

TERMS OF INSTRUMENT - PART 2

COVENANT

BETWEEN:

(hereinafter called the "Grantors")
OF THE FIRST PART

AND:

REGIONAL DISTRICT OF KOOTENAY BOUNDARY
202 - 843 Rossland Avenue, Trail BC V1L 4S8

(hereinafter called the "Grantee")
OF THE SECOND PART

WHEREAS:

- A. The Grantors are the registered owners in fee simple of the land and improvements known as address_____, Christina Lake, British Columbia and legally described as:

Legal Description,
Plan # PID

(hereinafter called the "Land");

- B. The Grantee is the Regional District of Kootenay Boundary;
- C. The Grantors have applied to the Grantee, under Section 407 of Regional District of Kootenay Boundary Floodplain Management Bylaw No. 1844 (the "Bylaw"), for an exemption (the "Site Specific Exemption") in relation to the Land from one or more of the Floodplain Specifications prescribed in that Bylaw for the purpose of constructing_____(the "Improvements");
- D. The Grantors have agreed to the terms and conditions of the granting of the Site Specific Exemption, namely to provide the Report of the Engineer, Name, P. Eng., dated, 202_, which is attached to this Covenant as Schedule 'A' (the "Report") certifying that the Land may be safely used for the purposes for which the permit application was made and to enter into and register this Agreement against the title to the Land as a covenant and indemnity under *Section 219 of the **Land Title Act*** and *Section 524(7)(b) of the **Local Government Act***.

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. The Grantors covenant and agrees to construct the Improvements on the Land in the manner determined and certified by the Engineer in the Report.
2. The Grantors covenant and agree with the Grantee that they will not:
 - (a) construct, reconstruct, erect, build, alter, move, extend, add to or place any of the structural supports for the Improvements, or permit such to be done, if such construction, reconstruction, erection, building, alteration, movement, extension, addition to or placement of the structural supports will result in:
 - (i) The structural supports being located within ____ metres from the natural boundary of Christina Lake; or
 - (ii) The underside of the floor system of any habitable area in the Improvements, or a furnace or other fixed equipment which may be damaged by floodwater, being located below ____ metres Geodetic Survey of Canada datum.
 - (b) deposit on the Land, or any part of it, any earth, fill or other material for the purpose of filling in or raising the natural ground elevation of the Land except in accordance with the Report.
3. The elevations required to be achieved under section 2(a)(ii) may be achieved by structural elevation of the Habitable Area or by adequately compacted landfill, or by a combination of both structural elevation and adequately compacted landfill, provided that any or all of them are carried out in accordance with the requirements described in Sections 1 and 2.
4. The Grantors covenant and agree that the Site Specific Exemption is conditional on the Grantors' compliance with Sections 1 and 2 of this Agreement and further covenant and agree that failure to comply with Sections 1 or 2 is a breach of this Agreement and entitles the Grantee to revoke the Site Specific Exemption.
5. The Grantors shall reimburse the Grantee for any expense that may be incurred by the Grantee as a result of a breach of a covenant under this Agreement.

6. The Grantors and the Grantee agree that the enforcement of this Agreement shall be entirely within the discretion of the Grantee and that the execution and registration of this covenant against the title to the Land shall not be interpreted as creating any duty on the part of the Grantee to the Grantors or to any other person to enforce any provision or the breach of any provision of this Agreement.
7. The Grantors acknowledge that the covenants in this Agreement are enforceable against the Grantors and the Grantors' successors in title, but the Grantors are not personally liable for breach of the covenants after the Grantors have ceased to be the owner of the Land.
8. Nothing contained or implied herein shall prejudice or affect the rights and powers of the Grantee 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 this Agreement had not been executed and delivered by the Grantors, and in particular, without limiting the generality of the foregoing, the Building Inspector of the Grantee may request further or additional reports to be prepared by a professional engineer or geoscientist experienced in geotechnical engineering prior to the issuance of a building permit for the Land.
9. The Grantors hereby releases and forever discharges the Grantee of and from any claim, cause of action, suit, demand, expenses, costs and legal fees whatsoever which the Grantors can or may have against the said Grantee for any loss or damage or injury that the Grantors may sustain or suffer arising out of the issuance of the Site Specific Exemption or a Building Permit for the construction of the Improvement, or the use of the Land as a result of the issuance of the Site Specific Exemption or a Building Permit for the Intended Use, or as result of flooding or erosion of the Land.
10. The Grantors covenant and agree to indemnify and save harmless the Grantee from any and all claims, causes of action, suits, demands, expenses, costs and legal fees whatsoever that anyone might have as owner, occupier or user of the Land, or by a person who has an interest in or comes onto the Land, or by anyone who suffers loss of life or injury to his person or property, that arises out of the issuance of the Site Specific Exemption or a Building Permit for the Improvements, or the use of the Land as a result of the issuance of the Site Specific Exemption or a Building Permit for the construction of the Improvements, or as result of flooding or erosion of the Land.
11. It is mutually understood, acknowledged and agreed by the parties hereto that the Grantee has made no representations, covenants, warranties, guarantees, promises or Agreements (oral or otherwise) with the Grantors other than those contained in this Agreement.

12. The Grantors agree to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
13. The Grantors shall pay the legal fees and disbursements and Land Title Office registration fees incurred by the Grantee in connection with the preparation and registration of this Agreement.
14. The Grantors covenant and agree for themselves, their, executors, successors and assigns, that they will at all times perform and observe the requirements and restrictions hereinbefore set out and they shall be binding upon the Grantors as personal covenants only during the period of its respective ownership of any interest in the Land.
15. The restrictions and covenants herein contained shall be covenants running with the Land and shall be perpetual, and shall continue to bind all of the Land when subdivided, and shall be registered in the Kamloops Land Title Office pursuant to *Section 219* of the *Land Title Act* and *Section 524(7)* of the *Local Government Act* as covenants in favor of the Grantee and as a first charge against the Land.
16. This Agreement shall enure to the benefit of the Grantee and shall be binding upon the parties hereto and their respective heirs, executors, successors and assigns.
17. Wherever the expressions "Grantors" and "Grantee" are used herein, they shall be construed as meaning the plural, feminine or body corporate or politic where the context or the parties so require.

IN WITNESS WHEREOF the Grantors have duly executed this Agreement by signing the Form C and Form D to which this Agreement is attached and forms part.

END OF DOCUMENT