

2 covenant holders

LAND TITLE ACT
FORM C

Province of
British Columbia

GENERAL INSTRUMENT - PART I

8. Execution(s): ****This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.**

Officer(s) Signature(s)

Execution Date

Party (ies) Signature(s)

Y M D

Owner

06

(as to signatures)

Print name:

Print name:

TLC The Land Conservancy of British
Columbia by its authorized signatories:

06

(as to signatures)

Print name:

Print name:

Coholder by its authorized signatories:

06

(as to signatures)

Print name:

Print name:

OFFICER CERTIFICATION: Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

* If space is insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

TERMS OF INSTRUMENT - PART 2

**Section 219 Conservation Covenant and
Section 218 Statutory Right of Way**

The Agreement is dated for reference the **Xth** day of **November, 2007** is

AMONG:

(“THE OWNER”)
Address

AND:

TLC THE LAND CONSERVANCY OF BRITISH COLUMBIA (THE FIRST COVENANT HOLDER), a society registered in British Columbia (Registration No. S-36826), with its registered office at 301-1995 Esquimalt Road, Victoria, B.C. V9A 3N6

AND

(THE SECOND COVENANT HOLDER), a society registered in British Columbia (Registration No. **S-**), with its registered office at **Address**

(collectively, the "Parties")

WHEREAS:

- A. The Owner is the registered owner of the Land;
- B. The Land contains significant amenities, including flora, fauna and natural features, of great importance to the Owner, to the Covenant Holders, and to the public;
- C. The Owner wishes and has agreed to grant the Covenant Holders a covenant pursuant to section 219 of the *Land Title Act* (British Columbia), 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 pursuant to section 218 of the *Land Title Act* in favour of the Covenant Holders is necessary for the operation and maintenance of the undertakings of the Covenant Holders;
- E. TLC The Land Conservancy of British Columbia has been designated by the Government of British Columbia as a person authorized to accept covenants under section 219 of the *Land Title Act* and as a person authorized to accept statutory rights of way pursuant to section 218 of the *Land Title Act*, and

- F. **Coholder** has been designated by the Government of British Columbia as a person authorized to accept covenants under section 219 of the *Land Title Act* and as a person authorized to accept statutory rights of way pursuant to section 218 of the *Land Title Act*;
- G. EcoGift? Refer to section 2.3

In consideration of the payment of two dollars (\$2.00) now paid 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 agree as follows, in accordance with sections 218 and 219 of the *Land Title Act* (British Columbia):

1. **Definitions and Interpretation**

1.1 In this Agreement:

- (a) "Administration Fee" means a fee charged by the Covenant Holders to cover the administration costs of providing approvals or special inspections at the request of the Owner. The amount of the Administration Fee is determined by adjusting the amount set out in the appropriate section of this Covenant by any increase in the CPI which has occurred since the date of registration of this Covenant.
- (b) "Amenity" includes any natural, scientific, environmental, wildlife, plant life or cultural value relating to the Land;
- (c) "Business Day" means, a day on which the Land Title Office in Victoria BC is open.
- (d) "Covenant Area" means that part of the parcel of Land legally described as **PID xxx-xxx-xxx, legal description**, which is indicated by a heavy black line and the words "Covenant Area" on the Reference Plan by _____ BCLS, Dated on _____, and registered at the Land Titles Office as _____.
- (e) "Covenant Holder" means, unless the context otherwise requires, the **Coholder** or TLC The Land Conservancy of British Columbia, singularly; and includes its permitted successors and assignees as provided in section 13;
- (f) "Covenant Holders" means, unless the context otherwise requires, the **Coholder** and TLC The Land Conservancy of British Columbia, collectively;
- (g) "CPI" means the All-Items Consumer Price Index published by Statistics Canada, or its successor in function, for Vancouver, British Columbia, where **2007** equals 100;
- (h) "**coholder name**" means **coholder**, a society registered in British Columbia (Registration No.**S-**) and includes its permitted successors and assignees;

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- (i) "Land" means the parcel of land legally described as: **PID, Lot , Plan, Section , Range, District;**
 - (j) "Management Plan" means the management plan for the Land created in accordance with section 5;
 - (k) "Natural State" means the state of the Land as described in the Report;
 - (l) "Notice of Enforcement" means a notice of enforcement given under section **10;**
 - (m) "Owner" means **Name** and, includes any Successor of the Owner;
 - (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 VIP _____, and 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 **12**
 - (p) "Rent Charge Amount" means the amount set out in section **12** the payment of which is secured by the Rent Charge;
 - (q) "Report" means the baseline documentation report that describes the Land and the Amenities in the form of text, maps, photographs and other records of the Land and the Amenities as of the date of registration of this Agreement, an overview of which is attached as **Schedule B;**
 - (r) "Successor" means a person who, at any time after registration of this Agreement, becomes the registered owner of the Land or any part of the land by any means, including a beneficial owner; and
 - (s) "The Land Conservancy" means TLC The Land Conservancy of British Columbia a society registered in British Columbia (Registration No.S-36826) and includes its permitted successors and assignees.
- 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 shall be interpreted in accordance with the laws of British Columbia and the laws of Canada applicable in British Columbia.
- 1.4 This Agreement is comprised of the recitation of the parties, the recitals to this Agreement, the Schedules to this Agreement and Part 1 of the *Land Title Act of British Columbia* 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 requires otherwise;

- (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.
- (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, 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 warrants that the facts set out in Recital A are true as of the date of this Agreement.
- 2.2 TLC The Land Conservancy of British Columbia represents and warrants that the facts set out in Recital E are true as of the date of this Agreement.
- 2.3 The **Coholder** represents and warrants that the facts set out in Recital F are true as of the date of this Agreement.
- 2.4 The parties each agree that Recitals B and D are true as of the date of this Agreement.

3. **Intent of Agreement**

- 3.1 The parties each agree that the general intent of this Agreement is:
 - (a) to protect, preserve, conserve, maintain, enhance or restore the Land and the Amenities in a Natural State; and
 - (b) to prevent any occupation or use of the Land that will significantly impair or interfere with the Natural State of the Land or the Amenities;

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

- 3.2 This Agreement shall be perpetual to reflect the public interest in the protection, preservation, conservation, maintenance and enhancement of the Land and the Amenities for ecological and environmental reasons.

4. Restrictions on Land Use

4.1 Except as expressly permitted in this Agreement, the Owner shall 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 Land or the Amenities from the condition described in the Report.

4.2 Without restricting the generality of Section 4.1, the Owner shall not, except with the prior written approval of both Covenant Holders, in the sole discretion of each of them, perform or allow the performance of any of the restricted activities or uses of the Land set out in Schedule C to this Agreement.

5. Management Plan

5.1 The Owner must create, review and revise at intervals agreed by the Covenant Holders (or at intervals of 5 years or less) a Management Plan for the land and submit the Management Plan to each Covenant Holder for approval. Each Covenant Holder must, within 25 Business days of receipt of the proposed Management Plan, notify the Owner whether or not that Covenant Holder, acting reasonably, approves the proposed Management Plan.

5.2 If a Covenant Holder does not approve the proposed Management Plan, the Covenant Holder will, in its notification to the Owner, provide written reasons for not approving the Management Plan that are necessary for the Covenant Holder to approve the Management Plan.

6. Baseline Documentation Report

6.1 The Parties agree that the Land and the 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 15.4, an overview of which is attached as Schedule B to this Agreement.

6.2 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 and Schedule B provide an accurate description of the Land and the Amenities at the date of this Agreement. (The Parties agree that the Report needs completion in the area of XXX, and undertake to jointly complete this inventory at a suitable time during the first year after registration of this covenant.)

6.3 The Parties each acknowledge that the flora and fauna on the Land 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.

7. Dispute Resolution

- 7.1 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.
- 7.2 All activities giving rise to 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 the notice.
- 7.3 The parties must attempt to resolve the matter, acting reasonably and in good faith, within 20 Business Days of receipt of the notice.
- 7.4 If the parties are not able to resolve the matter within that time, the parties may appoint a mutually acceptable person to mediate the matter. If the parties are unable to agree on the appointment of a mediator within 15 days after the mediation process is invoked, any party may apply to the British Columbia Mediator Roster Society, or its successor, or such other organization or person agreed to by the parties in writing, for appointment of a mediator. 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 60 days after the mediator is appointed.
- 7.5 The cost of the mediation will be borne equally between the owner and the covenant holder(s), which costs will not include costs incurred by a party for representation by counsel at the mediation.

8. Owner's Reserved Rights

- 8.1 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 Land in any way that is not expressly restricted or prohibited by this Agreement, so long as the use, occupation or maintenance are consistent with the intent of this Agreement.
- 8.2 Without limiting the generality of section 8.1 and subject to sections 4.1 and 4.2, the rights set out in Schedule D to this Agreement are expressly reserved to the Owner.
- 8.3 Subject to section 8.4, nothing in this Agreement restricts or affects the right of the Owner or any other party to do anything reasonably necessary to:
 - (a) prevent, abate or mitigate any damage or loss to any real or personal property; or
 - (b) prevent potential injury or death to any individual.

8.4 If the Owner or any other party intends to do anything described in section 8.3, the Owner shall give at least 30 days' prior written notice to each Covenant Holder, describing in reasonable detail the intended action, the reason for it, and its likely effect on the Land or the Amenities. Despite the rest of this Agreement, the Owner shall permit each Covenant Holder to enter upon and inspect the Land if any such action is proposed under section 8.3. A Covenant Holder 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.

8.5 Despite section 8.4, in an emergency situation, such as fire or threat to human safety, a living or dead tree on the Land may be cut down or trimmed without the consent of the Covenant Holders, but the Owner shall notify the Covenant Holders of the circumstances of such action within 30 days, including the actual or likely effect on the Land or the Amenities.

9. Owner's Obligations As To Taxes and Other Matters

9.1 The Owner retains all responsibilities and bears all costs and liabilities related to the ownership, use, occupation and maintenance of the Land, including any improvements expressly authorized by this Agreement.

9.2 The Owner shall 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 the Amenities by the Owner.

9.3 The Owner is liable for any and all breaches of this Agreement, but the Owner is not liable for:

- (a) breaches of this Agreement which occurred prior to the Owner becoming the registered owner of any interest in the Land, provided that the Owner has received a Certificate issued by the Covenant Holder certifying that there were no violations noted before the transfer to the Owner of that interest;
- (b) injury or alteration to the Land or the Amenities resulting from natural causes, or causes beyond the Owner's reasonable control, including accidental fire, flood, storm, pest or fungal infestation, vandalism, trespass and earth movement, but excluding injury or alteration resulting from actions of the Owner or any other person acting with the actual or constructive knowledge of the Owner; or
- (c) any prudent action taken by the Owner under emergency conditions to prevent, abate, or mitigate significant injury to the Land or the Amenities resulting from natural causes, including accidental fire, flood, storm and earth movement; or

- (d) injury or alteration to the Land caused by the Covenant Holders exercising their rights under this Agreement.
- 9.4 Without limiting the generality of Sections 9.1, 9.2 and 9.3, 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 ("Contaminant"); and
 - (b) shall indemnify each Covenant Holder from and against any loss, damage, liability, cause of action, action, penal 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 9.4(a).
- 9.5 Where, as provided under Section 9.3b, the Owner is not responsible for damage or theft due to trespass or vandalism, the Owner will take all reasonable steps to identify and prosecute the person responsible and to seek financial restitution for the damage or theft.
- 9.6 The Owner shall pay when due all taxes, assessments, levies, fees and charges of whatever description which may be levied on or assessed against the Land and shall pay any arrears, penalties and interest in respect thereof.
- 9.7 The Owner shall indemnify each Covenant Holder from and against any fee, tax, or other charge which may be assessed or levied against the Owner or a 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 a Covenant Holder as a result of the amendment or termination of this Agreement.
- 9.8 Any debts or other amounts due from the Owner to the Covenant Holders under this Agreement, if not paid within 30 days after notice, shall bear interest at the annual interest rate that is 1 percent 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, British Columbia, for demand Canadian dollar commercial loans made to its most creditworthy commercial customers and designated from time to time by the Bank of Montreal as its prime rate.
- 9.9 For clarity, the indemnities granted by the Owner to the Covenant Holders under Section 9.2, 9.4(b) and 9.7 are indemnities granted as an integral part of the section 219 *Land Title Act* covenant created by this Agreement.

10. **Statutory Right of Way For Monitoring and Enforcement**

10.1 The Owner grants to each of the Covenant Holders a license, and a statutory right of way pursuant to s. 218 of the *Land Title Act*, permitting each of the Covenant Holders to do the following:

- (a) to enter upon and inspect the Land:
 - (i) at least once each calendar year, with the date for each inspection to be agreed upon by the parties before August 31 each year, but if the parties cannot agree on those days by August 31 in any year, the Covenant Holders are entitled to enter upon and inspect the Land in accordance with section 10.1(a)(ii); and
 - (ii) at all reasonable times upon prior notice by a Covenant Holder to the Owner of at least **twenty-four (24)** hours, unless, in the opinion of a Covenant Holder, there is an emergency or other circumstance which does not make giving such notice practicable, in the sole discretion of the Covenant Holder;
- (b) as part of inspection of the Land, to take samples, photographs and video recordings as may be necessary to monitor compliance and enforce the terms of this Agreement;
- (c) to enter upon and protect, preserve, conserve, maintain, enhance, restore or rehabilitate, in a Covenant Holder's sole discretion and at that Covenant Holder's expense, the Land or the Amenities to as near the condition described in the Report as is practicable if an act of nature or human agency other than as described in section 10.1(d), destroys, impairs, diminishes or negatively affects or alters the Land or the Amenities from the condition described in the Report;
- (d) in accordance with section **11**, to enter upon and protect, preserve, conserve, maintain, enhance, restore or rehabilitate, in a Covenant Holder's sole discretion and at the Owner's expense, the Land or the Amenities to as near the condition described in the Report as is practicable, if an action of the Owner or any other person acting with the actual or constructive knowledge of the Owner:
 - (i) destroys, impairs, diminishes, negatively affects or alters the Land or the Amenities from the condition described in the Report; or
 - (ii) contravenes any term of this Agreement;
- (e) to carry out or evaluate, or both, any program agreed upon among the parties for the protection, preservation, conservation, maintenance, enhancement, restoration or rehabilitation of all or any portion of the Land or the Amenities; and
- (f) to place survey pegs or other markings on the Land or to increase the visibility of existing survey pegs or other markings.

- 10.2 The Covenant Holders may bring workers, vehicles, (as reasonably necessary), equipment and personal property onto the Land when exercising their rights under this Agreement.
- 10.3 For the purposes of sections 10.1(c) and (d), both of the Covenant Holders have the sole discretion to protect, preserve, conserve, maintain, enhance, restore or rehabilitate the Land or the Amenities.

The Covenant Holder may bring equipment and personal property onto the Land when exercising its rights under this Agreement.

11. Enforcement Remedy of the Covenant Holders

- 11.1 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 serve on the Owner and the other Covenant Holder a notice setting out particulars of the breach and of the Covenant Holder's estimated maximum costs of remedying the breach.
- 11.2 The Owner has 60 days from receipt of the notice given under section 11.1 or from the conclusion of a dispute resolution process under section 7 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 shall be remedied.
- 11.3 If the Owner does not remedy a breach described in section 11.1 in 60 days, either Covenant Holder may enter upon the Land and remedy the breach or carry out the arrangements referred to in section 11.2, and the Owner shall reimburse that Covenant Holder for any expenses incurred in doing so, up to the estimated maximum costs of remedying the breach as set out in the notice given under section 11.1.
- 11.4 Expenses incurred by the Covenant Holder under this section, until paid, are a debt owed by the Owner to that Covenant Holder.
- 11.5 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 the disbursement and other reasonable expenses of recovery, as the agent for the Covenant Holder that incurred the expenses.

12. Rent Charge and Its Enforcement

- 12.1 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, ranking prior to all other financial charges and encumbrances registered against the Land, including options to purchase and rights of first refusal. The Rent Charge is granted both

under s. 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.

- 12.2 The Rent Charge secures payment to the Covenant Holders by the Owner of the sum of **\$10,000.00** per year, subject to adjustment under section 12.3, for each violation occurring within that year. For clarity, only one Rent Charge Amount is payable by the Owner for each violation, and not one to each of the Covenant Holders.
- 12.3 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%.
- 12.4 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 has been altered, damaged, destroyed, moved, harvested or removed.
- 12.5 The Covenant Holders shall be entitled to recover from the Owner all reasonable expenses incurred as a result of enforcement of the Rent Charge.
- 12.6 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 **11** of this Agreement.
- 12.7 The Covenant Holders may enforce the Rent Charge by any combination, or all, of:
 - (a) an action against the Owner for the Rent Charge Amount;
 - (b) distraint against the Land to the extent of the Rent Charge Amount;
 - (c) an action for appointment of a receiver in respect of the Land; or
 - (d) an order for sale of the Land.
- 12.8 If either of the Covenant Holders wishes to enforce the Rent Charge, it shall provide notice to that effect to the Owner and to the other Covenant Holder. This notice may be given at any time after notice of breach is given under section 11.1.

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12.9 The Covenant Holder receiving notice given under section 12.8 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.

12.10 If the Rent Charge is enforced jointly:

- (a) reasonable expenses incurred as a result of the enforcement of the Rent Charge shall be shared equally between the Covenant Holders; and
- (b) the net proceeds obtained as a result of the enforcement of the Rent Charge shall be shared equally between the Covenant Holders,

unless otherwise agreed in writing between the Covenant Holders.

12.11 If the Covenant Holder receiving notice given under section 12.8 does not wish to enforce the Rent Charge jointly, that Covenant Holder shall have no entitlement to the Rent Charge unless otherwise agreed in writing between the Covenant Holders.

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

12.13 Within **ten (10)** business days of receipt of a Notice of Enforcement, the Owner shall pay the full Rent Charge Amount to the Covenant Holder giving the Notice of Enforcement.

13. **Successor of the Owner**

13.1 This Agreement shall enure to the benefit of and be binding upon the Owner and the Owner's Successor.

13.2 The Owner shall not lease or license the Land or any part thereof unless the lease or license is expressly made subject to the provisions of this Agreement and unless the lease or license expressly entitles the Owner to terminate the lease or license and re-enter the land if the tenant or licensee breaches any of the provisions of this Agreement.

13.3 The Owner shall notify the Covenant Holders of any change of ownership or the registration of a lease or license prior to the registration of any such change. The Owner may request the Covenant Holder visit the Land and issue a Certificate indicating whether or not there are any violations of the covenant. The Covenant Holder may charge an Administration Fee plus expenses for this visit and Certificate.

13.4 Failure by the Owner to comply with the provisions of this section shall not affect the enforceability of this Agreement against the Owner or any Successor.

14. **Assignment of Agreement or Dissolution of a Covenant Holder**

- 14.1 This Agreement shall be transferable by a Covenant Holder, but the Covenant Holder may assign its rights and obligations under this Agreement only to an entity or person qualified at the time of transfer to hold covenants under s. 219 of the *Land Title Act* (or any successor provision then applicable) and any applicable regulations.
- 14.2 The Covenant Holders agree that before either of them assigns its rights and obligations under this section, it shall consult with the Owner, and consider the Owner's comments, with respect to the proposed assignee. The Covenant Holder must give notice to the Owner of the proposed assignment, setting out in reasonable detail the identity of the proposed assignee and the qualifications and experience of the proposed assignee relevant to performance by the assignee of the rights and obligations of the Covenant Holder under this Agreement. If the Owner does not provide comments to the Covenant Holder regarding the proposed assignee within 10 Business Days after receipt from the Covenant Holder to the Owner under this section, the Owner is conclusively deemed to have declined to comment on the proposed assignee and to have consented to the assignment. For clarity, the Owner agrees that the Covenant Holder is only required to consult the Owner and that the Covenant Holder is entitled to assign its rights and obligations so long as it has consulted the Owner.
- 14.3 In the event of the winding-up or dissolution of a Covenant Holder, the Covenant Holder shall 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*. If the Covenant Holder does not assign and transfer all of its interests under this Agreement as set out in this section, it shall be deemed to have assigned and transferred all of its interest under this Agreement to the other Covenant Holder, to hold temporarily until another Covenant Holder can be found, or if the other Covenant Holder is not available, to Her Majesty the Queen in Right of the Province of British Columbia. For clarity, the consultation process set out in section 14.2 does not apply to this section.
15. **Notice**
- 15.1 Any notice or other communication (collectively "notice") required or permitted under this Agreement must be in writing and must be:
- (a) delivered in person; or
 - (b) sent by pre-paid registered mail to the address of the parties at their respective addresses as set out in Section 15.4.
- 15.2 If notice is delivered in person, the party receiving the notice shall forthwith acknowledge receipt of same in writing, and the notice shall be deemed to have been received on the earlier of the date of such acknowledgment and the date that is 5 days after the notice is sent.

15.3 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.

15.4 The addresses of the parties' representatives for notice are as follows:

The Owner:

Name

Address

, provided that if the ownership of the Land has changed, to the registered owner in fee simple as indicated on title to the Land at the time of notice.

TLC THE LAND CONSERVANCY OF BRITISH COLUMBIA:

TLC The Land Conservancy of British Columbia

2709 Shoreline Drive,

Victoria, B.C. V9B 1M5

COHOLDER:

Coholder

Address

15.5 Each party agrees to immediately give written notice to the others of any change in its address from that set out in section 15.4.

15.6 If a party refuses to sign an acknowledgment 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.

16. Mortgages

16.1 If the Owner charges the Land with a mortgage and wishes the mortgage to be granted priority over the Rent Charge, the mortgage shall include provisions obliging the mortgage lender to notify both Covenant Holders in the event of any default in compliance with any of the terms of the mortgage and each Covenant Holder shall be entitled to status as a party in any legal proceedings as a consequence of any default under the terms of the mortgage and shall have the right to redeem the mortgage in any such proceedings.

16.2 In this section, "approve" and "approval" mean approval by the Covenant Holders of a first mortgage intended to be registered against the Land or any portion of the Land.

2 covenant holders

- 16.3 If the Owner is not in breach of this Agreement, the Covenant Holders shall approve a first mortgage if:
- (a) the mortgage does not exceed 75% of the fair market value of the Land at the date of the approval, as determined by a qualified appraiser; and
 - (b) the mortgage is an arms-length transaction with a bona fide mortgage lender.
- 16.4 Upon approval of a first mortgage, the Covenant Holders must execute a priority Agreement granting priority to the first mortgage over the Rent Charge to a maximum of the outstanding balance of the first mortgage plus penalties.
- 16.5 Either Covenant Holder may, in its sole discretion, inspect the Land to determine if the Owner is in breach of any of the terms of this Agreement before granting approval and may withhold approval if there is any breach.
- 16.6 The Owner shall reimburse and indemnify the Covenant Holders for all reasonable expenses incurred by it as a result of a site visit to inspect the Land pursuant to this section, plus an Administration Fee of **\$250.00**.

17. **Access**

- 17.1 No right of access by the general public to any portion of the Land is conveyed or created by this Agreement.
- 17.2 The Land is accessible to the public, subject to such regulation by the Owner as to time, place and amount of access as is required for safety purposes and to maintain the Land in its Natural State.

18. **Notice of Covenant**

- 18.1 The Owner agrees to allow the Covenant Holders to publicize the existence of this Agreement in a tasteful manner.
- 18.2 Without restricting the generality of the foregoing, the Owner agrees to allow the Covenant Holders to erect a plaque or other signage on the Land, in a tasteful manner and at the Covenant Holders' expense, indicating that they hold a covenant on the Land.

19. **No Liability in Tort**

- 19.1 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 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.

20. **Waiver**

20.1 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.

20.2 The failure 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.

21. **Joint and Several Obligations**

21.1 Where there is more than one party comprising the Owner in this Agreement, the obligations of those parties are joint and several.

22. **Remedies not exhaustive**

22.1 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.

23. **Covenant runs with the Land**

23.1 Unless it is otherwise expressly provided in this Agreement, every obligation and covenant of the Owner in this Agreement constitutes a personal covenant and also a covenant granted under s. 219 of the *Land Title Act* (British Columbia) and a statutory right of way granted under s. 218 of the *Land Title Act* (British Columbia) in respect of the Land. This Agreement burdens the Land and runs with it and binds the successors in title to the Land. This Agreement burdens and charges all of the Land and any parcel into which it is subdivided by any means and any parcel into which the Land is consolidated.

24. **Registration**

24.1 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.

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

25. Severance

25.1 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.

26. No other Agreements

26.1 This Agreement is the entire Agreement between the parties and it terminates and supersedes all other Agreements and arrangements regarding its subject. A written instrument signed by all the parties may only change this Agreement.

27. Binding on successors

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

28. Independent Advice

28.1 The Owner acknowledges and agrees that the Owner has sought and obtained to the Owner's satisfaction independent advice from an accountant or other income tax expert with respect to the income tax implications of this Agreement and acknowledges that it does not and has not relied on either Covenant Holder for advice in this regard and that they have given no representation or warranty in that regard.

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

29. Deed and contract

29.1 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.

30. Rights of Covenant Holders

30.1 A Covenant Holder, may exercise its rights under this Agreement through its directors, officers, employees, agents or contractors.

31. Administration Fee

31.1 The Owner agrees that the Covenant Holders may bill the Owner for an Administration Fee in each and any case where the Covenant Holders are requested to approve any action of the Owner. This Administration charge applies whether or not the Covenant Holders grant the approval

requested. For the purposes of this Section the Administration Fee is \$200.00.

32. Discussion with Covenant Holder

32.1 The Owner agrees that, annually, at the request of the Covenant Holder(s) with at least 10 Business Days notice the Owner will meet with the Covenant Holder(s), in person or by telephone at the Covenant Holder's sole discretion, to discuss the results of monitoring and any other items relating to the Land which the Covenant Holders wish to bring forward.

As evidence of their Agreement to be bound by the above terms, the parties each have executed and delivered this Agreement under seal by executing Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

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

SCHEDULE A

Attached to and forming part of the Covenant Agreement between **Name**, Owner, and TLC THE LAND CONSERVANCY OF BRITISH COLUMBIA, Covenant Holder and the **COHOLDER NAME**, Covenant Holder, dated the day of 2007.

REFERENCE PLAN

SCHEDULE B

Attached to and forming part of the Covenant Agreement between **Name**, Owner, and TLC THE LAND CONSERVANCY OF BRITISH COLUMBIA, Covenant Holder and the **COHOLDER NAME**, Covenant Holder, dated the day of **2007**.

BASELINE DOCUMENTATION REPORT

1.0 Acknowledgment

1.1 The Owner hereby acknowledges and agrees that the following is an accurate description of the Property, as of the reference date of this agreement.

2.0 Property Location and description

3.0 Significance of the Land and Amenities

4.0 The Management Vision.

5.0 Site History

6.0 List of buildings, structures and other improvements

7.0 Inventory of Species

7.1 Topography:

7.2 Hydrology:

7.3 Vegetation

7.4 Wildlife:

7.5 Disturbance:

7.6 Soil:

8.0 Maps and sketches

SCHEDULE C

Attached to and forming part of the Covenant Agreement between **Name**, Owner, and TLC THE LAND CONSERVANCY OF BRITISH COLUMBIA, Covenant Holder and the **COHOLDER NAME**, Covenant Holder, dated the **2nd** day of **November 2007**.

1. EXAMPLES OF RESTRICTIONS.

1.1 The following restrictions apply to the Protected Area:

- (a) no fill, soil, rock, rubbish, ashes, garbage, waste or other material may be deposited in or on the Protected Area or the watercourses flowing through the Protected Area;
- (b) no hunting, or grazing of domestic animals;
- (c) no other acts except as permitted by schedule C may be carried out on or in respect of the Protected Area which, in the opinion of the Covenant Holders, or either of them, acting reasonably, may have a detrimental impact on the Protected Area;
- (d) no extraction of water may occur out of the watercourses;
- (f) no component of the Protected Area, including soil, gravel or rock, may be disturbed, explored, moved or removed from the Protected Area, except as allowed under Schedule C or is necessary to conduct the activities permitted by Schedule C;
- (g) no native plant or tree, living or dead may be damaged, pruned, cut, harvested or otherwise interfered with, except as allowed under Schedule C; and,

SCHEDULE D

Attached to and forming part of the Covenant Agreement between **Name**, Owner, and TLC THE LAND CONSERVANCY OF BRITISH COLUMBIA, Covenant Holder and the **COHOLDER NAME**, Covenant Holder, dated the **xx** day of **2006**.

1. EXAMPLES OF SPECIFIC RESERVED RIGHTS.

1.1 The Owner specifically reserves the following rights:
The Owner specifically reserves the following rights:

- (a) to construct foot paths, on suitable terrain within the Protected Area, not greater than one meter (3.3 feet) in width. The area of such foot paths shall not exceed 5% of the Protected Area and in so far as is practicable be of natural materials. The owner shall have the right to from time to time replace, repair, maintain and enhance such footpaths; and,
- (b) to build, maintain, replace and enhance benches on suitable terrain within the Protected Area.

All of the forgoing activities shall comply with all applicable Federal, Provincial and Local Government, statutes, bylaws and regulations.

END OF DOCUMENT