

Annotated Conservation Covenant
for the
Natural Area Protection Tax Exemption Program



Islands Trust



Islands Trust Fund

WHAT IS NAPTEP?

The Natural Area Protection Tax Exemption Program, or NAPTEP, is a program that allows landowners who preserve natural and cultural features of their land through conservation covenants to receive a 65% reduction in property taxes on the protected portion of their land. Currently, NAPTEP is **ONLY** available from the Islands Trust in the following areas:

Galiano Island Local Trust Area

Gambier Island Local Trust Area

Mayne Island Local Trust Area

North Pender Island Local Trust Area

South Pender Island Local Trust Area

Salt Spring Island Local Trust Area

Saturna Island Local Trust Area

WHO IS THE ISLANDS TRUST?

The Islands Trust is a unique federation of local island governments with a provincial mandate (from the Islands Trust Act) to make land use decisions that will "preserve and protect" British Columbia's southern Gulf Islands. It includes a land trust (the Trust Fund Board) that holds land and covenants for conservation.

WHO IS THE ISLANDS TRUST FUND?

The Islands Trust Fund was established in 1990 to preserve and protect the unique character and environment of islands in the Islands Trust Area. The Trust Fund Board governs the Islands Trust Fund and is the most likely body to hold NAPTEP covenants.

FOR MORE INFORMATION

For more information please view the Islands Trust Fund website at www.islandstrustfund.bc.ca or contact us at:

Telephone: 250.405.5186 or toll-free via **Enquiry BC** at 1.800.663.7867, 604.660.2421 in Vancouver.

Fax: 250.405.5155

Email: itfmail@islandstrust.bc.ca

Mail: 200-1627 Fort Street, Victoria, BC V8R 1H8

WHAT IS A CONSERVATION COVENANT?

A conservation covenant, under section 219 of the *Land Title Act*, is a promise made by a willing landowner to protect ecological, cultural or heritage values. To be upheld in court, these promises are recorded in voluntary, written agreements, between the landowner and at least one other party, that are registered on the land title. Once registered on the land title, a conservation covenant is considered to be binding forever.

In order to be eligible for a tax exemption under NAPTEP, an owner must enter into a conservation covenant with the Islands Trust. The standard NAPTEP covenant, complete with helpful interpretive notes, is contained in the rest of this document.

HOW TO USE THIS DOCUMENT

The following is an annotated standard Natural Area Protection Tax Exemption Program (NAPTEP) covenant. The left hand column contains the NAPTEP covenant as it is written. The right hand column contains comments that refer to and explain the covenant in plain English. The standard NAPTEP covenant contains the minimum restrictions required for properties or portions of properties that wish to be considered for a Natural Area Exemption Certificate. Restrictions may be added, but they may not be taken away. **This document is not intended as a substitute for legal advice.** All landowners wishing to participate in NAPTEP are advised to obtain independent legal and tax advice.

ACKNOWLEDGEMENT

We would like to thank West Coast Environmental Law for giving us permission to use the following as a resource for this document:

Hillyer, A. and Atkins, J. *Greening Your Title: A Guide to Best Practices for Conservation Covenants*. West Coast Environmental Law Research Foundation. Vancouver, British Columbia: 2000.

Greening Your Title is available in PDF form at <http://www.wcel.org/resources/publications> or for a small cost by calling West Coast Environmental Law at 1-800-330-WCEL.

ANNOTATED CONSERVATION COVENANT FOR THE NATURAL AREA PROTECTION TAX EXEMPTION PROGRAM

*NOTE: The terms in this covenant are the minimum requirements needed to enter the NAPTEP Program. The Owner may include additional restrictions. (See Section 4.)

TERMS OF INSTRUMENT – PART 2

Section 219 Conservation Covenant

And

Section 218 Statutory Right of Way

This Agreement dated for reference [insert date], is

BETWEEN:

Name, and address of the owner(s)
(collectively, "Owner")

AND:

Trust Fund Board, a corporation under the Islands Trust Act
(British Columbia) with its office at 200-1627 Fort Street,
Victoria, B.C. V8R 1H8
("Board")

Part 1 is the *Land Title Act* Form C which Part 2 is attached to.

Section 219 of the *Land Title Act* authorizes a provincially designated body to hold a registered interest in land for the purposes of conservation.

Section 218 of the *Land Title Act* allows the owner to give the covenant holders the right to enter onto the owner's land to ensure compliance with the covenant.

The Islands Trust is composed of three corporate entities:

- Trust Council, which brings together 26 local and municipal trustees as a federation to deal with issues that affect the Islands Trust Region.
- 13 Local Trust Committees and one Island Municipality, which undertake local land use planning within their islands
- Trust Fund Board, which oversees a conservation land trust, the Islands Trust Fund, and acquires land and funds for conservation purposes.

As arms of local government, each of these entities is able to hold a conservation covenant. Because of its conservation mandate, the Trust Fund Board is the most likely to hold and administer a NAPTEP covenant.

AND:

Name, status ["a society..." or "a corporation..."] and address of each additional covenant holder ("Co-covenant Holder") (collectively the "Parties")

WHEREAS:

- A. The Owner is the registered owner in fee simple of the Land;
- B. The Land contains significant Natural Area Values and Amenities including flora, fauna and natural features of great importance to the Owner, the Covenant Holders and the public;
- C. The Owner wishes and has agreed to grant to the Covenant Holders a covenant pursuant to section 219 of the *Land Title Act*, to restrict the use of the Land, and a statutory right of way pursuant to section 218 of the *Land Title Act*;
- D. A statutory right of way in favour of the Covenant Holders is necessary for the operation and maintenance of the undertakings of the Covenant Holders; and,
- E. The Co-covenant Holder has been designated by the British Columbia Minister of Water, Land and Air Protection as a person authorized to accept covenants under section 219 of the *Land Title Act* and as a person authorized to accept a statutory right of way under section 218 of the *Land Title Act*; and
- F. The Board is a Crown Agent and is authorized to accept covenants and statutory right of ways under sections 218 and 219 of the *Land Title Act*.

NOW THEREFORE in consideration of the payment of \$2.00 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 covenant and agree as follows, in accordance with sections 218 and 219 of the *Land Title Act* (British Columbia):

Under NAPTEP, the owner may choose a co-covenant holder. If the co-covenant holder is non-governmental, they MUST be authorized by the Provincial government under section 219 of to hold conservation covenants.

This section is known as the "recitals." It explains what has led to the conservation covenant and why all parties have entered into it. Often this section will state what is special about the land to be protected.

B. To qualify for NAPTEP you must have land with Natural Area Values and Amenities that are described in the NAPTEP regulation. To view the regulation, see www.islandstrustfund.bc.ca or contact the Islands Trust Fund.

D. A statutory right of way gives the covenant holder(s) the right to go onto the land to check for covenant violations.

E. This section is added if there is a non-governmental co-covenant holder. Non-governmental organizations must be designated to hold covenants by the Provincial Government. This paragraph is repeated for each non-governmental covenant holder.

F. The Trust Fund Board is the most likely organization to hold NAPTEP Covenants. However, Trust Council and Local Trust Committees may also fill this role.

A NAPTEP Covenant is a contract. Every contract must have some kind of payment and commitment to be valid. The payment in this contract is \$2.

1. INTERPRETATION

1.1 In this Agreement:

(a) "Amenities" includes those natural, scientific, environmental, wildlife, plant, and cultural values relating to the Covenant Area as identified in the Report;

(b) "Business Day" means any day other than Saturday, Sunday or British Columbia Statutory holidays;

(c) "Covenant Area" means that part of the Land as shown on the Plan;

(d) "Covenant Holder" means, unless the context otherwise requires, the Board or [name of Co-covenant Holder #1, etc.], singularly;

(e) "Name of Covenant Holder #1" [or short name of covenant holder] means, unless the context otherwise requires, [full name and status of covenant holder] and includes its successors and assigns;

(f) "Name of Covenant Holder #2" [or short name of covenant holder] means, unless the context otherwise requires, [full name and status of covenant holder] and includes its successors and assigns;

(g) "Covenant Holders" means, unless the context otherwise requires, [include names of each covenant holder], collectively;

(h) "CPI" means the All-Items Consumer Price Index published by Statistics Canada, or its successor in function, for Vancouver, BC, where [insert year] equals 100;

(i) "Land" means the parcel of land legally described as [insert legal description of the land];

(j) "Natural State" means the state of the Covenant Area as described in the Report;

(k) "Natural Area Value and Amenities" means the natural values and amenities for the purposes of Part 7.1 of the *Islands Trust Act* as described in the Islands Trust Natural Area Protection Tax Exemption Regulation.

(l) "Notice of Enforcement" means the notice of enforcement of Rent Charge given under section 11.8;

1. This section sets out how terms in the NAPTEP agreement are to be interpreted.

(c) Every covenant must have a plan that is drawn up by a British Columbia Land Surveyor indicating the covenant area. In most NAPTEP covenants the "covenant area" will be the portion of the property that is natural. It will exclude areas such as gardens and houses. However, structures such as sheds, power lines, well heads, old roads and trails may be included in the covenant area. To make sure that the owner is allowed to upkeep these structures, they must be shown on the covenant area map that is attached to the Baseline Report.

(e) Each covenant holder is defined and the short form of their names are noted.

(h) "CPI" is used to calculate inflation on charges for covenant infractions. It ensures that a significant penalty today is also a significant penalty in the future.

- (m) "Owner" means [name of the current owner of the Land];
- (n) "Plan" means the Reference Plan [describe plan] certified correct by [name of surveyor], B.C.L.S., dated [date of Plan], and deposited in the _____ Land Title Office under number VIP_____, a reduced copy of which is attached to this Agreement as Schedule A;
- (o) "Rent Charge" means the rent charge granted by the Owner under section 11;
- (p) "Rent Charge Amount" means the amount set out in section 11, the payment of which is secured by the Rent Charge; and
- (q) "Report" means the baseline documentation report that describes the Covenant Area and the Natural Values and Amenities in the form of text, maps, and other records of the Covenant Area as of the date of registration of this Agreement, a copy of which is attached as Schedule B.

- 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 subject to section 6, the courts of British Columbia shall 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 the Agreement, the Schedules to the 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 otherwise requires;
 - (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;

(n) All covenant areas must be surveyed by a registered British Columbia Land Surveyor (B.C.L.S.)

(o) The rent charge is a specified amount paid to the covenant holder if the landowner breaks the covenant. It is intended to ensure that the landowner complies with the terms of the covenant.

(q) The Baseline Report must be compiled by an environmental professional that has been approved by the Trust Fund Board.

(e) the word "enactment" has the meaning given to it in the *Interpretation Act* (British Columbia) on the reference date of this Agreement;

(f) reference to any enactment is a reference to that enactment as consolidated, revised, amended or re-enacted or replaced, unless otherwise expressly provided;

(g) 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

(h) 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 to the Covenant Holders that the facts set out in Recitals A and C are true as of the date of this Agreement.
- 2.2 The Co-covenant Holder represents and warrants that the facts set out in Recital E are true as of the date of this Agreement.
- 2.3 The Board represents and warrants that the facts set out in Recital F are true as of the date of this Agreement.
- 2.4 The Parties represent and warrant that the facts set out in Recitals B and D are true as of the date of this Agreement.

3. INTENT OF AGREEMENT

- 3.1 The Parties agree that the intent of this Agreement is:
- (a) to protect, preserve, conserve, maintain, enhance, and if applicable from time to time, restore the Natural State of the Covenant Area or its Natural Area Values and Amenities;
- (b) to prevent any occupation or use of the Land that will impair or interfere with the Natural State of the Covenant Area or its Natural Area Values and Amenities;

and the parties agree that this Agreement is to be interpreted, performed and applied in that context.

- 3.2 This Agreement shall be perpetual to reflect the public interest in the protection, preservation, conservation, maintenance and enhancement of the Covenant Area and the Natural Area Values and Amenities.

2. This section confirms that all parties agree on the facts set out in the WHEREAS section of the covenant (the recitals).

3. This section explains the intent of the agreement and gives a context for the interpretation of the agreement. This is especially useful if the covenant needs to be defended in court.

4. Restrictions on Use of the COVENANT AREA

4.1 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 Covenant Area or its Natural Area Values and Amenities from the condition described in the Report.

4.2 Without restricting the generality of section 4.1, the Owner must not, except with the prior written approval of both 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:

(i) causes or allows silts, leachates, fills or other deleterious substances to be released into any watercourse on the Covenant Area;

(ii) causes the erosion of the Covenant Area to occur;

(iii) causes or facilitates the loss of soil on the Covenant Area;

(iv) alters or interferes with the hydrology of the Covenant Area, including by the diversion of natural drainage or flow of water in, on or through the Covenant Area in a manner which may impact or alter the Covenant Area;

(v) causes or allows fill, rubbish, ashes, garbage, waste or other material foreign to the Covenant Area to be deposited in, on or under the Covenant Area;

(vi) causes or allows any component of the Land, including soil, gravel or rock, to be disturbed, explored for, moved, removed from or deposited in or on the Covenant Area;

(vii) causes or allows pesticides, including but not limited to herbicides, insecticides or fungicides, to be applied to or introduced onto the Covenant Area; or

(viii) causes or allows any indigenous flora on the Covenant Area to be cut down, removed defoliated or in any way tampered with.

(b) use or permit the use of the Covenant Area for hunting, fishing, gathering or grazing of domestic animals;

(c) have the Covenant Area removed from the Agricultural Land Reserve;

- (d) construct, build, affix or place on the Covenant Area any buildings, structures, fixtures or improvements of any kind;
- (e) lay out or construct any new roads or paths on the Covenant Area; and
- (f) lease or license the Covenant Area or any part thereof unless the lease or license is expressly made subject to the provisions of this Agreement and expressly entitles the Owner to terminate the lease or license if the tenant or licensee breaches any of the provisions of this Agreement.

5. BASELINE DOCUMENTATION REPORT

- 5.1 The Parties agree that the Covenant Area and the Natural Area Values and Amenities are described in the Report, a copy of which is on file with each of the parties at the addresses set out in section 13, an overview of which is attached as Schedule B to this Agreement. For clarity, the Covenant Holders will provide a copy of the full Report to the Owner upon request from the Owner from time to time.
- 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 Covenant Area and its Natural Area Values and Amenities as of the date of the this Agreement.
- 5.3 The Parties each acknowledge that the flora and fauna on the Covenant 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. DISPUTE RESOLUTION

- 6.1 If a breach of this Agreement occurs or is threatened, or if there is disagreement as to the meaning of this Agreement, either Covenant Holder or the Owner may give notice to the other parties requiring a meeting of all parties within 10 Business Days of receipt of the notice.
- 6.2 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 must immediately cease upon receipt of notice.

5. A Baseline Report must be prepared for every NAPTEP covenant. It documents the current state of the land and includes descriptions of the land's special features. It must be completed by an environmental professional or an organization that has been approved by the Trust Fund Board.

5.2 The Baseline Report provides a benchmark for the state of the covenant area. It is used for annual monitoring to determine whether or not the covenant has been violated and will be used in court as evidence of any covenant violations should they occur.

5.3 Over time features and values of the land may change naturally. These natural changes are taken into account during monitoring visits.

6. In the event that a violation of this agreement has occurred or is likely to occur, this section outlines the process used to resolve the matter.

- 6.3 The parties must attempt to resolve the matter, acting reasonably and in good faith, within 20 Business Days of receipt of the notice.
- 6.4 If the parties are not able to resolve the matter within that time, the parties may, if all parties are agreeable, appoint a mutually acceptable person to mediate the matter, with the costs to be borne equally between the parties, and the parties must act reasonably and in good faith and cooperate with the mediator and with each other in an attempt to resolve the matter within 30 days after the mediator is appointed.
- 6.5 This section 6 does not affect the right of either Covenant Holder to pursue any other legal or equitable remedy in relation to a breach or a threatened breach of this Agreement.

7. OWNER'S RESERVED RIGHTS

- 7.1 Subject to section 4, the Owner reserves all of its rights as owner of the Land, including the right to use, occupy and maintain the Covenant Area in any way that is not expressly restricted or prohibited by this Agreement, so long as the use, occupation or maintenance is consistent with the intent of this Agreement.
- 7.2 Without limiting the generality of section 7.1 the following rights are expressly reserved to the Owner:
- (a) to maintain, restore or replace existing buildings and other improvements on the Covenant Area, the location of which are indicated in the Report, as of the date of registration of this Agreement so long as the size and location of the buildings and improvements remain the same;
 - (b) to maintain, replace or restore any existing waste disposal and water supply system existing in the Covenant Area at the time of registration of this agreement, the location of which is indicated in the Report;
 - (c) to maintain, replace or restore any utility lines running through the Covenant Area, the location of which is indicated in the Report;
 - (d) to maintain, replace or restore an existing driveway within the Covenant Area, the location of which is indicated in the Report, so long as the size and location and material remain the same and;
 - (f) to install, maintain or replace a reasonable number of signs for the purposes of public safety or informing the public about

6.4 Section 6.4 allows the parties to have disputes mediated by a third party that is agreed upon by all.

6.5 The Covenant Holder(s) may pursue legal and other means to resolve disputes.

7.2 This section indicates the rights that are kept by the owner. Generally owners may maintain existing structures, for example sheds, power lines, wells, signs and roads. However, they may not make them bigger. All existing structures must be recorded on the map in the Baseline Report.

the Covenant Area and Natural Area Values and Amenities, so long as the signs are not larger than 1 metre by 1 metre in size.

- 7.3 Subject to section 7.4 nothing in this Agreement restricts or affects the right of the Owner or any other party to do anything reasonably necessary to:
- (a) prevent potential injury or death to any individual; or
 - (b) prevent, abate or mitigate any damage or loss to any real or personal property.
- 7.4 If the Owner or any other party intends to do anything described in section 7.3, the Owner must give at least 30 days' prior written notice (except in the case of an emergency, in which case the Owner must give notice to each Covenant Holder as soon as possible) to each Covenant Holder, describing in reasonable detail the intended action, the reason for it, and its likely effect on the Covenant Area or its Natural Area Value and Amenities. In addition to the Covenant Holders' other rights under this Agreement, the Owner must permit each Covenant Holder to enter upon and inspect the Land if any action is proposed or, in the case of an emergency, already done under section 7.3. The Covenant Holders may comment on the proposed action and the Owner and any other party must take those comments into consideration before doing anything under that section.

8. OWNER'S OBLIGATIONS

- 8.1 The Owner retains all responsibilities and bears all costs and liabilities related to the ownership, use, occupation and maintenance of the Land and all improvements thereon, including any improvements expressly authorized by this Agreement.
- 8.2 The Owner must indemnify the Covenant Holders, their directors, officers, employees, agents and contractors, from and against any and all liabilities, damages, losses, personal injury or death, 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 its Natural Area Values and Amenities by the Owner or its officers, employees, contractors, invitees, licensees or agents.
- 8.3 The Owner is liable for any and all breaches of this Agreement, but the Owner is not liable for
- (a) breaches of this Agreement that occur while the Owner is not the registered owner of any interest in the Land;

7.3 and 7.4 The owner may prevent damage to persons or property, (eg. remove a tree that threatens to fall on the owner's house). However, the owner must give at least 30 days notice to the covenant holder(s), unless the situation is considered an emergency.

8.1 The owner retains all costs (eg. property taxes) and potential liabilities of ownership.

8.2 This section protects the covenant holder(s) from having to pay any liabilities if the landowner is found liable in court.

(a) Only the registered owner is only liable for breaking the covenant.

(b) injury or alteration to the Covenant Area and its Natural Area Value and Amenities resulting from natural causes, or causes beyond the Owner's reasonable control, including accidental fire, flood, storm, vandalism, trespass and earth movement, but excluding injury or alteration resulting from actions of the Owner or any other person 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 Land, or improvements thereon, or its Natural Area Value and Amenities, resulting from natural causes, including accidental fire, flood, storm and earth movement; or

(d) injury or alteration to the Covenant Area caused by the Covenant Holders exercising their rights under this Agreement.

8.4 Without limiting the generality of sections 8.1, 8.2 and 8.3, 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 pollutant, contaminant, waste, special waste, or any matter that impairs the environment; and

(b) must indemnify each Covenant Holder from and against any loss, fine, penalty, damage, liability, cause of action, action, 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 8.4(a).

8.5 The Owner must pay when due all taxes, assessments, levies, fees and charges of whatever description which may be levied on or assessed against the Land and must pay any arrears, penalties and interest in respect thereof.

8.6 The Owner must indemnify each Covenant Holder from and against any fee, tax, or other charge which may be assessed or levied against the Owner or the Covenant Holder pursuant to any enactment, including the *Income Tax Act* (Canada) with respect to the Land or with respect to this Agreement, including any fee, tax or other charge which may be assessed or levied against the Owner or Covenant Holder as a result of the amendment or termination of this Agreement.

8.7 Any debts or other amounts due from the Owner to the Covenant Holders under this Agreement, if not paid within 30 days after notice, will bear interest at the annual interest rate

(b) The owner is not liable for any damage to the land that is caused by natural disasters or any other cause outside of his/her control (eg. vandalism).

(c) The owner is not liable for any damage to the land caused by a reasonable attempt to protect against a natural disaster during an emergency.

(d) The owner is not liable for damage done to the covenant area by the covenant holders.

8.4 The covenant holders are not responsible for the clean up of any contamination on the land. For example, pollutants.

8.6 If a covenant is released and there are any additional penalties, the owner is solely responsible for their payment. For example, if a NAPTEP covenant is terminated, the owner is responsible for the payment of back-taxes to the Minister of Finance.

8.7 Section 8.7 states the interest rate payable on any overdue debts to the covenant holders.

that is 1 per cent greater than the prime rate of interest. For the purposes of this section, the "prime rate of interest" is the annual rate of interest charged from time to time by the Bank of Montreal, at its main branch in Vancouver, BC, for demand Canadian dollar commercial loans and designated from time to time by the Bank of Montreal as its prime rate.

- 8.8 For clarity, the indemnities granted by the Owner to the Covenant Holders under sections 8.2, 8.4(b) and 8.6 are indemnities granted as an integral part of the section 219 covenant granted by this Agreement.
- 8.9 Every calendar year the Owner must either:
- (a) provide to the Covenant Holders, within one month of July 1, an annual written report, completed between the dates of April 1 and June 30 and prepared according to the Board's Monitoring Guidelines, as amended from time to time by the Board (which guidelines and amendments will be held by the Board and copies of which shall be available to the Owner) setting out any changes to the Covenant Area and the Natural Area Values and Amenities in comparison with the Report; or
 - (b) give notice to the Board, by March 1 requesting that the Board prepare such report.
- 8.10 If the Owner gives notice under section 8.9(b) or does not fulfill its obligations under section 8.9(a) and fails to give notice under 8.9(b), the Board may inspect the Covenant Area and prepare the written report and the Owner will indemnify the Board for its costs of doing so up to a maximum amount equal to the greater of 5% of the amount of any tax exemption for the most recent calendar year in respect of the Covenant Area under Part 7.1 of the *Islands Trust Act* or \$250 (which \$250 amount is referred to as the Minimum Indemnity Cap).
- 8.11 The Minimum Indemnity Cap amount under section 8.10 is to be adjusted on January 1 of each year by increasing or decreasing, as the case may be, that amount by the amount determined by multiplying the Minimum Indemnity Cap 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 Minimum Indemnity Cap 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 the Board in its sole discretion, the Minimum Indemnity Cap will be increased on January 1 of each year by 3%.

8.9 Under NAPTEP covenants the landowner is required to arrange and pay for covenant monitoring once a year. Monitoring may be done by the Trust Fund Board or by a private contractor/organization that has been pre-approved by the Trust Fund Board. It must be done within the timeframe noted in the covenant (this may vary depending on the natural values of interest). Guidelines for monitoring are available through the Islands Trust Fund.

8.10 The Board will typically charge \$250 to complete a monitoring report. Trust Fund Board monitoring fees and the penalties for failing to submit a monitoring report are defined in the next three sections. If the owner does not submit a monitoring report by the agreed date, the Trust Fund Board may have the property inspected. The maximum amount the Trust Fund Board may charge for this will be \$250 or 5% of the amount of any tax exemption for the most recent calendar year. The minimum charge is \$250.

8.11 The base \$250 maximum charged by the Trust Fund Board will increase or decrease with inflation as it is determined by Statistics Canada's Consumer Price Index (CPI).

8.12 The Owner acknowledges and agrees that the indemnity under section 8.10 is an integral part of the covenant under section 219 of the *Land Title Act* created by this Agreement and that the Owner agrees that any a failure by the Owner to indemnify the Board under section 8.10 within 30 days of receipt of an invoice from the Board will constitute a fundamental breach of this Agreement and amount to a contravention of this Agreement entitling the Island Trust Council under the *Islands Trust Act* to cancel any natural area exemption certificate issued in respect of the Covenant Area under Part 7.1 of the *Islands Trust Act*.

9. STATUTORY RIGHT OF WAY

9.1 The Owner grants to each Covenant Holder a licence, and a statutory right of way pursuant to section 218 of the *Land Title Act*, permitting each Covenant Holder to do the following:

(a) to enter upon the Land to access and inspect the Covenant Area at all reasonable times upon prior written notice by a Covenant Holder to the Owner of at least 24 hours, unless, in the opinion of a Covenant Holder, there is an emergency or other circumstance which makes giving such notice impractical, in the sole discretion of the Covenant Holder;

(b) as part of inspection of the Covenant Area, to take soil, water or other samples, photographs and video and sound recordings as may be necessary to monitor compliance with and enforce the terms of this Agreement;

(c) to enter upon and protect, preserve, conserve, maintain, enhance, rehabilitate or restore, in the Covenant Holder's sole discretion and at the Covenant Holder's expense, the Covenant Area or its Natural Area Value and Amenities to as near the condition described in the Report as the Covenant Holder considers is practicable or desirable, if an act of nature or of any person other than as described in section 9.1(d) destroys, impairs, diminishes or negatively affects or alters the Covenant Area or the Natural Area Value and Amenities from the condition described in the Report;

(d) in accordance with section 10, to enter upon and protect, preserve, conserve, maintain, enhance, rehabilitate or restore, in the Covenant Holder's sole discretion and at the Owner's expense, the Covenant Area or its Natural Area Value and Amenities to as near the condition described in the Report as in the Covenant Holder's sole discretion is practicable or desirable, if an action of the Owner or any other person acting with the actual or constructive knowledge of the Owner contravenes any term of this Agreement;

8.12 Failing to submit an annual covenant monitoring report or failing to pay the Trust Fund Board for monitoring performed under section 8.10, is a violation of the covenant and could result in the termination of the Natural Area Exemption Certificate. Cancellation of the Exemption Certificate will result in the payment of all past exempted property taxes as well as a rent charge (see 1.1(o)).

9. By signing the covenant, the owner also agrees to allow covenant holders and chosen monitors to go onto the land to ensure that the covenant is not violated.

(a) The covenant holder(s) will give 24 hours notice should they wish to inspect the land, unless an emergency inspection is needed.

(c) The covenant holder(s) have the right to enter onto the land to do restoration or repairs at their expense.

(d) Where the owner violates the covenant, any restoration or repairs are done at the owner's expense.

(e) to carry out or evaluate, or both, any program agreed upon between the parties for the protection, preservation, conservation, maintenance, restoration or enhancement of all of any portion of the Covenant Area or its Natural Area Value and Amenities;

(f) to place survey pegs or other markings on the Land to clearly identify the Covenant Area or access to the Covenant Area, or both, and to increase the visibility of existing survey pegs or other markings; and

(g) to erect a plaque or other sign on the Land, in a tasteful manner and at the expense of the Covenant Holders, indicating that they hold a covenant on the Land, provided that 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.

9.2 The Covenant Holders may bring workers, contractors, employees, vehicles, equipment and other personal property onto the Land when exercising their rights under this Agreement.

10. ENFORCEMENT REMEDIES OF THE COVENANT HOLDERS

10.1 If either Covenant Holder, in its sole discretion, believes that the Owner has neglected or refused to perform any of the obligations set out in this Agreement or is in breach of any term of this Agreement, that Covenant Holder may give notice to the Owner and the other Covenant Holder setting out particulars of the breach and of the Covenant Holder's estimated maximum costs of remedying the breach.

10.2 The Owner has 60 days from receipt of the notice given under section 10.1 or from the conclusion of the dispute resolution provision under section 6 if it is invoked, to 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.

10.3 If the Owner does not remedy a breach described in section 10.1 within the time acceptable to the Covenant Holder under section 10.2, either Covenant Holder may enter upon the Land and remedy the breach or carry out the arrangements referred to in section 10.2 and the Owner must reimburse that Covenant Holder for any expenses incurred in doing so, up to

(g) The covenant holders may place a sign on the covenant property with the owner's approval.

10. Section 10 gives the covenant holder the power to ensure that the owner complies with the terms of the covenant and to remedy any covenant violations at the owner's expense.

10.1 The covenant holder(s) will notify the owner if they believe a covenant violation has occurred.

10.2 The owner has 60 days to remedy the violation to the covenant holder(s)' satisfaction.

10.3 If the owner does not remedy the covenant violation, the covenant holder's may undertake the work at the owner's expense.

the estimated maximum costs of remedying the breach as set out in the notice given under section 10.1.

- 10.4 Expenses incurred by the Covenant Holder under this section, until paid, are a debt owed by the Owner to the Covenant Holder and the Owner agrees to indemnify the Covenant Holder for such expenses, which indemnity forms an integral part of the covenant under section 219 of the *Land Title Act* created by this Agreement.
- 10.5 By this section, each Covenant Holder appoints the other its agent for the purpose of recovering any debt owed by the Owner to the Covenant Holder who incurred expenses under this section, including through legal proceedings, and the Covenant Holder who recovers the debt holds it, less reasonable legal fees and disbursements and other reasonable expenses of recovery, as agent for the Covenant Holder that incurred the expenses.

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 the Covenant Holders a perpetual rent charge against the Land. The Rent Charge is granted both under section 219 of the *Land Title Act* (British Columbia) 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 secures payment to the Covenant Holders by the Owner of the sum of \$5,000 per year, subject to adjustment under section 11.3, for any violations occurring within that year. For clarity, only one Rent Charge Amount is payable by the Owner for each violation.
- 11.3 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 the Covenant Holder in its sole discretion, the parties agree that the factor to be used in determining the Rent Charge Amount for each year shall be 3%.

10.5 This section sets out the rights of covenant holders with respect to each other if it becomes necessary to start a legal action against an owner who doesn't pay his/her debts.

11. The rent charge ensures that the owner lives up to his/her obligations under the covenant. It is paid to the covenant holders by the owner if the owner violates the covenant.

11.2 The rent charge must be at least this amount, but can be more if all parties agree. An owner might agree to an increased rent charge to create a strong deterrent against covenant violations.

11.3 The rent charge is adjusted for inflation. This adjustment is essential because the covenant is intended to last forever.

- 11.4 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, of any flora or fauna, soil, rock, gravel or minerals, which have been altered, damaged, destroyed, moved, harvested or removed.
- 11.5 The Covenant Holders shall be entitled to recover from the Owner all reasonable expenses incurred as a result of enforcement of the Rent Charge.
- 11.6 The Rent Charge is suspended unless and until the Owner is in breach of any provision of this Agreement and has not cured the breach, or is not diligently proceeding to cure the breach in accordance with section 10 of this Agreement.
- 11.7 The Covenant Holders may enforce the Rent Charge by any of the following:
- (a) an action against the Owner for the Rent Charge Amount;
 - (b) distraint against the Land to the extent of the Rent Charge Amount.
- 11.8 If either of the Covenant Holders wishes to enforce the Rent Charge, it must provide notice to that effect to the Owner and the other Covenant Holder. Such a "Notice of Enforcement" may be given at any time after notice is given under section 10.1.
- 11.9 The Covenant Holder receiving the Notice of Enforcement has 30 days from receiving it to send notice to the notifying Covenant Holder that it wishes to enforce the Rent Charge jointly and, if it does not do so, it is deemed to have elected not to enforce the Rent Charge.
- 11.10 If the Rent Charge is enforced jointly:
- (a) reasonable expenses incurred as a result of the enforcement of the Rent Charge must be shared equally between the Covenant Holders; and
 - (b) the net proceeds obtained as a result of the enforcement of the Rent Charge must be shared equally between the Covenant Holders.
- unless otherwise agreed in writing between the Covenant Holders.
- 11.11 If the Covenant Holder receiving the Notice of Enforcement does not wish to enforce the Rent Charge jointly, that Covenant Holder shall not be entitled to the Rent Charge unless otherwise agreed in writing between the Covenant Holders.

11.4 By increasing the amount of the rent charge by more than the value of substances removed from the land, this section prevents the owner from profiting from a violation of the covenant.

11.7 The covenant holder(s) have options for enforcing the rent charge.

11.8 to 11.12 explain the enforcement of the rent charge when there is more than one covenant holder. They set out the rights of the covenant holders vis-à-vis each other. If there is only one covenant holder, sections 11.9 to 11.12 are not necessary.

11.12 A Covenant Holder who declines to enforce the Rent Charge jointly must execute all documents which may be necessary for the enforcement and collection of the Rent Charge by the notifying Covenant Holder.

12. ASSIGNMENT OF AGREEMENT OR DISSOLUTION OF THE COVENANT HOLDERS

12.1 This Agreement shall be transferable by a Covenant Holder, but the Covenant Holder may assign its rights and obligations under this Agreement only to a person or entity qualified by law at the time of transfer to hold covenants under section 219 of the *Land Title Act* and any applicable regulations.

12.2 The Covenant Holders agree that before either of them assigns its rights and obligations under this section, it must notify the Owner and the other Covenant Holder with respect to the proposed assignee.

12.3 In the event of appending winding-up or dissolution of a Covenant Holder, the Covenant Holder must use its best efforts to assign and transfer all of its interest under this Agreement to a person or entity authorized to accept covenants under section 219 of the *Land Title Act*.

13. NOTICE

13.1 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 facsimile to the parties at their respective facsimile numbers set out in section 13.5, followed by a copy sent by ordinary mail; or
- (c) sent by pre-paid registered mail addressed to the parties at their respective addresses set out in section 13.5.

13.2 If notice is delivered in person, the party receiving the notice must forthwith acknowledge in writing receipt of the notice, and the notice shall be deemed to have been received on the earlier of the date of the acknowledgement and the date that is 5 days after the notice is delivered.

13.3 If notice is sent by facsimile, it shall be deemed to have been received on the date of the transmission of the notice.

12. If the covenant holder ceases to exist (ie. dissolves), its rights and responsibilities can be assigned to another entity that is able to hold covenants. Because the covenant is meant to last forever, it is important to make provisions for changes in the status of covenant holders.

13. Many of the sections of the covenant require that notice be given to the parties. Section 13 sets out how notice should be given. The parties should consider the reliability of the methods of giving notice before they set them in the covenant, including ways of receiving confirmation that the notice has been received.

13.4 If notice is sent by pre-paid registered mail, it shall be deemed to have been received on the fourth Business Day following the day on which the notice was sent.

13.5 The addresses of the parties for notice are as follows:

The Owner:

[Address of the Owner]

[Facsimile number of the Owner]

The Board:

Trust Fund Board

200-1627 Fort Street

Victoria, B.C. V8R 1H8

Fax: 250-405-5155

Co-covenant Holder:

[Address of the Co-covenant Holder]

[Facsimile number of the Co-covenant Holder]

13.6 Each party agrees to give written notice immediately to the other parties of any change in its address or facsimile number from those set out in section 13.5.

13.7 If a party refuses to sign an acknowledgement of receipt of notice, the person delivering the notice may swear an affidavit of service and the notice shall be deemed to have been received on the date of service set out in the affidavit.

14. ACCESS

14.1 Except if expressly provided in this Agreement, no right of access by the general public to any portion of the Land is conveyed by this Agreement.

15. NOTICE OF COVENANT

15.1 The Owner agrees to allow the Covenant Holders to publicize the existence of this Agreement in a tasteful manner.

16. NO LIABILITY IN TORT

16.1 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

14. The covenant does not carry with it a right of public access. However, if the reason for covenanting the property includes public trails and viewpoints, public access will be required and a different clause will be inserted in section 14.

15. Covenants are available to the general public through the Land Titles Office. Section 15 allows the covenant holders to publicize the covenant, for example, in newsletters, displays and requests for funding.

16. Section 16 is intended to clarify that the liability of the parties is limited to the terms of the agreement and that no additional duties are created using legal concepts such as negligence.

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.

17. WAIVER

- 17.1 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.
- 17.2 The failure for any reason 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.

18. JOINT AND SEVERAL OBLIGATIONS

- 18.1 Where at any time there is more than one Owner in this Agreement, the obligations of those Owners are joint and several.

19. REMEDIES NOT EXHAUSTIVE

- 19.1 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.

20. COVENANT RUNS WITH THE LAND

- 20.1 Every obligation and covenant of the Owner in this Agreement constitutes both a personal covenant and a covenant granted under section 219 of the *Land Title Act* (British Columbia) in respect of the Land, and the provisions of section 9 constitute a statutory right of way under section 218 of the *Land Title Act* (British Columbia). This Agreement burdens the Land and runs with it and binds the successors in title to the Land and each and every part into which the Land may be subdivided by any means and any parcel with which the Land or any part of it is consolidated.

17. If the covenant holder does not enforce the terms of the covenant in one circumstance this does not set a precedent. In other words, the owner cannot argue that the covenant holder is prevented from doing so in the future.

18. If there is more than one person who owns the land, each person is both individually and jointly responsible for any violations of the covenant.

20. The covenant stays on the land title forever, even if the land is sold, subdivided or consolidated into a larger parcel.

21. REGISTRATION

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

22. SEVERANCE

22.1 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.

23. NO OTHER AGREEMENTS

23.1 This Agreement is the entire agreement between the parties and it terminates and supersedes all other agreements and arrangements regarding its subject.

24. INDEPENDENT ADVICE

24.1 The Owner acknowledges and agrees that the Owner has had an opportunity to seek and obtain, to the Owner's satisfaction, independent advice from an accountant or other tax expert with respect to the income tax and other tax implications of this Agreement and acknowledges that it does not rely and has not relied on either Covenant Holder for advice in this regard and that the Covenant Holders have given no representation or warranty in that regard.

24.2 The Owner acknowledges and agrees that the Owner has been advised by the Covenant Holders that the Owner should seek independent 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.

21. Registration of the agreement is essential to ensure that the covenant, statutory right of way and rent charge are registered against title to the land. Once registered in the Land Title Office, the covenant will bind all future owners. The covenant, statutory right of way and rent charges are intended to take priority over any other charges against the land.

22. If one section in a covenant is invalidated, the rest of the covenant remains in force and the invalid section will be removed from the agreement.

23. Only agreements included in the covenant are valid. Verbal agreements and informal agreements have no standing.

24.1 Owners are advised to seek independent tax advice before placing a covenant on their land. Granting a covenant can have a significant tax impact. Owners should not rely only on information provided by the covenant holder.

24.2 Owners are advised to seek independent legal advice regarding the agreement and its implications. Covenant holders cannot give legal advice on the implications of the covenant.

25. AMENDMENTS

25.1 This Agreement is intended to be perpetual and may only be changed by a written instrument signed by all the parties.

26. DEED AND CONTRACT

26.1 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.

27. RIGHTS OF COVENANT HOLDERS

27.1 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 this Agreement under seal by signing Part 1 of the *Land Title Act* Form C to which this agreement is attached.

The schedules referred to throughout the document are attached after this page.

25.1 The covenant cannot be changed unless all parties agree in a written addition to the covenant that is signed by all parties.

26.1 The contract under seal is the oldest method of creating an enforceable promise. A promise made under seal is enforceable.

SCHEDULE A REFERENCE PLAN

Attached to and forming part of the Conservation Agreement
between the Owners, and the _____, Covenant Holder and
the _____, Covenant Holder dated _____

[Attach Reference Plan]

The Reference Plan must be completed by a registered British Columbia Land Surveyor (B.C.L.S.). The Plan must outline the covenant area in heavy black line and indicate its total area in hectares.

SCHEDULE B BASELINE REPORT

Attached to and forming part of the Conservation Agreement between the Owners, and the _____, Covenant Holder and the _____, Covenant Holder dated _____

The Baseline Report must be completed by a professional who is approved by the Trust Fund Board. Guidelines on how to complete a Baseline Report are available from the Islands Trust Fund.

[The following Consent and Priority Agreement must be filled out if there is a mortgage on the property]

CONSENT AND PRIORITY AGREEMENT

WHEREAS the _____ ("Chargeholder") is the holder of a mortgage against the Land, as described in the Section 219 Covenant (including Rent Charge) and Section 218 Statutory Right of Way, to which this Agreement is attached ("Covenant and Right of Way"), which mortgage is registered in the Victoria Land Title Office under instrument no. _____ ("Prior Charge").

This Consent and Priority Agreement is evidence that in consideration of payment of Two Dollars (\$2.00) by the Transferee described in Item 6 of Part 1 of the *Land Title Act* Form C to which this Agreement is attached ("Transferee"), the receipt of which is acknowledged by the Chargeholder, the Chargeholder grants to the Transferee priority for the Section 219 Covenant and the Statutory Right of Way created by the Covenant and Right of Way, but does not grant priority over the Rent Charge, over the Chargeholder's right, title and interest in and to the Land and the Chargeholder postpones the Prior Charge, and all of its right, title and interest under the Prior Charge, to the Covenant and Right of Way as if the Covenant and Right of Way had been executed, delivered and registered prior to the execution, delivery and registration of the Prior Charge.

AS EVIDENCE of its agreement with the Transferee to be bound by the above terms, as a contract and as a deed executed and delivered under seal, the Chargeholder has executed and delivered this Agreement by executing Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

END OF DOCUMENT

The consent and priority agreement is only needed if the property has a mortgage at the time of registration of the covenant. Its purpose is to give priority to protect the covenant from being wiped off the title in the event of a foreclosure.

