

LAND TITLE ACT
EXPRESS CHARGE TERMS – PART 2

SECTION 219 COVENANT

THIS AGREEMENT dated for reference the 7th day of January, 2010.

BETWEEN:

PETER ALFRED MUMMERY, Carpenter
DOLORES MARIA MUMMERY, Secretary
10525 Lakeside Drive
Prince George, BC, V2K 5M7

(collectively, the “Owner”)

OF THE FIRST PART

AND:

REGIONAL DISTRICT OF FRASER-FORT GEORGE,
a regional district, of 155 George Street,
Prince George, British Columbia, V2L 1P8

(the “Regional District”)

OF THE SECOND PART

WHEREAS:

- A. The Owner is the registered owner in fee simple of those lands and premises in the Regional District of Fraser-Fort George, in the Province of British Columbia, legally described as:

PID: 006-872-638

LOT D DISTRICT LOT 2721 CARIBOO DISTRICT PLAN 26794

(the “Lands”).

- B. There is a principal building located on the Lands used for Residential – Single Family use and a two storey Accessory building (the “Accessory Building”) located on the Lands in which the first floor is used as a shop and the second floor used for secondary Residential – Single Family use.
- C. The Owner has applied to the Regional District for a rezoning of the Lands to allow the secondary Residential – Single Family use on the second floor of the Accessory Building.

- D. The Owner has voluntarily requested that the Regional District accept the section 219 covenant created by this Agreement so that a rezoning of the Lands sought by the Owner can proceed more expeditiously.
- E. The Owner wishes to grant, and the Regional District accepts, the s. 219 covenant contained in this Agreement over the Lands.

THIS AGREEMENT is evidence that in consideration of payment of \$1.00 by the Regional District to the Owner (the receipt of which is acknowledged by the Owner), and in consideration of the promises exchanged below, the Owner covenants and agrees with the Regional District in accordance with s. 219 of the *Land Title Act* as follows:

- 1. The following terms used in this Agreement will have the respective meanings hereinafter provided:
 - (a) "Accessory" has the same meaning as in the Zoning Bylaw;
 - (b) "Residential – Single Family" has the same meaning as in the Zoning Bylaw; and
 - (c) "Zoning Bylaw" means the Regional District of Fraser-Fort George Zoning Bylaw No. 833, as amended or replaced from time to time.
- 2. The Owner covenants and agrees with the Regional District as follows:
 - (a) the existing secondary Residential – Single Family use established on the second floor of the Accessory Building will not be relocated to or established at another location on the Lands; and
 - (b) in the event that the second floor of the Accessory Building ceases to be used for secondary Residential – Single Family use and notwithstanding that the Zoning Bylaw may permit the establishment of a new secondary Residential – Single Family use on the Lands, the Owner will not establish a new secondary Residential – Single Family use elsewhere on the Lands and will not build nor permit to be built any building or structure on the Lands to establish a new secondary Residential – Single Family use on the Lands and no building permit may be applied for, and the Regional District is not obliged to issue any building permit, in respect of any building or structure on the Lands that would result in the establishment of a new secondary Residential – Single Family use on the Lands.
- 3. The parties agree that this Agreement may only be modified or discharged with the consent of the Regional District under s. 219(9) of the *Land Title Act*.
- 4. The Owner hereby releases, and will indemnify and save harmless, the Regional District, its elected and appointed officials, contractors 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, from the performance by the Owner of this Agreement, or any default of the Owner under or in respect of this Agreement. The Owner will at all times indemnify the Regional District and

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, from the performance by the Owner of this Agreement, or any default of the Owner under or in respect of this Agreement. The Owner will at all times indemnify the Regional District and save it harmless from and against all loss, cost, expense and damage, including costs on a solicitor and client basis, that may be suffered or incurred by the Regional District in enforcing this Agreement as a result of any default or breach hereof.

6. The rights given to the Regional District by this Agreement are permissive only and nothing in this Agreement imposes any legal duty of any kind on the Regional District to anyone, or obliges the Regional District to enforce this Agreement, or to perform any act or to incur any expense in respect of this Agreement.
7. Where the Regional District is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the Regional District is under no public law duty of fairness or natural justice in that regard and agrees that the Regional District may do any of those things in the same manner as if it were a private party and not a public body.
8. This Agreement does not:
 - (a) affect or limit the discretion, rights or powers of the Regional District under any enactment (as defined in the *Interpretation Act*, R.S.B.C., on the reference date of this Agreement) or at common law, including in relation to the use or subdivision of the Lands; or
 - (b) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Lands.
8. Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted under s. 219 of the *Land Title Act* in respect of the Lands, and this Agreement burdens the Lands and runs with the Lands and binds the successors in title to the Lands. This Agreement burdens and charges all of the Lands and any parcel into which any of the Lands is subdivided by any means and any parcel into which any of the Lands is consolidated. The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Lands.
9. The Owner agrees to do everything necessary, at the Owner's expense, to ensure that this Agreement is registered against title to the Lands 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.
10. An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach in respect of which the waiver is asserted. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.
11. 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.

12. This Agreement is the entire agreement between the parties regarding its subject.
13. This Agreement binds the parties to it and their respective successors, heirs, executors and administrators.
14. The Owner must do everything necessary to give effect to the intent of this Agreement, including execution of further instruments.
15. By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

IN WITNESS WHEREOF the parties acknowledge that this Agreement has been duly executed and delivered by the parties executing Part 1 of Form C and Form D attached to and forming part of this Agreement.

CONSENT AND PRIORITY AGREEMENT

GIVEN THAT The Bank of Nova Scotia (the "Chargeholder") is the holder of a mortgage registered against the lands legally described (the "Lands") in the section 219 covenant to which this Agreement is attached (the "Section 219 Covenant"), which mortgage is registered in the Land Title Office under instrument number CA460324 (the "Mortgage").

This Consent and Priority Agreement (this "Agreement") is evidence that in consideration of payment to it of \$1.00 by the transferee described in Item 6 of Part 1 of the Form C to which this Agreement is attached (the "Transferee"), the Chargeholder agrees with the Transferee as follows:

1. The Chargeholder consents to the granting and registration of the Section 219 Covenant and the Chargeholder agrees that the Section 219 Covenant binds its interest in and to the Lands.
2. The Chargeholder grants to the Transferee priority for the Section 219 Covenant over the Chargeholder's right, title and interest in and to the Lands and the Chargeholder postpones the Mortgage, and all of its right, title and interest thereunder, to the Section 219 Covenant as if the Section 219 Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Mortgage.

As evidence of its agreement with the Transferee to be bound by this Agreement, as a contract and as a deed executed and delivered under seal, the Chargeholder has executed and delivered this Agreement by executing Part 1 of the *Land Title Act* Form D to which this Agreement is attached and which forms part of this Agreement.

END OF DOCUMENT