

TERMS OF INSTRUMENT – PART 2

SECTION 219 COVENANT

THIS COVENANT dated for reference the day of , 2017

BETWEEN:

MICHAEL JOHN BUTTLE, LINDA MAY BUTTLE
General Delivery
Minstrel Island
V0P 1L0

(hereinafter called the "**Covenantors**")

AND:

REGIONAL DISTRICT OF MOUNT WADDINGTON
PO Box 729, 2044 McNeill Road
Port McNeill, BC, V0N 2R0

(hereinafter called the "**Covenantee**")

WHEREAS:

- A. Section 219 of the Land Title Act provides that a covenant in respect to the use of land or the use of a building to be erected on land, or that land is to be built on in accordance with or not to be built on except in accordance with, a covenant that may be registered as a charge against the title to the land.
- B. The Covenantors are the registered owners of the Parent Parcel.
- C. The Covenantee is a local government.

NOW THEREFORE in consideration of the sum of ONE (\$1.00) DOLLAR, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Covenantors COVENANT AND AGREE as follows:

1. In this Agreement:
 - (a) "Land" means that portion of the Parent Parcel comprising 4.35 hectares (10.749 acres) and shown outlined in heavy black line and labelled "The Land" on the explanatory plan prepared by _____ and dated _____, a copy of which is attached as Schedule "A" hereto.
 - (b) "Parent Parcel" means that parcel of land lying and situate in the Regional District of Mount Waddington, in the Province of British Columbia, and more particularly known and described as District Lot 498, Range 1, Coast District (PID 009-909-001).
 - (c) "Uses" means those principal and accessory uses that are permitted to be undertaken on the Land in accordance with the provisions of the Zoning Bylaw of the Covenantee, as amended or replaced from time to time, that applies to the Land.
 - (d) "Works" includes all buildings and structures on, or to be erected, constructed, developed or sited on, the Land including, but not limited to, a marine railway and any other facilities that are designed to aid in undertaking the Uses on the Land, including but not limited to, the removal from, or placement in the ocean, of float camps, float homes and marine structures, barges, docks and other floating structures or buildings (jointly the "**Equipment**") , and to manipulate and store the Equipment for the purpose of undertaking alterations, repairs and maintenance.
2. Unless specifically defined in this Covenant, words and phrases herein shall have the same meaning as provided in the current Zoning Bylaw of the Covenantee that applies to the Parent Parcel, including the Land.
3. The Covenantors covenant and agree with the Covenantee that it shall only develop and use the Land in accordance with the provisions of the Zoning Bylaw of the Covenantee, as amended or replaced from time to time, that applies to the Land.

QRPE

4. The Covenantors further covenant and agree with the Covenantee that it shall not erect, construct, develop or site on the Land, Works to accommodate the Uses unless the Works have been designed by a qualified registered professional engineer (hereafter "**QRPE**"), and approved by the Covenantee,

after which erection, construction, development or siting of the Works on the Land shall be undertaken in strict accordance with the plans and specifications of the QRPE for the Works.

For the purposes of this Section 4:

- (a) Works shall not include any building or structure less than 279 square meters (3,000 square feet) in total floor area unless such building is otherwise required to be designed by a qualified professional in accordance with the British Columbia Building Code.
- (b) specifications prepared by the QRPE for the Works shall be provided to the Covenantee by the Covenantors or the QRPE prior to commencement of erection, construction, development or siting of the Works on the Land;
- (c) the Covenantors must ensure that the QRPE is engaged and attend at the Land to provide sufficient oversight and monitoring of the erection, construction, development and siting of the Works in order to confirm in writing to the Covenantors that the Works have been erected, constructed, developed or sited on the Land in accordance with the plans and specifications of the QRPE for the Works; and
- (d) the Covenantors shall provide this confirmation from the QRPE to the Covenantee immediately following completion of the erection, construction, development and siting of the Works and prior to occupancy of the subject Works.

QRPB

- 5. The Covenantors further covenant and agree with the Covenantee that it shall not erect, construct, develop or site on the Land, Works to accommodate the Uses unless:
 - (a) the Works have first been assessed by a qualified registered professional biologist (hereafter “**QRPB**”); and
 - (b) the Works are sited or constructed on the Land in accordance with the specifications and recommendations of that QRPB to minimize harm to the natural environment.

6. The Covenantors further covenant and agree with the Covenantee that:
- (a) The Works shall be undertaken in accordance with the specifications and recommendations outlined in the report prepared by Pacificus Biological Services Ltd. Titled, "Environmental Impact Assessment For A Proposed Barge Maintenance Facility" (hereafter "**Environmental Impact Assessment**"), and dated February 15, 2015 and amended April 29, 2015, a copy of which is attached as Schedule "B", hereto;
 - (b) Should the design, location, scope or size of any of the Works be altered or changed from the Works that were proposed and assessed as part of the Environmental Impact Assessment, based on the completion of the design of the Works by a QRPE as per section 4. herein, said changes in the Works will need to be assessed or reassessed by a QRPB as part of an addendum to the original Environmental Impact Assessment, and the addendum provided to the Covenantee, and any subsequent specifications or recommendations of the QRPB shall be strictly adhered to by the Covenantors;
 - (c) The erection, construction, development or siting of the Works on the Land shall be monitored by a QRPB to ensure compliance with the specifications and recommendations of the QRPB(s);
 - (d) A report shall be prepared by the QRPB within 30 days of the conclusion of the erection, construction, development or siting of the Works on the Land, and provided to the Covenantors and Covenantee that provides an assessment of this activity in this context; and
 - (e) Any noncompliance with recommendations provided by the QRPB(s) shall be deemed to be a breach of the provisions of this Covenant.

Operational Plan

7. The Covenantors further covenant and agree with the Covenantee that before any of the Uses commence on the Land or any of the Works are occupied or used for any purpose, the Covenantors shall engage a QRPE, QRPB or other suitable qualified professional (to be agreed on by both the Covenantors and Covenantee) to develop an operation plan (the "**Operational Plan**") to the satisfaction of the Covenantee, that provides specifications and recommendations to guide how the Uses shall be undertaken on the Land.

The purpose of the Operational Plan is to prevent the pollution of the environment and as a result, the Operational Plan must include detailed mitigation measures that include a system or systems that must be implemented by the Covenantors to ensure that chemicals, toxic materials / waste, hazardous substances and / or other pollutants that are used in, or result from, engaging in the Uses on the Land, are captured, treated and disposed of in ways that prevent them from migrating into the ocean or the foreshore area associated with the ocean (intertidal zone), and preventing them from permeating the soils or water table associated with the Parent Parcel or adjacent lands. The Covenantors hereby agree to strictly adhere to the Operational Plan developed by the QRPB or suitable qualified professional by implementing the specifications and recommendations therein.

Accommodation for Human Resources

8. The uses on the land will necessitate the use of human resources (e.g. workers, employees, etc.). In providing accommodations and services to facilitate those human resources who will be engaged in the uses on the land, the Covenantors must provide suitable living arrangements in a building or buildings that are constructed in accordance with the Building, Plumbing and Fire Codes of the Province of BC. Buildings used for this purpose shall be connected to a water supply system constructed, operated and maintained in accordance with the requirements of Island Health. The supply source (e.g. creek or well) for the water supply system shall be developed and used in accordance with the requirements of the B.C. Ministry of Environment (MoE) and/or the B.C. Ministry of Forests, Lands and Natural Resource Operations. Buildings used for accommodations shall be connected to a waste disposal system constructed, operated and maintained in accordance with the requirements of the jurisdiction that has authority (e.g. Island Health, MoE or Environment Canada).

Good Neighbour

9. In recognition of the popularity of Port Harvey as a haven for the recreational boating community, and an area in which residential dwellings are located the Covenantors further covenant and agree with the Covenantee that:
 - (a) in undertaking the Uses on the Land, the Covenantors shall undertake to store materials in a manner that is tidy and orderly and where possible, prevents them from being openly visible from the ocean and land based residences in the vicinity, to the satisfaction of the Covenantee; and

- (b) the Covenantors shall ensure that where possible, materials are screened from view from the ocean and residences by storing them in buildings, or utilizing landscaping materials (vegetation, earthen berms, fencing, etc.) to block them from view.

Hours of Construction and Operation

- 10. The Covenantors further covenant and agree with the Covenantee that all construction activities of the Works and the repair of the Equipment, as well as the removal from, or placement in the ocean of the Equipment, shall only be undertaken between the hours of 7:00am to 7:00pm each day between May 1st and September 30th of each year, and between the hours of 7:00am through 10:00pm each day between October 1st and April 30th of each year.

Variation to Covenant

- 11. It is acknowledged by the Parties that the fluctuation in tides and the timing associated with the occurrence of tides may have a detrimental impact to the continued undertaking of the business which is comprised of the Uses on the Land. In addition, poor weather conditions and emergency circumstances may arise and as a result, where tidal conditions, weather conditions and/or emergency situations are such that adherence to the time and date restrictions of Section 10 would have a detrimental impact to the continued undertaking of the business which is comprised of the Uses on the Land, the removal from, or placement in the ocean of the Equipment is permitted to occur at any time and date. The Covenantors shall maintain a log of any and all removal from, or placement in the ocean of the Equipment that occurs outside the times and dates set out in Section 10 and shall provide a copy of this log upon the request of the Covenantee.

Despite the remainder of this Section 11, the Covenantors further covenant and agree with the Covenantee that:

- (a) it will make every effort to avoid the movement of the Equipment outside of the times and dates prescribed in Section 10;
- (b) the rights to vary the time and date restrictions shall be reviewed every three months, or sooner should the Covenantee, acting in its sole discretion, so determine; and

- (c) upon such review, should the Covenantee determine, acting in its sole discretion, that the neighbourhood or the environment is being adversely impacted by the variations to the Covenant, then the times and dates prescribed in Section 10 shall, without exception, be strictly complied with.
12. The Covenantors may request by way of written submission to the Covenantee, that provisions included in this covenant be altered or waived by the Covenantee. In this regard, the Covenantee may require that the Covenantors provide whatever information the Covenantee requests that in the opinion of the Covenantee, would assist the Covenantee in making a decision regarding the request by the Covenantors. Without limiting the generality of the foregoing, this information may include reports, plans and specifications prepared by a qualified professional(s). The Covenantee is under no obligation to approve any such request by the Covenantors. In no case shall the Covenantors undertake any activity which is contrary to the provisions of this Covenant unless first approved in writing by the Covenantee.

Covenantors' Responsibilities

13. It shall be the responsibility of the Covenantors to ensure that any person entering onto the Land with the permission or knowledge of the Covenantors does not contravene any provision of this Covenant and a breach of the Covenant by any such person shall be considered for all purposes as a breach of the covenant by the Covenantors.

Default and Remedies

14. In the event the Covenantors breach, or permit or allow any provision of this Covenant to be breached, the Covenantee shall at its option, in addition to any other remedies it may have, do either (a) or (b) as follows:
- (a) give notice in writing to the Covenantors to:
- (i) cease and desist breaching the Covenant or permitting or allowing any provision of this Covenant to be breached; or
 - (ii) perform any positive obligations of the Covenant,
- either immediately or within a time period specified in the notice; and
- (b) give notice in writing directing the Covenantors to restore or remedy the breach in accordance with the terms and directions set out in the notice

and to carry out any restoration measures specified in the notice either immediately or within a time period specified in the notice.

15. If the Covenantors fail to comply with the direction contained in a notice as per sections 14.(a) or 14.(b) herein, the Covenantee may without further notice enter upon the Land and carry out the required work, including the Works, at the expense of the Covenantors. The Covenantors shall pay on demand all costs incurred by the Covenantee for labour, materials, administration and overhead in carrying out work under this provision. Should the Covenantors fail pay such invoice forthwith, the Covenantee is at liberty to add all such costs to the Parent Parcel as taxes in arrears.
16. Any waiver by the Covenantee of any term, condition, covenant, or other provision of this Covenant or any waiver by the Covenantee of any breach, violation, or non-performance of any term, condition, covenant, or other provision of this Covenant does not constitute and will not be construed as a waiver of any further or other term, condition, covenant, or other provision of this Covenant or any further or other breach, violation, or non performance of any term, condition, covenant, or other provision of this Covenant.

Specific Performance

17. The Covenantors agree that because of the public interest in ensuring that all of the matters described in this covenant are complied with, the public interest strongly favours the award of a prohibitory or mandatory injunction, or an order for specific performance or other specific relief, by the Supreme Court of British Columbia at the instance of the Covenantee, in the event of an actual or threatened breach of this Agreement.
18. Should the Covenantors not comply with the requirements of the Covenantee in relation to any breach of this Covenant as per sections 14.(a) or 14.(b) herein, then at the discretion of the Covenantee, any breach, contravention or non-compliance of any provision outlined in this Covenant shall be subject to payment of the following amounts by the Covenantors to the Covenantee. This payment shall be a minimum of TWO THOUSAND (\$2,000.00) DOLLARS and shall not exceed a maximum of TWENTY THOUSAND (\$20,000.00) DOLLARS, as determined by the Covenantee, for each incident of contravention or non-compliance, which amount is intended to be a genuine pre-estimate of damages that the Covenantee would suffer by reason of such breach, contravention or non-compliance of any provision outlined in this Covenant. Any payment levied by the Covenantee to the Covenantors under this Section 18 shall be in addition to any costs to be paid by the Covenantors as per section 15 herein.

The Covenantors further covenant and agree with the Covenantee that before any of the Uses commence on the Land or any of the Works are occupied or used for any purpose, the Covenantors shall post with the Covenantee a letter of credit in the amount of \$-----, (the "**Security**") which Security may, at the discretion of the Covenantee, be drawn on by the Covenantee to cover any costs incurred by the Covenantee arising out of or in any way connected with any breach of this Covenant by the Covenantors or enforcement of this Covenant by the Covenantee.

Should the Covenantee draw down on the Security for any reason, the Covenantors will top it up to the amount shown above.

General Provisions

19. If any section of this Covenant, or any part of a section, is found to be illegal or unenforceable, that part or section, as the case may be, will be severed from this Covenant, and the remainder of this Covenant will not be affected and will be enforceable to the fullest extent permitted by law.
20. The terms, conditions and other provisions of this Covenant will extend to, be binding upon, and enure to the benefit of the parties to this Covenant and their respective successors and assigns.
21. In addition to this Covenant being a contract, this Covenant runs with the Parent Parcel and will be registered as a charge against the title to the Land under Section 219 of the Land Title Act.
22. Nothing contained or implied in this Covenant shall impair, limit, prejudice, or affect the Covenantee's rights and powers in the exercise of its functions pursuant to any public or private statutes or any other enactment including the Covenantee's bylaws, orders, policies, and regulations and all such powers and rights may be fully and effectively exercised in relation to the Land as if this Covenant had not been executed and delivered by the Covenantors.
23. The Covenantors will do or cause to be done all things and execute or cause to be executed all documents and give such further and other assurances which may be reasonably necessary to give proper effect to the intent of this Covenant.
24. This Covenant will not be modified or discharged except in accordance with the provisions of Section 219 of the Land Title Act.

25. The Covenant shall be construed in accordance with the laws of British Columbia.
26. THIS AGREEMENT and everything herein contained shall be binding upon the Covenantors and its successors and assigns and shall enure to the benefit of the Covenantee.

Indemnity

27. The Covenantors covenant and agree to release, save harmless and indemnify the Covenantee, its elected and appointed officials, officers, invitees, licensees, employees, servants and agents from and against all liability, actions, causes of action, expenses, damages, costs (including legal costs on a solicitor/client basis), claims, debts, losses (including injurious affection) or demands whatsoever by the Covenantors or any other person which have arisen or may arise out of, or are in any way due directly or indirectly to the granting or existence of this Covenant including but not limited to:
 - (a) any breach of any covenant or agreement on the part of the Covenantors contained in this Covenant or any steps taken by the Covenantee to enforce this Agreement; and
 - (b) any injury to persons, including bodily injury and death or damage to or a loss of property on or about the Land.

IN WITNESS HEREOF the parties hereto acknowledge that this Covenant has been duly executed and delivered by the parties executing Form C (pages 1 and 2) attached hereto.

SCHEDULE "A"

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Schedule "B"

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