

ANNOTATED CONSERVATION COVENANT

WHAT IS NAPTEP?

The Natural Area Protection Tax Exemption Program (NAPTEP) allows landowners who preserve natural features of their land through conservation covenants to receive a 65% reduction in property taxes on the protected portion of their land. NAPTEP is available in the entire Islands 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 Gulf Islands and Howe Sound Islands.

WHO IS THE ISLANDS TRUST FUND?

The Islands Trust Fund is the conservation arm of the Islands Trust. The Islands Trust Fund acts as a regional land trust for the Islands Trust Area, protecting the unique environment of the islands through land acquisition, conservation covenants and stewardship education. The Trust Fund Board governs the Islands Trust Fund and is designated by the Islands Trust Council to hold NAPTEP covenants.

WHAT IS A CONSERVATION COVENANT?

A conservation covenant under section 219 of the *Land Title Act* is a voluntary, written legal agreement between a landowner and one or more conservation organizations (land trusts). Designed to help landowners protect specific ecological values on their property, a conservation covenant contains provisions, which specify what a landowner can and cannot do on the portion of the land protected by the covenant. A conservation covenant is registered on the land title ensuring the promise to protect the land applies to future landowners. The conservation organization(s) that hold the covenant are responsible for monitoring and enforcing the terms of the covenant.

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

FOR MORE INFORMATION

For more information, please visit the Islands Trust Fund’s 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: Islands Trust Fund, 200–1627 Fort Street, Victoria, BC V8R 1H8

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. ***This document is not intended as a substitute for legal advice.*** All landowners wishing to participate in NAPTEP are strongly encouraged to obtain independent legal and tax advice.

ACKNOWLEDGEMENT

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

Hillyer A. and J. Atkins. ***Greening Your Title: A Guide to Best Practices for Conservation Covenants, Second Edition.*** West Coast Environmental Law Research Foundation. Vancouver, British Columbia: 2005.

Greening Your Title is available from West Coast Environmental Law in print by calling 1-800-330-WCEL, or online via their website, <http://wcel.org/resources/publication/greening-your-title-guide-best-practices-conservation-covenant-3rd-edition>.

**ANNOTATED STANDARD CONSERVATION COVENANT
FOR THE
NATURAL AREA PROTECTION TAX EXEMPTION PROGRAM (NAPTEP)**

***NOTE:** The terms in this conservation covenant are the minimum requirements needed to enter the NAPTEP Program. The Owner may include additional restrictions (see Article 4). The Islands Trust Fund reserves the right to modify the standard conservation covenant from time to time as advised by legal counsel.

TERMS OF INSTRUMENT – PART 2

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

This Agreement dated for reference [insert date], is

AMONG:

Name, and address of the owner(s)
(the "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
(the "Board")

AND:

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

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 holder(s) 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 area.**
- **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 has been designated by Trust Council to hold and administer NAPTEP covenants.

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

(collectively, the "Parties")

WHEREAS:

- A. The Owner is the registered owner in fee simple of the Land;
- B. The Covenant Area 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 Covenant Area, and a statutory right of way pursuant to section 218 of the *Land Title Act*;
- D. A statutory right of way in favour of each Covenant Holder is necessary for the operation and maintenance of the undertakings of each Covenant Holder;
- E. The Co-covenant Holder has been designated under section 219(3)(c) of the *Land Title Act* as a person authorized to accept covenants and under section 218(1)(d) of the *Land Title Act* as a person authorized to accept statutory right of way; and
- F. The Board is a Crown Agent and is authorized to accept covenants and statutory rights of way under sections 219 and 218 of the *Land Title Act*, respectively.

In consideration of the payment of \$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 covenant and agree as follows, in accordance with sections 218 and 219 of the *Land Title Act*:

1. INTERPRETATION

1.1 In this Agreement:

- (a) "Administration Fee" means a fee of \$150.00 adjusted in each year as provided in section 12.2, charged by the Covenant Holders to cover the administration costs of providing approvals, inspections or other actions at the request of the

Under NAPTEP, the owner may choose a second organization, such as a local land trust or conservancy, to co-hold the covenant with the Trust Fund Board. If the co-holder of the covenant is a non-government organization, they must be authorized by the Provincial government 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/naptep or contact the Islands Trust Fund.

D. The statutory right of way gives the covenant holder(s) the right to enter onto the land to inspect the covenant area for covenant violations.

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

A conservation 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. This section sets out how terms in the NAPTEP agreement are defined and interpreted.

Owner;

- (b) "Amenities" includes those natural, scientific, environmental, wildlife, plant, and cultural values relating to the Covenant Area as identified in the Report, including any natural area values and amenities of the Covenant Area as prescribed by regulation for the purposes of Part 7.1 of the *Islands Trust Act*;
- (c) "Business Day" means any day other than Saturday, Sunday or British Columbia statutory holidays;
- (d) "Certificate" means a certificate issued by the Covenant Holders under subsection 8.3(a) or section 14.2;
- (e) "Covenant Area" means all of the Land except that portion shown outlined in heavy black line and identified as "Area Required" on the Plan;
- (f) "Covenant Holders" means, unless the context otherwise requires, the Board and the Co-covenant Holder, collectively and "Covenant Holder" means either of them, as the context may require;
- (g) "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;
- (h) "Land" means the parcel of land legally described as Parcel Identifier [insert legal description of the land];
- (i) "Natural State" means the state of the Covenant Area as described in the Report;
- (j) "Notice of Enforcement of Rent Charge" means a Notice of Enforcement of Rent Charge given under section 11.6;
- (k) "Notice of Breach" means a notice of breach given under section 10.1;
- (l) "Plan" means the Reference Plan over part of the Land certified correct by [insert name of surveyor, B.C.L.S] dated [insert date of survey], and deposited in the Land Title Office under number _____, a reduced copy of which is attached to this Agreement as Schedule A;
- (m) "Rent Charge" means the rent charge granted by the Owner under section 11.1;
- (n) "Rent Charge Amount" means the amount set out in Article 11, the payment of which is secured by the Rent Charge; and
- (o) "Report" means the baseline documentation

(d) A Certificate indicates whether or not there are any violations of the covenant as of the date of issuance of the Certificate.

(e) 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.

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

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

(m) The rent charge is a specified amount paid to the covenant holder(s) only if the owner is in violation of the covenant. It is intended to ensure that the landowner complies with the terms of the covenant.

(o) The Baseline Report must be prepared by an

report that describes the Covenant Area and the Amenities in the form of text, maps, and other records of the Covenant Area for the purposes of this Agreement, a copy of which is on file with each of the parties at the addresses set out in Article 15, and a condensed version of which is attached as Schedule B.

environmental professional who has been approved by the Trust Fund Board.

- 1.2 Where this Agreement provides that 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 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, Part 1 of the *Land Title Act* Form C to which this Agreement is attached, and these Terms of Instrument.
- 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 grammatical forms of the same word or expression have corresponding meanings;
 - (c) reference to a particular numbered Article or section, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered Article, section or Schedule of this Agreement, except where otherwise provided;
 - (d) Article 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* 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 an enactment is to an enactment of the province of British Columbia except where otherwise provided;
 - (h) 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

- (i) 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 to the Board and the Owner that the facts set out in Recitals D and E are true as of the date of this Agreement.
- 2.3 The Board represents and warrants to the Co-covenant Holder and the Owner that the facts set out in Recitals D and F are true as of the date of this Agreement.
- 2.4 Each party represents and warrants to each other party that the facts set out in Recitals B 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 and the Amenities; and
 - (b) to prevent any occupation or use of the Covenant Area that will impair or interfere with the Natural State of the Covenant Area or the 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 Amenities.

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 the Amenities from the condition described in the Report.

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. This section lists the restrictions on the owner’s use of the covenant area. The restrictions listed in this sample NAPTEP covenant are the minimum restrictions required for the NAPTEP program. Additional restrictions may be added if the owner and the covenant holder(s) agree. When the covenant is monitored by the covenant holders, the monitor will be looking to ensure the terms set out in this section have not been violated or breached.

- 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 Covenant Area 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;
 - (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 Covenant Area, 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 for the grazing of domestic animals;
 - (c) construct, build, affix or place on the Covenant Area any buildings, structures, fixtures or improvements of any kind;
 - (d) lay out or construct any new roads or paths on the Covenant Area; and
 - (e) 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 each agree that the Covenant Area and the Amenities are described in the Report and that the Report provides an accurate description of the Covenant Area and its Amenities as of the date of this Agreement.
- 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.
- 5.3 The Covenant Holders will provide a copy of the full Report to the Owner upon request from the Owner from time to time.
- 5.4 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 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 Upon receipt of a notice under section 6.1, all parties must immediately cease any activity giving rise to a breach or threatened breach of this Agreement, and any activity giving rise to a disagreement as to the meaning of this Agreement.
- 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 under section 6.1.
- 6.4 If the parties are not able to resolve the matter within the time set out in section 6.3, the parties may, by agreement, appoint a mutually acceptable person to mediate the matter, 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 The cost of mediation under this section, not including costs incurred by a party for legal counsel, will be shared equally among the parties.
- 6.6 This Article does not affect the right of either

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

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.

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

6. This section lays out the process that may be followed if a dispute arises between the parties to the covenant.

6.4 The parties may agree to appoint a third-party, acceptable to all the parties, to help mediate a resolution to the dispute.

6.6 The covenant holder(s) have the right to

Covenant Holder to pursue any other legal or equitable remedy in relation to a breach or a threatened breach of this Agreement, including without limitation under Articles 10 and 11, and a covenant holder may pursue other remedies concurrently with any dispute resolution under this Article.

7. OWNER'S RESERVED RIGHTS

- 7.1 Subject to Article 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, subject to Article 4, expressly reserved to the Owner:
- (a) to maintain, restore or replace existing buildings and other improvements existing on the Covenant Area as of the date of registration of this Agreement (the location of which are indicated in the Report), provided the location of the buildings and improvements remain the same and the size is the same or smaller;
 - (b) to maintain, replace or restore any existing waste disposal and water supply systems existing in the Covenant Area at the time of registration of this Agreement (the location of which are indicated in the Report);
 - (c) to maintain, replace or restore any utility lines running through the Covenant Area existing in the Covenant Area at the time of registration of this Agreement (the location of which are indicated in the Report), so long as the locations remain the same and the size is the same or smaller;
 - (d) to maintain, replace or restore an existing driveway existing within the Covenant Area at the time of registration of this Agreement (the location of which is indicated in the Report), provided the location and material remain the same and the size is the same or smaller;
 - (e) to maintain, replace or restore the trails existing within the Covenant Area at the time of registration of this Agreement (the location of which is indicated in the Report), so long as the location of each trail remains the same and the size is the same or smaller; and
 - (f) to install, maintain or replace a reasonable number of signs for the purposes of public safety or informing the public about the

pursue legal and other means to resolve disputes, and they may do this at the same time as any other dispute resolution process laid out in the covenant.

7. Except for those specific rights that have been restricted or prohibited under section 4 of the covenant, the owner retains all of the rights they currently enjoy as the owner of the land.

7.2 This section lists the specific rights that the owner wants to keep. This list of retained rights provides clarity about what the owner is permitted to do and will help avoid potential disputes in the future. The examples provided in this sample covenant are generally the rights most owners want to retain. The owner and the covenant holder(s) may agree to revise these or add others to this list when they are drafting the covenant although the reserved rights must not conflict with the intent of NAPTEP.

Covenant Area and the 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 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 intends to do, or permit to be done, anything described in section 7.3, the Owner must 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 Covenant Area and the Amenities. Where the Owner gives notice under this section, the Owner must permit each Covenant Holder to enter upon the Land and inspect the Covenant Area. The Covenant Holders may comment on the proposed action and the Owner must take those comments into consideration before taking or permitting the proposed action to be taken under section 7.3.
- 7.5 Notwithstanding section 7.4, in the case of an emergency situation where the Owner must take immediate action under section 7.3, the Owner may take such necessary action without first notifying the Covenant Holders. As soon as possible after the action is taken, the Owner must notify each Covenant Holder of the circumstances of the action taken, including the actual or likely affect of the action on the Covenant Area and the Amenities. Where such emergency action is taken, the Owner must permit each Covenant Holder to enter upon the Land and inspect the Covenant Area.

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.
- 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 made, suffered or incurred 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 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

7.3 to 7.5 The covenant does not limit or restrict the owner's ability to take reasonable action to prevent damage or injury to persons or property (e.g., 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 is still the owner of the land and retains sole responsibility for all costs (e.g., property taxes) and potential liabilities of ownership.

8.2 This section protects the covenant holder(s) from legal claims made by third parties that relate to the Owner's use of the land. It is the Owner that will be legally responsible, including for the payment of any damages awarded by a court.

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 the Owner has received a Certificate issued by the Covenant Holder certifying that there were no violations of this Agreement as of the date of issuance of the Certificate;
- (b) injury or alteration to the Covenant Area or the Amenities resulting from natural causes, or causes beyond the Owner's reasonable control, other than as referenced in paragraph (c), including accidental fire, flood, storm 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) injury or alteration to the Covenant Area or the Amenities resulting from the actions of any person without the actual or constructive consent or knowledge of the Owner, including from trespass, vandalism, nuisance or negligence, provided the Owner acts in accordance with sections 8.5 to 8.8;
- (d) any prudent action taken by the Owner under emergency conditions to prevent, abate, or mitigate significant injury to the Covenant Area (including improvements) or the Amenities, resulting from natural causes, including accidental fire, flood, storm and earth movement; or
- (e) 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, hazardous 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

(a) The owner is only liable for violations of the covenant that occur while he or she is the registered owner of the land. To protect both a new owner and the previous owner from covenant breaches that are the result of action taken by the other owner, the covenant holder(s) encourage owners to obtain a Certificate at the time of property transfer. This Certificate will identify violations, if there are any, at the time of transfer. Unless identified in a Certificate, any covenant violation found after the land is transferred will be the new owner's responsibility.

(b) The owner is not liable for damage caused to the Covenant Area that is caused by natural disasters or other causes beyond the owner's reasonable control. This exception doesn't apply if the owner caused the damage, or someone else caused the damage but the owner knew or should have known about it.

(c) The owner is not liable for damage to the Covenant Area caused by another person through trespass, vandalism, etc. where the owner did not consent or know about the person's actions. In order to not be liable, the owner has to act in accordance with sections 8.5 to 8.8.

(d) The owner is not liable for violations to the covenant caused by the owner's actions when they are taken to protect against damage to the Covenant Area from natural causes during an emergency.

(e) The owner is not liable for damage done to the Covenant Area by the covenant holder(s).

8.4 The covenant holder(s) is/are not responsible for any contamination (such as pollution) on the land, and for any damages or other costs that arise from that contamination. This could include, for example, the costs of cleaning up the contamination.

action, order, directive, notice or requirement, including those of any government agency, incurred, suffered, brought against the Covenant Holders, or either of them, in any way associated with anything described in subsection (a).

- 8.5 Where, as provided in subsection 8.3(c), injury or alteration is caused to the Covenant Area or the Amenities by a person without the actual or constructive consent or knowledge of the Owner, the Owner will not be responsible for the resulting breach of this Agreement provided the Owner takes all reasonable steps to identify the person responsible and
- (a) pursues a civil action against that person for damage caused to the Covenant Area and the Amenities; or
 - (b) seeks a prosecution of that person under the Trespass Act, R.S.B.C. 1996, c. 462, including a claim for restitution for damage caused to the Covenant Area and the Amenities.
- 8.6 If the Owner chooses to not take action under section 8.5(a) or (b), or if the Owner is unsuccessful in seeking a prosecution under section 8.5(b), the Owner will not be responsible for the resulting breach of this Agreement provided the Owner, at the Board's option and with the Board's approval
- (a) irrevocably and in writing assigns to the Board the Owner's right to bring a civil action against that person and the right to any damages awarded should the action be successful; or
 - (b) commences a civil action against that person and irrevocably and in writing assigns the action, or the conduct of the action in the Owner's name, to the Board, and the right to any damages awarded should the action be successful.
- 8.7 Where the Owner makes an assignment under section 8.6, the Owner must execute such agreements, and provide such documents and information, as requested by the Board from time to time to give effect to the assignment.
- 8.8 Where the Owner, under section 8.5, receives compensation for damage caused to the Covenant Area or the Amenities, the Owner agrees to use that compensation to restore or rehabilitate the Covenant Area and the Amenities to as near the condition described in the Report as is possible, in a manner consistent with this Agreement and in consultation with the Covenant Holders.
- 8.9 Where the Board, under section 8.6, receives

8.5 The owner is the only party to the covenant that has the right to prosecute trespassers or vandals or seek financial restitution for trespass or vandalism. In cases where trespass or vandalism results in damage to the covenant area, section 8.5 ensures reasonable steps are taken to identify the person responsible and either bring a civil action against the trespasser or seek prosecution through the Crown.

8.6 If the owner chooses not to pursue a trespass action or prosecution, the owner will be responsible for the damage to the Covenant Area unless he/she complies with this section. This section gives the Board the option to take an assignment of the owner's right to bring a legal action, or to take an assignment of a legal action started by the owner. The Board would then be responsible for overseeing the court action.

If the Board decides that it does not wish to pursue a court action, the owner will have satisfied section 8.6 and won't be responsible for the damage caused by the trespasser.

8.7 Where the Board is pursuing the legal action, the owner is required to assist by providing needed documents and information. The owner is in the best position to have the required information for the court case.

8.8 -8.9 The owner and the Board both agree that compensation obtained by pursuing legal action against a trespasser will be used to restore and rehabilitate the Covenant Area.

compensation for damage caused to the Covenant Area or the Amenities, the Board agrees to use that compensation to restore or rehabilitate the Covenant Area and the Amenities to as near the condition described in the Report as is possible, in a manner consistent with this Agreement and in consultation with the Owner and the Co-Covenant Holder.

- 8.10 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 of any such unpaid amounts.
- 8.11 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 a Covenant Holder pursuant to any enactment, including the *Income Tax Act* (Canada) with respect to the Land or 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.
- 8.12 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 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.
- 8.13 The indemnities granted by the Owner to the Covenant Holders under this Article are indemnities granted as an integral part of the section 219 *Land Title Act* covenant created by this Agreement.

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) 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;
 - (b) as part of inspection of the Covenant Area under subsection (a), take soil, water or other samples,

8.11 If a covenant is released and there are financial penalties associated with its release, the owner is solely responsible for the payment of these penalties. For example, if a NAPTEP covenant is terminated, the owner is responsible for the payment of back-taxes to the Minister of Finance.

8.12 Section 8.12 states the interest rate payable on any overdue debts to the covenant holder(s).

9. By signing the covenant, the owner also agrees to the registration of a Statutory Right of Way on the land title. The Statutory Right of Way gives the covenant holder(s) or their assigned representatives the right to enter onto the land to inspect the covenant area at regular intervals to ensure 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.

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 the 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 subsection (d) destroys, impairs, diminishes or negatively affects or alters the Covenant Area or the Amenities from the condition described in the Report;
- (d) in accordance with Article 10, 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 the 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;
- (e) carry out or evaluate any program agreed upon by the parties for the protection, preservation, conservation, maintenance, restoration or enhancement of all of any portion of the Covenant Area or the Amenities;
- (f) place survey pegs or other markings on the Land to clearly identify the Covenant Area or access to the Covenant Area, or to increase the visibility of existing survey pegs or other markings; and
- (g) erect a plaque or other sign on the Land, in a tasteful manner and at the expense of the Covenant Holders, indicating that the Covenant Holder (or the Covenant Holders) holds a covenant on the Covenant Area, 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, and vehicles, equipment and other personal property onto the Land when exercising their rights under this Article.

10. ENFORCEMENT REMEDIES OF THE COVENANT HOLDERS

(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, the covenant holder(s) have the right to enter upon the land and do any restoration or repairs at the owner's expense.

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

10. Section 10 gives the covenant holder(s) 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 If either Covenant Holder, in its sole discretion, believes that the Owner has failed to perform any of its obligations under this Agreement, or is otherwise in breach of any term of this Agreement, that Covenant Holder may give a Notice of Breach to the Owner and the other Covenant Holder setting out particulars of the breach, including the Covenant Holder's estimated maximum costs of remedying the breach.

10.2 On receipt of a Notice of Breach, the Owner must

- (a) immediately cease all activities giving rise to the breach; and
- (a) within 60 days remedy the breach or make arrangements satisfactory to the Covenant Holder to remedy the breach, including with respect to the time within which the breach must be remedied.

10.3 For clarity, the requirement in subsection 10.2(b) to remedy a breach requires the Owner to undertake such rehabilitation or restoration necessary to remedy any damage done to the Covenant area contrary to this Agreement, at the Owner's sole expense.

10.4 If the Owner does not comply with the requirements of section 10.2 within the time required or agreed upon, either Covenant Holder may enter upon the Land and take any required actions to cease any activities giving rise to the breach, and to remedy the breach or carry out the arrangements referred to in section 10.2. The Owner must reimburse that Covenant Holder for any expenses incurred in taking any action under this section, up to the estimated maximum costs of remedying the breach as set out in the notice of the Breach.

10.5 Expenses incurred by the Covenant Holder under this Article, 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.

10.6 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 Article, 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

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(s') satisfaction.

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

10.6 This section sets out the rights of the 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, similar in nature to a fine, is

- 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* 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 \$6,000 per year, subject to adjustment under section 11.3.
- 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%.
- 11.4 For each breach of this Agreement, the Rent Charge Amount will be increased by a sum equal to 110% of the market value at the date of the breach of any flora or fauna, soil, rock, gravel or minerals, which have been altered, damaged, destroyed, moved, harvested or removed in connection with the breach.
- 11.5 The Rent Charge is suspended unless and until the Owner is in breach of any provision of this Agreement.
- 11.6 A Covenant Holder that wishes to enforce the Rent Charge must give a Notice of Enforcement of Rent Charge to the Owner and the other Covenant Holder, stating the intention to enforce the Rent Charge and demanding immediate payment of the Rent Charge Amount. The Notice of Enforcement of Rent Charge may be given at any time after a Notice of Breach is given under section 10.1.
- 11.7 The Owner must, within 10 days of receipt of the Notice of Enforcement of Rent Charge, pay the full Rent Charge Amount to the Covenant Holder who delivered that notice.
- 11.8 The Covenant Holders may enforce the Rent Charge by any of the following:
- (a) an action against the Owner for the Rent Charge Amount;

a deterrent designed to ensure that the owner lives up to his/her obligations under the covenant. It is paid to the covenant holder(s) by the owner if the owner violates the covenant.

11.2 The minimum rent charge for covenants registered through NAPTEP is \$6,000. An increased rent charge can be registered to create a stronger deterrent against covenant violations if all the parties agree.

11.3 The rent charge is adjusted annually for inflation. This adjustment to account for inflation is essential because the covenant is intended to last forever; a rent charge that remains unchanged over several decades may lose the ability to deter violations to the covenant.

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.

11.8 The covenant holder(s) has/have a number of options for enforcing the rent charge.

- (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
- (b) an order for sale of the Land.

11.9 The Covenant Holders are entitled to recover from the Owner all reasonable expenses incurred as a result of enforcement of the Rent Charge.

11.10 The Covenant Holder receiving the Notice of Enforcement of Rent Charge 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.

11.11 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.

11.12 If the Covenant Holder receiving the Notice of Enforcement of Rent Charge does not wish to enforce the Rent Charge jointly, that Covenant Holder is not entitled to the Rent Charge unless otherwise agreed in writing between the Covenant Holders.

11.13 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. ADMINISTRATION FEE

12.1 The Owner agrees that the Covenant Holders may charge an Administration Fee to the Owner in each and any case where the Covenant Holders are requested to provide any review, approval or assessment of any action of the Owner. This Administration Fee applies whether or not the Covenant Holders grant the approval requested.

12.2 The Administration Fee will be adjusted on January 1 or each year by increasing or decreasing, as the case may be, the Administration Fee by the amount determined by multiplying the Administration Fee 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. If Statistics Canada, or its

11.10 to 11.13 These sections 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 11.10 to 11.13 are not necessary.

12. The administration fee enables the covenant holder(s) to recover costs associated with owners' requests of the covenant holder(s) after the covenant has been registered. This fee will not be applied for regular annual covenant monitoring.

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 annual increase in the Administration Fee for each year is 3%.

13. ASSIGNMENT OF AGREEMENT OR DISSOLUTION OF THE COVENANT HOLDERS

- 13.1 This Agreement is assignable by a Covenant Holder, but a Covenant Holder may only assign its rights and obligations under this Agreement to a person or entity authorized to hold statutory rights of way under section 218 of the *Land Title Act* and covenants under section 219 of the *Land Title Act*.
- 13.2 Each Covenant Holder agrees that before either it assigns this Article, it must notify the Owner and the other Covenant Holder with respect to the proposed assignee.
- 13.3 In the event of a pending 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 hold statutory rights of way under section 218 of the *Land Title Act* and covenants under section 219 of the *Land Title Act*.

14. NOTICE OF CHANGE OF OWNERSHIP BY OWNER

- 14.1 The Owner must notify the Covenant Holders of any change of ownership prior to the registration of any such change in the land title office.
- 14.2 The Owner may request that the Covenant Holders visit the Land and jointly issue a Certificate indicating whether or not there are any violations of this Agreement as of the date of the Certificate.
- 14.3 Failure by the Owner to comply with section 14.1 does not affect the enforceability of this Agreement against the Owner or its successors in title to the Land.

15. NOTICE

- 15.1 Any notice or other communication (collectively a "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 15.3, followed by a copy sent by ordinary mail;
 - (c) sent by e-mail to the parties at their respective

13. If a covenant holder ceases to exist (i.e., 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 the covenant holder(s).

15. Many of the sections of the covenant require that notice be given to the Parties. Section 15 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.

e-mail addresses, if the parties have provided an e-mail address, followed by a copy sent by ordinary mail; or

- (d) sent by pre-paid registered mail addressed to the parties at their respective addresses set out in section 15.3.

15.2 Unless otherwise provided, a notice

- (a) delivered in person is deemed received on delivery;
- (b) sent by facsimile or e-mail:
 - (i) if the notice is transmitted before 3:00 pm on a Business Day, the document is deemed to be received on the day of transmission;
 - (ii) if the notice is transmitted after 3:00 pm on a Business Day or is transmitted on a day that is not a Business Day, the notice is deemed to be received on the next day that is a Business Day; and
- (c) sent by pre-paid registered mail is deemed received on the fourth Business Day following the day on which the notice was sent.

15.3 The addresses of the parties for notices under this Article are as follows:

The Owner:

[Address of the Owner]

[Facsimile number of the Owner]

The Board:

Trust Fund Board

200 - 1627 Fort Street

Victoria, BC V8R 1H8

Fax: 250-405-5155

Co-covenant Holder:

[Address of the Co-covenant Holder]

[Facsimile number of the Co-covenant Holder]

15.4 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 15.3.

16. ACCESS

16.1 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.

16. 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 16.

17. NOTICE OF COVENANT

17.1 The Owner agrees that the Covenant Holders may publicize the existence of this Agreement in a tasteful manner.

18. NO LIABILITY IN TORT

18.1 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 limitation, 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.

19. WAIVER

19.1 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.

19.2 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.

20. JOINT AND SEVERAL OBLIGATIONS

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

21. REMEDIES NOT EXHAUSTIVE

21.1 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.

22. COVENANT RUNS WITH THE LAND

17. Section 17 allows the covenant holder(s) to publicize the covenant, for example, in newsletters, displays and requests for funding.

18. Section 18 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.

19. If the covenant holder(s) does not (do 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(s) is (are) prevented from doing so in the future.

20. 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.

22. The covenant stays on the land title forever,

22.1 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* in respect of the Land, and the provisions of Article 9 constitute a statutory right of way under section 218 of the *Land Title Act*. This Agreement burdens 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.

23. REGISTRATION

23.1 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 applicable provincial land title office at the time of application for registration of this Agreement.

24. SEVERANCE

24.1 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.

25. NO OTHER AGREEMENTS

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

26. INDEPENDENT ADVICE

26.1 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.

26.2 The Owner acknowledges and agrees that the Owner has been advised by the Covenant Holders that the

even if the land is sold, subdivided or consolidated into a larger parcel.

23. 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 financial charges against the land.

24. 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.

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

26.1 Owners are strongly advised to seek independent tax advice before placing a covenant on their land. Granting a covenant can have significant tax implications. Owners should not rely only on information provided by the covenant holder(s).

26.2 Owners are strongly advised to seek independent legal advice regarding 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.

27. AMENDMENTS

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

28. DEED AND CONTRACT

28.1 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.

29. RIGHTS OF COVENANT HOLDERS

29.1 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.

agreement and its implications. The covenant holder(s) cannot give legal advice on the implications of the covenant.

27.1 The covenant cannot be changed unless all Parties agree in writing.

28.1 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 Owner and the Covenant Holder dated for reference _____.

[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

(Note: This is a condensed version of the full Baseline Report)

Attached to and forming part of the Conservation Agreement between the Owner and the Covenant Holder dated for reference _____.

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 or online at www.islandstrustfund.bc.ca.

[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 title to 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, Rent Charge 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 each of the Transferees described in Item 6 of Part 1 of the Land Title Act Form C to which this Agreement is attached ("Transferees"), the receipt of which is acknowledged by the Chargeholder, the Chargeholder:

1. consents to the granting and registration of the Covenant, Rent Charge and Right of Way and agrees that the Covenant, Rent Charge and Right of Way bind its interest in and to the Land; and

2. grants to the Transferees priority for the Covenant, Rent Charge and Right of Way over the Chargeholder's right, title and interest in and to the Land and the Chargeholder hereby postpones the Prior Charge, and all of its right, title and interest under the Prior Charge, to the Covenant, Rent Charge and Right of Way as if the Covenant, Rent Charge 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 Transferees to be bound by the above terms, 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 needed if the property has a mortgage at the time of registration of the covenant. Its purpose is to give the covenant, right of way priority on land title over the existing mortgage.