

SCHEDULE "W": DEVELOPMENT PARCEL COVENANT

[attach *Land Title Act* Form C General Filing Instrument – Part 1]

TERMS OF INSTRUMENT - PART 2

This Covenant dated for reference the _____ day of _____, _____.

BETWEEN:

REGIONAL DISTRICT OF NANAIMO

6300 Hammond Bay Road
Nanaimo, BC
V9T 6N2

(the "Regional District")

AND:



(the "Owner")

WHEREAS:

- A. The Owner is the registered owner of the properties situated, lying and being in the Regional District of Nanaimo, in the Province of British Columbia, described in Item 2 of Form C to which these Terms of Instrument are attached (the "**Development Parcel**");
- B. A Development Cap Covenant was registered against title to land that included the Development Parcel, which Development Cap Covenant was released as a result of the registration of this Covenant;
- C. Section 219 of the *Land Title Act* provides that the Owner may grant a covenant to the Regional District of a negative or positive nature respecting the use of land, and the Owner desires to grant this Covenant to restrict the use of land on the terms and conditions set forth herein;

NOW THEREFORE THIS AGREEMENT WITNESSES that pursuant to Section 219 of the *Land Title Act*, and in consideration of the promises hereby contained, the parties agree as follows:

1. Definitions. In this Agreement:

"**Development Cap Covenant**" means a covenant under section 219 of the *Land Title Act* that was registered against the Development Parcel, pursuant to a Phased Development Agreement entered into between the owner of the Development Land and the Regional District on the _____ day of _____, _____, which Development Cap Covenant limited the development of the Development Parcel and other land to a joint amount of no more than a specified number of dwelling units, and no more than a specified amount of commercial development.

“Development Land” means the lands against which the Development Cap Covenant had been registered, further to the Phased Development Agreement.

2. Section 219 Covenant. Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees with the Regional District that it shall not build upon, or allow to be built upon, the Development Parcel any more than ♦ [insert maximum number of dwelling units allowed on the Development Parcel].
3. Run with Lands. This Covenant is granted voluntarily by the Owner to the Regional District pursuant to Section 219 of the *Land Title Act* of the Province of British Columbia and shall run with the Lands.
4. Binding Effect. This Covenant shall enure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns, provided however that nothing herein obliges the Regional District to enforce this Agreement.
5. Further Acts. The Owner and the Regional District shall do all further acts as may be necessary for carrying out this Covenant, including without limitation execution of all required documents and alterations required to achieve registration at the Land Title Office. The Owner agrees to do everything reasonably necessary, at the Owner’s expense, to ensure that this Agreement is registered against title to the Land with priority over all financial charges, liens and encumbrances registered, or the registration of which is pending, at the time of application for registration of this Agreement.
6. Severability. 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.
7. Indemnity, Release and Liability. The Owner releases, and must indemnify and save harmless, the Regional District, its elected and appointed officials and employees, from and against all liability, actions, causes of action, claims, damages, expenses, costs, debts, demands or losses suffered or incurred by the Owner, or anyone else, arising from the granting or existence of this Agreement, or any default of the Owner under or in respect of this Agreement. The parties agree that this Agreement creates obligations arising out of the nature of this document as a section 219 covenant only. 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 pertaining to section 219 covenants.
8. Interpretation. In this Covenant:
 - (a) the headings and captions are for convenience only and do not form a part of this Covenant and will not be used to interpret, define or limit the scope, extent or intent of this Covenant or any of its provisions;
 - (b) the word “including” when following any general term or statement is not to be construed as limiting the general term or statement to the specific items or matters set

forth or to similar terms or matters but rather as permitting it to refer to other items or matters that could reasonably fall within its scope;

- (c) a reference to a statute includes every regulation made pursuant thereto, all amendments to the statute or to any such regulation in force from time to time and any statute or regulation that supplements or supersedes such statute or any such regulation;
- (d) a word importing the masculine gender includes the feminine or neuter, and a word importing the singular includes the plural and vice versa; and
- (e) every reference to each party hereto shall be deemed to include the officers, employees, elected officials, agents, servants, successors and assigns of that party.

IN WITNESS WHEREOF the Owner and the Regional District have duly executed this Covenant as of the day, month and year first above written by executing the Form C attached hereto.