



Renewal Land Company

“LOT B”  
Conservation Covenant

Official Version

April 2006

LAND TITLE ACT  
FORM C

Province of  
British Columbia

**GENERAL INSTRUMENT - PART I** (This area for Land Title Office Use)

**Page 1 of 27**

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

William C. Turner  
TLC The Land Conservancy  
2709 Shoreline Drive  
Victoria, BC V9B 1M5

\_\_\_\_\_  
Signature of William C. Turner

2. Parcel Identifier(s) and Legal Description(s) of Land:

Lot B, Plan VIP\_\_\_\_\_, Section 3, Cortes Island, Sayward District

3. Nature of Interest:\*

DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
Section 219 Covenant	Entire instrument	Transferee
Section 218 Statutory Right of Way	Section 9	Transferee
Rent Charge	Section 11	Transferee

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

- (a) Filed Standard Charge Terms \_\_\_\_\_ D.F. No.  
(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):\*

**RENEWAL LAND COMPANY**, a company incorporated in British Columbia  
(Incorporation No. 668917), 610-220 Cambie Street, Vancouver BC, V6B 2M9.

6. Transferee(s): (Including occupation(s), postal address(es) and postal code(s))\*

**TLC THE LAND CONSERVANCY OF BRITISH COLUMBIA**, a society registered in British Columbia (Registration No. S-36826), 2709 Shoreline Dr, Victoria BC V9B 1M5

7. Additional or Modified Terms:\*

N/A

**LAND TITLE ACT  
FORM C**

Province of  
British Columbia

**GENERAL INSTRUMENT - PART I**

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.

**EXECUTION DATE**

Officer Signature(s):

Y M D

Party(ies) Signature(s)

06 03 29

RENEWAL LAND COMPANY by its  
authorized signatory(s)

\_\_\_\_\_

(as to signature)

06

TLC THE LAND CONSERVANCY OF  
BRITISH COLUMBIA by its authorized  
signatory(s)

\_\_\_\_\_  
Print name, address and occupation

\_\_\_\_\_  
William Turner

\_\_\_\_\_  
print name

(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. 1979, c. 116 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 is insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

\*\* If space is insufficient, continue executions on additional pages in Form D

TERMS OF INSTRUMENT - PART 2

**Section 219 Conservation Covenant and  
Section 218 Statutory Right of Way**

The Agreement is dated for reference the \_\_ day of April 2006 is

BETWEEN:

**RENEWAL LAND COMPANY (Incorporation No. 668917)**  
(the "Owner")

AND:

**TLC THE LAND CONSERVANCY OF BRITISH COLUMBIA**, (Reg. No. S-36826)  
("The Land Conservancy")

WHEREAS:

- A. The Owner is the registered owner of the Land;
- B. The Land contains significant amenities, including flora, fauna and natural features, of great importance to the Owner, to the Covenant Holder, and to the public;
- C. A statutory right of way pursuant to s. 218 of the *Land Title Act of British Columbia* in favour of the Covenant Holder is necessary for the operation and maintenance of the undertakings of the Covenant Holder;
- D. TLC The Land Conservancy of British Columbia has been designated by the then Minister of Environment, Lands and Parks as a person authorized to accept covenants under s. 219 of the *Land Title Act of British Columbia* and as a person authorized to accept statutory rights of way pursuant to s. 218 of the *Land Title Act of British Columbia*;

In consideration of the payment of two dollars (\$2.00) now paid by the Covenant Holder to the Owner (the receipt and sufficiency of which is acknowledged by the Owner), and in consideration of the promises exchanged below, the parties agree as follows, in accordance with sections 218 and 219 of the *Land Title Act* (British Columbia):

**1. Definitions and Interpretation**

**1.1 In this Agreement:**

- (a) "Amenity" includes any natural, scientific, environmental, wildlife, plant life or cultural value relating to the Land;

- (b) "Biodiversity" means the variety of life and its processes, and encompasses genetic, species, assemblage, ecosystem and landscape levels of biological organization and their structural, compositional and functional components;
- (c) "Breast Height" means a point on a tree at 1.3 metres above the point of germination, measured along the axis of vertical growth;
- (d) "Business Day" means, a day on which the Land Title Office in New Westminster BC, or its successor, is open;
- (e) "Covenant Holder" means, unless the context otherwise requires, TLC The Land Conservancy of British Columbia;
- (f) "CPI" means the All-Items Consumer Price Index published by Statistics Canada, or its successor in function, for Vancouver, British Columbia, where 2005 equals 100;
- (g) "Diameter at Breast Height" means the diameter of a tree at Breast Height;
- (h) "Land" means the parcel of land legally described as: Lot B, Plan VIP\_\_\_\_\_, Section 3, Cortes Island Sayward District including those areas shown as Residential Conservation Area and Residential Use Area in Schedule D of this Agreement;
- (i) "Natural State" means the state of the Land as described in the Report with:
  - (i) such gradual changes thereto as occur over time as a result of natural processes, including windthrow and usual seasonal flooding and erosion; and
  - (ii) such changes thereto as may from time to time take place as a result of the use of the Land in compliance with the provisions of this Instrument;
- (j) "Notice of Enforcement" means a notice of enforcement given by the Covenant Holder in this Agreement;
- (k) "Owner" means Renewal Land Company Ltd. and includes Successors of the Owner in this Agreement;
- (l) "Rent Charge" means the rent charge granted by the Owner under section 11;
- (m) "Rent Charge Amount" means the amount set out in section 11.2, the payment of which is secured by the Rent Charge;
- (n) "Rent Charge Monitoring Fee" means the amount set out in section 11.3, the payment of which is intended to contribute to the annual costs of monitoring this Agreement;
- (o) "Report" means the baseline documentation report that describes the Land and the Amenities in the form of text, maps, photographs and other records of the Land and the Amenities as of the date of registration of this Agreement, a copy of which is on file with each

of the parties at the addresses set out in this Agreement, and an overview of which is attached as Schedule A to this Agreement;

- (p) "Residential Conservation Area" means that part of the Land that is used for conservation as shown in Schedule D of this Agreement;
- (q) "Residential Dwelling Unit" means either a self-contained unit designed, occupied or intended for occupancy as a separate household for one family containing not more than one set of kitchen and cooking facilities, sleeping facilities and/or sanitary facilities or the most current definition used by the Comox-Strathcona Regional District for Cortes Island Zoning Bylaw purposes.
- (r) "Residential Use Area" means that part of the Land that is used for a Residential Dwelling Unit and outbuildings and gardens as shown in Schedule D of this Agreement;
- (s) "Successor" means a person who, at any time after registration of this Agreement, becomes the registered owner of the Land or any part of the land by any means, including a beneficial owner;
- (t) "Sustainable" means meeting the needs of the present generation, while placing priority on the protection of natural systems and without exceeding the limits of natural systems to replenish themselves and maintain their structure, composition and function, without compromising the ability of future generations to meet their needs; and
- (u) "The Land Conservancy" means TLC The Land Conservancy of British Columbia, a society registered in British Columbia (Registration No.S-36826) and includes its permitted successors and assignees as provided in section 13.

1.2 Where this Agreement says something is in the "Sole Discretion" of a party, that thing is within the sole, absolute and unfettered discretion of that party.

1.3 This Agreement shall be interpreted in accordance with the laws of British Columbia and the laws of Canada applicable in British Columbia.

1.4 This Agreement is comprised of the recitation of the parties, the recitals to this Agreement, the Schedules to this Agreement and Part 1 of the *Land Title Act of British Columbia* Form C to which this Agreement is attached.

1.5 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* (British Columbia) on the reference date of this Agreement;
- (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.

## **2. Representations and Warranties**

2.1 TLC The Land Conservancy of British Columbia represents and warrants that the facts set out in Recital E are true as of the date of this Agreement.

2.2 The parties each agree that Recitals B and C are true as of the date of this Agreement.

## **3. Intent of Agreement**

3.1 The parties each agree that the intent of this Agreement is as follows, and that this Agreement is to be interpreted, performed and applied accordingly:

- (a) To limit the area of non-forested land and of young forests;
- (b) To protect trees with special wildlife habitat values, including large mature and old trees;
- (c) To permit a Residential Dwelling Unit and outbuildings that are in harmony with the natural landscape and strive to minimize the impact of residential use on the natural environment, ecosystems and Biodiversity of the Land, including the habitats, water, soil, scenic and spiritual values;
- (d) To prevent any occupation or use of the Land that will significantly impair or interfere with the Natural State of the Land or the Amenities, except as expressly permitted in this covenant.

3.2 This Agreement shall be perpetual to reflect the public interest in the protection, conservation, maintenance and enhancement of the Land.

**4. Baseline Documentation Report**

- 4.1 The parties agree that the Land and the Amenities are described in the Report, a copy of which is on file with each of the parties at the addresses set out in this Agreement, an overview of which is attached as Schedule A to this Agreement.
- 4.2 The parties agree that the Report is intended to serve as an objective information baseline for monitoring compliance with the terms of this Agreement and the parties each agree that the Report and Schedule A provide an accurate description of the Land and the Amenities at the date of this Agreement.
- 4.3 The parties each acknowledge that the flora and fauna on the Land will evolve through natural succession over time and, unless otherwise expressly stated, references to the Report in this Agreement are intended to take into account the natural succession of the flora and fauna over time, without human intervention other than as expressly permitted by this Agreement.

**5. Restrictions on all the Land**

- 5.1 Subject to section 5.2, Owner's reserved rights are set out in Section 7 and Schedule C to this Agreement.
- 5.2 Except as expressly permitted in this Agreement, the Owner shall not do anything, omit to do anything, allow anything to be done, or allow the omission of anything, that does or could reasonably be expected to destroy, impair, diminish, negatively affect, or alter the Land or the Amenities from the condition described in the Report. Without restricting the above:
  - (a) The Land shall not be subdivided;
  - (b) The Owner shall not, except with the prior written approval of the Covenant Holder, in their Sole Discretion, perform or allow the performance of any of the restricted activities or uses of the Land set out in Schedule B to this Agreement;
  - (c) The Owner shall not seek rezoning of the Land to any industrial or commercial use;
  - (d) The following materials shall not be applied to the Land:
    - (i) Any herbicide, insecticide, fungicide or pesticide;
    - (ii) Any materials which are persistent in the environment or break down into compounds which are persistent and damaging;
  - (e) No easements or Rights of Way may be registered on the land without permission of the Covenant Holder. Any easements or Rights of Way must be in compliance with the terms and intent of this Agreement;
  - (f) No road shall be built, laid out or established on the Land;



- (g) No activity or action on the Land or use of the Land shall be performed or permitted which may be expected to be detrimental or adverse to ground and surface water conservation in quantity, quality, or timing in flow;
- (h) No hunting or trapping, for commercial or sport purposes shall be performed or permitted on the Land;
- (i) No firearms of any kind shall be discharged or permitted to be discharged on the Land; and,
- (j) No industrial activity is allowed on the land.

## **6. Dispute Resolution**

- 6.1 If there is a disagreement regarding a breach of this Agreement which has occurred or is threatened, or if there is disagreement as to the meaning of this Agreement, the Owners or the Covenant Holder may give notice to the other parties requiring a meeting of all parties within 20 Business Days of receipt of the notice.
- 6.2 All activities giving rise to a breach or threatening a breach of this Agreement, or giving rise to a disagreement as to the meaning of this Agreement must immediately cease upon receipt of notice.
- 6.3 The parties must attempt to resolve the disagreement, acting reasonably and in good faith, within 20 Business Days of receipt of the notice.
- 6.4 If the parties are not able to resolve the disagreement within that time, the parties will initiate the procedures set out in the *Notice to Mediate (General) Regulations* (B.C Reg.4/2001, OC 5/2001) to the *Law and Equity Act* of British Columbia (RSBC 1996, CH. 253).
- 6.5 The costs of dispute resolution will be borne equally between the parties.

## **7. Owner's Reserved Rights**

- 7.1 The Owner reserves all of its rights as owner of the Land, including the right to use, occupy and maintain the Land in any way that is not expressly restricted or prohibited by this Agreement, so long as the use, occupation or maintenance are consistent with the intent of this Agreement.
- 7.2 Subject to Section 5.1, the rights for each area as set out in Schedule C to this Agreement are expressly reserved to the Owner.
- 7.3 Subject to Section 7.4, nothing in this Agreement restricts or affects the right of the Owner or any other party to do anything reasonably necessary to:
  - (a) prevent, abate or mitigate any damage or loss to any real or personal property; or
  - (b) prevent potential injury or death to any individual.

- 7.4 If the Owner or any other party intends to do anything described in Section 7.3, the Owner shall give at least 30 days' prior written notice to the Covenant Holder, describing in reasonable detail the intended action, the reason for it, and its likely effect on the Land or the Amenities. Despite the rest of this Agreement, the Owner shall permit the Covenant Holder to enter upon and inspect the Land if any such action is proposed under Section 7.3. The Covenant Holder may comment on the proposed action and the Owner and any other party must take those comments into consideration before doing anything under that section.

**8. Owner's Obligations As To Taxes and Other Matters**

- 8.1 The Owner retains all responsibilities and bears all costs and liabilities related to the ownership, use, occupation and maintenance of the Land, including any improvements expressly authorized by this Agreement.
- 8.2 The Owner shall indemnify the Covenant Holder, its directors, officers, employees, agents and contractors, from and against any and all liabilities, damages, losses, personal injury or death, causes of action, actions, claims, and demands by or on behalf of any person, arising out of any act or omission, negligent or otherwise, in the use, occupation and maintenance of the Land or the Amenities by the Owner.
- 8.3 The Owner is liable for any and all breaches of this Agreement, but the Owner is not liable for:
- (a) breaches of this Agreement which occur while the Owner is not the registered owner of any interest in the Land;
  - (b) injury or alteration to the Land or the Amenities resulting from natural causes, or causes beyond the Owner's reasonable control, including accidental fire, flood, storm, vandalism, trespass and earth movement, but excluding injury or alteration resulting from actions of the Owner or any other person acting with the actual or constructive knowledge of the Owner; or
  - (c) any prudent action taken by the Owner under emergency conditions to prevent, abate, or mitigate significant injury to the Land or the Amenities resulting from natural causes, including accidental fire, flood, storm and earth movement.
- 8.4 Without limiting the above, the Owner:
- (a) is solely responsible and liable for any loss or damage, or liability of any kind (whether civil, criminal or regulatory), in any way connected with the existence in, on, from, to or under the Land (whether through spill, emission, migration, deposit, storage or otherwise) of any pollutant, contaminant, waste, special waste, or any matter that impairs the environment; and
  - (b) shall indemnify the Covenant Holder from and against any loss, damage, liability, cause of action, action, penal proceeding,

regulatory action, order, directive, notice or requirement, including those of any government agency, incurred, suffered, brought against or instituted against the Covenant Holder, in any way associated with anything described in section 8.4(a).

- 8.5 Where the Owner is not responsible for damage or theft due to trespass or vandalism, the Owner will take all reasonable steps to identify and prosecute the person responsible and to seek financial restitution for the damage or theft.
- 8.6 The Owner shall pay when due all taxes, assessments, levies, fees and charges of whatever description which may be levied on or assessed against the Land and shall pay any arrears, penalties and interest in respect thereof.
- 8.7 The Owner shall indemnify the Covenant Holder from and against any fee, tax, or other charge which may be assessed or levied against the Owner or Covenant Holder pursuant to any enactment, including the *Income Tax Act* (Canada) with respect to the Land or with respect to this Agreement, including any fee, tax or other charge which may be assessed or levied against the Owner or the Covenant Holder as a result of the amendment or termination of this Agreement.
- 8.8 Any debts or other amounts due from the Owner to the Covenant Holder under this Agreement, if not paid within 30 days after notice, shall bear interest at the annual interest rate that is 3 percent greater than the prime rate of interest. For the purposes of this section, the "prime rate of interest" is the annual rate of interest charged from time to time by the Bank of Montreal, at its main branch in Vancouver, British Columbia, for demand Canadian dollar commercial loans made to its most creditworthy commercial customers and designated from time to time by the Bank of Montreal as its prime rate.
- 8.9 For clarity, the indemnities granted by the Owner to the Covenant Holder under this Agreement are indemnities granted as an integral part of the section 219 *Land Title Act of British Columbia* covenant created by this Agreement.

## 9. **Statutory Right of Way For Monitoring and Enforcement**

- 9.1 The Owner grants to the Covenant Holder a license, and a statutory right of way pursuant to s. 218 of the *Land Title Act*, permitting the Covenant Holder to do the following:
  - (a) to enter upon and inspect the Land:
    - (i) at least once each calendar year, with the date for each inspection to be agreed upon by the parties before August 31 each year, but if the parties cannot agree on those days by August 31 in any year, the Covenant Holder is entitled to enter upon and inspect the Land in accordance with section 9.1(a)(ii); and

- (ii) at all reasonable times upon prior notice by the Covenant Holder to the Owner of at least forty-eight (48) hours, unless, in the opinion of the Covenant Holder, there is an emergency or other circumstance which does not make giving such notice practicable, in the Sole Discretion of the Covenant Holder;
  - (b) as part of inspection of the Land, to take samples, photographs and video recordings as may be necessary to monitor compliance and enforce the terms of this Agreement;
  - (c) to enter upon and protect, preserve, conserve, maintain, enhance, restore or rehabilitate, in the Covenant Holder's Sole Discretion and at the Covenant Holder's expense, the Land or the Amenities to as near the condition described in the Report as is practicable if an act of nature or human agency other than as described in section 9.1(d), destroys, impairs, diminishes or negatively affects or alters the Land or the Amenities from the condition described in the Report;
  - (d) in accordance with section 10.1, to enter upon and protect, preserve, conserve, maintain, enhance, restore or rehabilitate, in the Covenant Holder's Sole Discretion and at the Owner's expense, the Land or the Amenities to as near the condition described in the Report as is practicable, if an action of the Owner or any other person acting with the actual or constructive knowledge of the Owner:
    - (i) destroys, impairs, diminishes, negatively affects or alters the Land or the Amenities from the condition described in the Report; or
    - (ii) contravenes any term of this Agreement;
  - (e) to carry out or evaluate, or both, any program agreed upon among the parties for the protection, preservation, conservation, maintenance, enhancement, restoration or rehabilitation of all or any portion of the Land or the Amenities; and
  - (f) to place survey pegs or other markings on the Land or to increase the visibility of existing survey pegs or other markings.
- 9.2 The Covenant Holder may bring vehicles, as reasonably necessary, equipment and personal property onto the Land when exercising their rights under this Agreement.
- 9.3 For the purposes of sections 9.1(c) and (d), the Covenant Holder has the Sole Discretion to protect, preserve, conserve, maintain, enhance, restore or rehabilitate the Land or the Amenities.

## **10. Enforcement Remedy of the Covenant Holder**

- 10.1 If the Covenant Holder, in its Sole Discretion, believes that the Owner has neglected or refused to perform any of the obligations set out in this Agreement or is in breach of any term of this Agreement, the Covenant

Holder may serve on the Owner a notice setting out particulars of the breach and of the Covenant Holder's estimated maximum costs of remedying the breach. The Owner has 60 days from receipt of the notice to remedy the breach or make arrangements satisfactory to the Covenant Holder for remedying the breach, including with respect to the time within which the breach shall be remedied.

- 10.2 If the Owner does not remedy a breach described within 60 days, the Covenant Holder is entitled to enter the Land and remedy the breach or carry out the arrangements and the Owner shall reimburse the Covenant Holder for any expenses incurred in doing so, up to the estimated maximum costs of remedying the breach as set out in the notice. Expenses incurred by the Covenant Holder under this section are a debt owed by the Owner to the Covenant Holder.

## **11. Rent Charge and Its Enforcement**

- 11.1 As security for the performance of the Owner's obligations under this Agreement, the Owner grants to the Covenant Holder a perpetual rent charge against the Land, ranking prior to all other financial charges and encumbrances registered against the Land, including options to purchase and rights of first refusal. The Rent Charge is granted both under s. 219 of the *Land Title Act* (British Columbia) as an integral part of the statutory covenant created by this Agreement and as a fee simple rent charge at common law.
- 11.2 The Rent Charge secures payment to the Covenant Holder by the Owner of the sum of \$10,000.00 per year per violation, subject to adjustment under Section 11.4.
- 11.3 If no violation exists, a yearly Rent Charge Monitoring Fee of \$100 is due to the Covenant Holder by January 31<sup>st</sup> of each year.
- 11.4 The Rent Charge Amount is to be adjusted on January 1 of each year by increasing or decreasing, as the case may be, the Rent Charge Amount by the amount determined by multiplying the Rent Charge Amount on December 31 immediately preceding by the percentage increase or decrease, as the case may be, in the CPI between the previous January 1 and that December 31 and adding the amount so determined to the Rent Charge Amount as it stands on that December 31. If Statistics Canada, or its successor in function, ceases to publish a CPI or comparable indicator as determined by the Covenant Holder in its Sole Discretion, the parties agree that the factor to be used in determining the Rent Charge Amount for each year shall be 3%.
- 11.5 The Rent Charge Amount shall be increased by a sum equal to 150% of the market value at the date of any breach of this Agreement of any flora or fauna, soil, rock, gravel or minerals, which has been altered, damaged, destroyed, moved, harvested or removed.

- 11.6 The Covenant Holder shall be entitled to recover from the Owner all reasonable expenses incurred as a result of enforcement of the Rent Charge.
- 11.7 The Rent Charge is suspended unless and until the Owner is in breach of any provision of this Agreement and has not cured the breach, or is not diligently proceeding to cure the breach in accordance with section 10 of this Agreement.
- 11.8 The Covenant Holder may enforce the Rent Charge by any combination, or all, of:
  - (a) an action against the Owner for the Rent Charge Amount;
  - (b) distraint against the Land to the extent of the Rent Charge Amount;
  - (c) an action for appointment of a receiver in respect of the Land; or
  - (d) an order for sale of the Land.
- 11.9 If the Covenant Holder wishes to enforce the Rent Charge, it shall provide notice to that effect to the Owners and to the other Covenant Holder. The Notice of Enforcement may be given at any time after notice of breach is given.

## **12. Successor of the Owner**

- 12.1 This Agreement shall enure to the benefit of and be binding upon the Owner and the Owner's Successors.
- 12.2 The Owner shall not lease or license the Land or any part thereof unless the lease or license is expressly made subject to the provisions of this Agreement and unless the lease or license expressly entitles the Owner to terminate the lease or license and re-enter the Land if the tenant or licensee breaches any of the provisions of this Agreement. The tenant or licensee's liability for any injury, damage or alterations to the Land shall be the same as though he were the Land and the Owner shall be jointly and severally liable with the tenant or licensee for any breach of the Covenant by the tenant or licensee.
- 12.3 Failure by the Owner to comply with the provisions of this section shall not affect the enforceability of this Agreement against the Owner or any Successor.
- 12.4 The Owner shall inform the Covenant Holder within five (5) business days of any accepted offer of purchase and sale of the Land.
- 12.5 The Owner shall inform any potential purchaser of the Land of the existence of this Agreement.

**13. Assignment of Agreement or Dissolution of the Covenant Holder**

- 13.1 This Agreement shall be transferable by the Covenant Holder, but the Covenant Holder may assign its rights and obligations under this Agreement only to an entity or person qualified at the time of transfer to hold covenants under s. 219 of the *Land Title Act* and any applicable regulation under it. The Covenant Holder agrees that before it assigns its rights and obligations under this section, it shall consult with the Owner, and consider the Owner's comments, with respect to the proposed assignee. The Covenant Holder must give notice to the Owner of the proposed assignment, setting out in reasonable detail the identity of the proposed assignee and the qualifications and experience of the proposed assignee relevant to performance by the assignee of the rights and obligations of the Covenant Holder under this Agreement. If the Owner does not provide comments to the Covenant Holder regarding the proposed assignee within 10 days after receipt from the Covenant Holder to the Owner under this section, the Owner is conclusively deemed to have declined to comment on the proposed assignee and to have consented to the assignment. For clarity, the Owner agrees that the Covenant Holder is only required to consult the Owner and that the Covenant Holder is entitled to assign its rights and obligations so long as it has consulted the Owner.
- 13.2 In the event of the winding-up or dissolution of the Covenant Holder, the Covenant Holder shall use its best efforts to assign and transfer all of its interest under this Agreement to a person or entity authorized to accept covenants under section 219 of the *Land Title Act*. If the Covenant Holder does not assign and transfer all of its interests under this Agreement as set out in this section, it shall be deemed to have assigned and transferred all of its interest under this Agreement to Her Majesty the Queen in Right of the Province of British Columbia, to hold temporarily until another Covenant Holder can be found. For clarity, the consultation process set out in section 13.1 does not apply to this section.

**14. Notice**

- 14.1 Any notice or other communication (collectively "notice") required or permitted under this Agreement shall be:
- (a) delivered in person; or
  - (b) sent by pre-paid registered mail, return receipt requested, to the address of the parties at their respective addresses as set out in this Agreement.
- 14.2 If notice is delivered in person, the party receiving the notice shall forthwith acknowledge receipt of same in writing, and the notice shall be deemed to have been received on the earlier of the date of such acknowledgment and the date that is 5 days after the notice is sent.
- 14.4 The addresses of the parties' representatives for notice are as follows:

**RENEWAL LAND COMPANY**

610-220 Cambie Street

Vancouver, BC V6B 2M9

Telephone (604) 844-7474

Fascimile (604) 844-7441

**TLC THE LAND CONSERVANCY OF BRITISH COLUMBIA**

2709 Shoreline Drive

Victoria, BC V9B 1M5

14.3 Each party agrees to immediately give written notice to the others of any change in its address.

14.4 If a party refuses to sign an acknowledgment of receipt of notice, the person delivering the notice may swear an affidavit of service and the notice shall be deemed to have been received on the date of service set out in the affidavit.

**15. Mortgages**

15.1 In this section, "approve" and "approval" mean approval by the Covenant Holder of a first mortgage intended to be registered against the Land or any portion of the Land.

15.2 If the Owner is not in breach of this Agreement, the Covenant Holder shall approve a first mortgage if:

- (a) the mortgage does not exceed 95% of the fair market value of the Land at the date of the approval, as determined by a qualified appraiser; and
- (b) the mortgage is an arms-length transaction with a bona fide mortgage lender.

15.3 The Covenant Holder may, in their Sole Discretion, inspect the Land to determine if the Owner is in breach of any of the terms of this Agreement before granting approval and may withhold approval if there is any breach.

15.4 The Owner shall reimburse and indemnify the Covenant Holder for all reasonable expenses incurred by it as a result of a site visit to inspect the Land pursuant to this section.

**16. Notice of Covenant**

16.1 The Owner agrees to allow the Covenant Holder to publicize the existence of this Agreement in a tasteful manner.

16.2 Without restricting the generality of the foregoing, the Owner agrees to allow the Covenant Holder to erect a plaque or other signage on the Land,



in a tasteful manner and at the Covenant Holder's expense, indicating that the Covenant Holder holds a covenant on the Land.

**17. No Liability in Tort**

- 17.1 The parties agree that this Agreement creates only contractual obligations and obligations arising out of the nature of this Agreement as a covenant under seal. Without limiting the generality of the foregoing, the parties agree that no tort or fiduciary obligations or liabilities of any kind are created or exist between the parties in respect of this Agreement and nothing in this Agreement creates any duty of care or other duty on any of the parties to anyone else. For clarity, the intent of this section is to, among other things, exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract.

**18. Waiver**

- 18.1 An alleged waiver of any breach of this Agreement is effective only if it is an express written waiver signed by the Covenant Holder, and is only effective to the extent of that express waiver and does not operate as a waiver of any other breach.

**19. Joint and Several Obligations**

- 19.1 The obligations of the parties referred to in this Agreement as the Owner are joint and several.

**20. Remedies not exhaustive**

- 20.1 Exercise or enforcement by a party of any remedy or right under or in respect of this Agreement does not limit or affect any other remedy or right that party may have against the other parties in respect of or under this Agreement or its performance or breach.

**21. Covenant runs with the Land**

- 21.1 Unless it is otherwise expressly provided in this Agreement, every obligation and covenant of the Owner in this Agreement constitutes a personal covenant and also a covenant granted under s. 219 of the *Land Title Act* (British Columbia) and a statutory right of way granted under s. 218 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.

**22. Registration**

- 22.1 The Owner agrees to do everything necessary at the Owner's expense to ensure that this Agreement, and the interests it creates, is registered against title to the Land, with, priority over all financial charges, liens and encumbrances registered or pending registration in the Land Title Office at the time of application for registration of this Agreement, including options to purchase and rights of first refusal.

**23. Severance**

- 23.1 If any part of this Agreement is held by a court to be invalid, illegal or unenforceable, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement is to remain in force unaffected by that holding or by the severance of that part as if the part was never part of this Agreement.

**24. No other Agreements**

- 24.1 This Agreement is the entire Agreement between the parties and it terminates and supersedes all other Agreements and arrangements regarding its subject. A written instrument signed by all the parties may only change this Agreement.

**25. Binding on successors**

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

**26. Amendments**

- 26.1 This Agreement is meant to be perpetual and may only be changed by a written instrument signed by all the parties.

**27. Independent Advice**

- 27.1 The Owner acknowledges and agrees that the Owner has sought and obtained to the Owner's satisfaction independent advice from an accountant or other income tax expert with respect to the income tax implications of this Agreement and acknowledges that it does not and has not relied on the Covenant Holder for advice in this regard and that they have given no representation or warranty in that regard.
- 27.2 The Owner acknowledges and agrees that the Owner has been advised by the Covenant Holder that the Owner should seek legal advice as to the meaning and effect of this Agreement and the Owner further acknowledges and agrees that no legal advisor of the Covenant Holder has advised the Owner on the meaning or effect of this Agreement or in connection with this Agreement.

**28. Deed and contract**

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

**29. Rights of Covenant Holder**

- 29.1 A Covenant Holder, as a corporate entity, may exercise its rights under this Agreement through its directors, officers, employees, agents or contractors.

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 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

## **SCHEDULE A**

Attached to and forming part of the Covenant Agreement between RENEWAL LAND COMPANY, Owner, and TLC THE LAND CONSERVANCY OF BRITISH COLUMBIA, Covenant Holder, dated the \_\_\_ day of April, 2006.

### **BASELINE DOCUMENTATION REPORT**

#### **1.0 Acknowledgment**

- 1.1 The Owners hereby acknowledge and agree that the following is an accurate description of the Land, as of the reference date of this Agreement.
- 1.2 An extensive baseline document complete with plant inventory and photo-point monitoring stations will be filed with each of the parties within two (2) years of the signing of this Agreement.

#### **2.0 Property location and description**

The Land comprises Lot B, Plan VIP\_\_\_\_\_, Section 3, Cortes Island, Sayward District and is located on Cortes Island. The Land is 1.55 hectares in size, is roughly triangular in shape, and is bounded by private residential property to the East and South and Sutil Point Road to the West as shown in Schedule D to this Agreement. Seascape Road borders the Northern point of the Land. The Land is legally described as:

Lot B, Plan VIP\_\_\_\_\_, Section 3, Cortes Island, Sayward District.

- 2.1 To drive to the Land, travel south from the Cortes ferry terminal in Whaletown to Manson's Landing, approximately 20 kilometres. Continue south on Sutil Point Road to Seascape Road. Turn left on Seascape Road – the Land is immediately to the South (and extending approximately 140 metres south along Sutil Point Road).

#### **3.0 Significance of the Land and Amenities**

The Land is part of the Eastern Very Dry Maritime Coastal Western Hemlock biogeoclimatic variant (CWHxm1).

#### **4.0 The Management Vision**

- 4.1 The purpose of this covenant is to protect the Land in perpetuity and restore Mature and Old Growth Forest attributes while permitting low-impact residential use within designated areas. The covenant is intended to encourage residential use that is in harmony with the natural landscape and minimizes any negative impacts on the Land. Landowners will encourage and support the management vision, and the covenant holder will monitor on an annual basis.

#### **5.0 Site history**

- 5.1 The Land was owned by MacMillan Bloedel Ltd. for several decades. In the late 1990's it was sold to Weyerhaeuser Corporation. In 2003 the Land was sold to Renewal Land Company and developed as part of a larger conservation-based residential subdivision (the adjacent Siskin Lane subdivision) that included both forest conservation and low-impact residential use, as outlined in this Agreement.

#### **6.0 List of buildings, structures and other improvements**

1. Sutil Point Road – public road located outside the Land but within a 10m area of influence.
2. Seascape Road – public road located outside the Land but within a 10m area of influence.
3. There are power and telephone lines running the length of Sutil Point Road within the Land.
4. A sewage disposal field area has been surveyed along the north-western boundary, adjacent to Sutil Point Road, and is designated with white survey pins marked "COV". No other residential improvements have been made on the Land at the time of this Report.
5. There are no buildings on the Land at the time of this Report.

#### **7.0 Inventory**

- 7.1 Topography: The topography is uniform, and generally flat, and averages approximately 35 metres in elevation. No streams or rock cliffs were noted on the Land.

- 7.2 Hydrology: No year-round streams, or wetland areas, were noted on the Land. Some seasonal, sedge-dominated wet patches exist along the western boundary of the Land.
- 7.3 Vegetation: No rare plant species were found on the Land. The forest cover is dominated by second-growth Douglas-fir (*Pseudotsuga menziesii*) and western redcedar (*Thuja plicata*) with small components of red alder (*Alnus rubra*) and western hemlock (*Tsuga heterophylla*). The majority of the forest was established following logging in the 1930's.
- 7.4 Wildlife: No rare wildlife species or their habitats were found on the Land. There are some large potential recruitment Wildlife Trees on the Land, particularly large western redcedar and Douglas-fir trees. Wherever possible, large veteran trees that show signs of wildlife use, such as cavities or woodpecker feeding sign or large branches, forks or scars, should be retained.
- 7.6 Soil: Throughout the Land, soil parent materials are predominantly deep, coarse textured glaciofluvial outwash materials on subdued topography. No areas at significant risk of erosion were found on the Land.

## **SCHEDULE B**

Attached to and forming part of the Covenant Agreement between RENEWAL LAND COMPANY, Owner, and TLC THE LAND CONSERVANCY OF BRITISH COLUMBIA, Covenant Holder, dated the \_\_\_ day of April, 2006.

### **RESTRICTIONS ON RESIDENTIAL USE AREA**

In accordance with Section 5 of this Agreement, the purpose of the Residential Use Area is to allow residential development and residential land use, while striving to minimize the impact of residential development and residential use. Within the Residential Use Area, the Owner may allow some clearing of forest land, construction of a home and outbuildings, and associated uses such as gardens, all subject to the terms and restrictions of this covenant. All buildings and structures must be in quiet harmony with the natural features of the land. In addition to the restrictions in Section 5 the following restrictions apply:

- 1.1 The Residential Use Area shall be that portion of the Land that is identified as such on the plan attached herein as Schedule D.
- 1.2 In respect to the area identified in Schedule D as Residential Use Area, the following restrictions apply:
  - (a) No more than 75% of the trees greater than 25cm Diameter at Breast Height shall be removed, where the 75% figure is based on the number of trees at the time of the Report;
  - (b) No wood may be harvested for firewood use except for the collection of naturally occurring windfalls unless the harvested wood is from a tree permitted to be removed under Schedule B Section 1.2(a) in this Agreement;
  - (c) The Owner must maintain a record of the number of trees removed and make this available to the Covenant Holder on request;
  - (d) The combined total structural footprint of the Residential Dwelling Unit and all outbuildings and associated structures shall not exceed 5000 square feet per Residential Use Area;
  - (e) No in-ground swimming pools shall be allowed;
  - (f) Access to the Residential Use Area must not be from Dean Road;
  - (g) Driveways must be built with permeable materials; and,

- (h) Any other acts which, in the opinion of the Covenant Holder acting reasonably, may have a detrimental impact on a Residential Use Area shall be prohibited.

- 1.3 Removal of native flora or fauna should be minimized.
- 1.4 The Owner must notify the Covenant Holder in writing when construction of a Residential Dwelling Unit is to commence and must certify that the Residential Dwelling Unit is in compliance with Schedule B, Section 1.2(d) of this Agreement.

## **2. RESTRICTIONS ON RESIDENTIAL CONSERVATION AREA**

In accordance with Section 5 of this Agreement, the purposes of the Residential Conservation Area is to protect as many old trees as possible, to maintain privacy and to preserve forested corridors across the landscape for connectivity and wildlife.

- 2.1 In respect to the area identified in Schedule D as Residential Conservation Area, including the area that lies within fifteen metres of the property line, the following restrictions apply:
  - (a) No more than 25% of trees greater than 25cm Diameter at Breast Height may be removed, where the 25% figure is based on the number of trees at the time of the Report;
  - (b) The Owner must maintain a record of the number of trees removed and make this available to the Covenant Holder on request;
  - (c) No wood may be harvested for firewood use except for the collection of naturally occurring windfalls unless the harvested wood is from a tree permitted to be removed under Schedule B Section 2.1(a) of this Agreement;
  - (d) No fires shall be allowed; and,
  - (e) No structures shall be built.



## **SCHEDULE C**

Attached to and forming part of the Covenant Agreement between RENEWAL LAND COMPANY, Owner, and TLC THE LAND CONSERVANCY OF BRITISH COLUMBIA, Covenant Holder, dated the \_\_\_ day of April, 2006.

### **1. RESERVED RIGHTS ON RESIDENTIAL USE AREA**

- 1.1 In respect to the area identified in Schedule D of this Agreement as Residential Use Area, the Owner reserves the following rights:
- (a) To construct, maintain, replace or enhance structures on the property;
  - (b) To create and maintain gardens;
  - (c) To maintain, replace or enhance a single driveway and service corridor from Highfield Road to the residence, provided that said corridor does not exceed 6 metres in width;
  - (d) To conduct home-based commercial activities that are not detrimental to the Land and Amenities and are consistent with maintaining the Land and Amenities in a Sustainable state; and,
  - (e) To construct, maintain, replace or enhance a well or other water source and a septic system or other method of waste disposal.

### **2. RESERVED RIGHTS ON RESIDENTIAL CONSERVATION AREA**

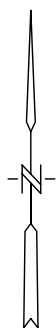
- 2.1 In respect to the area identified in Schedule D of this Agreement as Residential Conservation Area, the Owner reserves the following rights:
- (a) To construct a single driveway and service corridor to access the Residential Use Area provided that said driveway and corridor does not exceed 6 metres in width and is not accessed via Dean Road.

## **SCHEDULE D**

Attached to and forming part of the Covenant Agreement between RENEWAL LAND COMPANY, Owner, and TLC THE LAND CONSERVANCY OF BRITISH COLUMBIA, Covenant Holder, dated the \_\_\_ day of April, 2006.

### **1. MAP OF USE AREAS ON THE LAND**

# Lots A and B Land Use Areas



Legend \_\_\_\_\_

All distances shown are in metres

● Standard Iron Post found

○ Standard Iron Post set

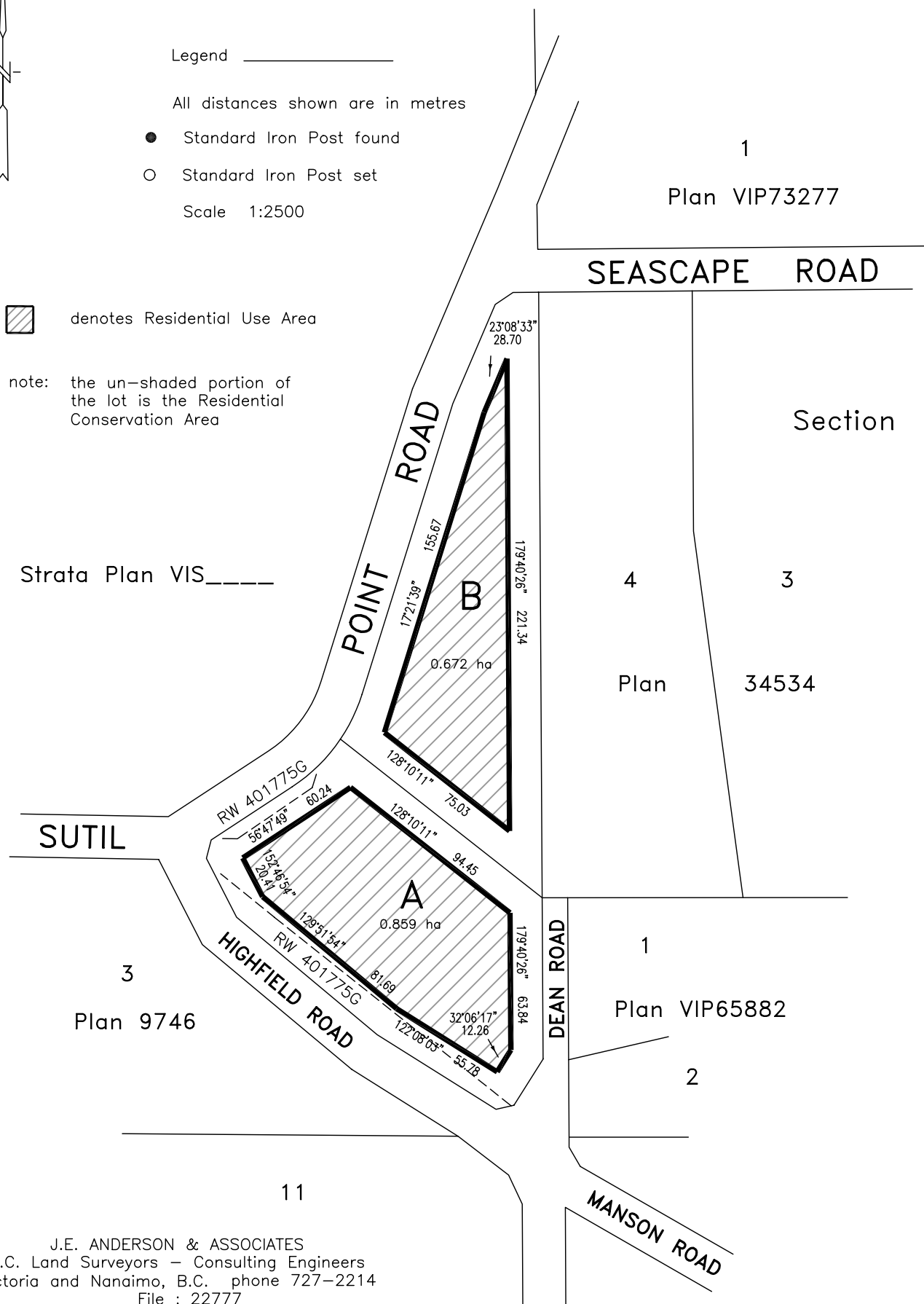
Scale 1:2500



denotes Residential Use Area

note: the un-shaded portion of the lot is the Residential Conservation Area

Strata Plan VIS\_\_\_\_\_



**END OF DOCUMENT**