

## TERMS OF INSTRUMENT- PART 2

THIS AGREEMENT made the \_\_\_\_ day of \_\_\_\_\_ 2021,

BETWEEN:

REGIONAL DISTRICT of CENTRAL OKANAGAN  
1450 K.L.O. Road  
Kelowna, British Columbia V1W 3Z4

(the "**Regional District**")

AND:

CENTRAL OKANAGAN LAND TRUST  
#306 – 1726 Dolphin Avenue  
Kelowna, British Columbia V1Y 9R9

("COLT")

- A) WHEREAS the Regional District is the registered owner in fee simple of all and singular that certain parcel(s) or tract(s) of land and premises, situate, lying and being in the Kelowna Assessment Area, in the Province of British Columbia, more particularly known and described as:

Parcel identifier: 001-713-744  
The North ½ of District Lot 4508 Osoyoos Division Yale District

Parcel identifier: 001-713-736  
The North West ¼ of Section 21 Township 27 Osoyoos Division Yale District

(hereinafter called the "**Lands**");

- B) AND WHEREAS pursuant to section 219 of the Land Title Act, R.S.B.C. 1996 c.250, a covenant may be registered against the title to the Lands in favour of COLT and is enforceable against the Regional District and the successors in title of the Regional District even if the covenant is not annexed to land owned by COLT;
- C) AND WHEREAS a covenant registrable under section 219 of the Land Title Act may be of a negative or positive nature and may include provisions in respect of the use of land or the use of a building on or to be erected on land and may further include provisions that land or a specified amenity in relation to the land be protected, preserved, conserved, maintained, enhanced, restored or kept in its natural or existing state in accordance with the covenant and to the extent provided in the covenant including any natural, environmental, wildlife or plant life value relating to the land that is subject to the covenant;
- D) AND WHEREAS the Regional District has agreed to the preservation, conservation, and protection of amenities of that portion of Lands, excluding the 1.55 hectare section of the gazetted Black Knight Forest Service Road right-of-way (registered under DF M10491), shown in bold on the map attached hereto as Schedule A, (the "**Black Knight FSR**"); and

- E) AND WHEREAS COLT has an interest concerning the preservation, conservation and protection of amenities of the Lands and other matters as provided herein.

NOW THEREFORE in consideration of the promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree, pursuant to section 219 of the *Land Title Act*, as follows:

- 1) The Regional District covenants and agrees that the Lands shall be used for the conservation, preservation, protection and enhancement of amenities and the naturally occurring ecosystems found within the Lands, in accordance with the Black Mountain - sntsk'il'nten Regional Park Management Plan, as that Plan may be amended or replaced from time to time, and that except as contemplated under or permitted by that Plan or this Agreement, the Regional District will let the natural process of habitat creation proceed, where appropriate, within the Lands.
- 2) The Regional District covenants and agrees to prepare a baseline inventory report for the Lands, which will serve as an objective information baseline to enable both parties to monitor compliance with this Agreement.
- 3) The Regional District covenants and agrees that COLT, by its officers, employees, contractors and agents, may enter the Lands at least once per year, upon reasonable notice being given to the Regional District, for the purposes of inspection of the Lands so as to determine compliance with this Agreement.
- 4) The Regional District agrees that COLT will have no obligation to ensure compliance with or enforce the terms of this Agreement.
- 5) COLT acknowledges and agrees the Westbank First Nation may have access to the Lands and its resources to exercise their Aboriginal Rights and Title for members' access and traditional use.
- 6) COLT acknowledges and agrees that the Regional District may permit members of the public to access and use the Lands for recreation and park enjoyment purposes, on foot and with horses, bicycles and motor assisted cycles on roads and trails from time to time located on the Lands.
- 7) COLT acknowledges and agrees that nothing in this Agreement shall affect or restrict the use of the Black Knight FSR or any unsurveyed informal roadways, nor shall anything in this Agreement affect or restrict the rights of the holders of any charges from time to time registered against title to the Lands, including any easements and any statutory rights of way under section 218 of the *Land Title Act*, , or the rights of the holders of any park access permits issued by the Regional District from time to time for access through the Lands including using motorized vehicles and horses.
- 8) The Regional District, through the Black Mountain - sntsk'il'nten Regional Park Management Plan planning process and including any subsequent updates and revisions to that plan, agrees to confer with COLT as a key stakeholder. The Regional District agrees to also confer with COLT on major capital and planning projects for the Lands with regards to decisions concerning the preservation, recreation, conservation, and protection of the Lands, and the location of access routes within the Lands.
- 9) COLT acknowledges and agrees that the Regional District may develop and construct and install improvements, utilities, services and public amenities on and to the Lands, in accordance with, or contemplated, proposed or suggested under, the Black Mountain - sntsk'il'nten Regional Park Management Plan as amended or replaced from time to time, including to facilitate public access to and upon and through the Lands.

- 10) COLT acknowledges agrees that the Regional District may remove dangerous trees and invasive plant species from the Lands and may make other alterations to the Lands and its amenities as the Regional District may consider necessary or desirable for the Regional District to manage and operate the Lands as a regional park or to address, mitigate or otherwise deal with a hazard or emergency situation which may threaten human health, property or safety.
- 11) COLT shall not be permitted to assign this Agreement, without the prior written consent of the Regional District.
- 12) Any notice which may be or is required to be given under this Agreement must be in writing and may be sent by Express Post or other form of registered mail or delivered by hand.

a. to the Regional District at the following address:

REGIONAL DISTRICT of CENTRAL OKANAGAN  
1450 K.L.O. Road  
Kelowna, B.C. V1W 3Z4  
ATTENTION: Parks Services

b. to the COLT at the following address:

CENTRAL OKANAGAN LAND TRUST  
#306 – 1726 DOLPHIN AVENUE  
Kelowna, BC, V1Y 9R9  
ATTENTION: Director

or to such other addresses as the Regional District or the COLT may advise in writing.

- 13) Pursuant to section 219 of the *Land Title Act*, this Agreement shall run with, and bind the successors in title to, the Lands.
- 14) There are no representations, promises, warranties or other commitments of any party except as set out in this Agreement.
- 15) Nothing contained in this Agreement shall impair or affect the exercise by the Regional District of its statutory functions, including all rights and powers under any enactments, letters patent, bylaws, orders, regulations or other source of authority.
- 16) Where a dispute arises between the Regional District and COLT with respect to the interpretation of this Agreement or Regional District compliance with this Agreement, the parties will attempt in good faith to resolve the dispute within 30 days following the delivery of a Dispute Notice by one party to the other, or such longer period as the parties may agree in relation to the particular dispute, including, if they agree that the Regional District is not in compliance with this Agreement they will also attempt to identify what steps the Regional District is to take in response to such non-compliance.

As evidence of their agreement to be bound by this Agreement, the Regional District and COLT have executed the *Land Title Act* Form C attached to and forming part of this Agreement.

Schedule A

