

**SCHEDULE 8**

**Trail Statutory Right of Way**

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 11 pages

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

BULL, HOUSSEY & TUPPER LLP, Barristers & Solicitors, 3000 - 1055 West Georgia Street, Vancouver, British Columbia, V6E 3R3 687-6575 (File No. 05-2793) LTO Client No. 11299 (Trail)

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

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
Statutory Right of Way over _____ m <sup>2</sup> portion shown on Plan _____	Section 2, pages 5 and 6	Transferee
Section 219 Covenant	Section 1, page 5	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) of 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 SEHELDT** a municipal corporation under the *Local Government Act* having its offices and postal address at 15797 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.

<p>Officer Signature(s)</p>  <p>_____</p> <p>Name:</p>  <p>(as to both signatures)</p> <p>_____</p> <p>Name:</p>  <p>(as to both signatures)</p>	<p>EXECUTION DATE</p> <table border="1" style="width: 100%; height: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; text-align: center; vertical-align: top;">Y</td> <td style="width: 33%; text-align: center; vertical-align: top;">M</td> <td style="width: 33%; text-align: center; vertical-align: top;">D</td> </tr> </table>	Y	M	D	<p>Party(ies) Signature(s)</p>  <p><b>PORPOISE BAY DEVELOPMENTS LTD.</b> by its authorized signatory(ies):</p> <p>_____</p> <p>Name:</p> <p>_____</p> <p>Name:</p>  <p><b>THE CORPORATION OF THE DISTRICT OF SEHELDT</b> by its authorized signatory(ies):</p> <p>_____</p> <p>Name: Cameron Reid, Mayor</p> <p>_____</p> <p>Name: Bill Brown, District Clerk</p>
Y	M	D			

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**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 E**

**SCHEDULE**

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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:\*
- |       |                     |
|-------|---------------------|
| (PID) | (LEGAL DESCRIPTION) |
|-------|---------------------|

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**TERMS OF INSTRUMENT – PART 2**

**STATUTORY RIGHT OF WAY**

THIS AGREEMENT made as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_

BETWEEN:

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

(herein called the “Owner”)

OF THE FIRST PART

AND:

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

(herein called the “District”)

OF THE SECOND PART

WHEREAS:

- A. 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, District of Sechelt, is called the “District” when referring to the corporate entity and “District of Sechelt” when referring to geographic location;
- B. The Owner is the registered owner of the Lands;
- C. 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 the 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 hereto 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;
- D. 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 or maintenance of such municipality's undertaking.

- E. Section 219 of the *Land Title Act* R.S.B.C. 1996, c.250 permits registration of a covenant in favour a municipality in respect of the use of land and that land is or is not to be built on or is or is not to be subdivided except in accordance with the covenant.
- F. The Statutory Right of Way and Section 219 covenant 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. SECTION 219 COVENANT**

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 a trail to the satisfaction of the District Engineer acting reasonably which is 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; and
- (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.

In the event of a default by the Owner of any its obligations hereunder the District, in addition to any other right or remedy secured by the District by this Agreement, shall have the right, but shall not be obligated, to exercise the rights set out in Section 6.

## **2. 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.

### **3. RESERVATIONS**

Notwithstanding the easements granted in section 2 herein, there is hereby reserved to the Owner (subject too the restrictions and limitations herein set forth), the right at all times and from time to time:

- (a) to temporarily interrupt the use and enjoyment of the easements by the District on the Lands; if such temporary interruption is reasonably required to facilitate construction or repair on the Lands, provided that such temporary interruption does not constitute a material interference with the easements herein granted,

that such interruption is as short as reasonably possible, and that reasonable notice of the interruption is delivered to the District.

#### **4. 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.

#### **5. 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.

#### **6. 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.

#### **7. 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 1 (a) and (b) ; 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.

## **8. 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.

## **9. 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.

## **10. 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.

## **11. 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.

## **12. 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.

### **13. 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.

### **14. 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.

### **15. 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.

### **16. 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.

### **17. 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.

### **18. GOVERNING LAW**

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

### **19. DEFINITIONS**

**"District Engineer"** means the Chief Administrator of the Engineering Department of the District and his successors in function and their respective nominees;

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

“Trail Works” means the trail described in Section 1(a) herein.

**20. REFERENCE DATE**

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

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

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**END OF DOCUMENT**