

TERMS OF INSTRUMENT - PART 2

THIS COVENANT is made pursuant to Section 219 of the *Land Title Act*, R.S.B.C. 1996, c.250

BETWEEN:

PROPERTY OWNER, PROFESSION
STREET ADDRESS
CITY, PROVINCE POSTAL CODE

(the "Owner")

AND:

DISTRICT OF LANTZVILLE
7192 Lantzville Road, PO Box 100
Lantzville, B.C. V0R 2H0

(the "Municipality")

WHEREAS:

- A. The Owner is the registered owner of land located in the territorial area of the Municipality and legally known and described as:

Parcel Identifier
Legal Description

(the "Land")

- B. The District of Lantzville is a municipality incorporated and operating pursuant to the provisions of the *Community Charter*, S.B.C. 2003, c.26 and the *Local Government Act*, R.S.B.C. 1996, c.323 and preceding legislation thereto;
- C. Section 219 of the *Land Title Act*, R.S.B.C. 1996, c.250, provides that a covenant of a negative or positive nature in respect of the use of the lands, to restrict building on the land, and to preserve amenities, may be registered as a charge against title to the land in favour of a municipality.
- D. The Owner has agreed to grant this Covenant to ensure that development on the Land is carried out in consideration of the interface wildfire risk on the Land.

NOW THEREFORE, in consideration of the sum of \$1.00 paid by the Municipality to the Owner, the receipt and sufficiency of which is hereby acknowledged by the parties, the Owner covenants and agrees with the Municipality pursuant to Section 219 of the *Land Title Act*, R.S.B.C. 1996, c.250, as follows:

Restrictions on Use

1. The Land must not be used, nor any building or structure constructed, sited or placed on the Land, except in accordance with this Covenant.
2. All works and activities on the Land must be carried out and maintained in accordance with the recommendations in the BC FireSmart Manual excerpt attached hereto as Schedule 'A'.
3. Roofing materials must be metal, asphalt, clay, composite rubber tiles or other Class A, B, or C rated roofing.
4. Siding materials must be stucco, metal, brick, concrete, fibre-cement, logs, or heavy timbers.
5. Where a fuel management zone recommended in the BC FireSmart Manual excerpt in Schedule 'A' would encroach or infringe on an ecologically sensitive area or an area required to be maintained in its natural state for geotechnical reasons, those areas must not be disturbed unless approval is granted in writing by the Municipality.

Withholding Building Permits

6. The Owner agrees that the Municipality may, acting reasonably, withhold the approval of a building permit for any proposed construction which does not comply with any provision of this Covenant.

Inspection

7. The Municipality, including its officers, employees and agents may inspect the Land or any building or structure on the Land, to determine whether the provisions of this Covenant are being or have been complied with.

Enforcement Remedy of the Municipality

8. If the Municipality believes that the Owner is in breach of any term or terms of this Covenant:
 - (a) the Municipality may serve the Owner with written notice setting out particulars of the breach; and following service of the said notice;
 - (b) the Owner must immediately or within any time period specified by the said notice, remedy the breach or make arrangements deemed satisfactory by the Municipality to remedy the breach.

9. If the Owner does not remedy a breach as specified in this Covenant, the Municipality is entitled to enter the Land and remedy the breach at the sole cost of the Owner.

Notice

10. Whenever provision is made for notice to be given to the Owner pursuant to this agreement, notice is deemed to have been given when delivered personally to the Owner, or to an officer or director of the Owner, or when mailed by prepaid registered mail to the registered and records office of the Owner, on the fourth day following the date of mailing. Notice to the Municipality is deemed to have been given when delivered personally to the business office of the Municipality, or when mailed by prepaid registered mail to the postal address of the Municipality, on the fourth day following the date of mailing.

Non-Enforcement

11. Notwithstanding any provision of this Covenant, the Municipality is under no obligation to enforce any provision of this Covenant.

Indemnity

12. The Owner must indemnify and save harmless at all times the Municipality, its officers, employees, contractors and agents from and against any proceeding, claim or demand which may be made in relation to restrictions imposed by this agreement or in relation to any obligation required to be performed under this agreement. This indemnity applies to any act or omission occurring while the Owner is an owner of the Land, notwithstanding that the Owner may have ceased to be an owner of the Land, and must survive the release of this Covenant from title to the Land in relation to acts or omissions occurring before such discharge.

Performance at Cost of Owner

13. Unless otherwise expressly provided for herein, whenever the Owner requests something to be done, or is obliged or required to do or cause to be done any act, matter or thing, such act, matter or thing must be done by the Owner at its sole expense.

Interest in Land and Enurement

14. This Covenant must charge the Land pursuant to Section 219 of the *Land Title Act* and the burden of all covenants herein must run with the Land and charge the Land and every parcel into which the Land may be subdivided.
15. This Covenant enures to the benefit of and is binding upon the parties hereto and their respective successors, heirs, administrators and assigns.
16. No liability for any breach of this Covenant occurring after a person has ceased to be an owner of the Land, or any parcel into which the land may be subdivided, must attach to that person.

Amendment and Waiver

17. No amendment or waiver of any provision in this Covenant is valid unless it is made in writing and executed by the Owner and the Municipality.

Release of Covenant

18. This Covenant must be of no force and effect if the Municipality declares in writing that the Covenant is to be release from title to the Land.

Severability

19. All provisions of this Covenant are to be construed as independent covenants and should any provision thereof be held invalid by a Court of competent jurisdiction, that portion must be severed, and the invalidity or unenforceability of such provision must not affect the validity of the remainder, which is to remain binding upon the parties and remain a charge upon the Land.

Time of the Essence

20. Time is of the essence of this agreement.

Further Acts

21. The Owner covenants and agrees to do and cause to be done all things, and to execute and cause to be executed all plans, documents and other instruments which may be necessary to give proper effect to this Covenant.

No Exemption from Jurisdiction

22. Nothing in this Covenant exempts the Owner or the Land from any statutory requirement or from the ordinary jurisdiction of the municipal council of the Municipality, including its bylaws, permits, regulations and orders.
23. The construction of any works or services required to be provided by this Covenant must not confer any exemption or right of set-off from development cost charges, connection charges, application fees, user fees or any other fee or charge of whatever nature, except as statutorily required.

Interpretation

24. Wherever the singular or masculine is used herein, the same must be construed as meaning the plural or the feminine or the body corporate or politic where the context so requires.

Entire Agreement

25. This Covenant constitutes the entire agreement between the parties, and the Municipality has made no representations, warranties, guaranties, promises, covenants or agreements to or with the Owner in relation to the subject matter of this Covenant other than those expressed in writing herein.

Priority Agreement

26. The Owner must, at the expense of the Owner, do or cause to be done all actions reasonably necessary to grant priority to this agreement over all financial charges and encumbrances which may have been registered against the title to the Land save and except those specifically approved in writing by the Municipality or that are in favour of the Municipality.

Execution

27. As evidence of its agreement to be bound by the above terms, the Owner has executed and delivered this Covenant by executing the *Land Title Act* Form C to which this Covenant is attached and which forms part of this agreement.
28. The Owner agrees to do everything necessary at its own expense to ensure that this Covenant, and the interests it creates, is registered against title to the Land, with priority over all financial charges, liens and encumbrances registered or pending registration in the Land Title Office at the time of application for registration of this Covenant at the appropriate Land Title Office.
29. By executing and delivering this agreement, each of the parties intends to create both a contract, and a deed and covenant executed and delivered under seal.