

FORM C

(Section 233)

Province of
British Columbia

FB180725 JUN 2008 14 51

FB180722

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office Use)

PAGE 1 of 28 pages

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

BULL, HOUSSEY & TUPPER LLP, Barristers & Solicitors, 3000 - 1055 West Georgia Street, Vancouver,
British Columbia, V6E 3R3 604. 687.6575 (LTO File No. 11299) (File No. 95-2977) (Section 219 Covenant)

Per:

LARRY R. SANDRIN

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

(PID)

(LEGAL DESCRIPTION)

SEE SCHEDULE

3. NATURE OF INTEREST:*

DESCRIPTION

DOCUMENT REFERENCE
(page and paragraph)

PERSON ENTITLED TO INTEREST

1. Section 219 Covenant over
those areas included within
Reference

Entire Instrument

The Nature Conservancy of
Canada and North Pender
Island Local Trust Committee

VIP BCP 85133
VIP BCP 85134, BCP 85135
VIP BCP 85136, BCP 85137
VIP BCP 85138 and
VIP BCP 85139

2. Section 218 Statutory
Right-of-Way

Page 13, paragraph 8.1

The Nature Conservancy of
Canada and North Pender
Island Local Trust Committee

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

- (a) Filed Standard Charge Terms

[]

D.F. Number:

- (b) Express Charge Terms

[X]

Annexed as Part 2

- (c) Release

[]

There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S):*

J.I. PROPERTIES, INC., c/o 3000 - 1055 West Georgia Street, Vancouver, British Columbia, V6E 3R3

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

THE NATURE CONSERVANCY OF CANADA (Registration No. XS-0033684), Suite 300, 1205 Broad Street,
Victoria, British Columbia, V8W 2A4 and NORTH PENDER ISLAND LOCAL TRUST COMMITTEE, a local
trust committee under the *Islands Trust Act*, 200 - 1627 Fort Street, Victoria, British Columbia, V8R 1H8

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.

Officer Signature(s)



Name:

LARRY R. SANDRIN
BARRISTER & SOLICITOR
BULL, HOUSSEY & TUPPER LLP
#3000, 1055 WEST GEORGIA
VANCOUVER, B.C. V6E 3R3
(604) 641-4873

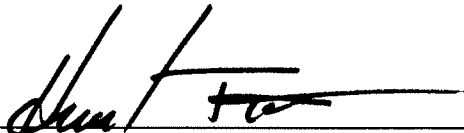
EXECUTION DATE

Y	M	D
08	05	26

Party(ies) Signature(s)

TRANSFEROR:

J.I. PROPERTIES, INC. by its authorized signatory:



Name: HOWARD G. TROTT

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.

FORM D

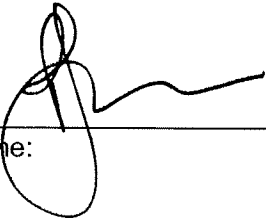
EXECUTIONS CONTINUED

PAGE 3

Officer Signature(s)

EXECUTION DATE

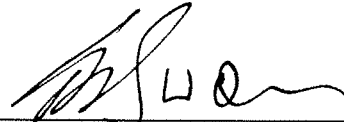
Party(ies) Signature(s)


Name: _____

Y	M	D
08	05	23

TRANSFeree:

THE NATURE CONSERVANCY OF
CANADA by its authorized
signatory(ies):


Name: Thomas Swann

(as to both signatures)

PETER D. JOHNSON
Barrister & Solicitor
2nd FLOOR, 837 BURDETT AVENUE
VICTORIA, BRITISH COLUMBIA
V8W 1B3

Name: _____

OFFICER CERTIFICATION:

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

FORM D

EXECUTIONS CONTINUED

PAGE 4

Officer Signature(s)

EXECUTION DATE

Party(ies) Signature(s)

Name:

(as to both signatures)

LINDA JOAN ADAMS
Commissioner for Taking Affidavits
for British Columbia
 200 - 1627 Fort Street
 Victoria, BC V8R 1H8
 Ph (250) 405-5151

Y	M	D
08	06	03

TRANSFeree:

NORTH PENDER ISLAND LOCAL
 TRUST COMMITTEE by its authorized
 signatory(ies):

Name: CRISTEEVESName: ROSE WILLOW

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.

FORM E

SCHEDULE

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

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

(PID)	(LEGAL DESCRIPTION)
1. _____ - _____ - _____	Lot 1 of Parcel 1, James Island, Cowichan District, Plan VIP _____
2. _____ - _____ - _____	Lot 2 of Parcel 2, James Island, Cowichan District, Plan VIP _____
3. _____ - _____ - _____	Lot 3 of Parcel 3, James Island, Cowichan District, Plan VIP _____
4. _____ - _____ - _____	Lot 4 of Parcel 4, James Island, Cowichan District, Plan VIP _____
5. _____ - _____ - _____	Lot 5 of Parcel 5, James Island, Cowichan District, Plan VIP _____

TERMS OF INSTRUMENT - PART 2

SECTION 219 COVENANT AND STATUTORY RIGHT OF WAY

THIS AGREEMENT, dated for reference May 29, 2008,

AMONG:

J.I. PROPERTIES, INC., c/o 3000 - 1055 West Georgia Street,
Vancouver, British Columbia, V6E 3R3

(the "**Owner**")

AND:

THE NATURE CONSERVANCY OF CANADA, Suite 300,
1205 Broad Street, Victoria, British Columbia, V8W 2A4

(the "**NCC**")

AND:

NORTH PENDER ISLAND LOCAL TRUST COMMITTEE, a local
trust committee under the *Islands Trust Act*, 200 - 1627 Fort
Street, Victoria, British Columbia, V8R 1H8

(the "**Local Trust Committee**")

WITNESSES WHEREAS:

- A. In addition to the terms defined above, the terms employed in these Recitals will have the meanings respectively ascribed to them in Section 1 of this Agreement;
- B. The Owner is the registered owner of the Lands, including the Conservation Areas;
- C. Sections 219(3), (4) and (5) of the *Land Title Act*, R.S.B.C. 1996 Chapter 250, as amended, permit registration of covenants in favour of the Local Trust Committee and persons designated by the minister in respect of the conservation of land or a specified amenity in relation to land;
- D. The NCC has been designated by the Minister of Environment of the Province of British Columbia as an organization authorized to accept and hold covenants under Section 219(3) of the *Land Title Act* for the purposes described in Recital C above;
- E. The Local Trust Committee has required the execution and registration of this Agreement as a condition of the adoption of Bylaw 170 of the Local Trust Committee,

NOW THEREFORE in consideration of the sum of TEN DOLLARS (\$10.00) now paid by each of the NCC and the Local Trust Committee to the Owner and for other good and valuable consideration (the receipt and sufficiency of which the Owner hereby acknowledges), the Owner hereby covenants and agrees with the NCC and the Local Trust Committee, as a covenant in favour of the NCC and the Local Trust Committee pursuant to Section 219 of the *Land Title Act* (it being the intention and agreement of the Owner that the provisions hereof be annexed hereto and run with and be a charge upon the Conservation Areas for the express purposes of conserving the Conservation Areas and protecting all ecologically-sensitive areas thereof as an ecosystem sanctuary), as follows:

1. DEFINITIONS

- (a) **"Amenity"** includes any natural, scientific, environmental, wildlife or plant life value located within the respective Conservation Areas;
- (b) **"Business Day"** means any day other than Saturdays, Sundays and statutory holidays in the Province of British Columbia;
- (c) **"Conservation Area A"** means that portion of the Lands included within the Conservation Reference Plan attached hereto as Schedule A;
- (d) **"Conservation Area B"** means that portion of the Lands included within the Conservation Reference Plan attached hereto as Schedule B;
- (e) **"Conservation Area C"** means that portion of the Lands included within the Conservation Reference Plan attached hereto as Schedule C;
- (f) **"Conservation Area D"** means that portion of the Lands included within the Conservation Reference Plan attached hereto as Schedule D;
- (g) **"Conservation Area E"** means that portion of the Lands included within the Conservation Reference Plan attached hereto as Schedule E;
- (h) **"Conservation Area F"** means that portion of the Lands included within the Conservation Reference Plan attached hereto as Schedule F;
- (i) **"Conservation Area G"** means that portion of the Lands included within the Conservation Reference Plan attached hereto as Schedule G;
- (j) **"Conservation Areas"** means, collectively, Conservation Area A, Conservation Area B, Conservation Area C, Conservation Area D, Conservation Area E, Conservation Area F and Conservation Area G;
- (k) **"Conservation Reference Plan"** means any of the Reference Plans described in Section 3 of Part 1 of this General Instrument, unregistered photo-reduced copies of which are respectively attached hereto as Schedules A, B, C, D, E, F and G;

- (l) **"CPI"** means the All-Items Consumer Price Index published by Statistics Canada, or its successor in function, for Victoria, British Columbia, where 2001 equals 100;
- (m) **"Land Title Act"** means the *Land Title Act*, RSBC 1996, Chapter 250 as amended;
- (n) **"Lands"** means the lands and premises legally described in Item 2 of the Form C General Instrument Part 1 to which these Terms of Instrument are attached;
- (o) **"Owner-Controlled Party"** means any registered or beneficial owner of any legal parcel of land comprising any portion of the Lands, any tenant of any such owner, any family member, guest, tenant, agent, employee, contractor, invitee or licensee of any such owner or tenant, and any other person or entity for whom the Owner is responsible at law, however, "Owner-Controlled Party" will exclude the NCC and the Local Trust Committee and any officer, employee, agent, contractor, invitee or licensee of any of them, and will further exclude any trespasser upon any portion of the Lands;
- (p) **"Report"** means the baseline documentation report described in Article 3, which will describe the respective Conservation Areas and the respective Amenities in the form of text, maps, photographs and other records of the Lands and the Amenities as of the respective dates set out in the Report;
- (q) **"Sole Discretion"** means, with respect to any party to this Agreement, the sole, absolute and unfettered discretion of such party; and
- (r) **"Statutory Right-of-Way"** means the Statutory Right-of-Way granted by the Owner to the NCC and the Local Trust Committee pursuant to Section 8.1 of this Agreement.

2. INTENT OF AGREEMENT

2.1 The parties each agree that the general intent of this Agreement is:

- (a) to protect, preserve, conserve, maintain and restore the Conservation Areas and the Amenities, with particular interest in retaining, enhancing, and maintaining characteristics of salt marsh, freshwater marsh, forest and sand-spit ecosystems and species and plant communities at risk;
- (b) to prevent any entry upon or use of the Conservation Areas that will impair or interfere with the Conservation Areas or the Amenities as indicated in the Report; and
- (c) to manage the Conservation Areas and Amenities for the purposes of short-term and long-term ecosystem health and wildlife habitat provision,

and the parties agree that this Agreement is to be interpreted, performed and applied accordingly.

- 2.2 This Agreement is intended to be perpetual in application and to reflect the public interest in the protection, preservation, conservation, maintenance and restoration of the natural state of the Conservation Areas and the Amenities for ecological, environmental and aesthetic reasons.
- 2.3 Notwithstanding anything to the contrary contained in this Agreement, no rights of possession, nor access nor remedies are granted to the general public with respect to any of the Conservation Areas nor to any other portion of the Lands by this Agreement, and no member of the general public will have any standing to enforce or enjoy any rights or remedies granted by this Agreement to the NCC and the Local Trust Committee, or either of them.

3. BASELINE REPORT

- 3.1 The parties agree that the Conservation Areas and any Amenities will be described in the Report (which will be prepared by the NCC within one year following the date of registration of this Agreement at the Victoria Land Title Office), a copy of which will be, promptly following completion thereof, delivered to the Owner and to the Local Trust Committee and will be on file with each of the parties at the addresses set out on page 1 of Part 1 of this General Instrument.
- 3.2 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 will provide an accurate description of the respective Conservation Areas and any Amenities, together with any improvements existing upon or within any such Conservation Areas, all at the date of the Report.
- 3.3 The parties each acknowledge that the flora and fauna on the respective Conservation Areas 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 or contemplated by this Agreement.

4. RESTRICTIONS ON USE OF CONSERVATION AREAS

- 4.1 The Owner hereby covenants and agrees with the NCC and the Local Trust Committee that the Conservation Areas will be used only in strict compliance with the following terms and conditions of this Agreement:
 - (a) except as expressly permitted in this Agreement, the Owner shall not do anything, omit to do anything, knowingly allow anything to be done or knowingly allow the omission of anything that does or could reasonably be expected to destroy, impair, diminish, negatively affect or alter the natural state of the Conservation Areas or the Amenities, including from the condition described in the Report.

In connection therewith and without restricting the generality of Section 4.1(a), the Owner shall not, except with the prior written approval of both the NCC and the Local Trust Committee, in the Sole Discretion of each of the NCC and the Local Trust Committee, use or permit the use of the Conservation Areas, or any of them, by any Owner-Controlled Party for any of the following activities:

- (b) altering or interfering with the hydrology of the Conservation Areas, including diversion of natural drainage and flow of water in or around the Conservation Areas which may impact the Conservation Areas;
- (c) allowing any new buildings, structures, fixtures or improvements to be built, affixed, or placed on the Conservation Areas;
- (d) allowing any road, driveway, path, trail, lane or other way, whether for vehicular or other passage, to be laid out or constructed in the Conservation Areas, other than the driveway and paths existing on the reference date of this Agreement;
- (e) allowing any flora or fauna, living or dead, which is native to the Conservation Areas, to be removed, harvested, cut or destroyed in any way;
- (f) allowing any noxious or non-native flora or fauna to be planted or introduced to the Conservation Areas, other than through natural processes or causes;
- (g) allowing any motorized equipment to be used within or upon any of the Conservation Areas, except on roads or driveways existing as of the reference date of this Agreement;
- (h) allowing any horseback riding, pedestrian access, or other non-motorized recreational activity in the Conservation Areas;
- (i) allowing any other acts to be carried out on or in respect of Conservation Areas which, in the opinion of the NCC or the Local Trust Committee, acting reasonably, may have a detrimental impact on the Conservation Areas.

In addition, the Owner acknowledges and agrees that:

- (j) no resident of James Island nor any Owner-Controlled Party will have any access rights into, through or otherwise affecting any such Conservation Area unless otherwise expressly authorized by the NCC and the Local Trust Committee;
- (k) the NCC and the Local Trust Committee will be entitled and authorized to undertake and maintain ongoing ecosystem management activities in connection with each Conservation Area in furtherance of the objectives set out in Section 2.1 and terms and conditions outlined in this Agreement and
- (l) any lease of all or any of the Conservation Areas to any party, as tenant, shall refer to this Agreement and include an express acknowledgment of any such tenant that the interests and rights of any such tenant are subject to compliance

with the terms of this Agreement and a provision which permits the Owner to terminate any such lease if any such tenant violates this Agreement;

5. DISPUTE RESOLUTION

- 5.1 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 Owner, the Local Trust Committee or the NCC may give notice to the other parties hereto requiring a meeting between such parties within 15 days of receipt of the notice.
- 5.2 Upon receipt of any notice as contemplated in Section 5.1, any activity constituting or threatening an alleged breach of this Agreement, or giving rise to a disagreement as to the meaning of this Agreement, shall immediately cease pending resolution of the issue in dispute.
- 5.3 The Owner and the NCC and/or the Local Trust Committee will diligently, reasonably and in good faith, endeavour to resolve the subject of any such disagreement within 30 days following receipt of a notice as contemplated in Section 5.1.
- 5.4 If the Owner and the NCC and/or the Local Trust Committee are not able to resolve the disagreement within 30 days following receipt of such notice, those parties may appoint a mutually acceptable person to mediate the matter and such parties will act diligently, reasonably and in good faith and co-operate with the mediator and with one another in an attempt to resolve the matter within 30 days after the mediator is appointed. Any costs of any such mediation will be borne equally by the Owner and the NCC and/or the Local Trust Committee.
- 5.5 If the Owner and the NCC and/or the Local Trust Committee are not able to resolve the matter in dispute through mediation, or if either party refuses or fails to participate in mediation, then either the Owner or the NCC and/or the Local Trust Committee may submit the matter in dispute to a single arbitrator appointed jointly by the parties; PROVIDED THAT if the Owner and the NCC and/or the Local Trust Committee are unable to agree upon the appointment of an arbitrator, an arbitrator shall be appointed pursuant to and shall act in accordance with the *Commercial Arbitration Act* (British Columbia) to render a determination through arbitration of any issue in dispute.
- 5.6 Any determination of the arbitrator appointed pursuant to Section 5.5 shall be final and binding upon the Owner and the NCC and/or the Local Trust Committee .
- 5.7 Any costs of arbitration pursuant to this Article 5 will be borne equally by the Owner and the NCC and/or the Local Trust Committee .

6. OWNER'S RESERVED RIGHTS

- 6.1 Without limiting the generality of Section 4 and subject to Section 4.1, the Owner may, with the prior written approval of the NCC, extract water for irrigation purposes from Conservation Area D, provided enough water is left at all times to ensure the ecological

health of the freshwater marsh ecosystem is maintained, as determined in the Sole Discretion of the NCC.

- 6.2 Subject to Sections 6.3 and 6.4, nothing in this Agreement restricts or affects the right of the Owner 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.
- 6.3 If the Owner intends to take any action as contemplated in Section 6.2 within any of the Conservation Areas, then, in non-emergency conditions, the Owner shall give at least 30 days' prior written notice to the NCC and to the Local Trust Committee, describing in reasonable detail the intended action, the reason for it, and its likely effect on the Conservation Areas and the Amenities.
- 6.4 In an emergency situation (such as, by way of example only, in the case of fire, trespass, vandalism or threat to human safety) the Owner will be entitled (but not obligated) to take all such action (including, by way of example only, by cutting down or trimming living or dead trees) in the Conservation Areas as may reasonably and *bona fide* be determined by the Owner to be necessary to alleviate any apprehended risk of damage, loss, injury, death or danger, without complying with Section 6.3; PROVIDED THAT the Owner shall notify the NCC and the Local Trust Committee of the circumstances of such action within 30 days, including the actual or likely effect on the Conservation Areas and the Amenities.

7. OWNER'S OBLIGATIONS AS TO TAXES AND OTHER MATTERS

- 7.1 The Owner shall indemnify the NCC and the Local Trust Committee and their respective 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, and any breach of any of the obligations of the Owner under this Agreement.
- 7.2 The Owner is not released from liability for any breaches of this Agreement for which the Owner is responsible at law, 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 Lands;
 - (b) injury or alteration to the Conservation Areas or the Amenities resulting from natural causes, or causes beyond the Owner's reasonable control, including, without limitation, by accidental fire, flood, theft, storm, vandalism, trespass and earth movement, but excluding injury or alteration resulting from actions of the Owner or any Owner-Controlled Party; or

- (c) any prudent action taken by the Owner under emergency conditions to prevent, abate, or mitigate significant injury to the Lands or the Amenities resulting from natural causes, including accidental fire, flood, storm and earth movement.

7.3 Without limiting the generality of Sections 7.1 and 7.2, 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 Lands (whether through spill, emission, migration, deposit, storage or otherwise) of any pollutant, contaminant, waste, hazardous waste, or any matter that impairs the environment ("**Contaminant**"), and for which the Owner is responsible at law; and
- (b) shall indemnify the NCC and the Local Trust Committee 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 NCC and/or the Local Trust Committee in any way associated with anything described in Section 7.3(a).

7.4 Where, as provided under Section 7.2(b), the Owner is not responsible for damage or (*inter alia*) theft, loss or damage due to theft, 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.

7.5 (Subject to the provisions of Section 10.3), 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 Lands and shall pay any arrears, penalties and interest in respect thereof. For greater certainty, the covenants contained in this Section 7.5 are intended to apply to and bind the respective registered owner or owners from time to time of all or any of the Conservation Areas.

8. **STATUTORY RIGHT-OF-WAY FOR ACCESS, MONITORING AND ENFORCEMENT**

8.1 Pursuant to Section 218 of the *Land Title Act*, the Owner hereby grants to the NCC and to the Local Trust Committee, in perpetuity, the right, liberty and easement by way of statutory right-of-way, for each of the NCC and the Local Trust Committee and their respective officers, agents, employees, contractors and subcontractors, with or without equipment and on foot or with vehicles (in keeping with vehicles permitted by the Owner to be used upon the Lands), on, over and across the Conservation Areas and, in order to access the Conservation Areas, the rest of the Lands for the following purposes:

- (a) to inspect the Conservation Areas:
 - (i) at least once each calendar year, with the date for each inspection to be agreed upon by the parties before May 31st each year, but if the parties cannot agree on those days by May 31st in any year, the NCC and/or the

Local Trust Committee is entitled to enter upon and inspect the Lands in accordance with Section 8.1(a)(ii); and

- (ii) at all reasonable times upon prior notice by the NCC or the Local Trust Committee to the Owner of at least twenty-four (24) hours, unless, in the opinion of the NCC or the Local Trust Committee, there is an emergency or other circumstance which does not make giving such notice practicable, in the Sole Discretion of the NCC or the Local Trust Committee;
- (b) as part of inspection of the Conservation Areas, to take samples, photographs and video recordings as may be necessary to monitor compliance and enforce the terms of the Agreement;
- (c) to protect, preserve, conserve, maintain, enhance, restore or rehabilitate, in the NCC's Sole Discretion and at the NCC's expense or in the Local Trust Committee's Sole Discretion and at the Local Trust Committee's expense, as the case may be, the Conservation Areas or the Amenities to as near the condition described in the Report as is practicable or to an improved state of ecological health if an act of nature or human agency other than as described in Section 8.1(d), destroys, impairs, diminishes or negatively affects or alters the Conservation Areas or the Amenities, including from the condition described in the Report;
- (d) in accordance with Section 9.1, to protect, preserve, conserve, maintain, enhance, restore or rehabilitate, in the NCC's Sole Discretion or the Local Trust Committee's Sole Discretion, as the case may be, and at the Owner's expense (to the extent that the Owner is liable therefor under this Agreement or at law), the Conservation Areas or the Amenities to as near the condition described in the Report as is practicable, if an action of the Owner or any Owner-Controlled Party:
 - (i) destroys, impairs, diminishes, negatively affects or alters the Conservation Areas or the Amenities from the condition described in the Report;
 - (ii) contravenes any term of this Agreement and such contravention results in any damage to the Conservation Areas;
- (e) to carry out or evaluate, or both, any program agreed upon between the Owner and the NCC or the Local Trust Committee for the protection, preservation, conservation, maintenance, enhancement, restoration or rehabilitation of all or any portion of the Conservation Areas or the Amenities; and
- (f) to place survey pegs or other markings on the Conservation Areas or to increase the visibility of existing survey pegs or other markings;

PROVIDED THAT:

- (g) the NCC and the Local Trust Committee acknowledge and agree that with respect to the portions of the Lands outside the Conservation Areas:
 - (i) the Statutory Right-of-Way may only be exercised over such areas as may be established as vehicular roadways and pedestrian pathways, provided that this limit shall only apply if such areas provide reasonable, continuous and practical access to the Conservation Areas, and
 - (ii) the Statutory Right-of-Way may be exercised only for the purposes of providing reasonable, continuous and practical access to the Conservation Areas;
 - (h) if requested by the Owner, on the filing of a bare land strata plan in the Land Title Office, at any time and from time to time, the NCC and the Local Trust Committee will execute such documentation as may reasonably be required to modify and/or partially discharge the Statutory Right-of-Way so as to restrict the charge of the Statutory Right-of-Way to such portions of the Lands as may be designated as "common property" on any bare land strata plan filed in connection with the Lands and/or to any portion of the Lands shown on any Reference Plan of Statutory Right-of-Way (and first approved by the NCC and by the Local Trust Committee, each acting promptly and reasonably) showing roadways and pathways, provided that the NCC and LTC shall only be obligated under this paragraph if such common property and/or portion of the Lands, as the case may be, provide reasonable, continuous and practical access to the Conservation Areas.
- 8.2 The Statutory Right-of-Way granted to the NCC and to the Local Trust Committee pursuant to Section 8.1 is necessary for the operation and maintenance of the NCC's and the Local Trust Committee's respective undertakings.
- 8.3 The Owner agrees that the Local Trust Committee and the NCC will be entitled, during the term of the Statutory Right-of-Way, to an appurtenant licence to the use of any wharves or docks reasonably required for the purposes of the exercise of the rights of access contemplated in the Statutory Right-of-Way; PROVIDED THAT such licence will not constitute an interest in land and may only be exercised by the Local Trust Committee and by the NCC during the term of any tenure (and subject to any relevant terms and conditions imposed) under any leases or easements held by the Owner in connection with any such wharves or docks.
- 9. ENFORCEMENT REMEDIES OF THE NCC AND THE LOCAL TRUST COMMITTEE**
- 9.1 If the NCC and/or the Local Trust Committee, in the reasonable exercise of its discretion, believes that the Owner has neglected or refused to perform any of the obligations of the Owner set out in this Agreement or is in breach of any term of this Agreement, the NCC and/or the Local Trust Committee may serve upon the Owner a notice setting out the particulars of the alleged breach and of the NCC's estimated maximum costs of remedying the alleged breach.

- 9.2 The Owner will have 60 days from receipt of the notice, or conclusion of the dispute resolution provisions under Section 5 of this Agreement if it is invoked, to make arrangements satisfactory to the NCC and/or the Local Trust Committee for the remedying of such breach, including with respect to the time within which the breach shall be remedied.
- 9.3 If the Owner does not arrange for the remedying of a breach described in Section 9.1 within the time acceptable to the NCC and/or the Local Trust Committee under Section 9.2, the NCC and/or the Local Trust Committee is entitled to enter the Conservation Area and remedy the breach or carry out the arrangements referred to in Section 9.1, and the Owner shall reimburse the NCC and/or the Local Trust Committee for any expenses reasonably incurred in doing so, up to the estimated maximum costs of remedying the breach as set out in the notice under Section 9.1. Any expenses reasonably incurred by the NCC and/or the Local Trust Committee under this Section 9 will be a debt owed by the Owner to the NCC and/or the Local Trust Committee, payable promptly following delivery of written demand and reasonable substantiation therefor.
- 9.4 If the NCC and/or the Local Trust Committee elects, in its Sole Discretion, not to claim the NCC's and/or the Local Trust Committee's actual costs of remedying any breach, as contemplated in Sections 9.1 through 9.3 above, the NCC and/or the Local Trust Committee may instead claim, by delivery of written notice to the Owner, as liquidated damages payable by the Owner the sum of \$5,000.00 for each individual occurrence of any such breach by the Owner of its obligations under this Agreement (the "**Liquidated Sum**"); PROVIDED THAT:
- (a) such Liquidated Sum will be adjusted on January 1 of each year following the date of registration of this Agreement at the Victoria Land Title Office by increasing or decreasing, as the case may be, the Liquidated Sum by the amount determined by multiplying the Liquidated Sum in effect on December 31 immediately preceding, by the percentage increase or decrease, as the case may be, in the CPI between the previous January and that December 31, and by adding the amount so determined to the Liquidated Sum (as it stands on that December 31); and
 - (b) if Statistics Canada, or its successor in function, ceases to publish a CPI or comparable indicator as determined by the NCC and/or the Local Trust Committee, in its Sole Discretion, the Owner and the NCC and/or the Local Trust Committee agree that the factor to be used in determining the Liquidated Sum for such year shall be an increase of 1%.

- 9.5 As an alternative remedy to those of the NCC and/or the Local Trust Committee set out in Sections 9.1 through 9.4 above, the NCC and/or the Local Trust Committee may elect, in its Sole Discretion, and by delivery of written notice to the Owner, to claim from the Owner a sum equal to 110% of the market value (as 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 in breach of the Owner's obligations under this Agreement, or of any profit earned by the Owner as a result of any such breach of this Agreement.
- 9.6 Exercise or enforcement by a party of any remedy or right under or in respect of a breach of this Agreement does not limit or affect any other remedy or right that party may have against any other party in respect or under this Agreement or its performance or breach, including but not limited to the right of such party to enforce this Agreement by commencing proceedings in a court of competent jurisdiction for damages, injunctive or other equitable relief, and costs.
- 9.7 Notwithstanding anything to the contrary contained in this Agreement, if the Owner determines to subdivide any portion of the Lands charged by the Section 219 Covenant or the Statutory Right-of-Way granted to the Local Trust Committee or to the NCC pursuant to this Agreement, then concurrently with the filing for deposit of any strata plan (including any bare land strata plan), the Owner will cause the strata corporation created by the filing of any such strata plan to expressly covenant with the Local Trust Committee and with the NCC (in such form as may reasonably be required by the Local Trust Committee and by the NCC) to assume and perform all of the obligations of the Owner under this Article 9 from and after the date of the filing for deposit of any such strata plan.
- 10. ASSIGNMENT OF COVENANT UPON DISSOLUTION OF THE NATURE CONSERVANCY**
- 10.1 The interests of the NCC under this Agreement shall be assignable by the NCC to an entity or person qualified at the time of any proposed transfer to hold covenants under Section 219 and Statutory Right-of-Way under Section 218 of the Land Title Act and any applicable regulation under such statute. The NCC agrees that before the NCC assigns any rights or interests under this Agreement, the NCC shall first consult with the Owner and consider the Owner's comments with respect to the proposed assignee of the interests of the NCC under this Agreement and by delivery of written 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 the performance by the assignee of the rights and obligations of the NCC under this Agreement. If the Owner does not provide written comments to the NCC regarding the proposed assignee within 30 days after the NCC consults the Owner under this Section 10, the Owner shall be conclusively deemed to have declined to comment on the proposed assignee and to have consented to the proposed assignment. For clarity, the Owner agrees that the NCC is only required to consult the Owner and that the NCC is entitled to assign its rights and obligations to an entity whose purposes in its constating documents include the preservation of the environmental or ecological value

of lands in the Province of British Columbia, and that the NCC is entitled to assign its interests and obligations to any such entity so long as the NCC has first consulted with the Owner.

- 10.2 In the event of the winding-up or dissolution of the NCC, the NCC shall use its best efforts to assign and transfer all of its interests under this Agreement to a person or entity whose objectives in its constating documents are in compliance with the requirements of Section 10.1; PROVIDED THAT if the NCC does not assign and transfer all of its interests under this Agreement to such an entity, it shall be deemed to have assigned and transferred all of its interests under this Agreement to Her Majesty the Queen in Right of the Province of British Columbia.
- 10.3 Notwithstanding anything to the contrary contained in this Agreement, the Owner may, upon delivery of written notice to the NCC and to the Local Trust Committee and at any time and in its Sole Discretion, elect to give (and convey) or dedicate title to all or any of the Conservation Areas to Her Majesty the Queen in Right of Canada or Her Majesty the Queen in Right of the Province of British Columbia, or to any ministry, agency, representative or other emanation of the federal or provincial Crown whereupon:
- (a) if the NCC and its regional and national boards of directors, and the Local Trust Committee are satisfied, acting reasonably, that arrangements have been made with any such proposed transferee whereby the environmental stewardship of the Conservation Areas contemplated under this Agreement will be continued, the NCC and the Local Trust Committee will execute a discharge of this Agreement with respect to such conveyed or dedicated lands, prepared and registered by and at the cost of the Owner; and
 - (b) the NCC and the Local Trust Committee acknowledge that the Owner will no longer be responsible for fulfilling its obligations under Section 7.5 with respect to any portion of the Conservation Areas which is the subject of any such gift or dedication with respect to any taxes, assessments, levies, fees and charges which are levied on or assessed against such portion after the Owner ceases to be an assessed owner of such portion.

11. NOTICES

- 11.1 Any notice or other communication (collectively, a “**Notice**”) required or permitted under this Agreement shall be:
- (a) delivered in person; or
 - (b) sent by prepaid registered mail or courier to the address of the parties at their respective addresses as set out in Sections 5 or 6, as the case may be, of Part 1 of this General Instrument;

PROVIDED THAT if the Lands are subdivided by the filing of a strata plan, including a bare land strata plan, then following the deposit of any such strata plan at the Victoria Land Title Office, any Notice may be delivered by the Local Trust Committee or by the

NCC to the registered office of the strata corporation created by the filing of any such strata plan.

- 11.2 If a 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.
- 11.3 If a Notice is sent by pre-paid registered mail or courier, it shall be deemed to have been received on the fourth Business Day following the day on which the Notice was sent.
- 11.4 Each party agrees to immediately give written notice to the other of any change in its address from that set out in Sections 5 or 6, as the case may be, in Part 1 of this General Instrument.
- 11.5 If a party refuses to sign an acknowledgment of receipt of a 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.

12. NOTICE OF COVENANTS

- 12.1 The Owner agrees to allow the NCC and the Local Trust Committee to publicize the existence of their interests under this Agreement.
- 12.2 Without restricting the generality of the foregoing, the Owner agrees to allow the NCC to erect a plaque or other signage on the Conservation Areas, at the expense of the NCC, indicating that the NCC holds a covenant on the Conservation Areas; PROVIDED THAT such signage shall not exceed two (2) square metres in area per sign.

13. NO LIABILITY IN TORT

- 13.1 The parties to this Agreement agree that no tort or fiduciary obligations or liabilities of any kind are created or exist between the parties solely by reason of or in respect of this Agreement, and nothing in this Agreement creates any duty or care or other duty on any of the parties hereto to anyone else. For clarity, the intent of this Section 13.1 is, among other matters, to exclude tort liability of any kind and to limit the obligations of the parties hereto to their rights and remedies under the law of contract.

14. GENERAL

- 14.1 The Owner covenants and agrees that in addition to any remedies which are available under this Agreement or at law, the NCC and the Local Trust Committee, as applicable, will be entitled to all equitable remedies, including specific performance, injunction and declaratory relief, or any combination thereof, to enforce their respective rights under this Agreement. The Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a default by the Owner under this Agreement.

14.2 The covenants contained in this Agreement will enure to the benefit of and be binding upon the NCC and the Local Trust Committee, respectively, and their respective successors and assigns and will enure to the benefit of and be binding upon the Owner and its successors and assigns and the Section 219 Covenant and the Statutory Right-of-Way, will run with the Lands, and enure to the benefit of and be binding upon the Owner's successors in title and their respective heirs, executors, administrators, trustees and successors; PROVIDED THAT:

- (a) every reference to the parties is deemed to include the respective successors and assigns of such parties;
- (b) neither the Owner named in this Agreement nor any future owner is liable for a breach of this Agreement after the Owner named herein or any future owner, as the case may be, ceases to have any interest in the relevant portions of the Lands which are charged by this Agreement; and
- (c) if and to the extent that the covenant contained in Section 4.1 of this Agreement relates to common property created by the subdivision of the Lands by way of a bare land strata plan, then each respective Owner of the bare land strata corporation so created will be liable for such covenants only to the extent of such Owner's respective unit entitlement in such common property as established by virtue of such bare land strata plan.

14.3 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; and
- (e) 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.

14.4 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 it is invalid will not affect the validity of the remainder of this Agreement.

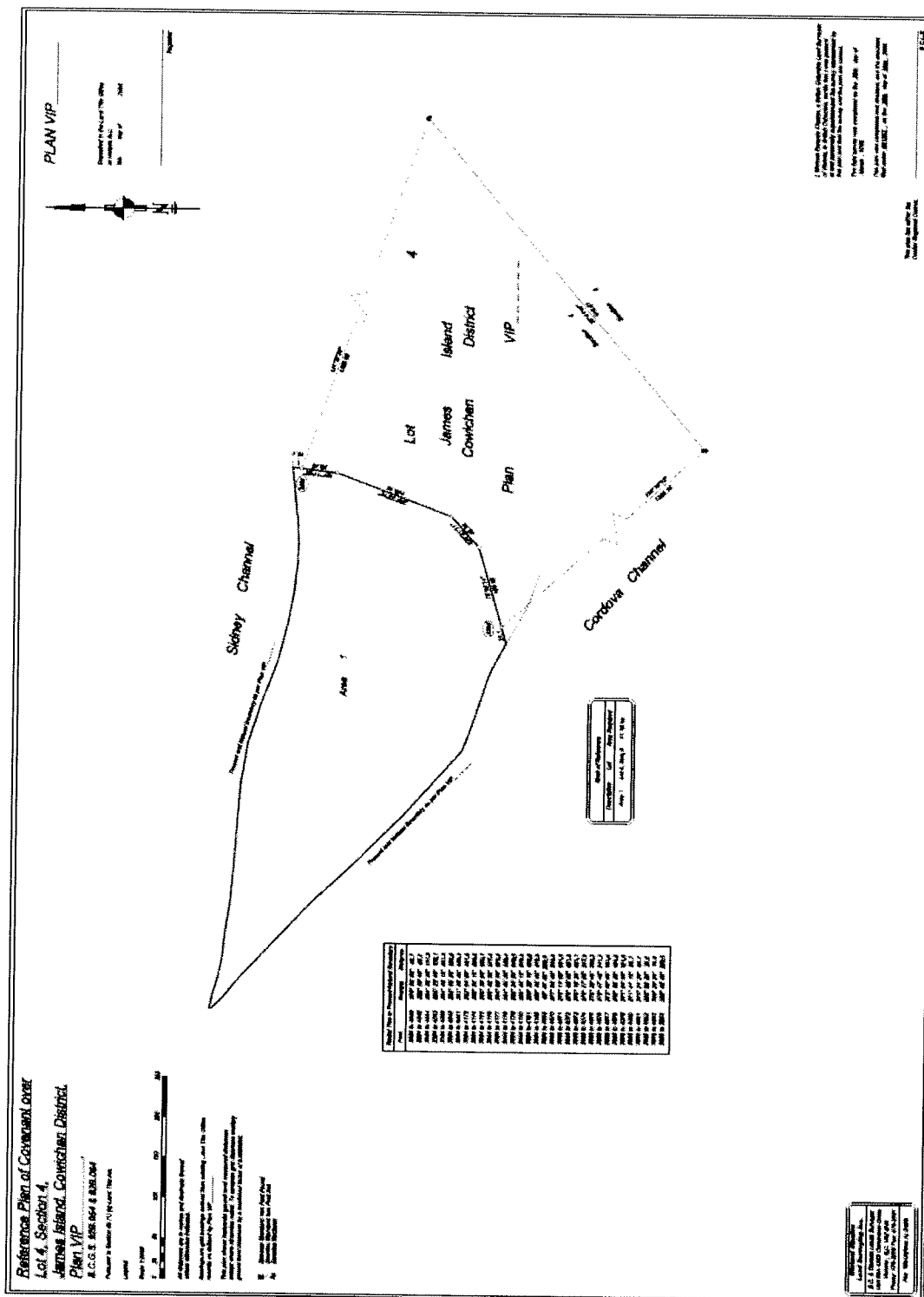
- 14.5 This Agreement shall be interpreted in accordance with the laws of British Columbia and the laws of Canada applicable in British Columbia.
- 14.6 The parties hereto will do and cause to be done all things and execute and cause to be executed all documents which may be necessary to give proper effect to the intention of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by signing the "Form C - General Instrument - Part 1" attached hereto.

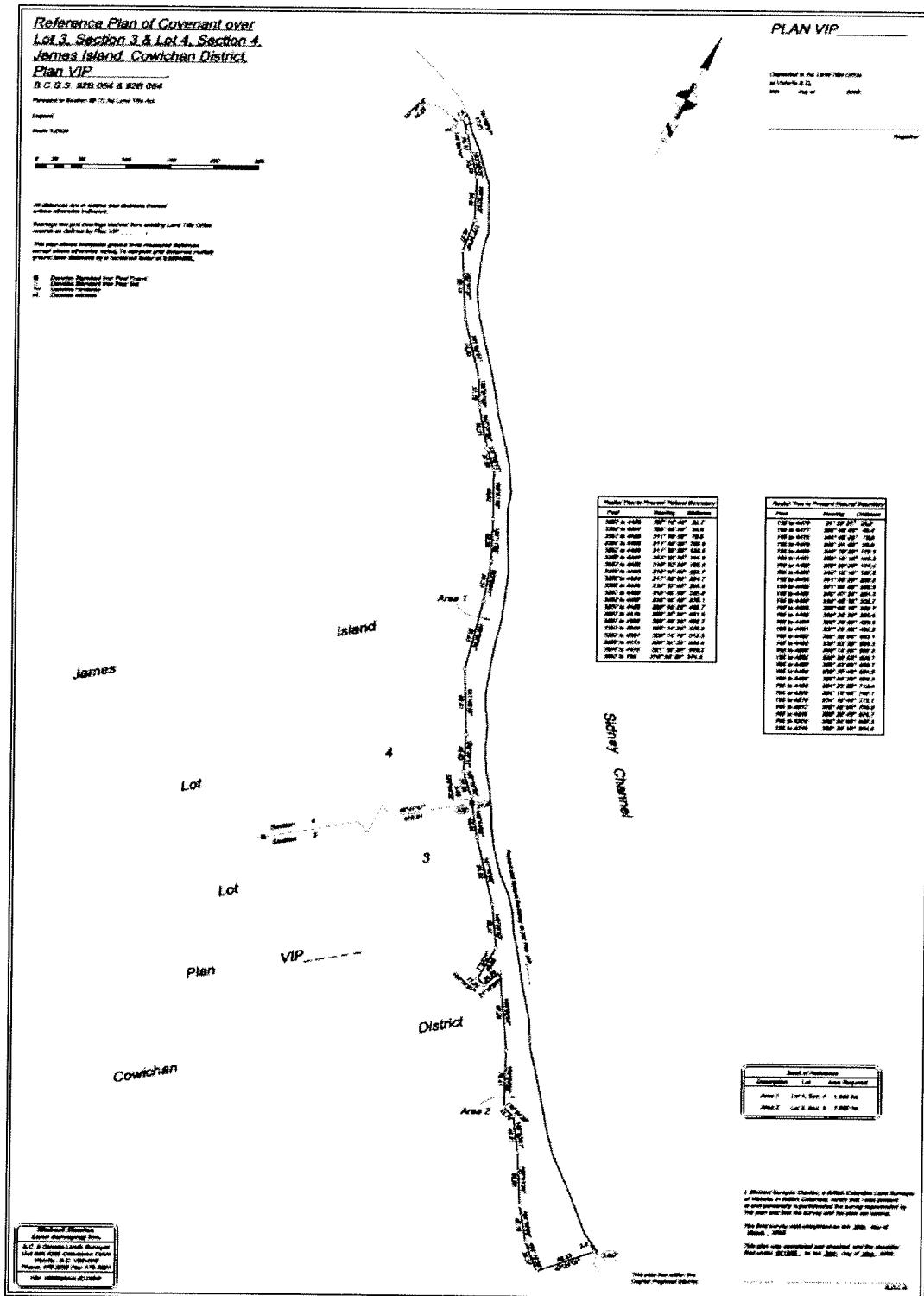
ATTACHMENTS:

Schedule A	Conservation Reference Plan for Conservation Area A
Schedule B	Conservation Reference Plan for Conservation Area B
Schedule C	Conservation Reference Plan for Conservation Area C
Schedule D	Conservation Reference Plan for Conservation Area D
Schedule E	Conservation Reference Plan for Conservation Area E
Schedule F	Conservation Reference Plan for Conservation Area F
Schedule G	Conservation Reference Plan for Conservation Area G

SCHEDULE A
CONSERVATION REFERENCE PLAN FOR CONSERVATION AREA A

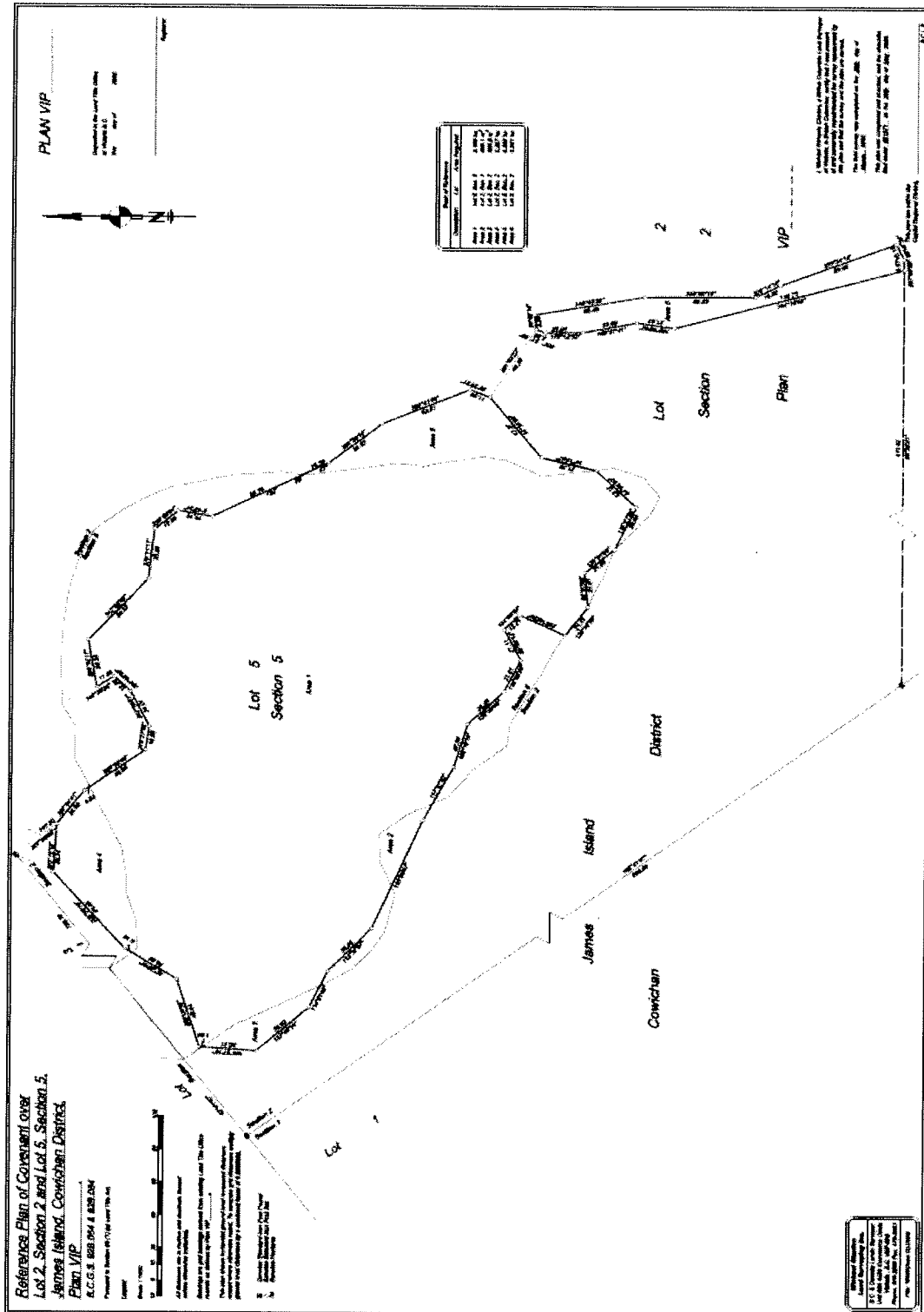


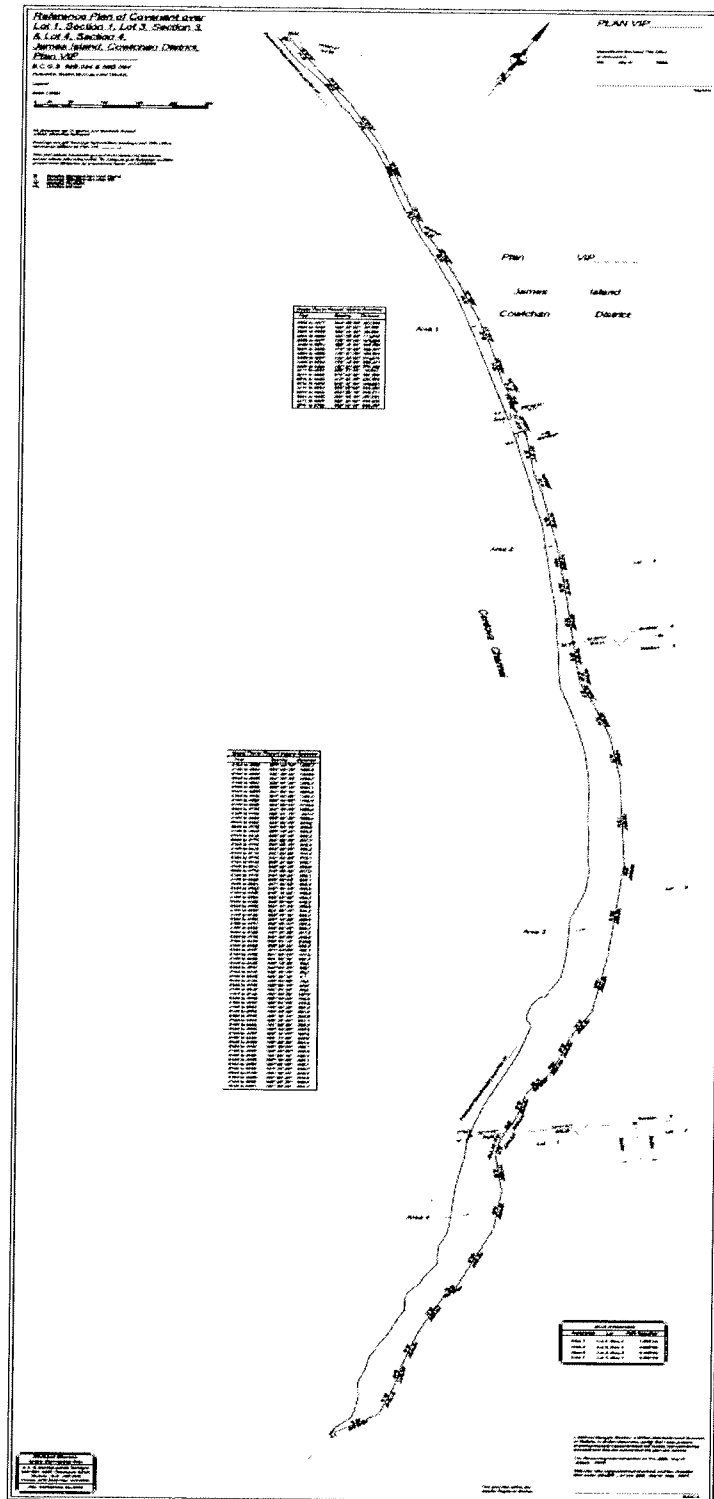
SCHEDULE B CONSERVATION REFERENCE PLAN FOR CONSERVATION AREA B





SCHEDULE D CONSERVATION REFERENCE PLAN FOR CONSERVATION AREA D





END OF DOCUMENT