**TERMS OF INSTRUMENT - PART 2**

THIS AGREEMENT dated for reference [month, date, year]

BETWEEN:

*[insert name of owner]*

(the “Owner”)

AND:

Cowichan Valley Regional District

(the “CVRD”)

**WHEREAS:**

1. The Owner is the registered owner in fee simple of:

PID:

[insert full legal description of parcel]

(the"**Land**")

1. The CVRD is a regional district incorporated under the *Local Government Act* of British Columbia;
2. The Owner has applied to the CVRD’s Building Inspector for a building permit permitting construction of a building or structure on the Land;
3. The CVRD's Building Inspector considers that the Land is or is likely to be subject to the risk of *[select one or more of the following as applicable to the Land: flooding, mud flows, debris flows, debris torrents, erosion, land slip, rock falls, subsidence or avalanche]* and, pursuant to section 56 of the *Community Charter*, has required the Owner to provide the Building Inspector with a report certified by a professional engineer or geoscientist, with experience or training in geotechnical study and geohazard assessments (the "**Qualified Professional**"), that the Land may be used safely for the use intended;
4. The Owner has provided the CVRD with the report, prepared by a Qualified Professional, which is attached to this Agreement as Schedule "A" (the **“Report**"); and
5. The Owner has agreed to enter into this Agreement and to register this Agreement as a covenant and indemnity against the title to the Land under section 219 of the *Land Title Act* and section 56 of the *Community Charter*.

**NOW THEREFORE,** in consideration of the premises and the covenants herein contained and for other valuable consideration, receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereto covenant and agree with each other as follows:

* 1. In this Agreement, “construction” has the same meaning as under section 56 of the *Community Charter*.
  2. The Owner shall use the Land only in the manner determined and certified by the Qualified Professional in the Report as enabling the safe use of the Land for the use intended, and without limiting the foregoing, the Owner shall not carry out or permit the construction of any building or structure on the Land except in accordance with the conditions specified in the Report.
  3. The enforcement of this Agreement is entirely within the discretion of the CVRD and the execution and registration of this Agreement against the title to the Land must not be interpreted as creating any duty on the part of the CVRD to the Owner or to any other person to enforce any provision or the breach of any provision of this Agreement.
  4. The Owner shall reimburse the CVRD for any expense that may be incurred by the CVRD as a result of a breach of a covenant under this Agreement.
  5. The Owner hereby releases and forever discharges the CVRD of and from any claims, causes of action, suits, demands, expenses, costs and legal fees whatsoever that the Owner has or may have against the CVRD for any loss, damage, or injury that the Owner may sustain or suffer arising out of this Agreement or the use of the Land contemplated under this Agreement.
  6. The Owner shall indemnify and save harmless the CVRD from any and all claims, causes of action, suits, demands, expenses, costs and legal fees whatsoever for any loss (including economic loss), damage, or injury that any person might have as owner, occupier, or user of the Land, or by any person who has an interest in or comes onto the Land, or by any person that suffers loss of life or injury to his or her person or property, that arises out of this Agreement or the use of the Land contemplated under this Agreement.
  7. Nothing contained or implied herein prejudices or affects the rights and powers of the CVRD in the exercise of its functions under any public or private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Land as if the Agreement had not been executed and delivered by the Owner, and in particular, without limiting the generality of the foregoing, the Building Inspector may request that further or additional Reports be prepared by a Qualified Professional prior to the issuance of a building permit for any further construction on the Land.
  8. At the Owner’s expense, the Owner must do everything necessary to ensure that this Agreement, and the section 219 covenant it creates, are registered against the title to the Land in priority to all charges and encumbrances of a financial nature.
  9. Time is of the essence of this Agreement.
  10. The Owner covenants and agrees for itself, its heirs, executors, successors, and assigns, that it will at all times perform and observe the requirements and restrictions set out in this Agreement and they will be binding upon the Owner as personal covenants only during the period of his or her respective ownership or any interest in the Land.
  11. It is mutually understood, acknowledged and agreed by the parties hereto that the CVRD has made no representations, covenants, warranties, guarantees, promises, or agreements (oral or otherwise) with the Owner other than those contained in this Agreement.
  12. The waiver by a party of any breach of this Agreement or failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement must not be construed as a waiver of any future or continuing failure, whether similar or dissimilar, and no waiver will be effective unless it is in writing and signed by both parties.
  13. Wherever the singular, masculine, and neuter are used throughout this Agreement, the same is to be construed as meaning the plural, feminine, or body corporate or politic as the context so requires.
  14. 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.
  15. The restrictions and covenants herein contained run with the Land, are perpetual, continue to bind all of the Land when subdivided, and must be registered in the Victoria Land Title Office pursuant to section 219 of the *Land Title Act* as covenants in favour of the CVRD as a first charge against the Land.
  16. The Owner agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
  17. If any part of this Agreement is found to be illegal or unenforceable, that part will be considered separate and severable and the remaining parts will not be affected thereby and will be enforceable to the fullest extent permitted by law.
  18. This Agreement must be construed in accordance with, and governed by, the laws applicable in the Province of British Columbia.
  19. This Agreement may be executed in counterpart with the same effect as if all parties had signed the same document.
  20. *[Insert full legal name of lender, as shown on title search]*, the registered holder of a charge by way of *[describe charge – e.g.: mortgage, assignment of rents]* against the Land and registered under No. *[insert charge number]* (the “**Charge**”) in the Land Title Office at Victoria, British Columbia for and in consideration of the sum of one ($1.00) Dollar paid by the CVRD to the said Chargeholder (the receipt whereof is hereby acknowledged), agrees with the CVRD, it successors and assigns, that the within Section 219 Covenant will be an encumbrance upon the Land in priority 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 parties hereto hereby acknowledge that Agreement has been duly executed and delivered by the parties executing the Form C and Form D attached hereto.

**Schedule A**

**Report**