

TERMS OF INSTRUMENT – PART 2

SECTION 219 COVENANT – SECOND DWELLING UNIT RURAL LANDS

THIS AGREEMENT dated for reference _____, is

BETWEEN:

THE CORPORATION OF THE DISTRICT OF NORTH COWICHAN
7030 Trans Canada Highway
Duncan, B.C. V9L 6A1

(the “**District**”)

AND:

KYLE WALTER LEIDENIUS
7167 Bell McKinnon Road
Duncan, B.C. V9L 6B5

(the “**Owner**”)

GIVEN THAT:

- A. The Owner is the registered owner of the parcels of land legally described in the General Instrument – Part 1 (*Land Title Act* Form C) attached to and forming part of this Agreement (the “**Lands**”); and
- B. In connection with the issuance of a building permit to construct single-family residential dwelling on the Lands (the “**Second Dwelling**”), the District requires, and the Owner has agreed to grant to the District, a covenant under section 219 of the *Land Title Act* British Columbia restricting the use of the Lands;

THIS AGREEMENT is evidence that in consideration of the payment of \$10.00 from the District to the Owner and other good and valuable consideration (the receipt and sufficiency of which the Owner acknowledges), the Owner covenants and agrees with the District under section 219 of the *Land Title Act* as follows:

1. **General Restrictions** – The Lands shall not be used, nor any building or structure constructed, placed on the Lands, except in accordance with this Agreement.
2. **Development of Second Dwelling** – The Owner covenants and agrees with the District that the size of the proposed Second Dwelling shall not exceed **96.6 m²**. For clarity, the size of the proposed Second Dwelling shall be considered the habitable floor area which excludes uninhabitable areas such as garages or covered parking areas, unenclosed and roofless decks, patios, balconies and porches, areas below grade with a maximum ceiling height less than 1.8 m (5.91’), elevator shafts and mechanical rooms, and

covered entrances, and includes habitable rooms such as those used or intended for cooking, eating, sleeping or human occupancy.

3. **Restrictions on Subdivisions** – The Lands shall not be subdivided by any means, including by deposit of a bare land strata plan, phased strata plan or leasehold plan under the *Strata Property Act* (British Columbia), except as permitted by the District.
4. **Municipal Permits** – The Owner agrees that the District may withhold building permits and occupancy permits with respect to any building or other structure from time to time constructed or proposed to be constructed on the Lands, as the District may, in its sole discretion, consider necessary to ensure compliance with this Agreement.
5. **Inspection** – The District, its officers, employees, contractors and agents, shall have reasonable access to the Lands and any buildings at all reasonable times in order to ascertain compliance with Agreement.
6. **Indemnity** – As an integral part of this Agreement, pursuant to section 219(6)(a) of the *Land Title Act*, the Owner hereby indemnifies the District:
 - (a) from and against any and all liability, actions, causes of action, claims, suits, proceedings, judgements, damages, expenses, legal fees, demands and losses at any time suffered or incurred by, or brought against, the District, or any of its elected or appointed officials, officers, employees or agents, arising from or in connection with the granting or existence of this Agreement, the performance of any of the Owner's obligations under this Agreement and any breach of any provision under this Agreement; and
 - (b) for all costs, fees and expenses, including legal fees, incurred by the District in the enforcement of this Agreement as a result of any breach of any provision of this Agreement by the covenantor.
7. **Specific Relief** – The Owner agrees that the public interest in ensuring that all of the provisions of this Agreement are complied with 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.
8. **No Effect on Powers** – Nothing in this Agreement shall:
 - (a) affect or limit the discretion, rights or powers of the District or the District's Approving Officer under any enactment or at common law, including in relation to the use, development or subdivision of the Lands;
 - (b) affect or limit any enactment relating to the use, development or subdivision of the Lands; or
 - (c) relieve the Owner from complying with any enactment, including in relation to the use, development or subdivision of the Lands.

And the Owner covenants and agrees to comply with all such enactments with respect to the Lands.

9. **District Discretion** – Where the District or a representative of the District is required or permitted under this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent:
 - (a) the relevant provision shall not be considered fulfilled unless the approval, opinion, determination, consent or expression of satisfaction is in writing signed by the District or the representative, as the case may be;
 - (b) the approval, opinion, determination, consent or satisfaction is in the sole discretion of the District or the representative, as the case may be; and
 - (c) the District or the representative, as the case may be, is under no public law duty of fairness or natural justice in that regard and the District or the representative may do any of those things in the same manner as if it were a private person and not a public body or employee or officer thereof.
10. **Release of Covenant** –
 - (a) This Agreement shall be of no force and effect if the District declares in writing that this Agreement is to be released.
 - (b) In the event that the zoning amendment bylaw to rezone the Lands is not adopted within 180 days from the date this Agreement is registered against title to the Lands, this Agreement must be released from title. The Owner must deliver the release form to the District for signature and is responsible for registering the release.
11. **No Obligation to Enforce** – The rights given to the District under this Agreement are permissive only and nothing in this Agreement shall give rise to any legal duty of any kind on the District to anyone or obligate the District to enforce this Agreement or to perform any act or incur any expense.
12. **Agreement Runs with Land** – This Agreement shall burden and run with, and bind the successors in title to, the Lands and each and every part into which the Lands may be subdivided by any means (including by deposit of a strata plan of any kind under the *Strata Property Act* (British Columbia)).
13. **Waiver** – No waiver by the District of any requirement or breach of this Agreement shall be effective unless it is an express waiver in writing that specifically references the requirement or breach and no such waiver shall operate as a waiver of any other requirement or breach or any continuing breach of this Agreement.
14. **Remedies** - No reference to or exercise of any specific right or remedy by the District shall prejudice or preclude the District from exercising any other right or remedy, whether allowed at law or in equity or expressly provided for in this Agreement, and no

such right or remedy is exclusive or dependent upon any other such remedy and the District may from time to time exercise any one or more of such remedies independently or in combination.

15. **Priority** – The Owner shall cause this Agreement to be registered in the applicable land title office against title to the Lands with priority over all financial liens, charges and encumbrances, and any leases and options to purchase, registered or pending registration at the time of application for registration of this Agreement, including by causing the holder of each such lien, charge, encumbrance, lease or option to purchase to execute an instrument in a form required by the District under which such holder postpones all of the holder's rights to those of the District under this Agreement in the same manner and to the same extent as if such lien, charge, encumbrance, lease or option to purchase had been registered immediately after the registration of this Agreement.
16. **Modification** – This Agreement may not be modified except by an agreement or instrument in writing signed by the Owner or its successor in title and the District or a successor or assignee.
17. **Further Assurances** – The Owner shall do and cause to be done all things, including by executing further documents, as may be necessary to give effect to the intent of this Agreement.
18. **Owner's Expense** – The Owner shall perform its obligations under this Agreement at its own expense and without compensation from the District.
19. **Severance** – If any part of this Agreement is for any reason held to be invalid by a decision of a court with the jurisdiction to do so, the invalid portion is to be considered severed from the rest of this Agreement and the decision that it is invalid shall not affect the validity or enforceability of the remainder of this Agreement.
20. **Interpretation** - In this Agreement:
 - (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
 - (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this agreement;
 - (c) the term "enactment" has the meaning given to it under the *Interpretation Act* (British Columbia) on the reference date of this Agreement;
 - (d) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
 - (e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced from time to time, unless otherwise expressly provided;

- (f) reference to a particular numbered section, or to a particular lettered schedule, is, unless otherwise expressly provided, a reference to the correspondingly numbered section or lettered schedule of this Agreement;
 - (g) time is of the essence; and
 - (h) where the word "including" is followed by a list, the contents of the list are not intended to limit or otherwise affect the generality of the expression preceding the word "including".
21. **Governing Law** – This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, which shall be deemed to be the proper law hereof.
22. **Enurement** – This Agreement hereof shall enure to the benefit of the parties and their respective successors and assigns, as the case may be.
23. **Entire Agreement** – This Agreement is the entire agreement between the parties regarding its subject.
24. **Execution in Counterparts & Electronic Delivery** - This Agreement may be executed in any number of counterparts and delivered by e-mail, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, provided that any party delivering this Agreement by e-mail shall also deliver to the other party an originally executed copy of this Agreement.

As evidence of their agreement to be bound by this Agreement, the parties have executed the General Instrument – Part 1 (*Land Title Act* Form C) attached to and forming part of this Agreement.

PRIORITY AGREEMENT

This Priority Agreement is between _____ (the “**Prior Chargeholder**”), being the registered owner and holder of Mortgage No. _____ and Assignment of Rents No. _____ (the “**Prior Charges**”), and the Corporation of the District of North Cowichan (the “**District**”), being the registered owner and holder of the covenant under section 219 of the *Land Title Act* (British Columbia) to which this Priority Agreement is attached (the “**Subsequent Charge**”).

In consideration of the sum of ten dollars (\$10.00) now paid to the Prior Chargeholder and other good and valuable consideration, the receipt and sufficiency of which the Prior Chargeholder acknowledges, the Prior Chargeholder hereby approves of, joins in and consents to the granting of the Subsequent Charge and hereby postpones all of the Prior Chargeholder’s rights under the Prior Charges to the rights of the District under the Subsequent Charge in the same manner and to the same extent as if the Prior Charges had been registered immediately after the Subsequent Charge.

As evidence of its agreement to be bound by this Priority Agreement, the Prior Chargeholder has executed the General Instrument – Part 1 (*Land Title Act* - Form C) attached to and forming part of this Priority Agreement.

Director of Planning and Building for
The Corporation of the District of North Cowichan