

Province of British Columbia  
**GENERAL INSTRUMENT**

(This area for Land Title Office use)

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)  
**OLSTEAD & BIEBER, Barristers and Solicitors, 512 Fourth Street, Courtenay, B. C. V9N 1H2**  
Telephone: 338-6747 c/o VICTRO REGISTRY SERVICES  
Client No. 12180

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:\*  
(PID) (LEGAL DESCRIPTION)  
026-173-255 Lot 1, Section 3, Nelson District, Plan VIP78238

3. NATURE OF INTEREST:\*  
DESCRIPTION DOCUMENT REFERENCE PERSON ENTITLED TO INTEREST  
(Page and paragraph)  
Section 219 Covenant Entire Document Transferee

4. TERMS: Part 2 of this instrument consists of (select one only)

- (a) Filed Standard Charge Terms
- (b) Express Charge Terms
- (c) Release

D.F. No.  
Annexed as Part 2  
There is no Part 2 of this instrument.

**COPY**

A selection of (a) includes any additional or modified terms referred to in item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in item 3 is released or discharged as a charge on the land described in item 2.

5. TRANSFEROR(S):\*

**THE CORPORATION OF THE VILLAGE OF CUMBERLAND**

6. TRANSFEREE(S): (including occupation(s), postal address(es) and postal codes(s))\*

**SEE SCHEDULE**

7. ADDITIONAL OR MODIFIED TERMS:\*

N/A

8. EXECUTIONS(S):\*\* This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in item 3 and the transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

**DOUGLAS W. OLSTEAD**

*Barrister & Solicitor*

512 Fourth Street

Courtenay, B.C. V9N 1H2

(As to both signatures)

Execution Date

Y	M	D
05	03	10

Party(ies) Signature(s)

THE CORPORATION OF THE VILLAGE OF CUMBERLAND by its authorized signatory(ies):

Name: Fred Bates

Name: Mac Fraser

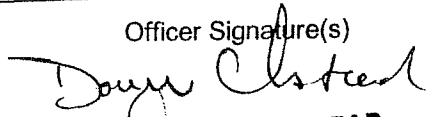
OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

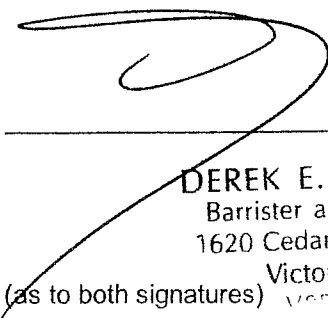
\* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

\*\* If space insufficient, continue executions on additional page(s) in Form D.

**EXECUTIONS CONTINUED** (This area for Land Title Office use)

Officer Signature(s)  
  
**DOUGLAS W. OLSTEAD**  
Barrister & Solicitor  
512 Fourth Street  
Courtenay, B.C. V9N 1H2

(as to both signatures)

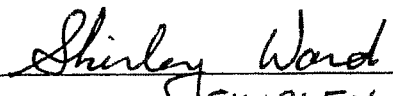
  
**DEREK E. ASHURST**  
Barrister and Solicitor  
1620 Cedar Hill X Road  
Victoria, BC

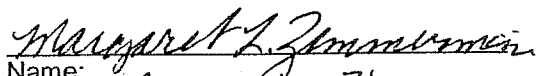
(as to both signatures)

Execution Date		
Y	M	D
05	03	09
05	03	17

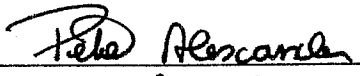
Transferor/Borrower/Party Signature(s)

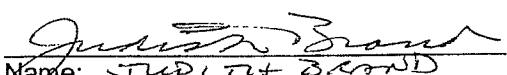
COMOX VALLEY LAND TRUST by its authorized signatory(ies):

  
Name: **SHIRLEY WARD**

  
Name: **Margaret L. Zimmerman**

TLC THE LAND CONSERVANCY OF BRITISH COLUMBIA by its authorized signatory(ies):

  
Name: **PETA ALEXANDER**

  
Name: **JUDITH BRAND**

**OFFICER CERTIFICATION:**  
Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

**SCHEDULE**

Enter the required information in the same order as the information must appear on the Freehold Transfer form, Mortgage Form or General Document Form.

**COMOX VALLEY LAND TRUST**, (Reg. No. S-39579) a society registered in British Columbia with its registered office at #221, 2270 Cliffe Avenue, Courtenay, British Columbia, P.O. Box 3462 Courtenay, British Columbia, V9N 5N5

and

**TLC THE LAND CONSERVANCY OF BRITISH COLUMBIA**, (Reg. No. S-36826) a society registered in British Columbia with its registered address at 2709 Shoreline Drive, Victoria, British Columbia, V9B 1M5

## TERMS OF INSTRUMENT - PART 2

### WHEREAS:

- A. The Grantor is the registered owner in fee simple of:  
PID 026-173-255  
Lot 1, Section 3, Nelson District, Plan VIP78238  
(the "Land");
- B. The Grantees are the Comox Valley Land Trust and TLC The Land Conservancy of British Columbia (the "Grantee");
- C. The Land was purchased with funds raised by the local community for the purpose of the Land remaining a Nature Park and Wildlife Corridor in perpetuity;
- D. The Land contains significant Amenities including flora, fauna and other natural features of great importance to the Grantor, the Grantees and the public including Watercourses, wetlands, part of the site of the historic Chinatown, the entrance to the historic Number Three Mine, vegetation of historic significance relating to Chinatown and significant forest cover with diverse flora, fauna and natural features;
- E. The Grantor has agreed to grant the Grantee a covenant pursuant to section 219 of the *Land Title Act*, to restrict the use of the Land; and
- F. Each of the Grantees has been designated by the Minister of Sustainable Resource Management as a person entitled to hold a covenant under section 219 of the *Land Title Act* and as a person authorized to accept a Statutory Right of Way, pursuant to section 218 of the *Land Title Act*, and this Instrument is in accordance with such designation.

NOW THEREFORE in consideration of the payment of two dollars (\$2.00) now paid by the Grantee to the Grantor (the receipt and sufficiency of which is acknowledged by the Grantor), and in consideration of the promises exchanged below, the parties agree as follows, in accordance with section 219 of the *Land Title Act*:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 In this Instrument:

**Amenity** includes any natural, scientific, environmental, wildlife, plant life, agricultural, archaeological, historical or cultural value relating to the Land.

**Business Day** means any day on which the Land Title Office in Victoria BC is open for business.

**Comox Valley Land Trust** means the Comox Valley Land Trust, a society registered in British Columbia (Registration No.S-039579) and includes its permitted Successors and assigns.

**Danger Tree** means any tree so defined by a Certified Arborist's Tree Hazard Evaluation as hazardous to people or facilities because of location or lean, physical damage, overhead hazards, deterioration of limbs, stem or root system or a combination of the former.

**Grantee** means the Comox Valley Land Trust or TLC The Land Conservancy of British Columbia and includes any Successors of the Grantees.

**Grantor** means the Village of Cumberland and includes any Successors of the

Grantor.

**Land** means the parcel of land legally described as:

PID 026-173-255

Lot 1, Section 3, Nelson District, Plan VIP78238

**Management Plan** means the management plan for the Land created in accordance with section 5.

**Mine Entrance** means the site of the entrance to the abandoned Number Three Mine, the location and description of which is indicated in the Report.

**Native Vegetation** means plants that are indigenous to the Land.

**Natural State** means the state of the Land as described in the Report with

- (i) such gradual changes thereto as occur over time as a result of natural processes, including windthrow and usual seasonal flooding and erosion; and
- (ii) such changes thereto as may from time to time take place as a result of the use of the Land in compliance with the provisions of this Instrument.

**Nature Park and Wildlife Corridor** means an area retained in a Natural State for the preservation of its ecological environment and scenic features and for the benefit of wildlife.

**Report** means the baseline documentation report that describes the Land and the Amenities in the form of text, maps, photographs and other records of the Land and the Amenities as of the date of registration of this Instrument, a complete copy of which is on file with each of the parties at the addresses set out in section 12.4, and a summarized copy of which is attached to this Instrument as Schedule A.

**Successor** means a person who, at any time after registration of this Instrument, becomes the registered owner of the Land or any part thereof by any means, including both registered and beneficial owners, or a person who assumes the responsibility of either of the Grantees.

**The Land Conservancy of British Columbia** means TLC The Land Conservancy of British Columbia, a society registered in British Columbia (Registration No. S-36826) and includes its permitted Successors and assigns.

**Watercourses** means the ephemeral and static stream channels that intersect or flow from the Land, which are described in the Report, and any springs, wetlands or ponds that are contiguous with or connected to the stream channels.

**Wildlife Tree** means any standing or fallen dead or dying tree over 40 centimetres in diameter at breast height.

- 1.2 Where this Instrument says something is in the "sole discretion" of a party, that thing is within the sole, absolute and unfettered discretion of that party.
- 1.3 This Instrument must be interpreted in accordance with the laws of British Columbia and the laws of Canada applicable in British Columbia.
- 1.4 This Instrument is comprised of the recitation of the parties, the recitals to this Instrument, the Schedules to this Instrument and Part 1 of the *Land Title Act* Form C to which this Instrument is attached.
- 1.5 In this Instrument:

- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- (b) where a word or expression is defined in this Instrument, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (c) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Instrument;
- (d) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Instrument;
- (e) the word "enactment" has the meaning given to it in the *Interpretation Act* (British Columbia) on the reference date of this Instrument;
- (f) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- (g) reference to a "party" or the "parties" is a reference to a party, or the parties, to this Instrument and their respective Successors, assigns, trustees, administrators and receivers; and
- (h) reference to a "day", "month" or "year" is a reference to a calendar day, calendar month or calendar year, as the case may be, unless otherwise expressly provided.

## 2. REPRESENTATIONS AND WARRANTIES

- 2.1 The Grantees warrant that the statements set out in Recital F are true as of the date of this Instrument.
- 2.2 The Grantor warrants that the statements set out in Recitals A, C and E are true as of the date of this Instrument.
- 2.3 The parties to this Instrument each warrant that Recitals B and D are true as of the date of this Instrument.

## 3. INTENT OF INSTRUMENT

- 3.1 The parties each agree that the general intent of this Instrument is:
  - (a) to protect, preserve and maintain the Land and the Amenities, in a Natural State;
  - (b) to protect, preserve and maintain the capacity of the Land as birthing, rearing, and refuge habitat and corridor for wildlife;
  - (c) to protect, preserve and maintain Wildlife Trees;
  - (d) to protect, preserve and maintain the quality and quantity of water that flows into Watercourses on the Land;
  - (e) to permit low impact recreational uses, such as walking, bicycling and wildlife viewing;
  - (f) to protect, preserve and maintain sites with archaeological or historical significance, including flora of historical significance;
  - (g) to permit a small scale historical / interpretive development at the Mine Entrance, provided that such development is in accordance with provisions of section 8;

- (h) to permit natural processes to occur which may disturb the Land and Amenities, including windthrow, flooding, channel changes and slope failure; and
- (i) to prevent any occupation or use of the Land that will significantly impair or interfere with the Natural State of the Land or the Amenities therein; and

the parties agree that this Instrument is to be interpreted, performed and applied accordingly.

- 3.2 This Instrument shall be perpetual to reflect the public interest in the protection, preservation, conservation, maintenance, enhancement and restoration of the Natural State of the Land and the Amenities for ecological, environmental and historical reasons, and is not to be removed even if there are substantial changes to the area surrounding the Land.

#### 4. RESTRICTIONS ON LAND USE

- 4.1 Except as expressly permitted in this Instrument, the Grantor must not do anything, omit to do anything, allow anything to be done, or allow the omission of anything, that does or could reasonably be expected to destroy, impair, diminish, negatively affect or alter the Land or the Amenities from the condition described in the Report.
- 4.2 Without restricting the generality of section 4.1, the Grantor must not, except as expressly permitted in this Instrument or with the prior written approval of both of the Grantees, in the sole discretion of each of them, perform or allow the performance of any of the restricted activities or uses of the Land set out in Schedule B to this Instrument.
- 4.3 The parties each acknowledge that the flora and fauna on the Land will evolve through natural succession over time and, unless otherwise expressly stated, references to the Report in this Instrument are intended to take into account the natural succession of the flora and fauna over time from the condition described in the Report, without human intervention other than as expressly permitted by this Instrument.

#### 5. MANAGEMENT PLAN

- 5.1 The Grantor must create, review and revise at intervals of five years or less, a Management Plan for the Land and submit the Management Plan to each Grantee for approval. Each Grantee must, within 25 Business Days of receipt of the proposed Management Plan, notify the Grantor whether or not that Grantee, acting reasonably, approves the proposed Management Plan. → CULT, TLC
- 5.2 If the Grantees do not approve the proposed Management Plan, the parties must attempt to reach agreement on amendments, acting reasonably and in good faith, within 20 Business Days of the notice given under section 5.1.
- 5.3 If the parties are not able to reach an agreement within 20 Business Days, the parties may appoint a mutually acceptable person to mediate the matter, with costs to be borne equally between the parties, and the parties must act reasonably and in good faith and cooperate with the mediator and with each other in an attempt to resolve the matter within 30 Business Days after the mediator is appointed.
- 5.4 If the parties are not able to reach an agreement within that time with the assistance of a mediator, the parties agree to submit the matter to a single arbitrator, under the provisions of the *Commercial Arbitration Act*, appointed jointly by them.
- (a) The decision of the arbitrator shall be final and binding; and
  - (b) The cost of the arbitration will be in the discretion of the arbitrator.

- 5.5 The first Management Plan for the Land must be created by October 31, 2005.
- 5.6 The Management Plan shall cover management issues including but not restricted to:
- ✓(a) park use permit issuance procedures and fees;
  - ✓(b) fencing;
  - ✓(c) signage;
  - ✓(d) trail maintenance;
  - ✓(e) road maintenance and decommissioning;
  - ✓(f) installation of Native Vegetation;
  - ✓(g) removal of non-native vegetation or invasive non-native wildlife species;
  - ✓(h) management of access to undersurface rights;
  - ✓(i) Watercourse and wetland protection;
  - ✓(j) procedures regarding Danger Trees; and
  - ✓(k) Mine Entrance development plan. *continue*

5.7 Any Management Plan must be consistent with the provisions of this Instrument.

## 6. BASELINE DOCUMENTATION REPORT

- 6.1 The parties agree that the Land and the Amenities are described in the Report, a complete copy of which is on file with each of the parties at the addresses set out in section 12.4, and a summarized copy of which is attached as Schedule A to this Instrument.
- 6.2 The parties agree that the Report is intended to serve as an objective information baseline for monitoring compliance with the terms of this Instrument and the parties each agree that the Report provides an accurate description of the Land and the Amenities as of the date of this Instrument.
- 6.3 Each of the Grantees may undertake the following activities in order to monitor compliance and enforce the terms of this Instrument:
- (a) to enter upon and inspect the Land once each calendar year, or at other times as deemed necessary by either of the Grantees, in the sole discretion of each of them;
  - (b) as part of inspection of the Land and the Amenities, to take soil, water and other samples, photographs and video or sound recordings as may be necessary to monitor compliance and enforce the terms of this Instrument;
  - (c) to place survey pegs or other markings on the Land or to increase the visibility of existing survey pegs or other markings; or
  - (d) to erect and repair a plaque or sign in accordance with section 13.
- 6.4 When exercising their rights under this Instrument, the Grantees may bring onto the Land such workers, vehicles, equipment and personal property as are reasonably required to carry out the works or activity.



## 7. DISPUTE RESOLUTION

- 7.1 If a breach of this Instrument occurs or is threatened, or if there is a disagreement as to the meaning of this Instrument, either (a) one or both of the Grantees or (b) the Grantor may give notice to the other party requiring a meeting of the parties within 10 Business Days of receipt of the notice.
- 7.2 If notice is given under section 7.1 and the Grantor disputes the occurrence of the breach specified in the notice, or that a threatened breach specified therein is likely to occur, the Grantor must nevertheless suspend all activities specified in such notice as giving rise to such alleged breach or likely to give rise to the threatened breach, pending completion of the process outlined in this section 7.
- 7.3 The parties must attempt to resolve the disagreement, acting reasonably and in good faith, within 20 Business Days of receipt of the notice.
- 7.4 If the parties are not able to resolve the disagreement or remedy a breach within 20 Business Days, the parties may appoint a mutually acceptable person to mediate the matter, with costs to be borne equally between the parties, and the parties must act reasonably and in good faith and cooperate with the mediator and with each other in an attempt to resolve the matter within 30 Business Days after the mediator is appointed.
- 7.5 If the parties are not able to resolve the disagreement or remedy a breach within that time with the assistance of a mediator, the parties agree to submit the matter to a single arbitrator, under the provisions of the *Commercial Arbitration Act*, appointed jointly by them.
- (a) The decision of the arbitrator shall be final and binding; and
  - (b) the cost of the arbitration will be in the discretion of the arbitrator.
- 7.6 Either or both of the Grantees, or the Grantor, shall be free to seek an injunction through the Supreme Court of British Columbia for the preservation of the Land in its then current condition, pending resolution through the mediation or arbitration process set out above.

## 8. GRANTOR'S RESERVED RIGHTS

- 8.1 Subject to section 4, the Grantor reserves all of its rights as Grantor of the Land, including the right to use, occupy and maintain the Land in any way that is not expressly restricted or prohibited by this Instrument, so long as the use, occupation or maintenance are consistent with the intent of this Instrument.
- 8.2 Without limiting the generality of section 8.1, and subject to section 4, the rights set out in Schedule C to this Instrument are expressly reserved to the Grantor, provided that any such activities are carried out in accordance with a Management Plan prepared in compliance with section 5 of this Instrument.
- 8.3 Nothing in this Instrument restricts or affects the right of the Grantor or any other party to do anything reasonably necessary to:
- (a) comply with requirements of applicable laws affecting the Land;
  - (b) prevent potential injury or death to any individual; or
  - (c) prevent, abate or mitigate any damage or loss to any real or personal property.
- 8.4 Subject to section 8.5, if the Grantor or any other party intends to do anything described in section 8.3, the Grantor must give at least 30 days prior written notice to each

Grantee, describing in reasonable detail the intended action, the reason for it, and its likely effect on the Land or the Amenities. The Grantor must permit each Grantee to enter upon and inspect the Land if any action is proposed under section 8.3. The Grantees may comment on the proposed action and the Grantor and any other party must take those comments into consideration before doing anything under that section.

- 8.5 Notwithstanding section 8.4, in an emergency situation, such as fire or threat to human safety, a Danger Tree on the Land may be cut down or trimmed, or other action required by the emergency may be taken, without the consent of the Grantees, but the Grantor must notify the Grantees of the circumstances of such action within 30 days, including the actual or likely effect on the Land or the Amenities. Any felled tree or trimmings must be left on the Land so that natural processes can occur.

Any destruction, impairment, diminishment or alteration of the Land and the Amenities, from or relative to the existing Natural State occasioned by activities under section 8 shall be the minimum reasonably required to carry out such activities. No heavy equipment shall be used in carrying out these activities, unless required for fire suppression.

## 9. GRANTOR'S OBLIGATIONS

- 9.1 The Grantor retains all responsibilities and bears all costs and liabilities related to the ownership, use, occupation and maintenance of the Land, including any improvements expressly authorized by this Instrument.

- 9.2 Subject to section 9.3, the Grantor must indemnify the Grantees, their directors, officers, employees, agents and contractors, from and against any and all liabilities, damages, losses, personal injury or death, causes of action, actions, claims and demands by or on behalf of any person, arising out of any act or omission, negligent or otherwise, in the use, occupation and maintenance of the Land or the Amenities by the Grantor.

- 9.3 The Grantor is liable for any and all breaches of this Instrument, but the Grantor is not liable for:

- (a) breaches of this Instrument which occur while the Grantor is not the registered owner of any interest in the Land;
- (b) breaches of this Instrument resulting from natural causes, or causes beyond the Grantor's reasonable control, including accidental fire, flood, storm, vandalism, trespass and earth movement, but excluding injury or alteration resulting from actions of the Grantor or any other person acting with the actual or constructive knowledge of the Grantor;
- (c) breaches of this Instrument resulting from any prudent action taken by the Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Land or the Amenities resulting from natural causes, including accidental fire, flood, storm and earth movement; or
- (d) breaches of this Instrument caused by the Grantees exercising their rights under this Instrument.

- 9.4 Without limiting the generality of sections 9.1, 9.2 and 9.3, the Grantor

- (a) is solely responsible and liable for any loss or damage, or liability of any kind (whether civil, criminal or regulatory), in any way connected with the existence in, on, from, to or under the Land (whether through spill, emission, migration, deposit, storage or otherwise) of any pollutant, contaminant, waste, special waste or any matter that impairs the environment; and

- (b) must indemnify each Grantee from and against any loss, damage, liability, cause of action, action, penal proceeding, regulatory action, order, directive, notice or requirement, including those of any government agency, incurred, suffered, brought against or instituted against the Grantees, jointly or severally, in any way associated with anything described in section 9.4(a).
- 9.5 Where, as provided under section 9.3(b), the Grantor is not responsible for damage or theft due to trespass or vandalism, the Grantor will take all reasonable steps as determined in the Grantor's sole discretion to repair the damage, and/or identify and prosecute the person responsible.
- 9.6 The Grantor must pay when due all taxes, assessments, levies, fees and charges of whatever description which may be levied on or assessed against the Land and must pay any arrears, penalties and interest in respect thereof.
- 9.7 The Grantor must indemnify each Grantee from and against any fee, tax or other charge which may be assessed or levied against the Grantor or the Grantees pursuant to any enactment, including the *Income Tax Act* (Canada), with respect to the Land or with respect to this Instrument, including any fee, tax or other charge which may be assessed or levied against the Grantor or the Grantees as a result of the amendment or termination of this Instrument.
- 9.8 For clarity, the indemnities granted by the Grantor to the Grantees under sections 9.2, 9.4 and 9.7 are indemnities granted as an integral part of the section 219 covenant created by this Instrument.

## 10. SUCCESSORS OF THE GRANTOR

- 10.1 This Instrument shall enure to the benefit of and be binding on the Grantor and the Grantor's Successors.
- 10.2 Prior to and until the adoption of the Management Plan by the council of the Grantor, the Grantor shall make every effort to classify the Land as Park Reserve, and if the Land is not so classified, the Grantor agrees to grant the Grantees a statutory right of way under section 218 of the *Land Title Act*. In the Management Plan, the Land shall be given a park classification consistent with Recital C herein.
- 10.3 Ownership of the Land shall remain with the Village of Cumberland, the Regional District of Comox-Strathcona, the Province of British Columbia, or any of their various agencies.
- 10.4 The Grantor must not lease or license the Land or any part thereof unless the lease or license is expressly made subject to the provisions of this Instrument and unless the lease or license expressly entitles the Grantor to terminate the lease or license and re-enter the Land if the tenant of licensee breaches any of the provisions of this Instrument.
- 10.5 Failure by the Grantor to comply with the provisions of this section shall not affect the enforceability of this Instrument against the Grantor or any Successors.

## 11. ASSIGNMENT OF INSTRUMENT OR DISSOLUTION OF THE GRANTEE

- 11.1 This Instrument shall be transferable by a Grantee, but the Grantee may assign its rights and obligations under this Instrument only to a person or entity qualified by law at the time of transfer to hold covenants under section 219 of the *Land Title Act* (or any successor provision then applicable) and any applicable regulations.
- 11.2 The Grantees agree that before either of them assigns its rights and obligations under this section, it must consult with the Grantor, and consider the Grantor's comments, with

respect to the proposed assignee. The Grantee must give notice to the Grantor of the proposed assignment, setting out in reasonable detail the identity of the proposed assignee and the qualifications and experience of the proposed assignee relevant to performance by the assignee of the rights and obligations of the Grantee under this Instrument. If the Grantor does not provide comments to the Grantee regarding the proposed assignee within 10 Business Days after the Grantee gave notice to the Grantor under this section, the Grantor is conclusively deemed to have declined to comment on the proposed assignee and to have consented to the assignment. For clarity, the Grantor agrees that the Grantee is only required to consult the Grantor and that the Grantee is entitled to assign its rights and obligations so long as it has consulted the Grantor.

- 11.3 In the event of the winding-up or dissolution of the Grantee, the Grantee must use its best efforts to assign and transfer all of its interest under this Instrument to a person or entity authorized to accept covenants under section 219 of the *Land Title Act*. If the Grantee does not assign and transfer all of its interests under this Instrument as set out in this section, it shall be deemed to have assigned and transferred all of its interest under this Instrument to Her Majesty the Queen in Right of the Province of British Columbia. For clarity, the consultation process set out in section 11.2 does not apply to this section.

## 12. NOTICE

- 12.1 Any notice or other communication (collectively "notice") required or permitted under this Instrument must be in writing and must be:
- (a) delivered in person to an officer of the party to whom the notice is being given at their respective addresses as set out in section 12.4; or
  - (b) sent by pre-paid registered mail to the address of the parties at their respective addresses as set out in section 12.4.
- 12.2 If notice is delivered in person, the party receiving the notice must forthwith acknowledge in writing receipt of the notice.
- 12.3 If notice is sent by pre-paid registered mail, it shall be deemed to have been received on the fourth Business Day following the day on which the notice was sent.
- 12.4 The addresses of the parties' representatives for notice are as follows:

The Grantor, Village of Cumberland

(mailing)	Box 340 Cumberland, B.C. V0R 1S0
(street)	2673 Dunsmuir Avenue Cumberland, B.C.

The Grantee, Comox Valley Land Trust

(mailing)	Box 3462 Courtenay, B.C. V9N 5N5
(street)	#221- 2270 Cliffe Avenue Courtenay, B.C.

The Grantee, TLC The Land Conservancy of British Columbia

2709 Shoreline Drive  
Victoria, B.C. V9B 1M5

- 12.5 Each party agrees to give written notice immediately to the other party of any change in its address or facsimile number from that set out in section 12.4.
- 12.6 If a party refuses to sign an acknowledgement of receipt of notice, the person delivering the notice may swear an affidavit of service and the notice shall be deemed to have been received on the date of service set out in the affidavit.

**13. NOTICE OF COVENANT**

- 13.1 The Grantor agrees to allow the Grantee to erect a plaque or other sign on the Land, in a tasteful manner and at the expense of the Grantee, indicating that it holds a covenant on the Land.
- 13.2 The size, style, content and location of the plaque or sign must be approved by the Grantor prior to its placement, such approval not to be unreasonably withheld.

**14. NO LIABILITY IN TORT**

- 14.1 The parties agree that this Instrument creates only contractual obligations and obligations arising out of the nature of this Instrument as a covenant under seal. Without limiting the generality of the foregoing, the parties agree that no tort or fiduciary obligations or liabilities of any kind are created or exist between the parties in respect of this Instrument and nothing in this Instrument creates any duty of care or other duty on any of the parties to anyone else. For clarity, the intent of this section is, among other things, to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract and the law pertaining to covenants under seal.

**15. WAIVER**

- 15.1 An alleged waiver of any breach of this Instrument is effective only if it is an express written waiver signed by the Grantee, and is only effective to the extent of that express waiver and does not operate as a waiver of any other breach.
- 15.2 The failure of the Grantee to require performance by the Grantor at any time of any obligation under this Instrument does not affect the Grantee's right to subsequently enforce that obligation.

**16. JOINT AND SEVERAL OBLIGATIONS**

- 16.1 Where there is more than one party comprising the Grantor under this Instrument, the obligations of those parties as the Grantor are joint and several.

**17. COVENANT RUNS WITH THE LAND**

- 17.1 Unless it is otherwise expressly provided in this Instrument, every obligation and covenant of the Grantor in this Instrument constitutes a personal covenant and also a covenant granted under section 219 of the *Land Title Act* in respect of the Land. This Instrument burdens the Land and runs with it and binds the Successors in title to the Land. This Instrument burdens and charges all of the Land and any parcel into which it is subdivided by any means and any parcel into which it is consolidated in perpetuity.

**18. REGISTRATION**

- 18.1 This Instrument, and the interests it creates, shall be registered coterminous with the registration of the title to the Land.

**19. SEVERANCE**

19.1 If any part of this Instrument is held by a court or arbitrator to be invalid, illegal or unenforceable, that part is to be considered to have been severed from the rest of this Instrument and the rest of this Instrument is to remain in force unaffected by that holding or by the severance of that part as if the part was never part of this Instrument.

**20. NO OTHER INSTRUMENTS**

20.1 This Instrument is the entire Instrument between the parties and it terminates and supersedes all other agreements and arrangements regarding its subject.

**21. INDEPENDENT ADVICE**

21.1 The Grantor acknowledges and agrees that:

- (a) the Grantor has sought and obtained, to the Grantor's satisfaction, independent legal advice as to the meaning and effect of this Instrument;
- (b) the Grantor does not rely, and has not relied, on the Grantee for advice as to the meaning and effect of this Instrument; and
- (c) the Grantee has not given any representation or warranty to the Grantor as to the meaning and effect of this Instrument.

21.2 The Grantee acknowledges and agrees that:

- (a) the Grantee has sought and obtained, to the Grantee's satisfaction, independent legal advice as to the meaning and effect of this Instrument;
- (b) the Grantee does not rely, and has not relied, on the Grantor for advice as to the meaning and effect of this Instrument; and
- (c) the Grantor has not given any representation or warranty to the Grantee as to the meaning and effect of this Instrument.

**22. AMENDMENTS**

22.1 This Instrument is meant to be perpetual and may only be changed by a written instrument signed by all parties.

**23. DEED AND CONTRACT**

23.1 By executing and delivering this Instrument, each of the parties intends to create both a contract and a deed and covenant executed and delivered under seal.

**24. RIGHTS OF GRANTEE**

24.1 A Grantee may exercise its rights under this Instrument through its directors, officers, employees, agents or contractors.

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

**SCHEDULE B**

Attached to and forming part of the Covenant Instrument between the Village of Cumberland, Grantor, and the Comox Valley Land Trust and TLC The Land Conservancy of British Columbia, Grantees, dated as of the 9<sup>th</sup> day of March 2005.

Without restricting the generality of section 4.1, the Grantor must not, except as expressly permitted in this Instrument or with the prior written approval of both of the Grantees, in the sole discretion of each of them, perform or allow the performance of any of the following activities or uses of the Land:

- (a) use or permit the use of the Land for an activity or use which:
  - i) causes or allows any Native Vegetation on the Land to be cut down, removed or defoliated or in any way tampered with;
  - ii) causes or allows the unreasonable disturbance of wildlife, including without limitation any birds, aquatic creatures, fish or mammals;
  - iii) causes or allows any component of the Land, including soil, gravel or rock, to be disturbed, explored for, moved, removed from or deposited in or on the Land;
  - iv) alters or interferes with the hydrology of the Land, including by the diversion of natural drainage or flow of water in, on or through the Land;
  - v) causes or allows silts, leachates, fills or other deleterious substances to be released into any Watercourse on the Land;
  - vi) causes erosion of the Land to occur;
  - vii) causes or facilitates the loss of soil on the Land;
  - viii) causes or allows fill, rubbish, ashes, garbage, waste or other material foreign to the Land to be deposited in or on the Land;
  - ix) causes or allows deposit of any soil, gravel, rock, or other substance not currently located within the Land, except where needed for trail surfacing to prevent erosion;
  - x) causes or allows fires on the Land; or
  - xi) causes or allows pesticides, including but not limited to herbicides, insecticides or fungicides, to be applied to or introduced onto the Land;
- (b) charge or otherwise encumber the Land;
- (c) subdivide the Land by any means;
- (d) grant any new easements for underground or aerial utility lines such as, but not limited to, sewer, hydro or methane gas drilling;
- (e) remove standing or downed dead trees or fallen branches from the Land;
- (f) install vegetation other than Native Vegetation on the Land;
- (g) lay out or construct any new roads or trails on the Land, or upgrade any existing roads;
- (h) use or permit the use of heavy equipment on the Land;

- (i) use or permit the use of motorized vehicles other than service vehicles on the Land;
- (j) construct, build, affix or place on the Land any buildings or facilities of any kind, including, but not limited to picnic tables, outhouses, garbage bins, parking lots or playgrounds;
- (k) use or permit the use of the Land for hunting, trapping, fishing, gathering or for grazing of domestic animals;
- (l) discharge or permit to be discharged firearms of any kind on the Land;
- (m) use or permit the use of trails on the Land for horseback riding; or
- (n) use or permit the use of the Land for camping.



**SCHEDULE C**

Attached to and forming part of the Covenant Instrument between the Village of Cumberland, Grantor, and the Comox Valley Land Trust, and TLC The Land Conservancy of British Columbia, Grantees, dated as of the 9<sup>th</sup> day of March 2005.

Without limiting the generality of section 8.1, and subject to section 4, the following rights are expressly reserved to the Grantor, provided that any such activities are carried out in accordance with a Management Plan prepared in compliance with section 5 of this Instrument:

- (a) to maintain or restore existing trails provided that:
  - i) width does not exceed 1.0 metre;
  - ii) surfacing material shall be wood chips or similar material and no impervious surfacing material may be used;
  - iii) no standing trees having a diameter in excess of 8 centimetres at 1.2 meters above grade shall be cut down, removed or damaged by such work;
  - iv) deadfalls, felled Danger Trees and fallen branches may not be removed but may be repositioned to keep trails clear; and
  - v) trails, drainages from trails, boardwalks, or bridges do not interfere with the drainage and Watercourses on the Land;
- (b) to maintain, restore or resurface one existing road, the location and description of which road is indicated in the Report, provided that:
  - i) the road shall be used only for pedestrian and service vehicle access;
  - ii) width of the road shall not exceed 13 metres;
  - iii) no impervious surfacing material may be used; and
  - iv) drainage from the road shall not interfere with any Watercourses on the Land;
- (c) to decommission existing roads or trails;
- (d) to install small bridges along the trails where required to protect the natural drainage, provided that bridges are constructed of wood;
- (e) to remove invasive vegetation, including but not limited to Japanese knotweed, holly, broom or blackberry;
- (f) to install Native Vegetation on the Land;
- (g) to remove invasive non-native wildlife species including but not limited to bull frogs;
- (h) to install signs on the Land to identify the property, to provide orientation and direction, to outline rules and regulations, and/or to provide warning of possible hazards;
- (i) to install any protection or warning device, such as fencing, to maintain the safety of the Public, provided that fencing is constructed of natural material and is not painted;
- (j) to undertake a small scale historical / interpretive development at the Mine Entrance, provided that:
  - i) the development area does not exceed a maximum of one half acre;

- ii) the development does not negatively impact enjoyment of the Land for their natural values, or negatively impact the Natural State of the Land, wildlife or Watercourses;
  - iii) before any development occurs, the Grantor shall, at its own expense, complete a legal survey of the proposed development area and deposit the survey plan with the Land Title Office in Victoria;
  - iv) before any development occurs, the Grantor shall prepare a Management Plan for the proposed development under section 5 of this Instrument; and
  - v) the Management Plan shall specify that any hydro lines to the proposed development area will be buried and that the road/trail between the Mine Entrance and the northwest corner of the Land will not be used for motorized vehicle access;
- (k) to permit roads on the Land to be used for horseback riding; and
- (l) to permit the continued use of the Land by persons holding easements or other encumbrances registered against the Land on the terms authorized in those encumbrances.

End of document