

007

LAND TITLE ACT
FORM C

LB096538

14 AUG 2007 10 03

LB096529

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office use)

Page 1 of 12 pages

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

Fran Hinton, McCarthy Tétrault LLP
1300-777 Dunsmuir Street, Vancouver, B.C., V7Y 1K2
Phone: (604) 643-7100 Client No. 010452



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

(PID)

(LEGAL DESCRIPTION)

77
CHARGE

07/08/14 10:10:13 01 KL

011233

\$656.50

SEE SCHEDULE

3. NATURE OF INTEREST:*

DESCRIPTION

DOCUMENT REFERENCE
(PAGE AND PARAGRAPH)

PERSON ENTITLED TO INTEREST

SEE SCHEDULE

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):*

TOWER RANCH HOLDING CORPORATION (Inc. No. 449686) (as to easements and section 219 covenant granted); and **THE BANK OF NOVA SCOTIA** (as to priority agreement on page 12)

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

TOWER RANCH HOLDING CORPORATION (Inc. No. 449686), 800 - 200 Burrard Street, Vancouver, British Columbia, V6C 3L6 (as to easements granted and the priority agreement on page 12); and

TOWER RANCH COMMUNITY ASSOCIATION (XS-0052337), 800 - 200 Burrard Street, Vancouver, British Columbia, V6C 3L6 (as to the section 219 covenant granted and the priority agreement on page 12) (See D.F. No. LB074078)

This is Exhibit "M" referred to in the
affidavit of Timothy S. Kucher #1
sworn before me at Kelowna
in the province of British Columbia,
this 15 day of Feb 2017

A Commissioner for taking Affidavits within British Columbia.
A Notary Public in and for the Province of British Columbia.

135239-134161
VDO_DOCS #1625625 v. 3

7. ADDITIONAL or MODIFIED TERMS:*

N/A

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.

USE BLACK INK ONLY

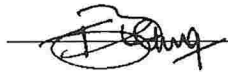
Officer Signature(s)

Execution Date

Y M D

USE BLACK INK ONLY

Party(ies) Signature(s)

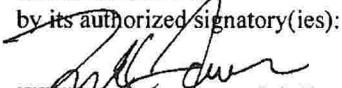


B. GLENN LEUNG
Barrister & Solicitor
 1300 - 777 DUNSMUIR STREET
 VANCOUVER, B.C. V7Y 1K2
 604-643-7108

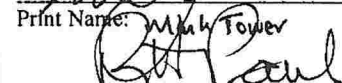
07 07 27

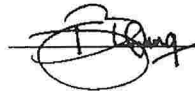
TOWER RANCH HOLDING CORPORATION

by its authorized signatory(ies):


 Print Name: Mark Tower

07 07 30


 Print Name: Robert Paul




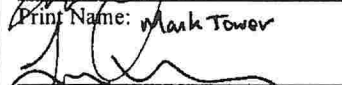
B. GLENN LEUNG
Barrister & Solicitor
 1300 - 777 DUNSMUIR STREET
 VANCOUVER, B.C. V7Y 1K2
 604-643-7108

07 07 27

TOWER RANCH COMMUNITY ASSOCIATION

by its authorized signatory(ies):


 Print Name: Mark Tower


 Print Name: John Morley

(as to signature of Mark Tower only)

OFFICER CERTIFICATION: Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

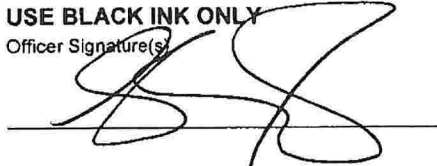
LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

Page 3 of 12 pages

USE BLACK INK ONLY

Officer Signature(s)



SARAH A. BATUT
Barrister & Solicitor
2100 - 1075 West Georgia Street
Vancouver, B.C. V6E 3G2
604-631-4954

Execution Date

Y M D

07

07

31

USE BLACK INK ONLY

Party(ies) Signature(s)

THE BANK OF NOVA SCOTIA (as
holder of the charges referred to on page
12) by its authorized signatory(ies) duly
appointed attorney

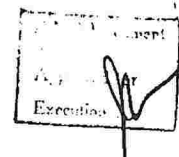
Print Name

Print Name:

Gary M. Lindsey, AGM
Global Risk Management

BW 485436

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.



**LAND TITLE ACT
FORM E**

SCHEDULE

Page 4 of 12 pages

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL DOCUMENT FORM.

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

1stly: 026-686-651	Lot 2, Section 31, Township 27, Osoyoos Division, Yale District, Plan KAP80993
2ndly: 026-686-660	Lot 3, Section 31, Township 27, Osoyoos Division, Yale District, Plan KAP80993
3rdly: 026-686-678	Lot 4, Section 31, Township 27, Osoyoos Division, Yale District, Plan KAP80993
4thly: 026-686-694	Lot 6, Section 31, Township 27, Osoyoos Division, Yale District, Plan KAP80993

3. NATURE OF INTEREST:
DESCRIPTION

DOCUMENT REFERENCE
(PAGE AND PARAGRAPH)

PERSON ENTITLED TO INTEREST

(Lot 2)
Easement granted over 1stly described lands in favour of 2ndly, 3rdly and 4thly described lands

Page 8, Paragraph 2.1

Tower Ranch Holding Corporation
(owner of 2ndly, 3rdly and 4thly described lands)

(Lot 3)
Easement granted over 2ndly described lands in favour of 1stly, 3rdly and 4thly described lands

Page 8, Paragraph 2.1

Tower Ranch Holding Corporation
(owner of 1stly, 3rdly and 4thly described lands)

(Lot 4)
Easement granted over 3rdly described lands in favour of 1stly, 2ndly and 4thly described lands

Page 8, Paragraph 2.1

Tower Ranch Holding Corporation
(owner of 1stly, 2ndly and 4thly described lands)

(Lot 6)
Easement granted over 4thly described lands in favour of 1stly, 2ndly and 3rdly described lands

Page 8, Paragraph 2.1

Tower Ranch Holding Corporation
(owner of 1stly, 2ndly and 3rdly described lands)

(Lots 2, 3, 4 + 6)
Section 219 Covenant granted over 1stly to 4thly described lands

Page 10, Paragraph 5.1

Tower Ranch Community
Association

DESCRIPTION	DOCUMENT REFERENCE (PAGE AND PARAGRAPH)	PERSON ENTITLED TO INTEREST
<u>Priority Agreement granting Easements</u> <u>LB96529, LB96530,</u> <u>LB96531 + LB96532</u>	Page 12	Tower Ranch Holding Corporation (owner of 1stly to 4thly described lands) and Tower Ranch Community Association
<u>and Section 219</u> Covenant <u>LB96533</u> priority over Mortgage KH21405 (as extended by LB26066 and modified by LB26067) and Assignment of Rents LB26068		

LAND TITLE ACT

TERMS OF INSTRUMENT – PART 2

Page 6 of 12 pages

RECIPROCAL EASEMENT AGREEMENTTHIS AGREEMENT made as of July 21, 2007,

BETWEEN:

TOWER RANCH HOLDING CORPORATION, a British Columbia corporation having an address at Suite 800, 200 Burrard Street, Vancouver, British Columbia, V6C 3L6

(the "Servient Owner")

AND:

TOWER RANCH HOLDING CORPORATION, a British Columbia corporation having an address at Suite 800, 200 Burrard Street, Vancouver, British Columbia, V6C 3L6

(the "Dominant Owner")

AND:

TOWER RANCH COMMUNITY ASSOCIATION, a British Columbia society having an address at Suite 800, 200 Burrard Street, Vancouver, British Columbia, V6C 3L6

(the "Community Association")

WHEREAS:

- A. Tower Ranch Holding Corporation is the owner of each of those properties located in Kelowna and legally described in item 2 of the Form C – General Instrument to which this Agreement is attached (the "Properties");
- B. The Properties are part of a multi-staged development which, upon completion, will consist of approximately 800 separate residential freehold lots and residential strata lots which are intended to share the Amenities (as defined herein);

- C. Tower Ranch Holding Corporation, in its capacity as owner of each Property, wishes to grant itself, in its capacity as owner of the other Properties, easements for the purpose of permitting the use and enjoyment of those of the Amenities which are located on or may hereafter be located on the Properties and are intended to be for the general use and enjoyment of all users of the Properties;
- D. By subsection 18(5) of the *Property Law Act* (British Columbia), a registered owner in fee simple may grant to himself an easement over land that he owns for the benefit of other land that he owns in fee simple;
- E. The Community Association wishes to ensure that the easements set out in this Agreement are not amended or discharged without its consent in writing;
- F. Pursuant to the provisions of section 219 of the *Land Title Act* (British Columbia), there may be registered as annexed to any land, conditions or covenants in favour of a person designated pursuant to the Act that the land, or any specified portion thereof, is not built upon or is not to be used in any particular manner; and
- G. The Community Association has been designated by the minister under section 219(3)(c) of the *Land Title Act* (British Columbia).

THEREFORE this Agreement witnesses that in consideration of the sum of \$1.00 now paid by each party hereto to each of the others and other good and valuable consideration, the receipt and sufficiency of which is by each party hereby acknowledged, the parties agree as follows:

1.0 DEFINITIONS

- 1.1 For the purposes of this Agreement, each of the following terms shall have the meanings hereinafter described:

- (a) “**Amenities**” means the following features which are intended for the communal use of the Owners, tenants and occupants from time to time of the Properties and their respective guests:
 - (i) that amenity centre and fitness centre located or to be located in a strata lot or in strata lots to be located on lands currently legally described as Parcel Identifier 026 686 708, Lot 7, Section 31, Township 27, Osoyoos Division, Yale District, Plan KAP80993;
 - (ii) the landscape areas located or to be located on the areas within the Properties which have been dedicated “road” or are hereafter dedicated “road” from time to time;
 - (iii) the network of trails which is located or to be located within the Properties for walking, hiking, bicycling and similar recreational purposes; and
 - (iv) if Tower Ranch Holding Corporation constructs them, such other amenities as are constructed on the Properties for the common benefit of

the Owners, tenants and occupants from time to time of the Properties and their respective guests (for example, a pool and change rooms),

and "**Amenity**" means any one of them;

- (b) "**Charged Property**" means each of the Properties (as they exist at the date of this Agreement) as the servient tenement pursuant to the easement granted in section 2.1 in respect of all the other Properties (as they exist at the date of this Agreement), it being the intent of this Agreement that section 2.1 is to charge each of the Properties (as they exist at the date of this Agreement) in favour of all of the other Properties (as they exist at the date of this Agreement);
- (c) "**Dominant Tenements**" means, with respect to any easement granted pursuant to section 2.1, all of the Properties except for the relevant Charged Property, it being the intent of this Agreement that each easement which charges a Property pursuant to section 2.1 is to be for the benefit of all of the other Properties (as they exist at the date of this Agreement);
- (d) "**Owners**" means, as of the date of the registration of this Agreement, Tower Ranch Holding Corporation and, thereafter, the registered owners of all lots or strata lots into which the Properties may be subsequently subdivided, and "**Owner**" means any one of them in respect of any one Property; and
- (e) "**Properties**" means, as of the date of the registration of this Agreement, the lots legally described in item 2 of the Form C – General Instrument to which this Agreement is attached and, thereafter, all legal lots and strata lots created from time to time pursuant to any subdivision of such properties (or of any lots or strata lots into which they may have been subdivided), and "**Property**" means any one of them.

2.0 GRANTS OF EASEMENTS

- 2.1 The Servient Owner, as owner of the Charged Property, being the servient tenement, hereby grants to the Dominant Owner, as owner of the Dominant Tenements, being the dominant tenement, for the benefit of the Dominant Tenements and to bind all of the Charged Property, the non-exclusive full, free and uninterrupted right, liberty and easement (subject only to the terms hereof and reservations set out in section 3.1) for the Owners of the Dominant Tenements, the tenants of the Dominant Tenements and all agents and invitees of the Owners of the Dominant Tenements at all times hereafter, and in common with the Owner of the Charged Property and all other persons now or hereafter having the express or implied permission of the Owner of the Charged Property to a similar right, to enter upon, go across, return over and remain upon the Charged Property for the purpose of obtaining access to and using the Amenities during the hours such Amenities are open for use; to have and to hold such easement appurtenant to the Dominant Tenements, subject only to the terms hereof and the reservations contained in section 3.1.

3.0 RESERVATIONS

3.1 Notwithstanding the grants of easement in section 2.1 hereof, the Owners of the relevant Dominant Tenements agree that the rights granted in section 2.1 are subject to the reservations that:

- (a) the rights of access of the Owners of the relevant Dominant Tenements over the relevant Charged Property shall be restricted to such rights of access over the relevant Charged Property as are absolutely necessary in connection with obtaining access to and using the Amenities;
- (b) the Community Association shall be entitled to regulate the use and enjoyment of the Amenities; and
- (a) pursuant to its powers under its Bylaws, the Community Association shall be entitled to suspend the exercise by any Owner of a Dominant Tenement of all or any of its easement rights pursuant to this Agreement if such Owner is in default of its obligations under the Bylaws of the Community Association.

4.0 SUBDIVISION

4.1 If any of the Properties is subdivided, either wholly or in part, and at any time and from time to time pursuant to the provisions of the *Land Title Act* (British Columbia), or of the *Strata Property Act* (British Columbia), as either may be amended from time to time, or of other similar legislation enacted from time to time, on the deposit of the plan of subdivision or strata plan, as the case may be:

- (a) the benefit of the easements granted in favour of such Property:
 - (i) shall be annexed to each of the new parcels, lots, strata lots or other subdivided parcels shown on such plan; and
 - (ii) shall continue to be annexed to the remainder, if any, of the lands subdivided; and
- (b) the burden of the easements and covenants granted in respect of such Property:
 - (i) shall run with and bind each of the new parcels, lots, strata lots or other subdivided parcels shown on such plan; and
 - (ii) shall continue to run with and bind the remainder, if any, of the lands subdivided.

Upon any such subdivision, this Agreement shall be read and construed such that the owner of any Property created by such a subdivision is liable for a breach of this Agreement only to the extent that it relates to the Property owned by such Owner.

5.0 SECTION 219 COVENANT

5.1 Tower Ranch Holding Corporation, as owner of the Properties, hereby covenants and agrees with the Community Association pursuant to section 219 of the *Land Title Act* (British Columbia), it being the intention of the parties that this covenant shall be annexed to the Properties, that:

- (a) it will not use any portion of the Properties or allow the Properties to be used for any purpose which would detract from or interfere with the function of the easements granted in this Agreement, it being understood and agreed that nothing contained in this Agreement will be interpreted so as to restrict or prevent the Owner of a Charged Property from using the Charged Property in any manner which does not interfere with the security of efficient functioning of or unobstructed use of the easements granted in this Agreement which burden such Charged Property;
- (b) the easements granted in this Agreement may only be modified or discharged with the written consent of the Community Association; and
- (c) the Community Association is not required and is under no obligation in law or in equity to prosecute or enforce this Agreement in any way whatsoever.

6.0 MISCELLANEOUS

- 6.1 No amendment, modification, supplement, termination or waiver of any provision of this Agreement will be effective unless made in writing signed by each of the Owners.
- 6.2 The easements and covenants herein contained will be easements and covenants running with the land but no part of the fee of the soil thereof will pass to or be vested in any party under or by this Agreement.
- 6.3 This Agreement will run with and be a burden upon each Owner's interest in the Properties, but no part of the fee of the soil of such lands will pass to or be vested in either party as grantee under or by these presents.
- 6.4 The expressions "Servient Owner", "Dominant Owner" and "Community Association" herein contained will be deemed to include the heirs, executors, administrators, successors, assigns, employees, servants, agents, officers and invitees of such parties wherever the context or the parties hereto so permit or require.
- 6.5 With respect to any Property, each Owner will cease to be liable for the agreements of the Owner pursuant to this Agreement to the extent they relate to that Property at such time as the Owner ceases to be the owner of such Property.
- 6.6 Waiver of any default by any party will not be deemed to be a waiver of any subsequent default by that party.

- 6.7 Whenever it is required or desired that any party serve a notice on any of the other parties, service will be deemed to be satisfactory if and deemed to have occurred when the party being served has been served personally.
- 6.8 If any section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion will be severed and the decision that is invalid will not affect the validity of the remainder of this Agreement.
- 6.9 This Agreement will be governed and construed in accordance with the laws of the Province of British Columbia.
- 6.10 This Agreement will enure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement by executing the Form C or any Form D attached hereto and agree to be bound by its terms.

PRIORITY AGREEMENT

WHEREAS THE BANK OF NOVA SCOTIA (the "**Chargeholder**") is the holder of the mortgage and assignment of rents encumbering those lands legally described in item 2 of the Form C – General Instrument to which this Priority Agreement is attached (the "**Charged Land**"), which mortgage and assignment of rents are registered in the Kamloops Land Title Office under instrument numbers KH21405 (as extended by LB26066 and modified by LB26067) and LB26068 (together, the "**Charges**").

THEREFORE THIS PRIORITY AGREEMENT WITNESSETH THAT for and in consideration of \$1.00 and other good and valuable consideration paid by Tower Ranch Holding Corporation and the Community Association to the Chargeholder (the receipt and sufficiency of which the Chargeholder hereby acknowledges):

1. The Chargeholder hereby grants to the easements and section 219 covenant granted and contained in the attached Agreement (the "**New Charges**") priority for the New Charges over the Chargeholder's right, title and interest in and to the Charged Land and the Chargeholder does hereby postpone the Charges and all of its right, title and interest thereunder to the New Charges as if the attached Agreement had been executed, delivered and registered prior to the execution, delivery and registration of the Charges and prior to the advance of any money pursuant to the Charges.

IN WITNESS WHEREOF the Chargeholder has executed this Priority Agreement by executing the Form C or a Form D to the attached Agreement.

- END OF DOCUMENT -