

FORM C

(Section 233)

Province of
British Columbia

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office Use)

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

BULL, HOUSSER & TUPPER LLP,
Barristers & Solicitors, 3000 - 1055 West Georgia Street,
Vancouver, British Columbia,
V6E 3R3 604.687.6575 (File No. 06-1650)
(LTO Client No. 11299) (Development)

Per: _____

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*

(PID) (LEGAL DESCRIPTION)

SEE SCHEDULE

3. NATURE OF INTEREST:*

DESCRIPTION

DOCUMENT REFERENCE
(page and paragraph)

PERSON ENTITLED TO INTEREST

Section 219 Covenant

Entire Document

Transferee

4. TERMS: Part 2 of this instrument consists of (select one only):

- (a) Filed Standard Charge Terms [] D.F. Number:
- (b) Express Charge Terms [X] Annexed as Part 2
- (c) Release [] There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S):*

PORPOISE BAY DEVELOPMENTS LTD. (Inc. No. 63590A)

6. TRANSFEREE(S): (including postal address(es) and postal code(s))*

THE CORPORATION OF THE DISTRICT OF SECHLT, a municipality incorporated pursuant to the *Local Government Act*, having its postal address at P.O. Box 129, Sechelt, British Columbia, V0N 3A0

7. ADDITIONAL OR MODIFIED TERMS:**

N/A

8. EXECUTION(S):** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

EXECUTION DATE

Party(ies) Signature(s)

Y	M	D
08		

PORPOISE BAY DEVELOPMENTS LTD.
by its authorized signatory(ies):

Name: _____

Name: _____

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

Officer Signature(s)

(as to both signatures)

EXECUTION DATE

Y	M	D
08		

Party(ies) Signature(s)

**THE CORPORATION OF THE DISTRICT
OF SEHELDT** by its authorized
signatories:

Name:

Name:

DRAFT

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT

FORM E

SCHEDULE

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL INSTRUMENT FORM

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*

<i>(PID)</i>	<i>(LEGAL DESCRIPTION)</i>
025-624-776	Lot 1 District Lots 1557 and 7903 Group 1 NWD Plan BCP4625
023-399-651	Lot B Block 1 District Lot 1557 Group 1 NWD Plan LMP27859
023-399-660	Lot C Block 1 District Lot 1557 Group 1 NWD Plan LMP27859
023-399-678	Lot D Block 1 District Lot 1557 Group 1 NWD Plan LMP27859
013-657-925	District Lot 4682 Group 1 New Westminster District
015-853-314	District Lot 4683 Group 1 New Westminster District
015-853-322	District Lot 4684 Group 1 New Westminster District
015-853-331	District Lot 4685 Group 1 New Westminster District
015-853-357	District Lot 4686 Group 1 New Westminster District
015-853-381	District Lot 4687 Group 1 New Westminster District

DRAFT

Terms of Instrument – Part 2

Whereas:

- A. It is understood and agreed that this instrument shall be read as follows:
 - (a) The transferor, Porpoise Bay Developments Ltd., is called the “Owner”; and
 - (b) The transferee, District of Sechelt, is called the “District”.
- B. The Owner is the registered owner of the Lands.
- C. The Owner has prepared a comprehensive development plan for a master plan golf course community including an eighteen (18) hole golf course complete with clubhouse facilities, a one hundred and twenty (120) room lodge/hotel with convention facilities, three thousand (3000) square metres of commercial/ retail space and sixteen hundred (1600) dwelling units in single, duplex and multi-family configurations on the Lands.
- D. The Owner wishes to develop the Project on the Lands.
- E. The Owner has agreed to provide and contribute to improvements to the District’s transportation, utility and recreational infrastructure.
- F. The Owner has applied to the District for amendments to the District’s official community plan and zoning bylaw to permit the Project to be developed on the Lands.
- G. As a condition of the enactment of the OCP Amendment Bylaw and the Rezoning Bylaw the Owner is required to grant the District this covenant and the Owner has agreed to do so.
- H. Section 219 of the *Land Title Act*, RSBC 1996 Chapter 250 permits registration of a covenant in favour of a municipality in respect of the use of land or the use of a building on or to be erected on land and that land is or is not to be built on except in accordance with a covenant and that land is not to be subdivided except in accordance with a covenant.

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) now paid by the District to the Owner and for other good and valuable consideration (the receipt and sufficiency of which the Owner hereby acknowledges) the Owner and the District covenant each with the other as follows:

1. Definitions

In this Agreement:

“**Approving Officer**” means the person acting as the approving officer for the District under the *Land Title Act*, RSBC 1996 Chapter 250 as amended and any employee of the District acting, or who has acted, as the nominee, delegate or agent of that person in connection with this Agreement;

“**Arborist**” means a person certified as an arborist by the International Society of Arboriculture;

“**CDP**” means the Comprehensive Development Plan attached as Schedule 1;

“**Conservation Area**” means those areas of the Lands which are:

- (i) 15 metres on either side of Sechelt Inlet Road; and
- (ii) 15 metres from the top of bank on either side of Angus Creek and Shannon Creek;

“**Design Approval Process**” means the process described in Schedule 2;

“**Design Guidelines**” means the Design Guidelines attached as Schedule 3;

“**Developable Lots**” means Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 20, 21, 22, 24, 26, 29, 32, 34, 35, 36 and 42;

“**District Site**” means Lot 38;

“**District Site Transfer**” means documents in registrable form transferring Lot 38 to the District free and clear of all encumbrances;

“**Dwelling Unit**” means a dwelling unit as defined in the Zoning Bylaw;

“**Easement Agreement**” means an easement, statutory right-of-way and Section 219 Covenant regarding construction and maintenance of and access to private roads and the Private Sewer System as described in Section 4, both situated on the Lands in form and substance acceptable to the District;

“**Further Agreements**” means every agreement (servicing and otherwise) Section 219 Covenant, statutory right of way and easement as may be required by the Approving Officer or by the District with respect to the Project in form and substance acceptable to the Approving Officer and the District as the case may be;

“**General Access SRW**” means an agreement in substantially in the form attached as Schedule 4;

“**Golf Course Clubhouse**” means the clubhouse facilities to be constructed on Lot 21;

“**Golf Course Lands**” means Lots 33 and 40;

“**Golf Course Works**” means the construction of an eighteen (18) hole golf course and driving range on the Golf Course Lands;

“**Hotel/Lodge**” means the hotel and lodge facilities to be constructed on Lot 20;

“**Initial Subdivision Plan**” means the initial Subdivision Plan in respect of the Lands, a reduced copy of which is attached as Schedule 5;

“**Lands**” means the lands and premises legally described in Item 2 of the Form C General Instrument Part 1 to which these Terms of Instrument are attached;

“**Land Title Act**” means *Land Title Act* R.S.B.C. 1996 Ch 250 as amended from time to time

“**Layout Plan**” means the future plan of subdivision for the Lands a reduced copy of which is attached as Schedule 6;

“**Lot**” means any one of the lots described on the Initial Subdivision Plan and any subdivided portion thereof;

“**LTO**” means the Vancouver/New Westminster Land Title Office;

“**OCP Amendment Bylaw**” means the official community plan amendment bylaw applicable to the Lands described as OCP Amendment Bylaw 435-7, 2006;

“**Open Space Covenant**” means an agreement in substantially the form attached as Schedule 7;

“**Project**” means the development of a residential golf course resort neighbourhood consisting of a golf course, driving range and club house along with 1600 residential dwelling units, 3000 square metres of commercial land use, a waterfront park and a lodge and convention centre with pier and associated temporary moorage generally as described in the CDP to be developed together with off-site services described more particularly in this Agreement;

“**Rezoning Bylaw**” means the rezoning bylaws applicable to the Lands described as Zoning Bylaw Amendment Bylaw 25-195 (CD-13), 2006 and Zoning Bylaw Amendment Bylaw 25-195-1 (CD-13), 2007;

“**Section 219 Covenant**” means a Covenant pursuant to Section 219 of the *Land Title Act* of British Columbia as amended from time to time;

“**Strata Property Act**” means the *Strata Property Act* S.B.C. 1998 Ch 43 as amended from time to time;

“**Subdivision Plan**” means a plan of subdivision under the *Land Title Act* or the *Strata Property Act*;

“**Trail SRW**” means an agreement in substantially the form attached as Schedule 8;

“**Utilities**” means the water, sanitary sewer, storm sewer, waste water treatment systems, gas, electricity, telephone, cable and similar systems servicing the Lands;

“**Works**” means the works and services described in the Works Servicing Agreement;

“**Works Servicing Agreement**” means an agreement in substantially the form attached as Schedule 9; and

“**Zoning Bylaw**” means Zoning Bylaw 25,1987 as amended from time to time;

2. Deleted

3. SECTION 219 COVENANT

3.1 The Owner hereby covenants and agrees with the District, as a covenant in favour of the District pursuant to Section 219 of the *Land Title Act*, R.S.B.C. 1996, C.250, it being the intention and agreement of the Owner that the provisions hereof be annexed to, and run with and be a charge upon the Lands, that the Lands shall be used, built and built on only in strict compliance with the terms and conditions of this Agreement and that:

- (a) all residential buildings constructed on the Lands will be constructed in compliance with the Design Guidelines and in accordance with the Design Approval Process;
- (b) all residential buildings constructed on the Lands will contain fully functional and operating sprinkler systems appropriate for the size of the residential building;
- (c) no building in excess of 6 storeys will be constructed on the Lands unless the Fire Department serving the District has sufficient capability, as determined in the sole discretion of the District, to respond to fires in buildings defined as tall buildings in the *National Fire Protection Act*;
- (d) the Owner shall protect, preserve, conserve, maintain and keep the Conservation Area in its natural or existing state;
- (e) the Owner shall not suffer, cause or permit the Conservation Area to be occupied or used for any purpose;

- (f) the Owner shall not suffer, cause or permit any buildings or structures to be constructed within the Conservation Area and the District may withhold permits for same;
- (g) the Owner shall not cut, trim, prune, damage, defoliate or remove trees or vegetation within the Conservation Area unless such trees or vegetation have been certified by an Arborist to be diseased or to pose a threat to the safety of persons or property or unless prior written permission is received from the District;
- (h) the Owner shall not excavate or remove soil within or from the Conservation Area unless prior written permission is received from the District;
- (i) the Owner shall not place within or upon the Conservation Area fill, soil, rock, rubbish, ashes, garbage waste or other material not naturally occurring within or upon the Conservation Area unless prior written permission is received from the District;
- (j) notwithstanding Sections 3(1)(d) to (i), the Owner will not be prohibited, prevented or restricted from:
 - (i) pruning, trimming, cutting, harvesting or removing from the Conservation Area, trees or vegetation which have been certified by an Arborist to be diseased or to pose a threat to the safety of persons or property;
 - (ii) constructing buildings and structures within the Conservation Area that will enhance the use of the Conservation Area as a wildlife refuge, ecological reserve, nature sanctuary or for research or educational purposes, where such buildings and structures are approved in writing by the District prior to the commencement of any excavation or construction; and
 - (iii) carrying out such other works within the Conservation Area as may be approved in writing by the District from time to time;
- (k) no buildings and structures shall be constructed on the Lands until all applicable fees and charges in respect of the rezoning, subdivision and development of the Lands have been paid to the District. The District may withhold permits in respect of such buildings and structures until such fees, charges including development cost charges have been paid. The Owner and the District acknowledge and agree that no Development Cost Charges are payable upon the filing of the Initial Subdivision Plan;
- (l) the Lands and any buildings and structures constructed thereon shall be developed, built and the design of the buildings and structures maintained in

accordance with all District bylaws, regulations, permits and guidelines as amended from time to time;

- (m) notwithstanding the District's approval of the Project, all design and construction responsibility and supervisory responsibility with respect to the construction of the buildings and structures on the Lands shall remain exclusively with the Owner and no such responsibility shall rest with the District;
- (n) the Owner shall not suffer, cause or permit the construction of more than sixteen hundred (1600) Dwelling Units on the Lands. Upon the subdivision of the Lands the sixteen hundred (1600) Dwelling Units may be allocated amongst the Developable Lots and any subdivided portion thereof at the discretion of the Owner provided that at least one (1) Dwelling Unit shall be constructed or shall be capable of being constructed on each Developable Lot and any subdivided portion thereof. The Owner will not suffer, cause or permit an application to be submitted to the District to construct one (1) or more Dwelling Units on the Developable Lots or any subdivided portion thereof which will result in the incapability of construction of at least one (1) Dwelling Unit on one or more Developable Lots and the District may refuse to issue any permits in respect thereof.
- (o) the Owner shall not suffer, cause or permit an application to be submitted to the District, to construct one (1) or more Dwelling Units, buildings or structures on the Lands unless:
 - (i) the Initial Subdivision Plan, the Works Servicing Agreement, the Easement Agreement, the General Access SRW, the Open Space Covenant and the Trail SRW have been registered in the LTO and the District Site Transfer has been delivered to the District;
 - (ii) the final engineering plans, drawings and specifications of the Works have been accepted by the District in accordance with the Works Servicing Agreement;
 - (iii) the District is satisfied that there are adequate Utilities to service the proposed Dwelling Units, buildings or structures; and
 - (iv) the District is satisfied that the municipal and private road systems providing access to and from the proposed Dwelling Units are adequate to service the proposed Dwelling Units, buildings or structures;

and the District may refuse to issue any permits in respect thereof;

- (p) the Owner shall not suffer, cause or permit any excavation of Lot 24 or any application to construct buildings or structures on Lot 24 to be submitted to the District and the District may refuse to issue any permits in respect thereof and the

Owner shall not suffer, cause or permit Lot 24 to be occupied or used for any purpose unless:

- (i) Lot 24 has been subdivided pursuant to the *Strata Property Act* to create lots in the general locations shown outlined in bold on Schedule 10 to permit the construction of single family and two family dwellings on those lots; and
 - (ii) Further Agreements have been executed by the Owner and delivered to the District and, if required registered in the LTO, with respect to the provision of on-site services for Lot 24 including those in respect of Utilities, road access and open space and maintenance of roads and open space;
- (q) the Owner shall not suffer, cause or permit any excavation of Lot 36 or any application to construct buildings or structures on Lot 36 to be submitted to the District and the District may refuse to issue permits in respect thereof and the Owner shall not suffer, cause or permit Lot 36 to be occupied for any purpose unless:
- (i) Lot 36 has been subdivided pursuant to the *Land Title Act* or the *Strata Property Act* to create lots in the general locations outlined in bold on Schedule 11 to permit the construction of single family and two family dwellings on the proposed lots; and
 - (ii) Further Agreements have been executed by the Owner and delivered to the District and, if required registered in the LTO, with respect to the provision of on-site services for Lot 36 including those in respect of Utilities and road access and maintenance of roads;
- (r) the Owner shall not suffer, cause or permit any excavation of Lot 34 or any application to construct buildings or structures on Lot 34 to be submitted to the District and the District may refuse to issue permits in respect thereof and the Owner shall not suffer, cause or permit Lot 34 to be occupied for any purpose unless:
- (i) Lot 34 has been subdivided pursuant to the *Land Title Act* or the *Strata Property Act* to create lots in the general locations outlined in bold on Schedule 12 to permit the construction of single family and two family dwellings on the proposed lots; and
 - (ii) Further Agreements have been executed by the Owner and delivered to the District and, if required registered in the LTO, with respect to the provision of on-site services for Lot 34 including those in respect of Utilities and road access and maintenance of roads;

- (s) in addition to the requirement of Sections 3.1(a) to (r) the Lands shall be used and built on in compliance with the provisions of the CDP. If there is conflict between the terms of the CDP and the terms of this Agreement the more restrictive terms will apply;
- (t) all private roads and public parks situated on the Lands shall be maintained by the Owner to a standard acceptable to the District Engineer acting reasonably or to such higher standard as the Owner may determine; and
- (u) the Owner acknowledges and agrees that there is currently insufficient capacity in the District's sanitary sewer system to service the Project. Accordingly, the Owner covenants and agrees to:
 - (i) not connect more than five hundred and seventy-five (575) Dwelling Units to the District's existing sanitary sewer system; and
 - (ii) construct, install and maintain at its sole cost and expense sanitary sewer services adequate to service the Project, including or excluding the Dwelling Units described in (a) above (the "Private Sewer System") which Private Sewer System shall be separate and apart from the District's sanitary sewer system.

4. In recognition of the lack of capacity in the District's sanitary sewer system the Owner shall, upon the filing for registration of the Initial Subdivision Plan, deliver to the District the sum of eight million (\$8,000,000.00) dollars ("Sewer Contribution") which shall be used by the District for construction of a new sewage treatment system.

Upon completion of the new sewage treatment system, the Owner may at its sole discretion, cost and expense connect all or part of the Project to the District's new sanitary sewer system and upon connection the Owner's obligation to construct, install and maintain the Private Sewer System shall be discharged from those Lots so connected to the District's sanitary sewer system.

5. The Owner hereby releases and forever discharges the District from and against all manner of claims, actions, causes of actions, suits and demands whatsoever at law or in equity the Owner may at any time have by reason of or in connection with or arising directly or indirectly from this Agreement excluding those arising from the negligent acts or omissions of the District.

6. The Owner shall do or cause to be done at its expense all acts reasonably necessary for the District to gain priority for this Agreement and all documents including Further Agreements

which require registration, over all liens, charges and encumbrances which are or may be registered against the Lands save and except those in favour of the District and those specifically approved in writing by the District.

7. Nothing contained or implied herein shall prejudice or affect the rights and powers of the District or the Approving Officer in the exercise of its or his functions under any public and private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the obligations of the Owner under this Agreement shall be subject to such public and private statutes, bylaws, orders and regulations in force from time to time.

8. The Owner covenants and agrees that in addition to any remedies which are available under this Agreement or at law, the District will be entitled to all equitable remedies, including specific performance, injunction and declaratory relief, or any combination thereof, to enforce its rights under this Agreement. The Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a default by the Owner under this Agreement.

9. The covenants contained in this Agreement shall enure to the benefit of and be binding upon the District and its successors and assigns and shall enure to the benefit of and be binding upon the Owner and its successors and assigns and shall run with the Lands and enure to the benefit of and be binding upon the Owners successors in title and their respective heirs, executors, administrators, trustees and successors. Every reference to the parties is deemed to include the successors and assigns of the parties.

10. Wherever the singular or masculine is used herein the same should be construed as meaning the plural, feminine or the body corporate or politic where the context or the parties so require.

11. If any section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not effect the validity of the remainder of this Agreement.

12. The parties hereto shall do and cause to be done all things and execute and cause to be executed all documents which may be necessary to give proper effect to the intention of this Agreement.

IN WITNESS OF THIS AGREEMENT the parties have executed this Agreement by signing the Form C – General Instrument – Part 1 or Form D – Executions Continued attached hereto.