

TERMS OF INSTRUMENT – PART 2

SECTION 219 COVENANT

BETWEEN:

Rivertown (Pemberton) Nominee Ltd., Inc. No. BC 1348508

1780 Scott Road
North Vancouver, BC
V7J 3J5

(the “**Owner**”)

AND:

THE VILLAGE OF PEMBERTON

PO Box 100,
Pemberton, BC
V0N 2L0

(the “**Village**”)

GIVEN THAT:

- A. The Owner is the registered owner of the lands legally described in Item 2 of the Form C to which these terms are attached (the “**Lands**”);
- B. The Owner has applied to the Village to develop the Lands pursuant to Rezoning Application No. OR135 in order to permit the construction of a 33-lot subdivision, including 32 residential lots and one (1) mixed-use lot (the “**Rezoning Application**”);
- C. In connection with the Rezoning Application, the Owner desires to grant this covenant and Agreement to restrict the use and Development on and of the Lands;
- D. The Owner agreed to grant to the Village a covenant under section 219 of the *Land Title Act* RSBC 1996, c. 250 (the “**Land Title Act**”) on the terms and conditions of this Agreement;
- E. A covenant registerable under Section 219 of the *Land Title Act* may include provisions of a positive or negative nature in respect of the use of land, buildings on land and subdivision of land; and
- F. Section 219 of the *Land Title Act*, allows the registration of a covenant in favour of a municipality in respect of the use of land or the use of buildings on or to be erected on land and that land is or is not to be built on except in accordance with the covenant and that land is not to be subdivided except in accordance with the covenant.

NOW THEREFORE THIS AGREEMENT WITNESSES that pursuant to section 219 of the *Land Title Act*, and in consideration of the premises and the mutual covenants and agreements contained herein and the sum of \$1.00 now paid to the Owner by the Village (the receipt and sufficiency whereof is hereby acknowledged), the Owner covenants and agrees with the Village as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Agreement, the following terms have the following meaning:

- (a) **“Agreement”** means these Terms of Instrument, the development plan in Schedule A, and the Form C to which they are attached;
- (b) **“Village’s Manager of Development Services”** means the manager of the Development Services department of the Village as appointed by Council from time to time;
- (c) **“Claim”** means any actual, potential or threatened claim, demand, suit, action, cause of action, cost recovery action, proceeding, investigation, charge, ticket, summons, citation, direction, inquiry, order and any other assertion of or with respect to liability or responsibility of any kind arising, asserted or threatened, formally or informally, pursuant to or based upon any enactment, any agreement or contract, or at common law or in equity (whether arising in respect of tort, contract or otherwise);
- (d) **“Develop”** or **“Development”** means any of the following:
 - i. an application for a rezoning, subdivision, or development permit to regulate development on the Lands;
 - ii. building or altering any building or structure on the Lands;
 - iii. changing the slope or grade of the Lands;
 - iv. placing fill on the Lands;
 - v. land alteration or land clearing activity (including, but not limited, to removal of trees or shrubs with no limitation or specification pertaining to size, diameter or species); and
 - vi. carrying out any work or activity that is likely to change the drainage pattern on the Lands
- (e) **“Expenses”** means all commercially reasonable liabilities, obligations, duties, losses, damages, costs, expenses (including legal fees and expenses on a solicitor and own client basis, and fees and disbursements of experts, consultants and contractors, and costs and expenses with respect to or related to security bonds, investigation, survey, sampling, testing, remediation, reclamation, monitoring and reporting and other services), penalties, fines and monetary sanctions and all amounts paid to settle a Claim, or to satisfy any judgment, order, decree, directive, award or other obligation to pay any amount of whatever nature or kind;

- (f) **“Lots with One Dwelling Unit”** means lots with only a single-family dwelling and does not include any accessory dwelling unit like a secondary suite, carriage house, garden suite, or any similar housing type that may be permitted by the Village from time to time.
- (g) **“Real Estate Development Marketing Act”** means the *Real Estate Development Marketing Act*, SBC 2004, c. 41;
- (h) **“Real Estate Act”** means the *Real Estate Act*, RSBC 1979, c. 356;
- (i) **“Strata Property Act”** means the *Strata Property Act*, SBC 1998, c. 43;
- (j) **“Subdivide”** or **“Subdivision”** means to divide, apportion, consolidate or subdivide the Lands, or the ownership or right to possession or occupation of the Lands into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization or development of “cooperative units” as defined in the *Real Estate Act* or “shared interests in land” as defined in the *Real Estate Development Marketing Act*;

1.2. Interpretation

In this Agreement:

- (a) words importing the singular number include the plural and vice versa and words importing the neuter gender include the masculine and the feminine or body corporate or politic where the context of the parties so require;
- (b) the division of this Agreement into articles and sections and the insertion of headings are for convenience only and will not affect the construction or the interpretation of this Agreement;
- (c) references to any article, section or schedule will, unless the context otherwise requires, mean that article, section or schedule of this Agreement;
- (d) every reference to each party is deemed to include the heirs, executors, administrators, personal representatives, successors, elected officials, directors, servants, employees, agents, contractors, licensees and invitees of such party, wherever the context so requires or allows;
- (e) the words “include” and “including” are to be construed as meaning “include without limitation” and “including without limitation”;
- (f) all payments to be made will be deemed to be payments in lawful currency of Canada;
- (g) reference to “governmental approval” means all federal, provincial, regional, municipal and health authority approvals, permits, authorizations of any nature and kind, lawfully required from time to time pursuant to any enactment;
- (h) reference to “business day” means all days other than Saturday, Sunday and statutory holidays in the Province of British Columbia;

- (i) reference to “party” and “parties” means the one or more parties to this Agreement, as the context demands;
- (j) reference to a whole, for example, the “Lands” includes reference to a portion thereof; and
- (k) unless expressly stated otherwise, all references to enactments refer to enactments of the Province of British Columbia, as amended or replaced from time to time, and all references to bylaws and policies refers to the bylaws and policies of the Village, as amended or replaced from time to time.

2. SECTION 219 OF THE *LAND TITLE ACT*

2.1. Section 219 Covenant – Land Use Restrictions

The Owner hereby covenants and agrees with the Village, as a covenant in favour of the Village pursuant to Section 219 of the *Land Title Act*, it being the intention and agreement of the Owner that the provisions in this Agreement be annexed to and run with and be a charge upon the Lands and that the Lands will be used only in strict compliance with the terms and conditions of this Agreement.

Notwithstanding that the Owner may otherwise be entitled to under a statute or bylaw, the Owner covenants and agrees with the Village that:

- (a) It shall not Develop the Lands except in accordance with this Agreement;
- (b) the Lands shall not be Developed to contain more than sixteen (16) Lots with One Dwelling Unit; and
- (c) the Village will not grant a building permit and the Owner will not take any action, directly or indirectly, to compel the issuance of a building permit in connection with the Lands unless the Owner has complied with the terms of this Agreement.

The Owner further covenants and agrees with the Village that, notwithstanding any statute or bylaw, the Village will be under no obligation to accept, inspect, or review any application or issue a building permit unless the Owner has strictly complied with all of the terms and conditions of this Agreement.

The Owner acknowledges, covenants, and agrees that:

- (a) except as expressly provided, nothing in this Agreement will relieve the Owner from any obligation or requirement arising under any applicable statute, bylaw, or regulation in respect of the subdivision, development, and use of the Lands;
- (b) notwithstanding any limitations on the statutory powers granted to the Village, the Village may withhold the approval or issuance of a permit, subdivision approval, and any other authorization if the subdivision, construction, or use of the Lands would result in non-compliance with this Agreement;

- (c) the Village may issue a stop work order in relation to any activity on the Lands that is or would result in non-compliance with this Agreement and the Owner agrees to immediately cease such activity upon receipt of such stop work order; and
- (d) the Owner is fully responsible for ascertaining and obtaining all governmental approvals (including federal and provincial approvals) required in connection with the Development of the Lands. The Village makes no warranties or representations as to the nature of required governmental approvals and has no obligation to enforce or monitor the Owner's compliance with governmental approvals.

2.2. Indemnity

As an indemnity pursuant to section 219(6) of the *Land Title Act*, the Owner agrees to indemnify, defend and save harmless the Village and its elected officials, officers, servants, agents, and employees (the "**Protected Parties**") against all Claims and Expenses arising out of, in any way related to, or that would not or could not be sustained but for, the following:

- (a) this Agreement, including but not limited to the exercise by any of the Protected Parties of any rights pursuant to this Agreement, or any restrictions imposed pursuant to this Agreement;
- (b) the Owner complying with this Agreement;
- (c) the Owner defaulting on its obligations under this Agreement; and
- (d) the approval or rejection by any of the Protected Parties of any permit or authorization on the Lands pursuant to this Agreement.

except to the extent caused by a deliberate and wrongful act of one or more of the Protected Parties.

2.3. Release

As an integral part of the covenant contained herein under section 219 of the *Land Title Act*, the Owner hereby releases the Protected Parties from any Claim and Expense arising out of, or in any way related to, or that would not or could not be sustained but for, the following:

- (a) this Agreement, including but not limited to the exercise or purported exercise by any of the Protected Parties of any rights granted in this Agreement, or any restrictions imposed pursuant to this Agreement;
- (b) the Owner complying with this Agreement;
- (c) the Owner defaulting on its obligations under this Agreement; and
- (d) the approval or rejection by any of the Protected Parties of any permit or authorization on the Lands pursuant to this Agreement;

except to the extent caused by a deliberate and wrongful act of one or more of the Protected Parties.

2.4. Survival of Indemnity and Release

The indemnity and release in this Part 2 will survive the expiration or the earlier termination of this Agreement and the release of this Agreement from title to the Lands.

2.5. Contribution toward Village's Legal Fees

Despite any other provision of this Agreement, forthwith upon a written request by the Village, the Owner will reimburse the Village for all reasonable legal fees and *Land Title Act* charges and disbursements incurred by the Village in connection with the drafting, negotiating and registering this Agreement in the Land Title Office.

3. GENERAL

3.1. Severability

If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion will be severed and the decision that it is invalid will not affect the validity of the remainder of this Agreement.

3.2. Default and Remedies

The Owner acknowledges, covenants and agrees that:

- (a) if the Owner fails to comply with any of its obligations under this Agreement, then the Village may notify the Owner in writing (at the address shown on title to the Lands in the Land Title Office at the relevant time) that the Owner is in default, describe the default, and instruct the Owner to correct the default within 15 days of receiving the notice;
- (b) if the correction of a default cannot be completed within 15 days of receiving the notice, the Owner will only be in compliance with this Agreement and the Village's instructions if the Owner:
 - (i) immediately takes all reasonable steps to begin to correct the default;
 - (ii) provides the Village with a schedule reasonably acceptable to the Village for such correction; and
 - (iii) completes the correction in accordance with such schedule;
- (c) damages are an inadequate remedy for the Village, and the Village is entitled to seek an order for specific performance, or a prohibitory or mandatory injunction, in order to compel performance of the obligations in this Agreement;
- (d) no remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity; and
- (e) the Village may at all reasonable times enter onto the Lands, including buildings and structures thereon, to ascertain the Owner's compliance with this Agreement.

3.3. Notice

(a) Any notice given under this Agreement may be well and adequately given if delivered by hand, or mailed by prepaid registered mail from any post office in British Columbia, and in the case of the Owner, delivered or addressed to it at:

- the address listed as the Owner's address on title in the Land Title Office, from time to time

and in the case of the Village, delivered or addressed to it at the Village Hall:

- Village of Pemberton, PO Box 100, Pemberton, BC V0N 2L0
Attention: Manager of Development Services

or at such other address or by such other method of communication (including e-mail) as the parties may from time to time agree to in writing.

(b) The date of receipt of any notice will be deemed to be the date of delivery of such notice, unless the notice is mailed. In case of a mailed notice, the date of delivery will be on the third business day next following the date of mailing, provided that should there be, between mailing and the actual receipt of such notice, a mail strike, slowdown or other labour dispute which might affect the delivery of such notice, such notice will only be effective by actual delivery of it:

- i. if delivered to the address specified above, at the time of delivery, and
- ii. if transmitted by email address, be deemed to have been received on the business day following the day it was transmitted if:
 - A. the receiving party replies to or otherwise acknowledges receipt of the email;
or
 - B. the sender's email service does not return any error notice in relation to he email.

3.4. Runs with the Lands

(a) The covenants set forth herein will charge the Lands pursuant to section 219 of the *Land Title Act* and will run with the Lands and bind the Lands and every part or parts thereof, and will attach to and run with the Lands and each and every part to which the Lands may be divided or Subdivided, whether by Subdivision plan, strata plan or otherwise.

(b) The covenants set forth herein will charge the Lands, and every portion thereof, and bind the Lands and all future owners of the Lands, until discharged.

3.5. Priority of Section 219 Covenant

The Owner will do or cause to be done, at the expense of the Owner, everything necessary to ensure that this Agreement is granted priority over all charges and encumbrances which are registered (or the registration of which is pending) against the title to the Lands save and except those specifically approved in writing by the Village or in favour of the Village.

3.6. Further Assurances

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

3.7. Waiver By Consent

Waiver by the Village of a default by the Owner must be in writing and signed by the Village and will not be deemed to be a waiver of any subsequent or other default.

3.8. No Waiver

The Owner and the Village acknowledge and agree that the Village is not obligated to remedy any default of this Agreement. A failure by the Village to enforce this Agreement will not constitute a waiver of any of the Village's rights herein. No single or partial exercise of any such right by the Village precludes any other or further exercise of that right or the exercise of any other right under this Agreement. Any waiver of, or consent to depart from, the requirements of any provision of this Agreement is effective only if it is in writing and signed by the Village in accordance with section 3.7.

3.9. Amendment

Any modification of this Agreement must be in writing, signed by both parties, and must be in a form that can be registered in the Land Title Office.

3.10. Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

3.11. Counterpart and Electronic Delivery

This Agreement may be executed in any number of counterparts and delivered by electronic means, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

3.12. Acknowledgements

The Owner acknowledges, covenants and agrees that:

- (a) except as expressly provided, nothing in this Agreement will relieve the Owner from any obligation or requirement arising under any applicable statute, bylaw or regulation in

- respect of the use, subdivision and development of the Lands;
- (b) nothing contained or implied in this Agreement will:
 - (i) prejudice or affect the Village's rights, powers, duties or obligations in the exercise of its functions pursuant to *the Local Government Act*, the *Community Charter*, or other statutes, bylaws, orders and regulations; or
 - (ii) cancel or modify the terms of any other covenant, right-of-way, permit, interest, charge, legal notation or agreement entered into between the parties or registered against the Lands;
 - (c) the Village may withhold the approval or issuance of a permit and any other authorization if the proposed use of the Lands would result in non-compliance with this Agreement;
 - (d) the Village may issue a stop work order in relation to any activity on the Lands that is or would result in non-compliance with this Agreement and the Owner agrees to immediately cease such activity upon receipt of such stop work order; and
 - (e) the Owner is fully responsible for ascertaining and obtaining all governmental approvals (including federal and provincial approvals) required in connection with the development contemplated in the Rezoning Application; the Village makes no warranties or representations as to the nature of required governmental approvals and has no obligation to enforce or monitor the Owner's compliance with governmental approvals.
 - (f) the Owner is fully responsible for ascertaining and obtaining all third-party licenses, rights of way, easements and agreements necessary in connection with the development contemplated in the Rezoning Application in the reasonable opinion of the Village; the Village makes no warranties or representations as to the nature of such agreements and has no obligation to enforce or monitor the Owner's compliance with third-party agreements.

3.13. Village Discretion

If the Village or a representative of the Village is required or permitted under this Agreement to form an opinion, exercise a discretion, express satisfaction, decide or give its consent, or impose conditions in connection with any of the foregoing:

- (a) the relevant provision will not be considered fulfilled unless the approval, opinion, determination, consent or expression of satisfaction is in writing signed by the Village or the representative, as the case may be;
- (b) the approval, opinion, determination, consent or satisfaction is in the sole discretion of the Village or the representative, as the case may be; and
- (c) the Village or the representative, as the case may be, is under no public law duty of fairness or natural justice in that regard and the Village or the representative may do any of those things in the same manner as if it were a private person and not a public body or employee or officer thereof.

IN WITNESS OF THIS AGREEMENT the Village and the Owner have executed this Agreement by signing the Form C - General Instrument - Part 1 or the Form D - Executions Continued attached hereto.