

PART 2 – TERMS OF INSTRUMENT

SECTION 219 COVENANT

This Agreement dated for reference the ____ day of _____, _____ is

AMONG:

1230869 BC LTD

Address: 479 Montague Park Road, Galiano Island, British
Columbia, V0N 1P0

(the “Owner”)

AND:

GALIANO ISLAND LOCAL TRUST COMMITTEE, a Corporation
under the *Islands Trust Act*, R.S.B.C. 1996, c.239, with an office at
Suite 200, 1627 Fort Street, Victoria, British Columbia, V8R 1H8

(the “Trust Committee”)

GIVEN THAT:

- A. The Owner is the registered owner in fee simple of that parcel of land located on Galiano Island, British Columbia which is legally described as:

Parcel Identification Number: 003-321-649

Legal Description: Lot “A” of Lot 15, Galiano Island, Cowichan District,
Plan 22128

(the “Land”);

- B. Section 219 of the *Land Title Act* (British Columbia) provides that there may be registered as a charge against the title to land a covenant, whether of a negative or positive nature, in respect of the use of land, the building on land, the subdivision of land and the preservation of land or a specified amenity on the land;
- C. The Owner has requested that the Trust Committee rezone the Land to Rural 2(a), and the Owner has granted the Trust Committee this covenant in order to induce the Trust Committee to rezone the Lands;

- D. The Owner wishes to grant and the Trust Committee wishes to accept this Covenant over the Land, restricting the use of the Land in the manner specified;
- E. The Owner has provided a site plan (the "Site Plan") attached as Schedule A.

This Agreement is evidence that in consideration of the premises and covenants herein contained, the payment of two dollars (\$2.00) by the Trust Committee to the Owner, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

S. 219 Covenant

The Owner shall not use or permit the use of the Land or any building on the Land for any purpose, construct any buildings on the Land, or subdivide the Land except in strict accordance with this Agreement.

Restriction on Use

1. The processing, crushing, or washing of aggregate is prohibited.
2. All permitted machinery and equipment stored for 14 or more days must be equipped with a suspended drip system (consisting of grommeted canvas squares suspended beneath engines and lined with absorbent pads).
3. Dust control measures shall be implemented to prevent impacts on neighbouring properties.
4. Drainage swales or a detention basin, incorporating oil/water separators if necessary, must be constructed to limit runoff flowing from the property to the 'Riparian' area and 'Sensitive Ecosystems' area identified on the Site Plan attached as Schedule A
5. An emergency spill kit must be located within the 'Work/Aggregate Yard/Sawmill' area as identified on the Site Plan attached as Schedule A.
6. A source of water for emergency fire response must be located no greater than 30 metres from the sawmill area.
7. The maximum number of vehicles, equipment, and machinery associated with Contractor Workshop and Contractor Yard uses is limited to ten (10).
8. The hours of operation for the sale of gravel, soil and aggregates, including any associated loading, unloading and/or movement of any truck, motor vehicle, trailer or equipment for this use, shall be limited to between the

hours of 8:00 a.m. and 5:00 p.m. daily, except on Saturdays, Sundays, and Holidays, when it shall be limited to between 9:00 a.m. and 5:00 p.m.”

9. The maximum volume of gravel, soil and aggregate stored at one time is limited to 305 m³ (400 yd³).
10. The maximum volume of raw logs for wood processing shall not exceed 350 m³ per year.
11. Cidery and winery uses, including production, storage, and sales, must comply with the Liquor Control and Licensing Act and the Liquor Control and Licensing Regulation.
12. The use of the cidery or winery building for special or private events exceeding 100 persons is limited to six (6) per calendar year.

Riparian Area

13. No land disturbance or construction may occur within the Riparian area as shown on the Site Plan attached as Schedule A.

Water Management

14. All uses must comply with the Water Sustainability Act and the Water Sustainability Regulation.
15. All pump test reports and water quality test results in compliance with the Water Sustainability Act and as required for a Water Licence must be provided to the Galiano Island Local Trust Committee.
16. The Owner shall not use or permit the use of the Land or any building on the Land for the purpose of a cidery or winery until a water licence in compliance with the Water Sustainability Act has been obtained. An approved water licence must be forwarded to the Galiano Island Local Trust Committee.
17. A staff gauge must be installed to monitor water fluctuations in the ‘Pond’ identified on the Site Plan attached as Schedule A.
18. A sounding tube must be installed in Well WTN 131111 (WID 72049) to enable monitoring of water levels.
19. A water meter must be installed at Well WTN 131111 (WID 72049) to monitor water consumption.

20. Installation of water meters on any water storage tank outlets to monitor water use.

No Effect On Laws or Powers

21. This Agreement does not
- (a) affect or limit the discretion, rights, duties or powers of the Trust Committee or the Capital Regional District under any enactment or at common law, including in relation to the use or subdivision of the Land;
 - (b) impose on the Trust Committee or the Capital Regional District any duty of care or other legal duty of any kind to the Owner or to anyone else;
 - (c) oblige the Trust Committee to enforce this Agreement, which is a policy matter within the sole discretion of the Trust Committee;
 - (d) affect or limit any enactment relating to the use or subdivision of the Land;
 - (e) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.

Limitation on Obligations

22. The Owner is only liable for breaches of this Agreement caused or contributed to by the Owner or which the Owner permits or allows. The Owner is not liable for the consequences of the requirements of any enactments or law or any order, directive, ruling or government action thereunder. The Owner is liable only for breaches of this Agreement which occur while the Owner is the registered owner of any interest in the Land and then only to the extent of that interest.

Entry by Trust Committee Staff

23. The Owner hereby authorizes the Trust Committee, through its employees or agents, to enter the Land at all reasonable times after giving 24 hours notice for the express purpose of confirming whether or not this Agreement is being complied with.

Indemnity

24. The Owner hereby indemnifies and saves harmless the Trust Committee and its elected and appointed officials, officers, employees and agents,

from and against all loss, damage, cost, actions, suits, debts, expenses and harm of any kind whatsoever which the Trust Committee may at any time suffer or incur arising out of or related to this Agreement or any breach of it.

No Liability in Tort

25. The parties agree that this Agreement creates only contractual obligations. The parties agree that no tort obligations or liabilities of any kind exist between the parties in connection with the performance of or any default under or in respect of this Agreement. The intent of this section is to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract.

Covenant Runs With the Land

26. 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* (British Columbia) in respect of the Land. This Agreement burdens the Land and runs with it and binds the successors in title to the Land. This Agreement burdens and charges all of the Land and any parcel into which it is subdivided by any means and any parcel into which the Land is consolidated.

Registration

27. The Owner agrees to do everything necessary, at the Owner's expense, to ensure that this Agreement 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 Agreement.

Waiver

28. An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach. A waiver by the Trust Committee of a breach of this Agreement by the Owner does not operate as a waiver of any other breach of this Agreement.

Severance

29. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.

No Other Agreements

30. This Agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other agreements and arrangements regarding its subject.

Binding of Successors

31. This Agreement binds the parties to it and their respective successors, heirs, executors and administrators.

Further Acts

32. The Owner must do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.

Deed and Contract

33. By executing and delivering this Agreement the Owner intends to create both a contract and a deed executed and delivered under seal.

As evidence of their agreement to be bound by the terms of this instrument, the parties each have executed the Land Title Office Form C which is attached hereto and which forms part of this Agreement.

CONSENT AND PRIORITY AGREEMENT

WHEREAS:

- A. [Name of land owner(s)] (the "Owner") is the registered owner of [insert full legal description] (the "Land");
- B. The Owner granted [Name of chargeholder] (the "Prior Chargeholder") a [identify mortgage or other charge], which was registered against the title to the Land in the Victoria Land Title Office under number [insert registration number] (the "Prior Charge");
- C. The Owner granted to the Island Local Trust Committee (the "Subsequent Chargeholder") a Section 219 Covenant which is registered against the title to the Land under number [insert registration number] (the "Subsequent Charge"); and
- D. Section 207 of the *Land Title Act* permits the Prior Chargeholder to grant priority over a charge to a subsequent chargeholder.

THEREFORE THIS CONSENT AND PRIORITY AGREEMENT WITNESSES THAT IN CONSIDERATION OF \$1.00 AND OTHER GOOD AND VALUABLE CONSIDERATION RECEIVED BY THE PRIOR CHARGEHOLDER FROM THE SUBSEQUENT CHARGEHOLDER (THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED):

1. The Prior Chargeholder hereby consents to the granting and registration of the Subsequent Charge and the Prior Chargeholder hereby agrees that the Subsequent Charge shall be binding upon its interest in and to the Land.
2. The Prior Chargeholder hereby grants to the Subsequent Chargeholder priority for the Subsequent Charge over the Prior Chargeholder's right, title and interest in and to the Land, and the Prior Chargeholder does hereby postpone the Prior Charge and all of its right, title and interest thereunder to the Subsequent Charge as if the Subsequent Charge had been executed, delivered and registered prior to the execution, delivery and registration of the Prior Charge.

As evidence of its agreement to be bound by the above terms of this Consent and Priority Agreement, the Prior Chargeholder has executed and delivered Part 1 of *Land Title Act* Form C which is attached hereto and forms part of this Agreement.

SCHEDULE A

Site Plan

