



Storm Water Pump Covenant

Master Requirement GEN 114

Building Department: 604-990-2480, building@dnv.org, fax: 604-984-9683

Purpose

The purpose of this document is to establish the general form and content of the Storm Water Pump covenant required under the Construction Bylaw.

Background

Storm water pumps are often required in construction to convey storm water drainage to the municipal storm system or an alternate approved discharge location. Where a storm water pump is required, the Construction Bylaw specifies that the owner must grant to the District a covenant under section 219 of the Land Title Act in a form satisfactory to the municipal solicitor.

Requirements

Timing

Storm water pump covenants should be prepared under a drainage permit as early as possible in the construction process. The final inspection and Occupancy Permit will not proceed when a storm water pump covenant is required but not registered on property title.

Owner

The owner is responsible for the granting and registration of covenant on title.

Details

1. Storm water pump covenants must be prepared using this MRL as a template.
2. Storm water pump covenant must be prepared by a lawyer or notary, along with the **Land Title Act Form C** (LTO registration form). **All** required signatures from notary, owner, witness (and mortgage company, as applicable) must be on document **prior** to submitting to DNV for signatures. (One copy is sufficient if lawyer or notary is going to be filing electronically at LTO; two copies if being filed manually).

3. Documents are delivered to the Development Services Counter. Ensure delivery of completed documents is early enough to accommodate the process which usually takes 5-10 business days, and that a contact name and phone number are provided.
4. The Homeowner or their designate is contacted to pick up the signed document. The District does not mail or courier the document.
5. The applicant, lawyer or notary submits the signed documents to the Land Title Office for registration. One copy of the **registered** storm water pump covenant is returned to the Development Services department.
6. The plumbing/mechanical Inspector is advised when the **registered** document has been received.

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TERMS OF INSTRUMENT - PART 2

SECTION 219 COVENANT

This Agreement is dated for reference the [_____] day of [_____] , 20__.
Date **Month**

BETWEEN:

[insert owner name and address]

(the "Owner")

AND:

THE CORPORATION OF THE DISTRICT OF NORTH VANCOUVER, a municipality incorporated under the *Local Government Act*, RSBC 2015, c. 1 and having its office at 355 West Queens Road, North Vancouver, BC V7N

(the "District")

GIVEN THAT:

- A. The Owner is the registered owner of the Land legally described in Item 2 of Part 1 of the *Land Title Act* Form C to which this Agreement is attached ("Land");
- B. The Owner has constructed or wishes to construct a storm water lift pump (the "Pump") to service the Land and this Pump contains both mechanical and electrical components which must be monitored and maintained on an ongoing basis;
- C. Section 219 of the *Land Title Act* (R.S.B.C. 1996, c. 250) provides that there may be registered as a charge against the title to any land a covenant in favour of a municipality that the Land or any specified portion thereof is not to be built on or is to or is not to be used in a particular manner.

THIS AGREEMENT is evidence that pursuant to s. 219 of the *Land Title Act* and in consideration of \$10.00 paid by the District to the Owner and other good and valuable consideration (the receipt and sufficiency of which the Owner acknowledges), the Owner grants to and covenants with the District as follows:

1. **Use of Land** - The Owner covenants not to use or occupy the Land, or permit the Land to be used or occupied, for residential purposes unless the Pump is properly installed and is thereafter maintained in good working order, at the Owner's expense.

2. **Failure of Pump** - The Owner acknowledges that the Pump may fail, causing damage to the Land and adjacent properties and the Owner agrees to indemnify and save the District harmless from all actions, causes of action, damages, claims, (including claims for injurious affection), costs and expenses (including legal fees and disbursements) arising from or connected with the adequacy or inadequacy of the Pump, its construction, installation, operation, maintenance or any failure or malfunction of the Pump.
3. **Indemnity and Release** - The Owner hereby releases the District, and indemnifies and saves the District harmless, from and against any and all actions, causes of actions, suits, claims (including claims for injurious affection), costs (including legal fees and disbursements), expenses, debts, demands, losses and liabilities of whatever kind arising out of or in any way due or relating to the granting or existence of this Agreement, the restrictions or obligations contained in this Agreement or the performance or non-performance by the Owner of its obligations under this Agreement that the District is or may become liable for, incur or suffer.
4. **Runs with Land** - Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted under section 219 of the *Land Title Act* in respect of the Land. This Agreement burdens and runs with, and binds the successors in title to, the Land and each and every part into which the Land may be subdivided or consolidated by any means. The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Land.
5. **No Obligation to Enforce** - The rights given to the District by this Agreement are permissive only and nothing in this Agreement imposes any legal duty of any kind on the District to anyone, or obliges the District to enforce this Agreement, to perform any act or to incur any expense in respect of this Agreement.
6. **No Effect on Powers** - This Agreement does not:
 - (a) affect or limit the discretion, rights or powers of the District under any enactment;
 - (b) affect or limit any enactment applying to the Land; or
 - (c) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.
7. **No Public Law Duty** - Where the District is required or permitted by this Agreement to form an opinion, exercise its discretion, express satisfaction, make a determination or give its consent, the District is under no public law duty of fairness or natural justice in that regard and the District may do any of those things in the same manner as if it were a private party and not a public body.
8. **Specific Relief** - The Owner agrees with the District that because of the public interest in ensuring that all of the matters described in this Agreement, and the provisions of all applicable laws, 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 District in the event of an actual or threatened breach of this Agreement.

9. **Owner Not Exempted** - Nothing in this Agreement exempts the Owner on the Land from any statutory requirement or from the ordinary jurisdiction of the District, its bylaws, permits, regulations and orders, and, without limitation, this Agreement does not relieve the Owner from complying with any enactment relating to the use of the Land.
10. **No Rights to Owner or Third Parties** - This Agreement is not to be interpreted to create rights in, or to grant remedies to, any Owner or occupant of the Land or any other third party. The Owner and the District agree that this Agreement:
 - (a) is entered into only for the benefit of the District; and
 - (b) is not intended to protect the interests of the Owner, any tenant, or any lessee, occupier or user of the Land or any other third party.
11. **Priority** - The Owner agrees to do everything necessary to ensure that this Agreement is registered against title to the Land 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, including all options to purchase, rights of first refusal, mortgages and assignments.
12. **Severance** - If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of the Agreement.
13. **Entire Agreement** - This Agreement is the entire agreement between the parties concerning its subject, and supersedes and terminates all other agreements, understandings or promises concerning its subject. The District has made no representations and gives no warranties to the Owner regarding the subject of this Agreement or any related matter or proceeding.
14. **Waiver** - 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 or continuing breach of this Agreement.
15. **Successors** - This Agreement binds the parties hereto and their respective successors, heirs, executors and administrators.
16. **Joint and Several** - All covenants made by the Owner shall be construed as being several as well as joint with respect to all persons constituting the Owner.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement under seal by executing Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

GRANT OF PRIORITY

WHEREAS _____ (the “**Chargeholder**”) is the holder of the following charge(s) which is(are) registered in the Land Title Office:

(a) _____ (the “**Charge**”);

AND WHEREAS the Chargeholder agrees to allow the Section 219 Covenant herein to have priority over the Charge;

THIS PRIORITY AGREEMENT is evidence that in consideration of the sum of \$1.00 paid by THE CORPORATION OF THE DISTRICT OF NORTH VANCOUVER (the “**District**”) to the Chargeholder, the receipt and sufficiency of which is hereby acknowledged, the Chargeholder covenants and agrees to subordinate and postpone all its rights, title and interest in and to the lands described in the Form C to which this Agreement is attached (the “**Land**”) with the intent and with the effect that the interests of the District rank ahead of the Charge as though the Section 219 Covenant herein had been executed, delivered and registered against title to the Land before registration of the Charge.

As evidence of its Agreement to be bound by the above terms, as a contract and as a deed executed and delivered under seal, the Chargeholder has executed the Form C to which this Agreement is attached and which forms part of this Agreement.