

5.3.v Procedure

BEST PRACTICES FOR LOCAL TRUST COMMITTEES IN HOLDING CONSERVATION COVENANTS

Trust Council: June 17, 2005

A. PURPOSE:

To identify best practices and establish standards for local trust committees that intend to hold conservation covenants.

Note: To date, the best legal interpretation of best practices for conservation covenants is included in a publication by the West Coast Environmental Law Research Foundation entitled "Greening Your Title: A Guide to Best Practices for Conservation Covenants -- Second Edition" (Hillyer and Atkins, 2005). Relevant quotes from this document are included below in italics for information.

B. REFERENCES:

1. *Islands Trust Act*
2. *Land Title Act*
3. Trust Council Policy Manual:
 - Holding Covenants and Rights of Way (5.3.i.)
 - Guidelines for Local Trust Committee Sponsored or Initiated Development Applications (4.1.xiii)
4. Islands Trust Fund Policy Manual and Guidelines
 - Policy on Monitoring Other Agencies' Covenants
 - TFB Baseline Report Guidelines
 - TFB Covenant Monitoring Report Form
5. Hillyer, A. and J. Atkins, 2005. *Greening your title: a guide to best practices for conservation covenants. Second Edition.* Published by West Coast Environmental Law Research Foundation. Vancouver, B.C.

C. BACKGROUND:

Statutory covenants under section 219 of the *Land Title Act* can impose both positive and negative obligations on a landowner. These statutory covenants can and have been used by local trust committees for a variety of purposes.

"Conservation" covenants are designed specifically for conservation purposes. Although the term "conservation covenant" is not used in the *Land Title Act*, it is a term that is identified by the public as having a specific meaning and intent. In particular, it is expected that a conservation covenant will do the following:

- it will protect the particular values identified in the covenant (be they ecological, cultural or heritage);
- it is enforceable; and
- it will "run with the land", bind future owners and last in perpetuity.

ISLANDS TRUST POLICY MANUAL

Local trust committees occasionally hold conservation covenants. These covenants may or may not be developed in relation to development approvals. In some cases, development applications are approved or regulations are relaxed because a property owner agrees to provide a conservation covenant designed to protect certain values of importance to a community. These matters are usually discussed during a formal public process such as a public hearing. As a result, community members may rely heavily on conservation covenants to guide details of development that are not addressed by zoning or other regulations.

These understandings create long term expectations and obligations for both the property owner and for a local trust committee, as the covenant holder.

Recent case law regarding conservation covenants reinforces the need for organizations that hold conservation covenants to follow good practices when they enter into and manage them. The enforcement of conservation covenants can be expensive and time consuming. The Islands Trust will need to ensure, when it decides to commit legal funds to the defence of a conservation covenant, that the development and management of the covenant have followed good practices consistent with current legal practice.

D. BEST PRACTICES

To ensure that conservation covenants held by local trust committees address public expectations about their intent, and to minimize the direct and indirect costs and liabilities to the Islands Trust of administering and responding to concerns regarding unenforceable covenants, local trust committees should only enter into conservation covenants if they meet the best practices outlined in this policy.

D.1. Precise and Ascertainable Description of the Values Protected

Legal Background

“The baseline inventory report contains the primary evidence of the state of the land at the time the parties enter into the covenant. This evidence will be crucial in any enforcement action relating to the covenant.” - Hillyer and Atkins, 2005

“Canadian courts have refused to enforce restrictive covenants where the meaning of the language used in the covenant is uncertain.” - Hillyer and Atkins, 2005

Best Practice

Local trust committees must ensure that the values that are to be protected by a conservation covenant are precisely described, including a survey of the area, in a manner that can be easily ascertained by all relevant parties. Provisions must not be included that cannot be monitored and enforced or that the local trust committee does not intend to monitor or enforce.

Prior to a local trust committee agreeing to hold a conservation covenant, it must ensure that the protected values have been clearly described by a qualified third party in a baseline report that is

attached as an appendix to the covenant. A clear and accurate baseline report is critical to the enforceability of the covenant. The production and management of baseline reports should be consistent with the guidelines in Chapter 10 of Hillyer and Atkins (2005). The Trust Fund Board has developed a template for the development of baseline reports regarding conservation covenants that follows these guidelines and local trust committees should consider using this template.

D.2. Regular Monitoring and Landowner Contact

Legal Background

“Monitoring is essential to ensure that the objectives of a conservation covenant are met...It is much more effective to prevent violations of a covenant through monitoring and landowner contact than to enforce compliance and seek a remedy once a violation has occurred.” - Hillyer and Atkins, 2005

“Monitoring must be accurate, consistent and repeated at regular intervals. Monitoring documentation itself could be introduced as evidence in proceedings.” - Hillyer and Atkins, 2005

Best Practice

Regular monitoring of conservation covenants and contact with landowners affected by conservation covenants is critical to the enforceability of the covenant. Before entering into conservation covenants, local trust committees must ensure that arrangements are in place for on-going regular (preferably annual) monitoring and reporting by a qualified third party regarding the state of the protected values. Arrangements must include the production of a regular report by a qualified third party and a written record that documents the property owner’s knowledge of and compliance with the conservation covenant. Regular monitoring reports should be consistent with the guidelines in Chapter 11 of Hillyer and Atkins (2005). Local trust committees should ensure that funds or staff time are in place to ensure regular monitoring, and if necessary, an endowment is received for this purpose.

A local trust committee may hold a covenant jointly with another party that has the responsibility to monitor and enforce, and if so, these responsibilities must be clearly expressed in the wording of the covenant. A local trust committee must ensure that the joint covenantee has the ability to undertake regular monitoring and that appropriate assignment clauses are in place in the event of the dissolution of the joint covenantee.

The Trust Fund Board monitors its conservation covenants annually and has developed a template for this purpose. It will consider requests to monitor conservation covenants held by others, including local trust committees, provided costs are covered and sufficient information is provided (see related policy referenced above).

D.3. Enforceability Provisions

Legal Background

“If the covenant holder does not enforce compliance with the covenant when breaches occur, it may lose the right to a remedy from the courts in the future.” - Hillyer and Atkins, 2005

“By acquiescing in breaches of a covenant, a party may lose its right to have it enforced by injunction.” - Hillyer and Atkins, 2005

Best Practice

Local trust committees must ensure that conservation covenants that they hold have enforceability provisions that meet the standards of current best practices on the date they are developed. Unless otherwise advised by legal counsel, the provisions should include a significant and perpetual rent charge as security for the performance of the property owner’s obligations. The terms of the rent charge should be consistent with best practices at the time the covenant is registered and must be reviewed in advance by the Islands Trust’s legal counsel.

Local trust committees must ensure that conservation covenants are enforced in accordance with the terms of the covenant.

D.4. Priority Agreement

Legal Background

“A pre-existing mortgage can pose a serious threat to a conservation covenant. If a landowner does not repay the mortgage as required, the lender...can commence foreclosure proceedings. If successful in obtaining an order of foreclosure...charges, including covenants, may be dropped from title.” - Hillyer and Atkins, 2005

Best Practice

Local trust committees must endeavour to ensure that conservation covenants registered against a property title have priority over mortgages registered on the title.

D.5. Legal Advice and Registration

Local trust committees must ensure that they do not enter into conservation covenants unless the covenants follow the current standards for conservation covenants such as those described in Hillyer and Atkins (2005). All covenants must be confirmed by the Islands Trust legal advisors as legally sound and enforceable prior to registration.

Local trust committees must confirm that conservation covenants have been legally deposited in the Land Titles Office as agreed before completing any actions such as consideration of development approvals that depend upon the conservation covenant.

D.6. Costs

In cases where a conservation covenant is developed as part of an agreement related to a development approval, the costs of developing, reviewing, registering and monitoring the conservation covenant should be borne by the development applicant, or through the local trust committee's local expense fund, if consistent with Island Trust Policy 4.1.xiii (Guidelines for Local Trust Committee Sponsored or Initiated Development Applications).

D.7. File Management

Local planning staff must ensure that an organized file is maintained for each covenant entered into by a local trust committee, including all relevant documents, correspondence, and reports regarding baseline data and monitoring.

Planning staff must ensure that the location of each conservation covenant within its area of jurisdiction is noted on a reference map that is available to the local trust committee and members of the public and easily referenced by staff.

D.8. Future Amendment to Conservation Covenants

Local trust committees should not enter into conservation covenants unless they intend to hold the covenant in perpetuity.

If a conservation covenant has been developed in regards to a development approval and has been the subject of a public hearing, then consideration of any future amendment to the covenant must include a public hearing regarding the proposed amendment.

COVENANT TEMPLATE

LAND TITLE ACT

FORM C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT-PART 1 (This area for Land Title Office use)

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*(PID) (LEGAL DESCRIPTION)

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3. NATURE OF INTEREST:*
Description

Document Reference
(page and paragraph)

Person Entitled to Interest

See Schedule

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) Filed Standard Charge Terms D.F. No.

(b) Express Charge Terms Annexed as Part 2

(c) Release There is no Part 2 of this Instrument.

A selection of (a) include any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S):*

~~ [as to Covenant and SRW]; ~~ [as to Priority]

6. TRANSFEREE(S): (including postal address(es) and postal code(s))*

LOCAL TRUST COMMITTEE, Suite 200, 1627 Fort Street, Victoria, B.C. V8R 1H8

LAND TITLE ACT

FORM C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT-PART 1

7. ADDITIONAL OR MODIFIED TERMS:*

N/A

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 Signature

Execution Date

Transferor Signature

Y M D

2011 ____ ____

~~ by its authorized signatory(ies):

Name:

Name:

(as to both signatures)

Transferee Signature

2011 ____ ____

_____ LOCAL TRUST COMMITTEE, by its authorized signatory(ies):

Chair:

(as to both signatures)

CAO:

**LAND TITLE ACT
FORM D**

EXECUTIONS CONTINUED

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 Signature

Execution Date
Y M D

Party(ies) Signature

Name of Officer

2011 ____ ____

~~ by its authorized
signatory(ies):

Name:

Name:

LAND TITLE ACT
FORM E
SCHEDULE

Enter the required information in the same order as the information must appear on the Freehold Transfer Form, Mortgage Form or General Document Form.

3.	NATURE OF INTEREST: Description	Document Reference (page and paragraph)	Person Entitled to Interest
	S. 219 Covenant	Entire Agreement	Transferee
	Statutory Right of Way	Page ____, Section 8	Transferee
	Rent Charge	Page ____, Sections 13 and 14	Transferee
	Priority Agreement granting Covenant _____, SRW _____, and Rent Charge _____ priority over Mortgage ~~	Page ____	Transferee

**TERMS OF INSTRUMENT - PART 2
SECTION 219 CONSERVATION COVENANT**

THIS AGREEMENT dated for reference _____, 20__ is
BETWEEN:

(the "Owner")

AND:

_____ LOCAL TRUST COMMITTEE, a Local Trust
Committee under the *Islands Trust Act*, having a mailing
address of Suite 200, 1627 Fort Street, Victoria, B.C. V8R
1H8
(the "LTC")

GIVEN THAT:

A. The Owner is the owner in fee simple of the land located on ____ Island, British Columbia, and legally described as:

PID: ●, ●
(the "Land");

B. The Land contains a [environmentally significant/riparian] area of great importance to the Owner, the LTC and the public, and the Owner wishes to grant a covenant under s.219 of the *Land Title Act* (British Columbia), including a rent charge under s.219(6) payable by the Owner and the Owner's successors in title, and a statutory right of way under s.218 of the *Land Title Act*, in order to protect and conserve that area as described in this Agreement; and

C. The statutory right of way granted by this agreement is necessary for the operation and maintenance of the LTC's undertaking.

This Agreement is evidence that in consideration of the payment of \$2.00 by the LTC to the Owner (the receipt and sufficiency of which is acknowledged by the Owner), and in consideration of the promises exchanged below, the Owner covenants and agrees as follows with the LTC in accordance with ss. 218 and 219 of the *Land Title Act*.

Interpretation and Definitions

1. The Owner and the LTC agree that the intent of this Agreement is to ensure that the Conservation Zone is protected, preserved and kept in its natural state as of the reference date of this Agreement, and the Owner and the LTC agree that this Agreement is to be interpreted, performed and applied accordingly.

2. In this Agreement:

(a) "Conservation Zone" means that part of the Land which is contained within heavy black line on the Explanatory/Reference Plan of prepared by _____,

B.C.L.S. on _____, 20____, and deposited in the Victoria Land Title Office under number _____, a copy of which is attached hereto as Schedule “A”;

- (b) “enactment” has the meaning given in the *Interpretation Act* (British Columbia);
- (c) “Remainder” means that part of the Land outside the Conservation Zone; and
- (d) “Report” means the baseline documentation report prepared by a Registered Professional Biologist that: describes the Conservation Zone in the form of text, maps, photographs, and other records of the Conservation Zone and the natural, environmental, wildlife, vegetation and plants, and streams and wetland amenities located in and on the Conservation Zone as of [insert Report Date], a copy for which is on file with the LTC; of which a [copy/overview] is attached as Schedule “B”.

No Disturbance Or Alteration of the Conservation Zone

3. The Owner covenants and agrees with the LTC that the Conservation Zone must be protected, preserved and conserved, including by strictly adhering to the following non-exhaustive conditions:

- (a) no component of the Land within the Conservation Zone, including soil, gravel or rock, may be disturbed, explored for minerals, moved or removed from the Conservation Zone; [delete “including soil, gravel or rock” and “explored for minerals” if title to property shows mineral exploration right]
- (b) subject to ss. 4 and 5, no living or dead tree, which in this section includes bushes and shrubs, or other plant life on the Conservation Zone, may be trimmed, pruned, cut down, damaged, destroyed, moved, harvested or removed from the Conservation Zone;
- (c) no herbicides, insecticides or pesticides may be applied or introduced on or to the Conservation Zone;
- (d) there may be no alteration or interference with the hydrology of the Conservation Zone, unless the Owner receives the prior written consent of the LTC;
- (e) the Conservation Zone must not be polluted or contaminated by any matter;
- (f) there may be no interference with, or alteration of, any wetland or body of water in the Conservation Zone;
- (g) no fixtures or improvements, including buildings or other structures, may be built, affixed or placed on the Conservation Zone, and no motor vehicles may travel over or park within the Conservation Zone;
- (h) no road, trail, path or other way may be laid out or constructed in the Conservation Zone;

- (i) without limiting s. 3(e), no fill, soil, rock, rubbish, ashes, garbage, waste or other material foreign to the Conservation Zone may be deposited in or on the Conservation Zone;
- (j) no hunting, fishing, commercial gathering or grazing of domesticated animals may be carried out in the Conservation Zone; and
- (k) no other acts may be carried out on or in respect of the Conservation Zone which, in the opinion of the LTC, acting reasonably, may have a detrimental impact on the Conservation Zone.

Habitat Enhancement Activities

4. Despite s. 3, the LTC agrees that activity necessary for fish or wildlife habitat protection, preservation, conservation, restoration or enhancement may be undertaken in the Conservation Zone, but only with the prior written consent of the LTC.

Exception For Risk To Humans or Property

5. Despite the rest of this Agreement,

- (a) if any living or dead tree on the Land poses a threat to the safety of those on or immediately adjacent to the Land by its falling or fire, that tree may be cut down or trimmed with the prior written consent of the LTC, not to be unreasonably withheld, so as to remove the risk, but the Owner and the LTC agree that unless it would, in the LTC's reasonable opinion, constitute a fire hazard, the cut tree or trimmings must be left on the Land so that natural processes can occur, and
- (b) the Owner may cut down or trim any living or dead tree on the Land without the consent of the LTC in an emergency situation, such as a fire or imminent threat to human safety, but the Owner must promptly advise the LTC of the Owner's actions.

Baseline Documentation Report

6. The parties acknowledge and agree that the Report will serve as an objective information baseline to enable the parties to monitor compliance with the terms of this Agreement, and the parties agree that the Report provides an accurate description of the Land and the Conservation Zone, including natural, environmental, wildlife, vegetation and plants, and streams and wetland amenities located in and on the Conservation Zone, as of the date of this Agreement.

7. The parties acknowledge and agree that the flora and fauna on the Conservation Zone will evolve through natural succession over time and, unless otherwise expressly stated, references to the Report are intended to take into account the natural flow of the sea and the succession of the flora and fauna over time, without human intervention on the Conservation Zone other than as expressly permitted by this Agreement.

Statutory Right of Way

8. In accordance with s. 218 of the *Land Title Act*, the Owner grants to the LTC the statutory right of way for the LTC to enter, leave and be on the Land:

- (a) to inspect the Conservation Zone:
 - (i) at least once each calendar year, with the date for each inspection to be agreed upon by the parties, but if the parties cannot agree on a date the LTC is entitled to enter upon and inspect the Conservation Zone in accordance with s. 8.1(a)(ii); and
 - (ii) at all other reasonable times upon prior notice by the LTC to the Owner of at least seventy-two (72) hours, unless there is an emergency or potential threat to the Conservation Zone which does not make giving such notice practicable;
- (b) as part of inspection of the Conservation Zone, to take samples, photographs and video recordings as may be necessary to monitor compliance and enforce the terms of this Agreement;
- (c) to protect, preserve, conserve, maintain, enhance, restore or rehabilitate at the LTC's expense and in accordance with the provisions of this Agreement, the natural state of the Conservation Zone to as near the condition described in the Report as is practicable if an act of nature or human agency, beyond the Owner's reasonable control, destroys, impairs, diminishes or negatively affects or alters the Conservation Zone from the condition described in the Report;
- (d) to protect, preserve, conserve, maintain, enhance, restore or rehabilitate, at the Owner's expense and in accordance with the provisions of this Agreement, the Conservation Zone 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, or negatively affects or alters the Conservation Zone from the condition described in the Report; other than as expressly allowed in this Agreement; 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 Conservation Zone;
- (f) to place pegs or other similar markings on the ground of the Conservation Zone; and
- (g) for any purpose necessary to monitor, implement or enforce this Agreement.

For clarity, the LTC may bring workers, vehicles, equipment and other personal property onto the Land when exercising its rights under this Agreement.

LTC May Perform Obligations Of Owner

9. If the Owner has breached any of its obligations under this Agreement, the LTC may in its sole discretion enter the Land and perform the obligation at the expense of the Owner. The cost to the LTC of performing the obligation is a debt due and owing by the Owner to the LTC, with interest accruing on that debt at the annual rate of interest that is equal to 3% above the annual rate prime rate of interest charged from time to time by the Bank of Montreal at its main branch in Vancouver, BC, being the annual rate of interest charged by it for Canadian dollar demand commercial loans extended to its most credit-worthy customers. The LTC may exercise its rights under this section only if the Owner has not cured the breach in question within 45 days after notice to do so is given to the Owner by the LTC. Exercise by the LTC of its rights under this section does not limit, or prevent the LTC from enforcing, any other remedy or right the LTC may have against the Owner.

Enforcement Remedies of the LTC

10. If the LTC, 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 provision of this Agreement, the LTC may serve on the Owner a notice setting out particulars of the breach together with an estimate of the maximum costs of remedying the breach.

11. The Owner shall have 60 days from receipt of such notice to remedy the breach or make arrangements satisfactory to the LTC giving notice for remedying the breach.

12. If the Owner does not remedy the breach within a reasonable period of time, to the satisfaction of the LTC giving notice, the LTC may, but is not required to, enter upon the Land and carry out the Owner's obligations. Where the LTC carries out the obligations of the Owner, the Owner must reimburse the LTC for any expenses incurred, up to the estimated maximum costs of remedying the breach set out in the notice. Such costs, until paid, constitute a debt owed by the Owner to the LTC, recoverable by all remedies available to a creditor in respect of a debtor.

Rent Charge

13. As security for the performance of the Owner's obligations under this Agreement, the Owner grants to the LTC in perpetuity a Rent Charge, which Rent Charge shall be the absolute property of the LTC in fee simple and issue and be payable from the Land without any set-off or deduction. The Rent Charge is granted both under s. 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.

14. The Rent Charge secures payment to the LTC of:

- (a) \$200 per calendar year, on account of the LTC's costs for performing annual monitoring of the Conservation Zone, subject to adjustment under s. 17(a). This Rent Charge amount is due to the LTC on June 1 of every calendar year; and
- (b) \$15,000 as a partial remedy for each violation of this Agreement occurring within that year, subject to adjustment under s. 18(a). The obligation of the Owner to pay this Rent Charge amount is suspended and deferred so long as the Owner is

not in breach of this Agreement, or is diligently working to cure the breach in accordance with s. 11 of this Agreement.

15. The Rent Charge shall rank in priority to all financial charges and encumbrances burdening or charging the Land. The LTC agrees to waive its entitlement to the Rent Charge as against any mortgagee that has commenced foreclosure proceedings or that otherwise realizes against its security in the Land.

16. The LTC may exercise any and all remedies available at law or in equity for enforcement of the Rent Charge, and without limiting the foregoing may sue in debt and levy distress against the Land.

17. **Annual Rent Charge for Monitoring Costs:**

- (a) The Rent Charge amount specified in s. 14(a) shall be adjusted on January 1 of tenth anniversary year of the date following that in which this Agreement is executed, 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 nine years prior 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 LTC 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% increase. The adjusted Rent Charge amount will be applicable for the following ten-year term.
- (b) The LTC will make reasonable efforts to inform the Owner of each tenth anniversary adjustment of the Rent Charge amount for annual monitoring costs, by giving written notice to the Owner, in accordance with section 31, in advance of the day such amount is due.

18. **Rent Charge for Violation:**

- (a) If the LTC wishes to enforce the penalty Rent Charge specified in s. 14(b), it shall provide notice to that effect to the Owner. This notice may be given at any time after notice is given under s. 10.
- (b) The Rent Charge amount specified in s. 14(b) shall be adjusted on January 1 of each year beginning in the year following that in which this Agreement is executed, 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 LTC 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% increase.

- (c) For clarity, the Rent Charge amount in s. 14(b) will only be due upon the Owner being in breach of the Agreement. The Rent Charge of \$15,000 shall forthwith become due and payable by the Owner to the LTC, and the Rent Charge shall thereafter accrue so long as the breach continues, to a maximum of \$60,000, and shall be paid on demand.
- (d) The Rent Charge specified in s. 14(b), as adjusted pursuant to s. 18(b), shall be increased by 110% of the market value of any timber or other flora, mineral, rock, gravel, soil, mineral or other material harvested or removed from the Land in contravention of this Agreement.

LTC's Right to Specific Relief

19. Notwithstanding anything in this Agreement, the Owner agrees that the LTC is entitled to obtain an order for specific performance or a prohibitory or mandatory injunction in respect of any breach by the Owner of this Agreement. The Owner agrees that this section is reasonable given the public interest in the need for effective protection of the Land from breaches of this Agreement.

20. No reference to or exercise of any specific right or remedy by the LTC in enforcing the Rent Charge shall preclude, prejudice or limit the LTC from exercising any other remedy at law or in equity not expressly provided for in this Agreement. Without limiting the generality of the foregoing, the LTC may sue in debt for recovery of the Rent Charge. No remedy shall be exclusive or dependent on any other remedy, and the LTC may from time to time exercise any one or more of the remedies available to it independently or in combination.

Limitation on Owner's Obligations

21. The Owner is only liable for breaches of this Agreement caused or contributed to by the Owner or which the Owner permits or allows. The Owner is not liable for the consequences of the requirements of any enactment or law or any order, directive, ruling or government action thereunder. The Owner is liable only for breaches which occur while the Owner is the registered owner of any part of the Land.

Release and Indemnity

22. The Owner irrevocably releases the LTC from, and waives, any claim, right, remedy, action, cause of action, loss, damage, expense or liability which the Owner may have against it in respect of this Agreement or its performance or breach.

23. The Owner hereby indemnifies and saves harmless the LTC, its officers, employees, contractors and agents at all time from all loss, damages, actions, suits, claims, demands, costs, expenses, fines and liabilities of any nature whatsoever by whomsoever brought, made or suffered for which the LTC shall or may become liable, incur or suffer by reason of any injury to person or loss or damage to property or economic loss arising directly or indirectly from any act or omission, negligent or otherwise, in the use, occupation and maintenance of the Land or the

Conservation Area by the Owner, its officers, employees, agents, contractors, licensees, invitees and others of the Owner.

24. The Owner agrees with the LTC that for the purposes of the *Occupier's Liability Act* (British Columbia), all other enactments and the common law, the Owner is, as between the Owner and the LTC, the sole occupier of the Land.

No Obligations on LTC

25. The rights given to the LTC by this Agreement are permissive only and nothing in this Agreement imposes any duty of any kind on the LTC to anyone or obliges the LTC to perform any act or to incur any expense for any of the purposes set out in this Agreement. Where the LTC is required or permitted by this Agreement to form an opinion, exercise a discretion, make a determination or give its consent, the Owner agrees that the LTC is under no public law duty of fairness or natural justice in that regard and agrees that the LTC may do any of those things in the same manner as if it were a private party and not a public body.

Dispute Resolution

26. If a breach of this Agreement occurs or is threatened, or if there is disagreement as to the meaning of this Agreement, the LTC or the Owner may give notice to the other party requiring a meeting of the parties within 10 business days of receipt of the notice.

27. All activities on the Conservation Zone giving rise to a breach or a threatened breach shall immediately cease or be dealt with by the parties, upon receipt of notice.

28. The parties must attempt to resolve the matter, acting reasonably and in good faith, within 20 business days of meeting under s. 26.

29. If the parties are not able to resolve the matter within said time, the parties may agree to appoint a mutually acceptable person to mediate the matter and the parties must equally share the cost of the mediator and act reasonably and in good faith and cooperate with the mediator and with each other in an attempt to resolve the matter within 30 business days after the mediator is appointed.

30. These sections 26 through 29 do not affect the right of either party to pursue any other legal or equitable remedy in relation to a breach or a threatened breach or a disagreement as to the meaning of this Agreement or part thereof.

Notice

31. Any notice to be given pursuant to this agreement must be in writing and delivered personally or sent by pre-paid express mail. The addresses of the parties for the purpose of notice are the addresses on the first page of this agreement and in the case of any subsequent Owner, the address will be the address shown on the title to the Land in the Land Title Office. If notice is delivered personally, it may be left at the relevant address in the same manner as ordinary mail is left by Canada Post and is to be deemed given when delivered. If notice is sent by mail, it will be

considered given 5 days after mailing. In the case of any strike or other event causing disruption of ordinary Canada Post operations, a party giving notice for the purposes of this agreement must do so by delivery as provided in this section. A party may change its address for the purposes of this section by giving notice in accordance with this section.

No Effect On Laws or Powers

32. This Agreement does not:

- (a) affect or limit the discretion, rights, duties or powers of the LTC under any enactment or at common law, including in relation to the use or subdivision of the Land,
- (b) affect or limit any enactment relating to the use or subdivision of the Land, or
- (c) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.

Covenant Runs With the Land

33. Unless it is otherwise expressly provided in this Agreement, every obligation and covenant of the Owner in this Agreement constitutes a personal covenant and a covenant granted under s. 219 of the *Land Title Act* 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.

No Effect on Property Taxation

34. Nothing in this Agreement of itself affects any obligation of the Owner to pay all property taxes, rates, charges and levies payable under any enactment on or in respect of the Land.

Modification, Discharge or Abandonment

35. The Owner agrees that this Agreement is intended to be perpetual in order to protect the Land as set out in this Agreement. In view of the importance of protecting the Land for ecological and other reasons, the Owner agrees not to seek a court order modifying, discharging or extinguishing this Agreement under the *Property Law Act* (British Columbia), any successor to that enactment, any other enactment or the common law.

Registration

36. The Owner shall, at the Owner's expense, do or cause to be done all acts reasonably necessary to register this agreement against title to the Land with priority over all financial charges, liens and encumbrances registered or pending registration at the time of application for registration of this agreement against the title to the Land.

Waiver

37. An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.

No Liability in Tort

38. The parties agree that this agreement creates only contractual obligations. The parties agree that no tort obligations or liabilities of any kind exist between the parties in connection with the performance of or any default under or in respect of, this Agreement. The intent of this section is to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract.

Severance

39. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.

No Other Agreements

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

Further Assurances

41. The parties hereto shall execute and do all such further deeds, acts, things and assurances that may be reasonably required to carry out the intent of this Agreement.

Enurement

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

Deed and Contract

43. By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

As evidence of their agreement to be bound by the terms of this instrument, 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.

PRIORITY AGREEMENT

_____ (the "Chargeholder") being the holder of Mortgage
No. _____ (the "Charge")

The Chargeholder, in consideration of the premises and the sum of One Dollar (\$1.00) now paid to the Chargeholder by the Transferee, hereby approves of, joins in and consents to the granting of the within Agreement (containing a s. 219

covenant, s. 218 statutory right of way, and rent charge) and covenants and agrees that the same shall be binding upon its interest in or charge upon the Lands and shall be an encumbrance upon the Lands prior to the Charge in the same manner and to the same effect as if it had been dated and registered prior to the Charge.

IN WITNESS WHEREOF the Chargeholder has executed this Agreement on Form D to which this Agreement is attached and which forms part of this Agreement.

Schedule "A" – Conservation Zone

Schedule "B" – Biologist Report

END OF DOCUMENT