

## Questions and Answers

PROSPECTIVE HOMEOWNERS AT THE SIGNATURE ESTATES AT RAVEN WOODS WILL ACQUIRE A LEASEHOLD INTEREST ON RESERVE LAND WITHIN THE TSLEIL-WAUTUTH FIRST NATION (BURRARD BAND) ("TWN") INDIAN RESERVE.

### 1. WHAT IS RESERVE LAND?

Reserve land is land owned by Her Majesty the Queen, in Right of Canada, that has been set aside as reserve land pursuant to the Indian Act for the use and benefit of First Nations. Reserve land, and interests in it, are registered in the First Nations Land Registry in Ottawa, and not in the British Columbia land title system.

### 2. HOW IS RESERVE LAND LEASED?

There are two common methods for developing and leasing reserve land. One method is for a First Nation to designate the lands for leasing, and thereafter for a lease to be issued through the offices of Indian and Northern Affairs Canada, on behalf of the First Nation. This process was used for prior developments on the TWN lands, such as Seasons and Windsong.

The other method, for those First Nations who have not signed self-government agreements, is through the land management provisions of the First Nations Land Management Act, enacted by Canada. First Nations such as the TWN who have opted for this method have greater involvement and control over the leasing process in that they can issue leases in place of Canada and therefore, process transactions more quickly. This method is becoming more prevalent in British Columbia.

### 3. WHAT IS TWN'S LAND SYSTEM?

In June 2007, the TWN approved the TWN Land Code, which will apply to any new developments in TWN reserve land, including The Signature Estates at Raven Woods. This process will work as follows:

- (a) Band members will vote to approve a new project and lease. On October 1, 2007, the members approved the proposed development of townhomes and condominiums on 7.62 acres of reserve land in the TWN reserve.
- (b) The TWN and the developer negotiate the form of head lease to be granted for the development. Once the terms are agreed upon, the TWN and the developer sign the head lease.
- (c) The head lease is submitted to the TWN Lands Office for registration. The TWN Lands Office reviews the lease, and arranges for its registration in the First Nations Land Registry in Ottawa.
- (d) Future dealings with the land (see below for questions regarding subleases, mortgages, and assignments) are processed by submitting documents to the TWN Lands Office for registration in the First Nations Land Registry in Ottawa.

### 4. WHAT INTEREST IN LAND WILL I ACQUIRE?

The land upon which the townhomes will be built will be leased by the TWN to the developer for 99 years pursuant to a head lease. The lease will be fully prepaid, which means the rent payable under the head lease has been paid. There are no rent reviews or adjustments under the head lease.

The developer will construct the townhomes, and the developer will issue a sublease to the homeowner for the particular townhome. The sublease will be for a term one day less than the term of the head lease, and will be prepaid. The sublease does have ongoing obligations on the homeowner's part, for maintenance, repair, insurance and other matters that are typically provided for in a lease.

A homeowner may grant a mortgage of its sublease, or may assign its sublease to a new homeowner.

Once all the townhomes are built, the developer will transfer the head lease to a British Columbia company called the Homeowners Corporation. Each homeowner will receive a share in the Homeowners Corporation. The common areas of the development will be administered and maintained by the Homeowners Corporation, which acts in a manner similar to a strata corporation.

# Questions and Answers *Continued...*

## **5. CAN TWN DECIDE TO CANCEL THE LEASE OR TAKE BACK THEIR LAND BEFORE THE EXPIRY OF 99 YEARS?**

Unless there is an uncured default of a material obligation under the head lease, the TWN cannot cancel the head lease.

All leases, whether or not on reserve land, have ongoing obligations on the part of the tenants. The head lease for The Signature Estates at Raven Woods provides that the TWN must give written notice of an alleged default, must allow 60 days for the default to be remedied, and must allow a lender or sublessee the opportunity to cure the default. The head lease specifically provides that termination of the lease will only be contemplated for “a serious or continuing breach of a material covenant hereunder for which a reasonable and adequate remedy has not been or cannot reasonably be obtained.”

## **6. CAN TWN UNFAIRLY INCREASE THE PROPERTY TAXES ON THE DEVELOPMENT?**

The TWN’s Property Taxation and Assessment Bylaw incorporates important protection regarding property taxes. It provides that homes must be assessed, for property taxes, using the same guidelines as the B.C. Assessment Authority uses for non-reserve land. The TWN has contracted with B.C. Assessment Authority to do assessments on its reserve.

The rate of tax (mill rate) applied by the TWN must be consistent with neighbouring off reserve areas having similar services and must be approved by the Federal Government. In addition, the Indian Taxation Advisory Board monitors tax increases in order to ensure that they are in line with the adjoining municipality. Each year a Rates Bylaw must be

submitted by the TWN to the Minister of Indian Affairs and Northern Development for approval.

## **7. WILL THERE BE ANY RENT INCREASES DURING THE 99 YEARS?**

The rent under the lease is a fixed amount, prepaid at the beginning of the lease term, and does not increase.

Contributions to common costs (similar to strata fees) will increase over the term of the lease as costs of services and materials increase.

The Homeowners Corporation (owned by the townhome owners) will vote on annual budgets for such costs and each owner will pay their share based on their unit entitlement.

## **8. HOW IS LAND MANAGEMENT AGREEMENT DIFFERENT FROM INAC’S LAND DESIGNATION PROCESS?**

Or how does the land management agreement affect what we are buying now?

Question 2 above describes the land management process.

The advantages to land management are a faster and more efficient process for dealing with reserve lands. The TWN has established a Lands Office that will process applications for new leases, subleases, and assignments of leases, subleases and mortgages. A more efficient system of processing documents for registration will exist.

Most importantly, with land management, the TWN can make its own decisions regarding how it leases its lands, and can respond to the needs and requests of homeowners on reserves.

## **9. WHAT IS THE DIFFERENCE BETWEEN THE HEAD LEASE FOR THIS PROJECT COMPARED TO PAST PROJECTS AT RAVEN WOODS?**

The Head Lease for this project is more development and tenant oriented than the prior leases. For example:

- (1) assignments and mortgages are permitted without consent of the landlord;
- (2) provisions on default are oriented to remedies other than termination – see Question 5.

The rights and protection given to the tenants are otherwise similar to the prior leases.

## **10. WHAT ARE ADDED BENEFITS OF LAND MANAGEMENT FOR PURCHASERS?**

A more efficient registry process which will make transactions involving reserve land faster and simpler.

## **11. CAN I RESELL MY TOWNHOME IF IT IS LOCATED ON RESERVE LAND?**

Yes. Your lease is assignable without approval from the landlord. The TWN’s Land Code has clear provisions respecting priorities for mortgages, leases and subleases and has largely followed the provisions of the Land Title Act which makes it more recognizable to financial institutions, insurance companies and lawyers dealing in real estate transactions.

## **12. WHO PROVIDES ROADS AND SERVICES TO THE NEW DEVELOPMENT?**

Raven Woods Drive is the road on reserve that intersects with Dollarton Highway. There is a Permit issued by the Federal Government that allows access to the Development.

The road is serviced by the District of North Vancouver pursuant to a Servicing Agreement between the TWN and the District of North Vancouver.

The TWN has contracted with the District of North Vancouver for the provision of water, sewer, fire and other municipal services. Property tax payments on the townhomes pay for the services.

Electricity is provided by B.C. Hydro, gas by Terasen, and cable by Shaw.

### **13. HOW DO WE GET TITLE TO THE HOME WE ARE PURCHASING?**

You will need to hire a lawyer or notary to assist you in the conveyancing process, as you would do if you were acquiring a home off reserve. We can recommend a lawyer or notary familiar with the project, or you may hire any lawyer or notary of your choice.

The lawyer or notary will arrange for the preparation and execution of the closing documents and their submission to the TWN Lands Office for registration in the First Nations Land Registry in Ottawa. On completion of the process, you will be the registered holder of your sublease.

### **14. WHO WILL BE MAINTAINING THE DAY-TO-DAY OPERATIONS OF THE COMMON AREAS?**

The Homeowners Corporation does this, in the same way that a strata corporation does. Strata corporations cannot be created on reserve lands as the Strata Property Act does not apply as it is Federal land. Given this, a B.C. registered company will be created which will operate in almost identical fashion as a strata corporation. We call this a Homeowners Corporation.

### **15. WILL THERE BE A STRATA CORPORATION SET UP?**

The Homeowners Corporation operates as a strata corporation would. Strata corporations cannot be created on reserve lands, and for this reason we have a structure with the Homeowners Corporation, which acts as a strata corporation would.

### **16. DO HOMEOWNERS HAVE A CHANCE TO HAVE SOME SAY OVER THE OPERATIONS OF THE BUILDING?**

Each sublease owner receives a share in the Homeowners Corporation (if there are joint owners of the sublease, the share is registered in their names jointly). The shareholders vote on major decisions such as budgets, significant maintenance costs and election of directors. Each director must be a homeowner, or a nominee if a company is the homeowner. The directors are responsible for most operations of the project.

### **17. WHAT OTHER FEES ARE THERE OVER AND ABOVE THE PRICE THAT WE ARE PAYING?**

GST is payable on the price of the townhome. There is no provincial Property Transfer Tax payable, as the lands are on reserve.

There is a fee to register a sublease, presently \$250, and a fee to register a mortgage, presently \$250. Please refer to [www.burrardband.com](http://www.burrardband.com) for detailed fee schedule.

Your lawyer or notary will charge you legal fees for assisting you, plus applicable taxes and disbursements relating to his or her services.

### **18. WHY DO BUYERS OF THE SIGNATURE ESTATES AT RAVEN WOODS HAVE TO PAY G.S.T ON THE PURCHASE PRICE OF THE NEW HOMES?**

Commonly, most First Nations and Aboriginal persons are not subject to any taxes, including the GST, with respect to any purchases made on, or services received on, reserve lands due to the provisions of section 87 of the Indian Act. However in 2003, Canada enacted the First Nations Goods and Services Tax Act (the "FNGSTA"). One of the major, if not the main, purposes of the FNGSTA is to allow for the imposition of GST upon First Nations and Aboriginal persons for goods purchased by them, and services rendered to them, on reserve. In this way, it is envisaged that First Nations and their members will become used to paying taxes. This is done by way of the First Nation passing a law imposing the GST upon all persons who purchase goods or receive services on its reserve lands including the First Nation, and it entering into an agreement with Canada whereby Canada collects the GST.

In 2005, the Tsleil-Waututh First Nation entered into discussions regarding the First Nations Good and Services Tax Act set forth by Canada, and will be among the first Aboriginal communities in Canada to approve this agreement with the Federal Government. The decision to forgo their inherent tax right previously granted to them is a reflection of the progressive and forward-thinking nature of the Tsleil-Waututh First Nation.

The Tsleil-Waututh First Nation continues to strive towards its goals of achieving economic success and independence for its community, while respecting and honoring their culture. The TWN Administration strongly believes that for the community to be able to sustain itself in the long-term, there needs to be less reliance on federal or provincial funding. As a result, over the last 15 years, the First Nation has made significant progress in moving beyond a history of colonial isolation and has begun to reintegrate itself into the Lower Mainland economy.

Despite knowing that GST will be henceforth payable by them and their First Nation, the membership of the Tsleil-Waututh Nation supported the passing of the requisite GST law and entering into a collection agreement with Canada. As a result of this, and the Canada Revenue Agency's Technical Information Bulletin B-039R3 which removed the previous exemption which was the result of the Tsleil-Waututh Nation being one of the partners which has developed the various Raven Woods projects, GST is now payable on all of the townhomes, including any that may be purchased by the Tsleil-Waututh Nation or its members. However, Canada has made recent steps to reduce the current GST tax rate to 5%.

It should be noted in closing that all homes purchased at Raven Woods will still not be subject to the property transfer tax and that GST is only paid on newly constructed homes. It is our belief that The Signature Estates at Raven Woods will offer unsurpassed value and quality when compared to other new home offerings in the North Shore.

#### **19. WHO DETERMINES THE FEES WE PAY FOR MAINTENANCE AND HOW ARE THE FEES DETERMINED?**

Each year, a budget of fees (called maintenance fees) will be approved by homeowners. Once approved, the fees are determined for each townhome based on a schedule of unit entitlement. That schedule is based on

the square footage of the individual townhome in relation to the total square footage of all of the townhomes.

#### **20. ARE THERE ANY OTHER MARKET DEVELOPMENT PROJECTS WITH SIMILAR LEASES?**

The projects on TWN lands are based on similar leases, however this lease is more oriented in favour of homeowners.

Several projects on Westbank First Nation lands in the Okanagan and in Tsawwassen First Nation lands have similar leases, under similar land management systems.

#### **21. CAN THE TWN IMPOSE ANY NEW SURCHARGES THAT WE DO NOT KNOW OF NOW?**

No. The head lease sets out what is payable and when. Rents are fully prepaid. Ongoing costs of operation and maintenance are in the control of the homeowners.

#### **22. WHO COLLECTS PROPERTY TAXES?**

The TWN.

#### **23. WHO ASSESSES THE VALUE OF PROPERTIES?**

The TWN has contracted with the B.C. Assessment Authority to assess property values.

#### **24. WHO DETERMINES THE MILL RATE FOR THE PROPERTY TAXES?**

The TWN does, but rates must be consistent with neighbouring municipalities and approved by the Federal Government.

#### **25. WHO CAN I CONTACT FOR MORE INFORMATION?**

We can recommend lawyers familiar with the project, or you may hire any lawyer of your choice for legal questions.

#### **FOR MORE INFORMATION REGARDING THE TWN LANDS OFFICE AND OTHER INQUIRIES:**

Please visit: [www.burrardband.com](http://www.burrardband.com)

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