

**TERMS OF INSTRUMENT – PART 2
SECTION 219 COVENANT**

THIS AGREEMENT dated for reference August 31, 2005 is

BETWEEN:

LGB9 DEVELOPMENT CORPORATION. (Incorporation No. 635234), a British Columbia corporation having its registered office at 1212-1175 Douglas Street, Victoria, B.C. V8W 2E1
(the "Owner")

AND:

DISTRICT OF HIGHLANDS, a District municipality incorporated under the *Local Government Act*, and having its office at 1980 Millstream Rd, Victoria, B.C. V9B 6H1
(the "District")

GIVEN THAT:

- A. The Owner is the registered owner in fee simple of the land in District of Highlands, British Columbia, legally described as:
- | | |
|--------------------|---|
| PID : 009 861 866; | Section 16, Highland District, Except that Part in Plan VIP72555 |
| PID : 025 088 092; | Block B, Section 75, Highland District |
| PID ; 009 861 815; | Section 5, Range 4 West, Highland District, Except Part in Plans VIP60675, VIP67875 and VIP75584 |
| PID : 005 438 187 | Lot 24, Section 17, Highland District, Plan 4128, Except Part in Plan 45401 |
| PID : 009 861 823 | The South 60 Acres of Section 6, Range 4 West, Highland District, Except Part in Plan VIP67875 |
| PID : 009 861 831 | Section 12, Highland District, Except Parts in Plans 10853, 11134 and 45402 |
| PID: 024 672 092 | Lot A, Section 4, Range 4 West, Highland District, Plan VIP70021 (See Plan As To Limited Access) Except Part in Plan VIP75586 |
- (the "Land");
- B. The Owner proposes to develop the Land for residential, commercial, resort and golf course purposes;
- C. The Owner has requested the District to adopt bylaws amending the Official Community Plan and Zoning Bylaw (the "Amendment Bylaws") amending the District's official community plan and rezoning the Land to permit the development proposed by the Owner, and
- D. The Council of the District has determined that the adoption of the Amendment Bylaws would, but for the covenants contained in this Agreement, not be in the public interest; and the Owner therefore wishes to grant, pursuant to **Section 219** of the *Land Title Act*, and the District wishes to accept, the covenants over the Land that are set out in this Agreement.

THIS AGREEMENT is evidence that in consideration of payment of \$1.00 by the District to the Owner (the receipt of which is acknowledged by the Owner), the Owner grants to the District in accordance with Section 219 of the *Land Title Act* the following covenants:

1. Subject to the receipt of an approved Development Permit, and with the exception of the creation of parcels whose boundaries are those shown on Appendix B of the Bylaw amending the Zoning Bylaw ~~and the exception of works related to the actual construction and operation of the golf course and the clearing, grubbing and burning of those lands—those lands that on the reference date of this agreement, had been logged within the previous 3 years,~~ the Owner covenants and agrees with the District that:
 - (a) The Land must not be used;
 - (b) The Land must not be subdivided;
 - (c) The Land must not be altered;
 - (d) Development of the Land, including by construction or placement of any building or structure on the Land, is prohibited;
 - (e) No building permit may be applied for, and the District is not obliged to issue any building permit, in respect of the Land; and
 - (f) No occupancy permit may be applied for, and the District is not obliged to issue any occupancy permit, in respect of the Land,

If the use, subdivision, alteration, development, building or occupancy is not in accordance with the Schedule of Restrictions attached as Schedule A.

2. The development will be constructed in compliance with all the Bylaws of the District, and any approved variances.
3. Any opinion, decision, act or expression of satisfaction provided for in this Agreement is to be taken or made by the District's Mayor and Council or their delegate authorized as such in writing, in each case acting reasonably.
4. The District shall execute and deliver to the Owner a registrable discharge of the covenants granted in this Agreement in the event that the Amendment Bylaws are not adopted by December 31, 2005. The Owner may, after the Amendment Bylaws are adopted, request a discharge of any particular covenant granted in this Agreement in respect of any parcel into which the Land may be subdivided, and the District shall execute and deliver a discharge in respect of any such covenant that has been, in the District's opinion, fully satisfied by the Owner.
5. The Owner releases, and must indemnify and save harmless, the District, its elected and appointed officials and employees, from and against all liability, actions, causes of action, claims, damages, expenses, costs, debts, demands or losses suffered or incurred by the Owner, or anyone else, arising from the granting or existence of this Agreement, from the performance by the Owner of this Agreement, or any default of the Owner under or in respect of this Agreement.

6. The parties agree that this Agreement creates only contractual obligations and obligations arising out of the nature of this document as a covenant under seal. 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 under the law pertaining to covenants under seal.
7. The rights given to the District by this Agreement are permissive only and nothing in this Agreement imposes any legal duty of any kind on the District to anyone, or obliges the District to enforce this Agreement, to perform any act or to incur any expense in respect of this Agreement.
8. Where the District is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the District is under no public law duty of fairness or natural justice in that regard and agrees that the District may do any of those things in the same manner as if it were a private party and not a public body. Nothing in this section affects the Owner's remedies against the District in relation to the exercise of its public law duties in respect of the Amendment Bylaws.
9. This Agreement does not:
 - (a) Affect or limit the discretion, rights or powers of the District under any enactment (as defined in the *Interpretation Act*, on the reference date of this Agreement) or at common law, including in relation to the use of the Land,
 - (b) Affect or limit any enactment related to the use of the Land, or
 - (c) Relieve the Owner from complying with any enactment, including in relation to the use of the Land.
10. 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* in respect of the Land and 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. The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Land.
11. The Owner agrees to do everything reasonably 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 the registration of which is pending, at the time of application for registration of this Agreement.
12. An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach in respect of which the waiver is asserted. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.

13. 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.
14. This Agreement is the entire agreement between the parties regarding its subject.
15. This Agreement binds the parties to it and their respective successors, heirs, executors and administrators.
16. The Parties must do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.
17. 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 terms of this instrument, the parties hereto have executed the *Land Title Act* Form C that is attached hereto and forms part of this Agreement.

SCHEDULE A

SCHEDULE OF RESTRICTIONS

On-Site Works, Services and Facilities

1. The Owner shall, at the Owner's cost,
 - (a) Provide a non-aquifer water supply for residential and commercial use to the satisfaction of all authorities having jurisdiction, including without limitation to the structures described in the last sentence of Section 5 of this Schedule, should such structures require a supply of water, and to any tennis pavilion, clubhouse or similar structure accessory to a tennis court use that the Covenantor may construct on the Lands;
 - (b) Make satisfactory arrangements for the provision of sewer services to the Land, through the establishment of a sewer specified area or an alternative means satisfactory to all authorities having jurisdiction;
 - (c) Submit to the District a petition for the establishment of a specified area, determined by the District to be sufficient, for the maintenance of highway and storm drainage works including street trees and boulevards to be installed on the Land, to the extent that such maintenance exceeds that provided on highways elsewhere in the District;
 - (d) Provide neighborhood parks dedicated upon subdivision of the Land to the satisfaction of the District, in accordance with Appendix B of the Bylaw amending the Zoning Bylaw;
 - (e) Provide to the satisfaction of the District and all authorities having jurisdiction, a Trail Master Plan and a Bicycle Route Master Plan to be prepared by a professional with suitable qualifications and experience, indicating the extent of the trails and their intended use;
 - (f) Cause the trail areas indicated on the Trail Master Plan and the Bicycle Route Master Plan to be dedicated as parkland or highways or Statutory Rights of Way and to be constructed at the time that the phase of the development in which they are located is constructed, and for that purpose a trail area is located within a phase if it abuts a phase on either side;
 - (g) Despite subparagraph (f), construct by June 30, 2007 trails specified by the District in its sole discretion by June 30 2005; and
 - (h) Install, at locations on the perimeter of the Land specified by the District, fencing of a style specified by the District. The required fencing shall be indicated on the Plan referred to in subparagraph (e) and shall be installed at the time that the phase of the development in which they are located is constructed.
2. Where approved by the District, the Owner may, instead of performing in whole or in part any of the obligations set out in subparagraph 1(d) to 1(h), enter into a further covenant under Section 219 of the *Land Title Act* obliging the Owner to perform the obligation or partial obligation at a future time specified in the covenant, and provide security to the District to guarantee the performance of the obligation or partial obligation, in an amount equivalent to 125 per cent of the amount estimated by the District as the cost of performing the obligation.

Golf Course Irrigation and Groundwater Monitoring

3. The Owner shall:

- (a) provide to the District a design and operation plan including a baseline groundwater quality and quantity monitoring program, approved by all authorities having jurisdiction (the "Irrigation Plan"), for a golf course irrigation system using reclaimed, treated septage water or other sources of water, which may include storm water runoff and CRD water supplies;
- (b) grant to the District a further covenant under s.219 of the *Land Title Act* in respect of any portion of the land used as a golf course, before golf course irrigation occurs, obliging the Owner to implement the Irrigation Plan in the design, installation and operation of any irrigation system on the Land, except to the extent that golf course irrigation occurs during the months of November through May in which case groundwater sources may be used;
- (c) construct and commission, before golf course irrigation occurs, all reservoirs contemplated by the Irrigation Plan, and limit the use of groundwater sources to fill such reservoirs to the months of November through May;
- (d) provide to the District a design and operation plan approved by all authorities having jurisdiction, for a groundwater quantity and quality monitoring program for lands adjacent to the Land, which plan shall require quarterly monitoring in perpetuity. The monitoring program shall include as a minimum one property abutting the Land to the north, one property on the north side of Finlayson Arm Road, and one property abutting Roundtree Road;
- (e) implement and report to the District in writing the results of the groundwater monitoring program approved under subparagraph (d), to the extent only that the District obtains the written consent of the owners of land affected and to the extent only that the groundwater quality characteristics being monitored are related to the use of products on the Land; and
- (f) discontinue immediately the use of any product on the Land that is found to be contaminating groundwater on adjacent lands as determined by the groundwater monitoring program or otherwise.

Without limiting paragraph 3(d), the monitoring program shall specifically test for residual pharmaceuticals in groundwater that are identified in the Irrigation Plan and if it is found that groundwater contamination is occurring as a result of the operation of the golf course irrigation system, as evidenced by the comparison of monitoring results with baseline data collected in accordance with the Irrigation Plan, the Owner shall take immediate action to eliminate such contamination in accordance with the Irrigation Plan.

Notwithstanding that the Owner is entitled to use groundwater sources under subparagraph 3(c), and is entitled despite this Agreement to use groundwater sources to irrigate its lands in Langford, the Owner shall, if the monitoring program indicates deleterious aquifer draw down such that groundwater wells on lands adjacent to the Land may, in the opinion of an engineer experienced in groundwater hydrology, reasonably be expected to cease producing water at their current pump depth, immediately cease pumping operations from all wells on the Land until such time as monitoring results indicate that the aquifer has sufficiently recharged to the point that the use of all such wells on lands adjacent to the Land may, in the opinion of an engineer experienced in groundwater hydrology, resume.

Statutory Building Scheme

4. The Owner shall register against title to the Land, prior to the construction of any single-family dwelling on the Land, a statutory building scheme, requiring all single-family dwellings on the Land to be designed and constructed in accordance with a consistent architectural theme approved by the District, and in particular in accordance with design guidelines prepared by a member of the Architectural Institute of British Columbia based on such architectural theme and forming an integral part of the covenant.

Fire Protection

5. The Owner shall not construct on the Land any building or structure for a commercial use or any residential building unless the building is equipped with sprinklers complying with NFPA standards for such buildings or structures, and shall not construct any building containing tourist accommodation units deemed to be in an area of extreme risk by a Registered Professional Forester unless the building exterior is protected by sprinklers. **Air-supported structures sheltering up to eight tennis courts in total, and a single structure with a fabric roof that is used to shelter golf course maintenance equipment or golf carts and for no other purposes, are not required to be equipped with sprinklers.**
6. The Owner shall grant to the District a Statutory Right of Way permitting the District to have access to any water detention ponds constructed on the Land, for firefighting purposes.
7. Where any construction on the Lands is being undertaken between May 1 and September 30, the Owner must give the District Fire Chief at least 10 days prior notice of undertaking such construction and what emergency services in relation to wildfire hazard will be in place while the development is undertaken, to the satisfaction of the Fire Chief.
8. The Owner will provide to the District upon request a Wildland Interface Assessment from a Registered Professional Forester, which will address all issues in the District's Wildland Interface Guidelines.

Environmental and Storm Water Management Plans

9. The Owner shall, at the Owner's cost, prepare and provide to the District an environmental management plan prepared by a professional with suitable qualifications and experience, complete with a baseline study, which shall include:
 - (a) Tree protection plan,
 - (b) Sensitive ecosystem and rare species habitat protection plan,
 - (c) Wildlife management plan,
 - (d) Sediment and pollution control plan,
 - (e) Fertilizer and pesticide management plan, with a goal toward immediate and on-going organic maintenance methods, and
 - (f) Environmental monitoring guidelines, and guidelines for construction in and about a watercourse.

The management plan shall be provided to the District for approval, and once approved

by the District all works and development on the Land contemplated by the Amendment Bylaws and this Agreement shall be undertaken in accordance with the management plan. The plan shall be based on no net loss of riparian or wetland habitat on the Land and the enhancement, wherever practicable, of riparian areas of the Land.

10. The Owner shall, at the Owner's cost, prepare and provide to the satisfaction of the District a comprehensive storm water management plan with consideration of the Millstream Watershed Management Plan for the Land including the golf course, which plan shall form the basis of detailed Storm Water management plans for portions of the Land required in connection with applications for subdivision or building permits.

Matson Dam

11. The Owner shall rebuild or repair Matson Dam to the satisfaction of the Ministry of Water Land and Air Protection, Department of Fisheries and Oceans and the District by September 30, 2007. If the work is not complete by December 31, 2006 the Owner shall provide funds to the District to undertake the work, in an amount equivalent to 125 per cent of the amount estimated by the District as the cost of performing the work.

Highway Improvements

12. The Owner shall, at the Owner's cost, prepare and provide to the satisfaction of the District a study by a professional engineer with suitable qualifications and experience identifying satisfactory progress on the construction of the North South Trans Canada Connection through the City of Langford or evidence that the Owner has caused the dedication of land as highway sufficient for the new north-south route.

Artificial Lighting

13. Acknowledging the potential health risks of unwanted artificial light, and to preserve the night sky environment, the Owner shall comply with the following requirements for outdoor lighting systems, which for the purposes of this Agreement includes roadway lighting systems, exterior building lighting systems and internally and externally illuminated signs:
 - (a) Outdoor lighting systems must be shielded or recessed so that direct glare and reflection are contained within the boundaries of the parcel on which the lighting is installed, and directed downwards and away from adjoining parcels and public rights of way;
 - (b) Light fixtures on externally illuminated signs including commercial signs permitted by the District's bylaws and building identification signs shall be either top mounted and fully shielded, or if top mounting is not feasible for the application in question, equipped with visors or other directional control devices keeping spill of light to an absolute minimum;
 - (c) Roadway luminaries shall be designed and installed to cast light exclusively downwards and shall not be equipped with metal halide, mercury vapour or quartz lamps;
 - (d) The mounting height of outdoor light sources shall not exceed 229 metres geodetic datum; and

- (e) The average illumination provided by any light source shall not exceed the lowest level meeting any health or safety requirement of the user, and shall in no case exceed 16.5 lux.

Construction Phasing Plan

14. The Owner shall provide to the District for its approval, prior to the construction of any building or structure on the Land, a plan for the phasing of construction of all residential dwelling units, commercial and resort facilities and golf course facilities permitted on the Land by the Amendment Bylaws, and all related roadways, utilities and other infrastructure, which phasing plan shall not provide for the construction of any residential dwelling units unless the golf course permitted by the Amendment Bylaws is actually under construction and further, shall not provide for the construction of more than 100 residential dwelling units on the Land prior to the completion of construction of the permitted golf course facilities.
15. Following the approval of the construction phasing plan, the Owner shall grant to the District a further covenant under s.219 of the *Land Title Act* requiring the construction of all buildings and structures on the Land, including golf course facilities, to be phased in accordance with the approved construction plan, which plan shall be attached to and form part of such further covenant.

Blasting Impacts

16. The Owner shall provide to the District, prior to undertaking any blasting on the Land, a plan and schedule for all blasting to be undertaken in the development of the Land, and thereafter shall provide to the District any revisions to the plan and shall not undertake any blasting on the Land except in accordance with the plan or the plan as revised or without having given the occupiers of land in the vicinity of the Land at least 2 days' notice of the scheduled blasting.
17. If any domestic well in the vicinity of the Land is rendered unusable or damaged as a result of blasting activities on the Land, the Owner shall at the Owner's expense promptly replace or repair such well provided that the owner or occupier of the land permits the Owner to do so, and the Owner agrees that this provision shall apply if the damage was on a balance of probabilities caused by the blasting.

This Agreement will be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of August 31, 2005.

The Corporate Seal of the District of Highlands }
Is hereto affixed in the }
Presence of }

Mayor Karel Roessingh }

Heinz Burki, Administrator }

The Common Seal of LGB9 Development }
Corporation }

Leonard Barrie, President }

In Witness of Mr. Philip J. LeSEUR, }
Barrister and Solicitor, 1212-1175 Douglas Street, }
Victoria, B.C. V8W 2E1 (382-7222) }