enactments with respect to the Lands.

11. **District Discretion** – Where the District or a representative of the District is required or permitted under this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent:
 - (a) the relevant provision shall not be considered fulfilled unless the approval, opinion, determination, consent or expression of satisfaction is in writing signed by the District or the representative, as the case may be;
 - (b) the approval, opinion, determination, consent or satisfaction is in the sole discretion of the District or the representative, as the case may be; and
 - (c) the District or the representative, as the case may be, is under no public law duty of fairness or natural justice in that regard and the District or the representative may do any of those things in the same manner as if it were a private person and not a public body or employee or officer thereof.
12. **No Obligation to Enforce** – The rights given to the District under this Agreement are permissive only and nothing in this Agreement shall give rise to any legal duty of any kind on the District to anyone or obligate the District to enforce this Agreement or to perform any act or incur any expense.
13. **Agreement Runs with Lands** – This Agreement shall burden and run with, and bind the successors in title to, the Lands and each and every part into which the Lands may be subdivided by any means (including by deposit of a strata plan of any kind under the *Strata Property Act* (British Columbia)).
14. **Waiver** – No waiver by the District of any requirement or breach of this Agreement shall be effective unless it is an express waiver in writing that specifically references the requirement or breach and no such waiver shall operate as a waiver of any other requirement or breach or any continuing breach of this Agreement.
15. **Remedies** - No reference to or exercise of any specific right or remedy by the District shall prejudice or preclude the District from exercising any other right or remedy, whether allowed at law or in equity or expressly provided for in this Agreement, and no such right or remedy is exclusive or dependent upon any other such remedy and the District may from time to time exercise any one or more of such remedies independently or in combination.

16. **Priority** – The Grantor shall cause this Agreement to be registered in the applicable land title office against title to the Lands with priority over all financial liens, charges and encumbrances, and any leases and options to purchase, registered or pending registration at the time of application for registration of this Agreement, including by causing the holder of each such lien, charge, encumbrance, lease or option to purchase to execute an instrument in a form required by the District under which such holder postpones all of the holder’s rights to those of the District under this Agreement in the same manner and to the same extent as if such lien, charge, encumbrance, lease or option to purchase had been registered immediately after the registration of this Agreement.
17. **Modification** – This Agreement may not be modified except by an agreement or instrument in writing signed by the Grantor or its successor in title and the District or a successor or assignee.
18. **Further Assurances** – The Grantor shall do and cause to be done all things, including by executing further documents, as may be necessary to give effect to the intent of this Agreement.
19. **Grantor’s Expense** – The Grantor shall perform its obligations under this Agreement at its own cost and expense and without compensation from the District.
20. **Severance** – If any part of this Agreement is for any reason held to be invalid by a decision of a court with the jurisdiction to do so, the invalid portion is to be considered severed from the rest of this Agreement and the decision that it is invalid shall not affect the validity or enforceability of the remainder of this Agreement.
21. **Interpretation** – In this Agreement:
 - (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
 - (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this agreement;
 - (c) the term “enactment” has the meaning given to it under the *Interpretation Act* (British Columbia) on the reference date of this Agreement;
 - (d) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
 - (e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced from time to time, unless otherwise expressly provided;

- (f) reference to a particular numbered section, or to a particular lettered schedule, is, unless otherwise expressly provided, a reference to the correspondingly numbered section or lettered schedule of this Agreement;
 - (g) time is of the essence; and
 - (h) where the word "including" is followed by a list, the contents of the list are not intended to limit or otherwise affect the generality of the expression preceding the word "including".
22. **Governing Law** – This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, which shall be deemed to be the proper law hereof.
23. **Enurement** – This Agreement hereof shall enure to the benefit of the parties and their respective successors and assigns, as the case may be.
24. **Entire Agreement** – This Agreement is the entire agreement between the parties regarding its subject.
25. **Execution in Counterparts & Electronic Delivery** – This Agreement may be executed in any number of counterparts and delivered by e-mail, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, provided that any party delivering this Agreement by e-mail shall also deliver to the other party an originally executed copy of this Agreement.

As evidence of their agreement to be bound by the terms of this instrument, the parties have executed the General Instrument – Part 1 (*Land Title Act* Form C) attached to and forming part of this Agreement.

END OF DOCUMENT