

17 AUG 2006 14 59

BA311773

**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)
BARRY D. CHASE, Borden Ladner Gervais LLP, Lawyers • Patent & Trade-mark Agents,
 1200 – 200 Burrard Street, Vancouver, British Columbia, V7X 1T2, (604) 687-5744

Client No. 10439

(File No. 503813/001906)

Agent No. 10440

West Coast
Client # 10350
 for LYA

agent for 
 Signature of Solicitor – Barry D. Chase

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

(PID)

(LEGAL DESCRIPTION)

Block A, District Lot 8073, Group 1, New Westminster District

3. NATURE OF INTEREST: *

DESCRIPTION

DOCUMENT REFERENCE
(page and paragraph)

PERSON ENTITLED TO INTEREST

Section 219 Covenant

Entire Instrument

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 ☒

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): *

RESORT MUNICIPALITY OF WHISTLER
 03 06/08/17 14:57:03 04 LM 726390
 CHARGE \$65.20

6. TRANSFeree(S): (Including postal address(es) and postal code(s))*

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
 represented by the Minister of Agriculture and Lands, Parliament Buildings, Victoria, British Columbia,
 V8V 1X4

7. ADDITIONAL OR MODIFIED TERMS: *

N/A


 2/ cc
 Provincial Covenant

GENERAL INSTRUMENT

Page 2 of 11 pages

8. EXECUTION(S):** The transferor(s) accept(s) the above consideration and understand(s) that this instrument operates to transfer the freehold estate in the land described above to the transferee(s).

Officer Signature(s)



Name: SHARON TAIT
A Commissioner for taking Affidavits for the Province of
BRITISH COLUMBIA

SHARON TAIT, DEPUTY CORPORATE OFFICER

A Commissioner for taking Affidavits
for the Province of British Columbia

4325 Blackcomb Way

Whistler, B.C. V0N 1B4

4325 Blackcomb Way
Whistler B.C. V0N 1B4

(As to both signatures)



Name:

BARBARA LYNN HUDSON

COMMISSIONER FOR TAKING AFFIDAVITS
FOR BRITISH COLUMBIA

SUITE 302 - 10428 - 153rd Street

Surrey, B.C. V3R 1E1

TELEPHONE: (604) 586-2882

(As to both signatures)

Execution Date


Y	M	D
06	08	17
06	07	27

Transferor(s) Signature(s)

**RESORT MUNICIPALITY OF
WHISTLER** by its authorized
signatories:

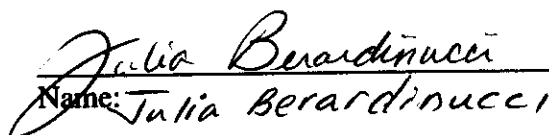


Name: KEN MELAMED Mayor



Name: SHANNON STORY
CORPORATE OFFICER

**HER MAJESTY THE QUEEN IN
RIGHT OF THE PROVINCE OF
BRITISH COLUMBIA**, by the
Minister of Agriculture and Lands or
his or her duly authorized signatories:



Name: Julia Berardinucci

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.

Provincial Covenant

TERMS OF INSTRUMENT - PART 2
SECTION 219 PROVINCIAL COVENANT
(LAND TITLE ACT)

This Agreement is dated for reference August 17, 2006,

BETWEEN:

RESORT MUNICIPALITY OF WHISTLER 4325 Blackcomb
Way, Whistler, British Columbia, V0N 1B4

(the "Owner")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA, represented by the
Minister of Agriculture and Lands, Parliament Buildings, Victoria,
British Columbia, V8V 1X4

(the "Covenantee")

GIVEN THAT:

- A. The Owner has requested that the Covenantee transfer the Land (herein defined) to the Owner for nominal consideration on the strict condition and understanding that it will be used in perpetuity solely for the purpose of providing affordable employee housing and as such will provide a lasting legacy from and in respect of the 2010 Olympic Winter Games;
- B. The Covenantee has agreed to transfer the Land to the Owner on the basis of the foregoing and provided that the Owner grant to the Covenantee a covenant under Section 219 of the *Land Title Act* in order to restrict the use of the Land in perpetuity to affordable employee housing;
- C. The Owner is or will become the registered owner of the Land; and
- D. The Owner has agreed to and wishes to grant the Covenantee a covenant under Section 219 of the *Land Title Act* in order to restrict the use of the Land in perpetuity to affordable employee housing.

In consideration of the payment of \$10.00 by each party to the other and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by both parties), and in consideration of the promises exchanged below, the Owner and the Covenantee covenant and agree as follows and in accordance with Section 219 of the *Land Title Act*:

Definitions

1. In this agreement:
 - (a) "Agreement" means this *Land Title Act* Section 219 Provincial Covenant as may be amended from time to time;
 - (b) "Dwelling Unit" means a residential dwelling unit or units located or to be located on the Land whether those dwelling units are lots, strata lots or parcels, or parts or portions thereof, into which ownership or right of possession or occupation may be subdivided and includes single family detached dwellings, duplexes, townhouses, auxiliary residential dwelling units, rental apartments and strata lots in a building strata plan;
 - (c) "Employee" means an individual either employed or self-employed for an average of not less than 20 hours per week over the most recent twelve months and whose principal place of employment or business during that time is located within the boundaries of the Resort Municipality of Whistler;
 - (d) "Land" means, collectively, the parcels of land in the Resort Municipality of Whistler, British Columbia, legally described as follows:

Block A
District Lot 8073
Group 1
New Westminster District;
 - (e) "LTO" means the New Westminster/Vancouver Land Title Office or its successor;
 - (f) "Municipality" means Resort Municipality of Whistler;
 - (g) "Owner" means the Transferor described in the General Instrument and any subsequent owner of the Land or of any part into which the Land is subdivided, and includes any person who is a registered owner in fee simple of a Dwelling Unit from time to time; and
 - (h) "Retiree" means an individual who has ceased active employment, but who was an Employee for five of the six years immediately preceding the date on which the individual ceased employment.

Interpretation

2. In this Agreement:
 - (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;

- (b) where a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (c) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
- (d) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (e) the word "enactment" has the meaning given to it in the *Interpretation Act*;
- (f) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- (g) reference to a "party" or the "parties" is a reference to a party, or the parties, to this Agreement and their respective successors, assigns, trustees, administrators and receivers; and
- (h) reference to a "day", "month" or "year" is a reference to a calendar day, calendar month, or calendar year, as the case may be, unless otherwise expressly provided.

Intent of the Parties

3. The Owner and Covenantee agree that the intent of this Agreement is:

- (a) to ensure that the Land and any Dwelling Unit or Dwelling Units on the Land will not be used or occupied for a purpose other than affordable employee housing;
- (b) to ensure that each and every Dwelling Unit in, on or over the Land may be occupied only by a person who resides in the Dwelling Unit on a full time basis and who is an Employee or Retiree, or living in the Dwelling Unit with an Employee or Retiree in a single domestic unit and related by blood, marriage, adoption, common law marriage or foster parenthood to the Employee or Retiree, or cohabitating with them in an opposite sex or same sex spousal relationship; and
- (c) that this Agreement is perpetual in view of the public interest in protecting the Land forever for affordable employee housing.

Housing Agreement Requirement

3.1 The Owner covenants and agrees that no portion of the Land shall be used or developed for any purpose except for:

- (a) development and use of temporary accommodation of athletes and other uses associated with the Athletes Village as defined in the Community Land Bank

Agreement dated October 21st, 2005 between the Owner and the Covenantee (the "CLB");

- (b) Temporary Uses as defined in the CLB; or
- (c) site preparation work including, without limitation, tree removal and excavation, and installation of all servicing associated with or necessary for uses described in (a) or (b) or associated with or necessary for the development of Affordable Employee Housing as defined in the CLB;

until the Owner has registered a Housing Agreement, as defined in the CLB, pursuant to s. 905 of the *Local Government Act* and s. 219 of the *Land Title Act* against title to the portion of the Land to be used or developed.

Buildings and Structures on the Land

4. The Owner covenants and agrees that the Land shall not be used for any purpose other than affordable employee housing on the terms of this Agreement and that no building or structure shall be erected or constructed on the Land other than Dwelling Units for use in accordance with this Agreement.

Occupancy

5. The Owner covenants and agrees that each and every Dwelling Unit on the Land shall be occupied only by a person who is an individual who resides in such Dwelling Unit on a full-time basis and who is:

- (a) an Employee;
- (b) a Retiree; or
- (c) living in such Dwelling Unit with an Employee or Retiree in a single domestic unit and related by blood, marriage, adoption, common law marriage or foster parenthood to the Employee or Retiree, or cohabiting with them in an opposite sex or same sex spousal relationship.

Number of Employees or Occupants in a Dwelling Unit

6. The Owner further agrees that the number of Employees or Retirees who permanently reside in the Dwelling Unit must be equal to or less than the number of Employees or Retirees that the Municipality's building inspector determines can reside in the Dwelling Unit given the number and size of bedrooms in the Dwelling Unit and in light of any relevant standards set by the Municipality in any bylaws of the Municipality.

Continuous Use and Occupancy

7. The Owner will ensure that each Dwelling Unit is continuously used and occupied as set out in sections 5 and 6.

New Employees

8. Notwithstanding anything to the contrary contained in this Agreement, if a potential tenant would be an Employee except for the fact that such potential tenant has not resided in Resort Municipality of Whistler over the most recent twelve months, then the Owner may rent the Dwelling Unit to such potential tenant provided that the Dwelling Unit is rented or leased in accordance with all other requirements of this Agreement.

Housing Agreement

9. The Owner covenants and agrees that it will enter into and comply with the terms of an agreement with the Resort Municipality of Whistler under Section 905 of the *Local Government Act* approved in writing by the Covenantor under which agreement the Owner agrees that the Owner must not permit a Dwelling Unit to be occupied as a residence by any person other than an individual who resides in the Dwelling Unit on a full time basis and who is:

- (a) an Employee;
- (b) a Retiree; or
- (c) living in such Dwelling Unit with an Employee or Retiree in a single domestic unit and related by blood, marriage, adoption, common law marriage or foster parenthood to the Employee or Retiree, or cohabiting with them in spousal relationship.

The Owner covenants and agrees with the Covenantor not to modify or discharge such agreement without the prior written consent of the Covenantor in its sole discretion.

The Covenantor acknowledges and agrees that the requirements of this section 9 do not apply to the Resort Municipality of Whistler as the first registered owner of the Land but apply to each subsequent registered owner of the Land.

Statutory Declaration

10. Upon the written request of the Covenantor, the Owner must deliver to Covenantor within three days of receiving the request a statutory declaration substantially in the form attached as Appendix A to this Agreement, sworn by the Owner, under oath containing all of the information required to complete the declaration.

Order to Comply

11. If the Owner is in default of the performance or observance of this Agreement, the Covenantor may give the Owner a notice of default.

Specific Performance of the Agreement

12. The Owner acknowledges and agrees that the provisions of this Agreement are reasonable, necessary and fundamental to the protection of the Covenantor's legitimate interests,

and that breach of those provisions would result in irreparable harm, loss and damage to the Covenantee which may not be adequately remedied by an award of damages. Consequently, the parties agree that, notwithstanding Section 15, in the event of a breach or threatened breach of any provision of this Agreement, in addition to any and all other remedies available at law or in equity or herein, the obligations of the Owner and the rights of the Covenantee shall be enforceable by restraining order, interim, interlocutory or permanent injunction, order for specific performance, or other equitable remedy as may be necessary to ensure the performance of this Agreement, and the Owner further agrees not to oppose the granting of any such relief and hereby waives any and all defences to the strict enforcement of this Agreement and such relief. This section 12 will survive the expiry or termination of this Agreement howsoever caused.

Indemnity

13. The Owner will indemnify and save harmless the Covenantee and each of its elected officials, servants, directors, officers, employees, deputies, delegates, representatives, agents, successors and assigns, and its and their heirs, executors, administrators, personal representatives, successors and assigns from and against all claims, demands, actions, loss, damage, costs and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of:

- (a) any act or omission of the Owner, or its officers, directors, employees, agents, contractors or other persons for whom at law the Owner is responsible;
- (b) the Owner's ownership, lease, operation, management or financing of the Land or any Dwelling Unit; or
- (c) any act or omission of the Covenantee or any of its elected officials, servants, officers, directors, employees, agents, deputies, delegates, representatives, successors and assigns and its and their heirs, executors, administrators, personal representatives, successors and assigns in carrying out or enforcing this Agreement, except where such act or omission constitutes a breach of this Agreement by the Covenantee or by any other person for whom at law the Covenantee is responsible.

The Covenantee acknowledges and agrees that the provisions of this section 13 do not apply to the Resort Municipality of Whistler as the initial Owner but apply to each subsequent registered owner of the Land.

Release

14. The Owner by this Agreement releases and forever discharges the Covenantee and each of its elected officials, servants, officers, directors, employees, agents, deputies, delegates, representatives, successors and assigns, and its and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of advice or direction respecting the ownership, lease, operation or management of the Land or any Dwelling Unit which has been or at any time after the commencement of this Agreement may be given to the Owner by all or any of them.

The Covenantee acknowledges and agrees that the provisions of this section 14 do not apply to the Resort Municipality of Whistler as the initial Owner but apply to each subsequent registered owner of the Land.

Dispute Resolution

15. If there is any dispute between the Owner and the Covenantee regarding the interpretation or enforcement of this Agreement, either party may give notice of dispute to the other. Within 5 days after delivery of such a notice, the parties each must appoint a representative for the purposes of this section. Within 10 days after their appointment, the representatives of the parties must attempt to resolve the matter in dispute, acting reasonably. If the representatives of the parties cannot resolve the matter within that time, either party may refer the matter for arbitration by a single arbitrator appointed and acting under the *Commercial Arbitration Act* (British Columbia). The arbitrator must have the expertise necessary to arbitrate the matter in issue. The arbitrator must issue a decision in respect of the matter within 30 days after his or her appointment. Each party must bear its own costs of the arbitration or as the arbitrator shall otherwise determine.

Owner's Obligations

16. The Covenantee is only liable for breaches of this Agreement caused by the Covenantee. 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. The Owner will not amend or discharge the Land Title Office notice of the housing agreement referred to in section 9 without the prior written consent of the Covenantee.

No Liability in Tort

17. The parties agree that this Agreement creates only contractual obligations and obligations arising out of the nature of this document as a deed. 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 and the law pertaining to deeds under seal.

Runs With the Land

18. Every obligation and covenant of the Owner in this Agreement constitutes a covenant granted under Section 219 of the *Land Title Act* 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.

Further Assurances

19. The parties hereto will do and cause to be done all things and execute and cause to be executed all documents, instruments and agreements that may be necessary to give proper effect to the intention of this Agreement.

Notice

20. Any notice which may be or is required to be given under this Agreement must be in writing and be delivered to the address set out above for each party or in the case of a subsequent Owner, the address of the Owner shown on title to the Land at the Land Title Office, except in the case of the Covenantee notices shall unless and until otherwise directed, be delivered as follows:

Her Majesty the Queen in Right of the Province of British Columbia
Minister of Ministry of Agriculture and Lands
#200 – 10428 – 153rd Street
Surrey, British Columbia
V3R 1E1

If a party changes its address it must promptly give notice of its new address to the other party as provided in this section.

Waiver

21. Any waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.

No Other Agreements

22. Except as between Resort Municipality of Whistler as the initial Owner and the Covenantee, 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

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

Deed and Contract

24. By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement under seal by executing Part I of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

APPENDIX A

STATUTORY DECLARATION CANADA

PROVINCE OF BRITISH COLUMBIA

IN THE MATTER OF A SECTION 219 PROVINCIAL COVENANT GRANTED TO HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA REPRESENTED BY THE MINISTER OF AGRICULTURE AND LANDS ("Provincial Covenant")

TO WIT:

I, _____ of _____, British Columbia, do solemnly declare that:

1. I am the owner of _____ (the "Employee Unit"), and make this declaration to the best of my personal knowledge.
2. This declaration is made pursuant to the Provincial Covenant in respect of the Employee Unit.
3. For the period from _____ to _____ the Employee Unit was occupied only by the Employees and Retirees (as defined in the Provincial Covenant) whose names and current addresses and whose employer's names and current addresses appear below:

Names, addresses and phone numbers of Employees and Retirees:
Names, addresses and phone numbers of Employers:
4. The rent charged each month for the Employee Unit is as follows:
 (a) the monthly rent on the date 365 days before this date of this statutory declaration: \$_____ per month;
 (b) the rent on the date of this statutory declaration: \$_____; and
 (c) the proposed or actual rent that will be payable on the date that is 90 days after the date of this statutory declaration: \$_____.
5. I acknowledge and agree to comply with the Owner's obligations under this Agreement, and other charges in favour of the Province and the Municipality registered in the land title office against the land on which the Employee Unit is situated and confirm that the Owner has complied with the Owner's obligations under these Agreements.
6. I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and pursuant to the *Canada Evidence Act*.

DECLARED BEFORE ME at the _____)
 _____, British Columbia, this _____)
 _____ day of _____.

 A Commissioner for taking Affidavits in British
 Columbia

END OF DOCUMENT