# TERMS OF INSTRUMENT – Part 2

**WHEREAS**

1. There are potential flood and erosion dangers on or associated with the Land.
2. Pursuant to section 86(1)(d) of the *Land Title Act*, the Approving Officer has required the Transferor to enter into this covenant with the Transferee under section 219 of the *Land Title Act*.

In consideration of the sum of One Dollar ($1.00) now paid by the Transferee to the Transferor (the receipt and sufficiency of which is hereby acknowledged) the parties agree as follows:

**DEFINITIONS**

1. In this Agreement,

**“Approving Officer”** means the Provincial approving officer appointed under section 77.2 of the *Land Title Act* and includes the deputy minister to the minster charged with the administration of the *Transportation Act*;

**"dispose"** has the meaning given to it in the *Interpretation Act*, and "disposed" and "disposition" have corresponding meanings;

**"Habitable Area"** means any room or space in an Improvement which is or may be used for:

1. human occupancy, commercial sales or business, or
2. storage of goods, possessions or equipment (including furnaces) which would be subject to damage if flooded;

**"Improvement"** includes a building, modular home, mobile home or unit, improvement or structure on the Land;

**"Land"** means the land described in item 2 of Part 1 of this Agreement;

**"Natural boundary"** means the visible high watermark of any lake, river, stream or other body of water where the presence and action of the water are so common and usual, and so long continued in all ordinary years, as to mark on the soil of the body of water a character distinct from that of its banks, in vegetation, as well as in the nature of the soil itself**;**

**"Non-conforming Improvement"** means an Improvement located in or on a part of the Land at any time prior to, on or after the date of execution of this Agreement and which does not meet the requirements described in section 3;

**"Setback Area"** means the area described in section 3(a)&(b);

**"Transferee"** means the person or persons named in Item 6 of Part 1 of this Agreement; and

**"Transferor"** means the person or persons named in Item 5 of Part 1 of this Agreement; and

**“this Agreement”** means this General Instrument.

**ACKNOWLEDGMENTS AND COVENANTS OF THE TRANSFEROR**

2. The Transferor acknowledges that

(a) there are potential flood and erosion dangers on or associated with the Land; and

(b) the Transferee does not represent to the Transferor, nor to any other person, that an Improvement or any chattel on the Land will not be damaged by flooding or erosion.

3. The Transferor covenants with the Transferee that

(a) No building, mobile home or unit, modular home or structure shall be constructed, reconstructed, moved, extended or located within fifteen (15.0) meters of the natural boundary of Clark and/or Kallis Creeks;

(b) No building, mobile home or unit, modular home or structure shall be constructed, reconstructed, moved, extended or located within seven point five (7.5) meters of the natural boundary of a marsh or pond;

(c) No area used for habitation, business or storage of goods damageable by floodwaters shall be located within any building at an elevation such that the underside of the floor system, thereof, is less than one point five (1.5) meters above the natural boundary of Clark Creek and/or Kallis Creek and/or a marsh or pond;

(d) In the case of a mobile home, the ground level or top of the concrete or asphalt pad on which it is located shall be no lower than the above described elevation; and

(e) The required elevation may be achieved by structural elevation of the said habitable, business or storage area or by adequately compacted landfill on which any building is to be constructed or mobile home or unit located, or by a combination of both structural elevation and landfill. No area below the required elevation shall be used for installation of furnaces or other fixed equipment susceptible to damage to floodwater. Where landfill is used to raise the natural ground elevation, the toe of the landfill slope shall be no closer to the natural boundary than the setback requirement given in condition (a) and (b) above. The face of the landfill slope shall be adequately protected against erosion from flood flows including but not limited to wave action, ice or other debris.

**INDEMNITY AND RELEASE**

4. The Transferor

(a) indemnifies and saves the Transferee and its servants, employees, agents and other representatives and the Approving Officer (and each of them) harmless from all actions, causes of action, claims, demands, suits, losses, damages, debts, accounts, liabilities, costs, expenses and compensation of any kind, including fees of solicitors and other professional advisors, arising out of or in connection with:

1. any breach, violation or non-performance by the Transferor of this Agreement, or
2. any personal injury (including death) or any loss or damage to the Land, an Improvement or its contents (including any existing Non-conforming Improvement), or any chattel on the Land caused by flooding, erosion or other similar cause; and

(b) releases and forever discharges the Transferee and its servants, employees, agents and other representatives from all actions, causes of action, claims, demands, suits, losses, damages, debts, accounts, liabilities, costs, expenses and compensation of any kind, including fees of solicitors and other professional advisors, arising out of or in connection with any personal injury (including death) or any loss or damage to the Land, an Improvement or its contents (including any existing Non-conforming Improvement), or any chattel on the Land caused by flooding, erosion or other similar cause.

**INTERPRETATION**

5.In this Agreement, "person" includes a corporation, firm or association and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or the parties so require.

6.This Agreement will be interpreted according to the laws of the Province of British Columbia.

7. Where there is a reference to an enactment of the Province of British Columbia in this Agreement, that reference includes a reference to any subsequent enactment of the Province of British Columbia of like effect and, unless the context otherwise requires, all statutes referred to in this Agreement are enactments of the Province of British Columbia.

8. If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that part or section, as the case may be, will be considered separate and severable and the remaining parts or sections, as the case may be, will not be affected and will be enforceable to the fullest extent permitted by law.

**MISCELLANEOUS**

9. No term, condition, covenant or other provision of this Agreement will be considered to have been waived by the Transferee unless such waiver is expressed in writing by the Transferee and the waiver by the Transferee of any such term, condition, covenant or other provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of that or any other term, condition, covenant or other provision or this Agreement.

10. This Agreement extends to, is binding upon and enures to the benefit of the parties and their respective heirs, executors, administrators, successors and assigns.

11. This Agreement will be registered as a charge against title to the Land pursuant to section 219 of the *Land Title Act*.

12. Nothing in this Agreement prejudices, limits fetters or affects the rights, powers and remedies of the Transferee or the Approving Officer in relation to the Transferor or the Land under any law, bylaw, order or regulation or in equity, all which rights, powers and remedies may be fully and effectively exercised by the Transferee or the Approving Officer, as the case may be, as if this Agreement had not been made by the parties.

13. The Transferor, at its expense, will cause this Agreement to be registered in priority to all liens, charges and encumbrances which are or may be registered against title to the Land, except those in favour of the Transferee and those others specifically approved in writing by the Transferee.

14. This Agreement will not be modified or discharged except in accordance with the provisions of Section 219 of the *Land Title Act* and with the approval of the Transferee.

15. The Transferor will do or cause to be done all things and execute or cause to be executed all documents and give such further and other assurance which may be reasonably necessary to give proper effect to the intent of this Agreement.

16. The parties agree that the Transferee is not responsible to inspect the Lands or to otherwise ensure compliance with this Agreement, nor is the Transferee required to remedy a default of this Agreement and a failure to enforce this Agreement by the Transferee will not constitute a waiver of its rights hereunder.

In witness whereof the parties acknowledge that this Agreement has been duly executed and delivered by the parties executing Part 1 of Forms C attached hereto.

**END OF DOCUMENT**