

## SCHEDULE 7

## Open Space Covenant

LAND TITLE ACT

## FORM C

(Section 233)

Province of  
British Columbia

## GENERAL INSTRUMENT - PART 1

(This area for Land Title Office Use)

PAGE 1 of 10 pages

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 (LTO File No. 11299) (File No. 07-1688) (Open Space Conservation Covenant)

Per:

\_\_\_\_\_  
Brian Taylor, Solicitor

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

(PID)

(LEGAL DESCRIPTION)

NO PID

3. NATURE OF INTEREST:\*

DESCRIPTION

DOCUMENT REFERENCE  
(page and paragraph)

PERSON ENTITLED TO INTEREST

Section 219 Covenant

Pages 4 &amp; 5, Section 2

Transferee

Statutory Right of Way

Page 5, Section 4

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), 1170 – 1040 West Georgia Street, Vancouver, B.C. V6E 4H1

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

**THE CORPORATION OF THE DISTRICT OF SECHLT**, a municipal corporation pursuant to the *Local Government Act* and having its offices at 5797 Cowrie Street, Sechelt, B.C. V0N 3A0

7. ADDITIONAL OR MODIFIED TERMS:\*

N/A

**GENERAL INSTRUMENT**

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)

\_\_\_\_\_  
Name:

2008

**PORPOISE BAY DEVELOPMENTS LTD.** by its authorized signatories:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

(as to both signatures)

\_\_\_\_\_  
Name:

2008

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

\_\_\_\_\_  
Mayor: Cameron Reid

\_\_\_\_\_  
Clerk: Bill Brown

(as to both signatures)

**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.

**TERMS OF INSTRUMENT – PART 2**

**CONSERVATION COVENANT**

THIS AGREEMENT, dated for reference the \_\_\_\_ day of \_\_\_\_\_, 2008

**BETWEEN:**

**PORPOISE BAY DEVELOPMENTS LTD.** (Inc. No. 63590A)  
of 1170 – 1040 West Georgia Street  
Vancouver, B.C. V6E 4H1

(the “Owner”)

**AND:**

**THE CORPORATION OF THE DISTRICT OF SECHELT**, a municipal  
corporation pursuant to the *Local Government Act* and having its offices at 5797  
Cowrie Street, Sechelt, B.C. V0N 3A0

(the “District”)

**WHEREAS:**

**A. It is understood and agreed that this Instrument shall be read as follows:**

1. The Transferor, Porpoise Bay Developments Ltd. is called the “Owner”; and
2. The Transferee, The Corporation of the District of Sechelt, is called the “District” when referring to the corporate entity and “District of Sechelt” when referring to geographical location.

B. The Owner is the registered owner of the Lands;

C. The Owner and the District wish to conserve and enhance the natural state of a portion of the Lands and provide limited access thereto to the District and the public;

D. The Owner has agreed to grant to the District a statutory right of way on, over, along and under that portion of the Lands containing \_\_\_\_ square metres and shown within heavy black outline on Explanatory Plan of Statutory Right of Way deposited in the Vancouver/New Westminster Land Title Office under BCP\_\_\_\_\_, a reduced print of which is attached as Schedule “A” (herein called the “Right of Way Area”) to permit the District to make use of the Right of Way Area for access purposes;

- E. Section 219 of the *Land Title Act*, R.S.B.C. 1996, C.250, permits registration of a covenant in favour of a municipality in respect of the use of land and that land is or is not to be built on except in accordance with the covenant;
- F. Section 218 of the *Land Title Act*, R.S.B.C. 1996, C.250, provides that a person may and shall be deemed to always to have been able to create by grant or otherwise in favour of a municipality, an easement, without a dominant tenement, to be known as a statutory right of way, for the purposes necessary for the operation and maintenance of such municipality's undertaking; and
- G. The Section 219 Covenant and Statutory Right of Way are necessary for the operation and maintenance of the District's undertaking.**

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises, covenants and agreements herein contained and the sum of ten dollars (\$10.00) now paid by the District to the Owner, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the Owner), the parties hereto hereby covenant and agree as follows:

## 1. DEFINITIONS

- (a) "**Arborist**" means a person certified as an arborist by the International Society of Arboriculture;
- (b) "**District Engineer**" means the chief administrator of the engineering department of the District and his successors in function and their respective nominees;
- (c) "**Lands**" means those lands and premises legally described in Item 2 of the Form C General Instrument Part 1 to which these Terms of Instrument are attached; and
- (d) "**Right of Way Area**" means that portion of the Lands shown outlined in bold and hatched on Statutory Right of Way Plan No. \_\_\_\_\_ a reduced copy of which is attached as Schedule "A" to this Agreement;
- (e) "**Trail Works**" means the trails described in Section 2(a) herein.

## 2. SECTION 219 COVENANT

- 2.1** Pursuant to Section 219 of the *Land Title Act* R.S.B.C. 1996, c. 250, the Owner covenants and agrees with the District that the Lands will be used in accordance with the terms of this agreement, as follows:
- (a) the Owner shall, on or before five (5) years from the date of this Agreement, construct in the Right of Way Area trails to the satisfaction of the District Engineer acting reasonably which are suitable for public access;
  - (b) the Owner will not at any time, without the written consent of the District Engineer acting reasonably, maintain any embankment or fill, any improvement, building, structure or

works of any kind whatsoever except the Trail Works or plant or maintain any trees, shrubs or other vegetation whatsoever on any portion of the Right of Way Area;

- (c) the Owner will not at any time, do or permit to be done, any act or thing on the Lands which in the opinion of the District Engineer acting reasonably will interfere with, injure, impair the operating efficiency of, obstruct access to or interfere with the use of the Right of Way Area or any part thereof or interfere with or impair the ability to undertake the Works and Actions.
- (d) except as expressly permitted in this Agreement:
  - (i) the Owner shall protect, preserve, conserve, maintain and keep the Right of Way Area in its natural or existing state;
  - (ii) the Owner shall not suffer, cause or permit the Right of Way Area to be occupied or used for any purpose except as permitted in this Agreement;
  - (iii) the Owner shall not suffer, cause or permit any buildings or structures to be constructed within the Right of Way Area or any subdivided portion thereof and the District may withhold permits for same;
  - (iv) the Owner shall not cut, trim, prune, damage, defoliate or remove trees or vegetation within the Right of Way 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;
  - (v) the Owner shall not excavate or remove soil within or from the Right of Way Area unless prior written permission is received from the District; and
  - (vi) the Owner shall not place within or upon the Right of Way Area fill, soil, rock, rubbish, ashes, garbage waste or other material not naturally occurring within or upon the Right of Way Area unless prior written permission is received from the District.

In the event of a default by the Owner of any of its obligations hereunder the District, in addition to any other right or remedies secured to the District by this agreement, shall have the right, but shall not be obligated, to exercise the rights set out in Section 7.

### **3. COVENANT EXCEPTIONS**

3. Notwithstanding Section 2, the District covenants and agrees that the Owner will not be prohibited, prevented or restricted from:

- (a) pruning, trimming, cutting, harvesting or removing from the Right of Way 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;

- (b) constructing buildings and structures within the Right of Way Area that will enhance the use of the Right of Way 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
- (c) carrying out such other works within the Right of Way Area as may be approved in writing by the District from time to time.

#### 4. GRANT OF STATUTORY RIGHT OF WAY

Pursuant to Section 218 of the *Land Title Act* R.S.B.C. 1996, c. 250 the Owner hereby grants:

- (a) to the District and its servants, agents, contractors, officials, workmen, permittees, licensees, and invitees, in perpetuity, the full, free and uninterrupted right, liberty, license, privilege, easement and statutory right of way to, at all times hereafter and by day and by night, at their will and pleasure:
  - (i) enter, labour, go, be, return, pass and repass in, on, over and under the Right of Way Area, with or without workers, vehicles, equipment and supplies, dig up the soil thereof, and place fill, earth, sand and gravel thereon, in order to maintain the Right of Way Area and the Works or remedy any default by the Owner of its obligations hereunder;
  - (ii) clear the Right of Way Area and keep the Right of Way Area clear of anything which, in the opinion of the District, constitutes or may constitute danger to, or obstruction of, the use of the Right of Way Area or the Works under and in accordance with the Agreement;
  - (iii) use the Right of Way Area to exercise, enforce and take the benefit of such by-laws, statutes and laws as could be exercised, enforced and taken the benefit of, if the Right of Way Area was a dedicated street or lane in the District of Sechelt;
  - (iv) do all acts which in the opinion of the District are incidental to the foregoing; and  
(the "Works")
- (b) to the District and its permittees, (including the general public, if and for so long as and on such conditions as the District Engineer may allow as to the whole or any portion of the Right of Way Area) the full, free and uninterrupted right of passage, to at all times hereafter, by day and by night, at their will and pleasure enter, go, be, return, pass, and repass on, over and along the Right of Way Area on foot and by wheelchairs, strollers and other conveyances lawfully used on public highways in the District of Sechelt.  
  
(collectively the "Works and Actions");

To have and to hold the same unto the District from and after the date hereof and until discharged by the District.

**5. DISCHARGE AT OPTION OF THE DISTRICT**

All the rights, privileges, easements and statutory rights of way hereby granted shall exist and continue unless and until discharged by the District, and the District shall have the right unilaterally to do so, and in such case the District shall execute a registrable discharge for removal of the interests in land created hereby from the title of the Lands.

**6. DISTRICT NOT REQUIRED TO DO WORK**

Nothing shall obligate the District to construct, inspect, install, keep, use, remove, operate, maintain, repair, reconstruct or replace any work, constructed pursuant to Section 1 (b) or any of them or any public work or utility whatsoever on the Right of Way Area or any portion thereof.

**7. DISTRICT MAY PERFORM OWNER'S OBLIGATIONS**

If the Owner fails to perform, or cause the performance of, its obligations herein contained, the District may, upon giving to the Owner two (2) days written notice, or immediately in the case of an emergency, perform such obligations, for and on behalf of and at the sole cost and expense of the Owner. The Owner shall pay on written demand the costs and expenses incurred by the District, including the District's normal overhead charges, not to exceed twenty percent (20%), for such obligations performed by the District, its servants, contractors, subcontractors and agents which costs and charges shall be and remain at all times a charge upon and against the Lands. The District shall be under no obligation or duty to perform the obligations of the Owner that the Owner does not perform.

**8. INDEMNITY**

The Owner hereby covenants and agrees to indemnify and save harmless the District, its officers, employees, servants and agents from all damages, costs, claims, demands, suits, losses, expenses, causes of action and judgments that arise out of, relate in any way to, are by reason of or that would not or could not exist, be made, be suffered or exist "but for" or are contributed to by:

- (a) the design or construction activities of the Owner or its agents, contractors or subcontractors in respect of or in relation to any work, constructed on the Right of Way Area pursuant to Section 2(a), (b), (d)(iv), d(v) and d(vi), 3(a), (b) and (c); or
- (b) any breach by the Owner of any of its obligations hereunder,

provided however that this indemnity shall not apply if and to the extent that such damages, costs, losses or expenses are caused by negligence on the part of the District, its officers, employees, servants, agents, or those for whom the District is at law responsible in the course of their employment by the District, excluding from such exception, for certainty, the negligent acts and omissions of any other person using the Right of Way Area or the Works or any portion thereof.

## **9. RELEASE**

The Owner does hereby release and discharge the District from any and all actions, causes of action, suits and demands whatsoever and whether at law or in equity or otherwise arising which the Owner may at any time have by reason of the exercise of the rights granted to the District hereunder save and except for the negligent acts or omissions of the District, its officers, employees, servants and agents or those for whom the District is responsible in the course of their employment by the District, excluding from such exceptions for certainty, the negligent acts and omissions of any other person using the Right of Way Area or the Works or any portion thereof.

## **10. WORKS PROPERTY OF DISTRICT**

Despite any rule or law to the contrary any works installed by or on the behalf of the District in the Right of Way Area, shall at all times be and remain the property of the District even if affixed to the Lands and shall at all times and from time to time be removable by the District in its sole discretion.

## **11. DISTRICT MAY DESIGNATE**

The District may from time to time designate licensees and permittees for any and all purposes connected with this Instrument and the use of the rights granted hereunder and may assign all or part of its rights hereunder from time to time and at any time.

Where any employee, official or officer of the District is named in this Instrument the District may designate another employee, official or officer or an agent to act in the stead of the employee, official or officer of the District who is named in this Instrument.

## **12. NO DEROGATION**

Nothing contained or implied herein shall derogate from the obligations of the Owner under any other agreement with the District or, if the District so elects, prejudice or affect the District's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Community Charter and Local Government Act*, or any other Act of the legislature of British Columbia, as amended from time to time and the rights, powers, duties and obligations of the District under all public and private statutes, bylaws, orders and regulations, all of which may be, if the District so elects, as fully and effectively exercised in relation to the Lands and the Right of Way Area as if this agreement had not been executed and delivered by the Owner and the District.

## **13. EFFECT OF TRANSFER**

The parties agree that neither the Owner nor any successor in title to the Lands shall be liable for breaches of or non-observance or non-performance of covenants herein occurring as the same relate to any portion of the Right of Way Area after ceasing to be the registered owner of such portion, but the Owner or its successors in title, as the case may be, shall remain liable after ceasing to be the registered owner of any portion of the Right of Way Area for all breaches of and non-observance and non-performance of covenants herein as the same relate to such portion that occurred prior to the Owner or any successor in title, as the case may be, ceasing to be the registered owner of such portion.

**14. RIGHTS PERPETUAL**

The statutory rights of way and covenants under Sections 218 and 219 of the *Land Title Act* created hereby shall run with and bind the Lands in perpetuity.

**15. ENURANCE**

The covenants contained in this agreement shall enure to the benefit of and be binding upon the District and its successors and assigns and it shall enure to the benefit of and be binding upon the Owner and its successors and assigns and shall run with the land and enure to the benefit of and be binding upon the Owner's 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.

**16. PRIORITY**

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 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.

**17. SEVERANCE**

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 affect the validity of the remainder of this agreement.

**18. INTERPRETATION**

Whenever the singular or masculine is used in this Agreement, the same is deemed to include the plural, or the feminine or the body politic or corporate wherever the context or parties hereto so requires.

**19. GOVERNING LAW**

This agreement shall be governed and construed in accordance with the laws of the Province of British Columbia.

**20. REFERENCE DATE**

This Agreement is dated for reference the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**SCHEDULE "A"**  
**STATUTORY RIGHT OF WAY PLAN**

**DRAFT**

**END OF DOCUMENT**