

## **APPENDIX "B"**

## APPENDIX B

### TYPICAL FORMS AND AGREEMENTS

The forms contained herein will be acceptable to the Regional District. These forms are included for information only and do not form part of the Regional District of Okanagan-Similkameen Subdivision Servicing Bylaw.

Servicing Agreement .....	B-2 - B-14
Permission to Construct .....	B-15
Certificate of Inspection .....	B-16
Certificate of Completion .....	B-17
Certificate of Acceptance.....	B-18
Form of Irrevocable Standby Letter of Credit.....	B-19 - B-20
Utility Right-Of-Way Agreement.....	B-21 - B25

**SERVICING AGREEMENT**

**THIS AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_;

**BETWEEN:**

\_\_\_\_\_

(hereinafter called the "Local Authority")

**OF THE FIRST PART**

**AND:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(hereinafter called the "Owner")

**OF THE SECOND PART**

**WHEREAS:**

- A. The Owner is the registered owner in fee simple of lands and premises within the Regional District of Okanagan-Similkameen, in the Province of British Columbia, more particularly known and described as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(hereinafter called the "Lands")

- B. The Owner desires to subdivide the Land or Develop on the Land.
- C. The Local Authority has agreed to recommend that the Approving Officer approve the subdivision of the Lands or the Development respectively subject to the terms and conditions contained in this Contract, and the posting with the Local Authority of the security deposit described herein.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the promised covenants and agreement hereinafter set forth, the parties hereto covenant, agree, represent, and promise as follows:

**APPENDICES**

- 1. The following Appendices will be read with and form part of this Agreement:

Appendix "A" - A copy of the subdivision plan of the Lands;

Appendix "B": - A list of the "Works" and an estimate of their respective construction costs.

Appendix "C" - Construction drawings to be used for the construction of the "Works".

**OWNER TO DO WORK**

- 2. The Owner covenants and agrees to construct and provide all the works and services listed and shown on Appendices "B" and "C" hereto, as approved by the Local Authority, in accordance with the standards contained in Schedule "A" of the Regional District's Subdivision Servicing Bylaw.

**TRANSFER OF  
INTEREST IN  
WORKS**

3. The Owner covenants and agrees with the Local Authority to assign, transfer and convey to the Local Authority all of its right, title and interest in the works on any dedicated highway or statutory right-of-way, upon or in which the works are situated, upon the completion of the works, (as witnessed by the issuance of a certificate of completion by the Local Authority). The Owner will from time to time and at all times so long as it exercises any rights of ownership in the "said lands" upon the request of the Local Authority, make, do and execute or cause or procure to be made, done and executed, all such further acts, deeds, rights-of-way, easements and assurances for the more effectual carrying out of this Agreement.

**PERMISSION TO  
DO WORK**

4. In so far as it has jurisdiction, the Local Authority covenants and agrees to permit the Owner to construct the "Works" on the terms and conditions herein, and in the manner required by and at the places specified in the Plans and Specifications; provided that nothing in this Agreement shall be construed as an undertaking, promise or covenant on the part of the Local Authority to make available the use of or access to the "Works" for any purpose, and without limited the foregoing, for the purpose of serving the Lands or any other real property whatsoever either owned or controlled by the Owner or its associates or otherwise, but rather the Local Authority reserves the right in its sole and absolute discretion to make available, operate, alter, use, extend, diminish, discontinue, tear up, sell, rent or otherwise dispose of the "Works" as its Board from time to time deems fit.

**CHANGES TO  
BYLAWS**

5. The Owner covenants and agrees to comply with any changes in subdivision requirements or standards enacted by Bylaw prior to the actual commencement upon the lands of the works contemplated by this Agreement.

**LOT GRADING**

6. The Owner covenants and agrees to adhere in all respects to the contours, elevations and drainage patters indicated on the lot grading plan or storm water management plans prepared by the Engineer and/or Engineering Company indicated in Clause 11 hereof, and which are attached as part of Appendix "C" to this Agreement.

**START OF WORK**

7. The Owner covenants and agrees not to commence work until the Local Authority and Ministry of Transportation and Highways provides the Owner with written permission to proceed with construction in the form provided in Appendix "B", to the Region District's Subdivision Servicing Bylaw.

**COMPLETION OF WORK**

8. The Owner shall complete the construction of the works, specified in Appendix "B" and "C" as Project No. \_\_\_\_\_ of the Regional District, to the satisfaction of the Regional District by the \_\_\_\_\_ day of \_\_\_\_\_. A.D.20 \_\_\_\_.

**OWNER TO GRANT RIGHTS OF WAY**

9. The Owner covenants and agrees to grant to the Local Authority without further payment or compensation, all necessary road dedications, statutory rights-of-way and easements over the said lands to accommodate the said works and, where the said works are located upon or under privately owned lands other than the Lands, to obtain at the Owner's expense, all necessary statutory rights-of-way and easements over such lands, in favour of the Local Authority where applicable, to accommodate the said works.

**DESIGN BY P.ENG 10.**

The Owner covenants and agrees that all works required herein, shall be designed by a Professional Engineer, who shall be registered with the Association of Professional Engineers of British Columbia and retained by the Owner. Plans and specifications for the said works shall be prepared by or under the direct supervision of the said Professional Engineer and all plans shall bear his professional seal and signature.

The Owner covenants and agrees to ensure that his Design Engineer (as specified in Clause 11) maintains professional liability and errors and omissions insurance to a value of \$250,000 per occurrence during the term of his engagement.

The Owner covenants and agrees to retain the Design Engineer during the construction period for the purposes of inspection to ensure compliance with the approved design and to provide certification of the as-built records.

**ENGINEERING DRAWINGS**

11.

The Owner covenants and agrees that the intent of this Agreement is that the Owner shall construct fully completed works, and grant necessary easements as shown in the plans and specification prepared by:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

under Drawing Nos.:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and as received for the purposes of this Agreement by the Local Authority on the \_\_\_\_ day of \_\_\_\_\_, A.D., 20 \_\_\_\_.

**CHANGES TO DESIGN  
BY LOCAL  
AUTHORITY**

12. The Local Authority may require that the Plans be altered because of conditions at the site, so that the works function and operate in a manner satisfactory to the Local Authority. Should the works, as provided herein, prove to be in any way defective or should they not operate to the satisfaction of the Local Authority, then the Owner shall, at his own expense, modify and reconstruct the works so that the works shall be fully operative and function to the satisfaction of the Local Authority.

**CERTIFICATE OF  
COMPLETION**

13. A Certificate of Completion, shall be provided by the Local Authority on the completion of the construction. This Certificate of Completion shall not be construed as acceptance of the works.

**"AS BUILT"  
SUBMISSION**

14. The Owner covenants and agrees to submit to the Regional District and Local Authority the final "as-built" drawings and records of construction, and test results, as accepted by the Regional District's Public Work's Manager, pursuant to Schedule 'A' of the Regional District's Subdivision Servicing Bylaw, within 60 days of the date of the Letter of Substantial Completion.

**MAINTENANCE  
PERIOD AND  
RESPONSIBILITY**

15. The Owner covenants and agrees to maintain every part of the "Works" in perfect order and in complete repair for a period of one year from the date shown on the Certificate of Completion in accordance with the requirements of the Regional District's Subdivision Servicing Bylaw.



Should the Owner, for any reason, fail to maintain when ordered, then the Local Authority, at it's option, after giving the Owner seven days written notice (emergencies excepted), may do so, and the whole costs, charges and expenses so incurred by the Local Authority will be payable by the Owner, as provided herein. The decision of the Local Authority will be final with respect to the necessity for repairs, or the adequacy of any work done.

**CERTIFICATE OF ACCEPTANCE**

16. The Local Authority covenants and agrees that upon satisfactory completion by the Owner of all the covenant and conditions in this Agreement, including the maintenance of the works in complete repair for a period of one (1) year, to provide the Owner with a Certificate of Acceptance of the works, signed by the Local Authority. Notice of acceptance of the work will be issued by the Local Authority when all deficiencies have been corrected, "As-Built" drawings and service location cards received, and the maintenance period outlined herein has expired. The Certificate of Acceptance will be in the form outlined in Appendix B to the Regional District's Subdivision Servicing Bylaw. All such works and services remain at the risk of the Owner until the "Certificate of Acceptance" for the work has been issued.

**OWNER INDEMNIFIES**

17. The Owner covenants and agrees to save harmless and effectually indemnify the Local Authority against:
- (a) All actions and proceedings, costs, damages, expenses, claims and demands whatsoever and whomsoever brought by reason of the execution of the works required by this Agreement. All such claims recoverable from the Local Authority or any property which the Local Authority by duty or custom is obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain, during the term of the Owner's work, shall be paid by the Owner, and if recoverable from the Local Authority shall, together with any costs and expenses incurred in connection therewith, be charged to and paid forthwith by the Owner.

- (b) All expenses and costs which may be incurred by reason of the execution of the required works by this Bylaw, resulting in damage to any property owned in whole or in part by the Local Authority by custom or duty is obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain, shall be paid by the Owner, and if paid by the Local Authority shall, together with any costs and expenses incurred in connection herewith, be charged to and paid forthwith by the Owner.
- (c) All expenses and costs which may be incurred by reason of liens for non-payment of labour or materials, Worker's Compensation Board assessments, unemployment insurance, federal or provincial tax, and of encroachments due to mistakes in survey, and all such claims recoverable from the Local Authority, or the property of the Local Authority, or any property of the Local Authority, or any property which the Local Authority by duty or custom is duly obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain, shall be paid by the Owner, and if recovered from the Local Authority shall, together with any costs and expenses incurred in connection therewith be charged to and paid forthwith by the Owner.
- (d) All expenses and costs which may be incurred by the Local Authority as a result of faulty workmanship and defective material in any of the works installed by the Owner.

The above clauses shall not be construed as to extinguish any rights which the Local Authority would have were it not for the inclusion of Clause 17 in this Agreement.

**INSURANCE BY  
OWNER**

18. The Owner will at his sole expense throughout the currency of the work carry Comprehensive Liability Insurance acceptable to the Regional District in the amount of at least two million dollars (\$2,000,000.00) with insurance companies licenses to carry on business in the Province of British Columbia in partial discharge of its obligation under Clauses 18(a), (b), (c) and (d).

**INSURANCE  
COVERAGE**

19. The Owner covenants and agrees to provide the following insurance coverage, and to provide the Local Authority with a copy of the insurance policy prior to the commencement of any construction of the works:

- (a) To protect the Owner and the Local Authority against all claims arising out of:

(i) Death or injury to person; and

(ii) Damage to, or loss of use of, any property of third person, including without limiting the foregoing; the following classes of property: Real property, chattels, land, works, buildings, structures, wires, conduits, pipes, mains, shafts, sewers, tunnels, and apparatus in connection therewith, even when the damage or loss of use is caused by vibration, moving, shoring, underpinning, raising, rebuilding or demolition of any building, structure or support, or by excavation, tunnelling or other work below the surface of the ground or water; and

(iii) Damage to or loss of all building, structures, stores, equipment and materials included in or required for the carrying out of the "Works".

- (b) Every policy of insurance required will:

- (i) Name the "Local Authority" as an additional insured;  
and
- (ii) State that policy applies to each insured in the manner and to the same extent as if a separate policy had been issued to each insured; and
- (iii) State that the policy cannot be cancelled, lapsed or materially changed without at least thirty (30) days written notice to the Local Authority.

**SECURITY DEPOSIT 20.**

As security for the due performance of all of the covenants and promises contained in this Agreement the Owner has deposited with the Local Authority a security deposit in the amount of \$ \_\_\_\_\_, in the form of cash or an Irrevocable Letter of Credit acceptable to the Local Authority (herein called the "Security Deposit").

**FORFEIT OF SECURITY DEPOSIT 21.**

In the event that the Owner fails to construct and install the Works and Services prescribed herein within the time specified in Clause 8, the said Security Deposit of \$\_\_\_\_\_ will be forfeited to the Local Authority.

**USE OF SECURITY 22.**

The Owner agrees that if all the works or obligations are not completed, installed or performed pursuant to this Agreement, the Local Authority may complete or fulfil the works or obligations at the cost of the Owner and deduct from the security deposit held by the Local Authority the cost of such completion, and the balance of the deposit shall be returned to the Owner, less any additional administration fees or costs incurred. If there is insufficient money on deposit with the Local Authority then the Owner will pay such deficiency to the Local Authority immediately upon receipt of the Local Authority's bill for completion. It is understood that the Local Authority may do such work either by itself or by Contractors employed by the Local Authority. If the works are completed as herein provided, then the deposit shall be returned to the Depositor.

**RELEASE OF  
SECURITY DEPOSIT 23.**

If the Local Authority is satisfied that the Owner has complied with the covenants contained in this agreement and if there is no litigation pending or threatened by any third party against the Local Authority as a result of, or arising from the construction of the "Works", the Local Authority may return all, or any portion of the Security Deposit to the Owner at such times and in such amounts as he may deem proper, provided only that it will retain an amount equal to 15% of the Security deposit, with a minimum of \$1,000 to secure the performance of the maintenance required of the Owner (hereinafter called the "Maintenance Deposit").

**RETURN OF MAINTENANCE  
DEPOSIT 24.**

If the Local Authority is satisfied that the Owner has complied with Covenants contained in this agreement and if there is no litigation pending or threatened by any third party against the Local Authority as a result of, or arising from the construction of the "Works", the Local Authority may direct that the Maintenance Deposit be returned to the Owner and thereafter the Owner's responsibility for the "Works" shall cease.

**ADMINISTRATION  
FEE 25.**

The Owner covenants and agrees to pay to the Local Authority a non-refundable fee in the amount of \$\_\_\_\_\_ to cover administration and processing costs. These fees are payable prior to the signing of this Agreement or the commencement of construction of the works.

**INSPECTION FEE 26.**

The Owner covenants and agrees to pay to the Local Authority a non-refundable fee in the amount of \$\_\_\_\_\_ to cover inspection on a periodic basis. These fees are payable prior to the signing of this Agreement and the commencement of construction of the works.

**NO OTHER  
REPRESENTATIONS**

27. It is understood and agreed that the Local Authority has made no representations, covenants, warranties, guarantees, promises or agreements (verbal or otherwise) with the developer other than those in this agreement.

**COMPLIANCE  
WITH BYLAWS**

28. Subject to the Agreement, the works and the development herein shall comply with all of the Bylaws of the Regional District of Okanagan-Similkameen and Local Authority.

**NO WAIVER**

29. The Owner covenants and agrees that nothing contained or implied herein shall prejudice or affect the rights and powers of the Local Authority in the exercise of its functions under any public and private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the said lands as if the Agreement had not been executed and delivered by the Owner.

**WHENEVER** the word "will" is used in this Agreement it will be construed as imperative (mandatory).

**WHENEVER** the singular or the masculine is used in the Agreement it will be construed as meaning the plural or the feminine or body corporate or politic where the context or the parties hereto so require.

**THIS CONTRACT SHALL ENURE TO THE** benefit of and be binding upon the parties hereto, their respective successors and assigns.

**IN WITNESS WHEREOF** the parties hereto have executed this contract the day and year first above written.

	THE CORPORATE SEAL OF	)	SEAL
		)	
	was hereunto affixed in the presence of:	)	
		)	
FOR		)	
CORPORATE		)	
BODY	_____	)	
	Authorized Signatory	)	
		)	
	_____	)	
	SIGNED, SEALED, AND DELIVERED	)	
	by the above named in the	)	
	presence of:	)	
		)	
	Name: _____	)	
FOR PRIVATE	Address: _____	)	Owner's signature
INDIVIDUAL	_____	)	
	Occupation: _____	)	
		)	
	SIGNED, SEALED, AND DELIVERED	)	
		)	
	THE CORPORATE SEAL OF	)	
		)	SEAL
	_____	)	
	LOCAL AUTHORITY	)	
	_____	)	

**PERMISSION TO CONSTRUCT**

Authorization to proceed with construction is hereby granted to:

NAME OF DEVELOPER \_\_\_\_\_

ADDRESS \_\_\_\_\_

For the works described generally as: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Authorized Start Date: \_\_\_\_\_ Completion Date: \_\_\_\_\_

Authorized Hours of Work: From \_\_\_\_\_ hrs. to \_\_\_\_\_ hrs.  
Monday to Saturday Inclusive.

Check the following: (All must be completed)

- \_\_\_\_\_ Approved plans covering the works are attached.
- \_\_\_\_\_ Certificates of Insurance attached.
- \_\_\_\_\_ Administration fee has been paid.
- \_\_\_\_\_ Inspection fee has been paid.
- \_\_\_\_\_ Security deposit has been paid.
- \_\_\_\_\_ A Servicing Agreement has been completed - No. \_\_\_\_\_

Design Engineer: \_\_\_\_\_

Contact: \_\_\_\_\_

Phone No: \_\_\_\_\_ (Bus:) \_\_\_\_\_ (Res:)

Special Conditions: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
FOR LOCAL AUTHORITY

File No. \_\_\_\_\_

cc: Contractor



**CERTIFICATE OF INSPECTION**

**I HEREBY** certify that all engineering and construction services, required under the Subdivision Servicing Bylaw of the Regional District of Okanagan-Similkameen for the subdivision of:

LEGAL DESCRIPTION: \_\_\_\_\_

PROJECT NO.: \_\_\_\_\_

which services were designed by:

NAME OF FIRM: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

and approved for construction on drawing numbers:

drawing number	date	drawing number	date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

have been installed and inspected by or under the direction of:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**I FURTHER CERTIFY** that the "As-Built" drawings hereby submitted represent the works and services as installed for the aforementioned subdivision.

\_\_\_\_\_  
\_\_\_\_\_

(Signature and name of the Professional Engineer responsible for design)

ENGINEER'S  
SEAL

**CERTIFICATE OF COMPLETION**

DEVELOPER: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PROJECT NO.: \_\_\_\_\_

SERVICING

AGREEMENT NO.: \_\_\_\_\_

DATE: \_\_\_\_\_

This certificate is issued pursuant to the Subdivision Servicing Bylaw.

The **MAINTENANCE PERIOD** for the Works will begin on \_\_\_\_\_

The **MAINTENANCE PERIOD** for the Works will end on \_\_\_\_\_

\_\_\_\_\_  
FOR LOCAL AUTHORITY

cc: Contractor

**CERTIFICATE OF ACCEPTANCE**

DEVELOPER: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

\_\_\_\_\_

PROJECT NO.: \_\_\_\_\_

SERVICING  
AGREEMENT NO.: \_\_\_\_\_

DATE: \_\_\_\_\_

This certificate is not a warranty or representation to any person that the works are without defect.

All deficiencies, defects or faults in the Work observed or discovered within the period preceding the date of this Certificate having been rectified, this Certificate is issued pursuant to the Referenced Servicing Agreement.

This Certificate has been made to the best of the Local Authority's knowledge, information and belief. It does not constitute acceptance of any work not in accordance with the requirements of the Servicing Agreement whether or not such defect(s) could have been observed or discovered during construction.

\_\_\_\_\_  
FOR LOCAL AUTHORITY

cc: Contractor

**LETTER OF CREDIT**

NAME OF BANK: \_\_\_\_\_

DATE OF ISSUE: \_\_\_\_\_

LETTER OF CREDIT NO: \_\_\_\_\_ AMOUNT: \_\_\_\_\_

Issued subject to Uniform Customs and Practices for Documentary Credits being ICC Publication UCP 500

TO: \_\_\_\_\_  
[regional district]

ADDRESS: \_\_\_\_\_

WE HEREBY AUTHORIZE YOU TO DRAW ON THE

\_\_\_\_\_  
[name of bank]

for the account of \_\_\_\_\_  
[name of contractor]

UP TO AN AGGREGATE AMOUNT OF \_\_\_\_\_  
[dollar amount written in words]

Dollars \_\_\_\_\_ available on demand.  
[dollar amount numerical]

PURSUANT TO THE REQUEST OF our customer: \_\_\_\_\_  
[name of contractor]

we the \_\_\_\_\_ hereby establish and give you an  
[name of bank]

Irrevocable Letter of Credit in your favour in the above amount which may be drawn on by you at any time and from time to time, upon written demand for payment made upon us by you, which demand we shall honour without enquiring whether you have the right as between yourself and the customer to make such demand, and without recognizing any claim of our customer, or objection by it to payment by us.

DEMAND shall be by way of a letter signed by the Deputy Secretary of the Regional District under the corporate seal attached to which shall be the original Letter of Credit. Presentation shall be made to the bank at \_\_\_\_\_

[name and address of bank]

THE LETTER OF CREDIT we understand relates to those services and financial obligations set out in an Agreement between the customer and the Regional District dated for reference and referred to as: \_\_\_\_\_

[name of project]

THE AMOUNT of this Letter of Credit may be reduced from time to time as advised by notice in writing to us by the Deputy Secretary of \_\_\_\_\_

[regional district]

THIS LETTER OF CREDIT shall continue in force and for a period of one year, but shall be subject to the condition hereinafter set forth.

IT IS A CONDITION of this Letter of Credit that it shall be deemed to be automatically extended without amendment from year to year from the present or any future expiration date hereof, unless at least 30 days prior to the present or any future expiration date, we notify you in writing by registered mail that we elect not to consider this Letter of Credit to be renewable for an additional period.

DATED at \_\_\_\_\_, British Columbia, this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

[city]

COUNTERSIGNED BY:

\_\_\_\_\_  
[Name of Bank]

Per:

\_\_\_\_\_

\_\_\_\_\_

**UTILITY RIGHT-OF-WAY AGREEMENT**

**THIS INDENTURE** made the            day of            , A.D., 20    .

**BETWEEN**

(the "**Grantor**")

OF THE FIRST PART

AND:

REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN

101 Martin Street  
Penticton, B.C.  
V2A 5J9

(the "**Grantee**")

OF THE SECOND PART

WHEREAS:

- A. The Grantor is the registered owner of those lands and premises situate in the Penticton Assessment Area, in the Province of British Columbia, more particularly known and described as:

Parcel Identifier  
Lot  
District Lot  
Osoyoos Division Yale District  
Plan

(the "**Lands**");

- B. To facilitate the establishment of the Grantee's works, the Grantor has agreed to execute these presents.

THIS INDENTURE WITNESSES that in pursuance of the premises and in consideration of the sum of One Dollar of lawful money of Canada and other valuable consideration now paid and given by the Grantee to the Grantor (the receipt and sufficiency of which is hereby acknowledged by the Grantor) and of

the covenants and conditions hereinafter contained the Grantor and the Grantee hereby covenant and agree with each other as follows:

1. The Grantor hereby grants, confirms and transfers in perpetuity unto the Grantee, for itself, its servants, agents, workmen, contractors and licensees, with or without machinery, vehicles, equipment or materials, the full, free and uninterrupted right, liberty, privilege, permission and right of way:

(a) At all times to lay down, install, construct, entrench, operate, maintain, inspect, alter, remove, replace, bury, use and otherwise establish one or more systems of works for the supply and distribution of water and associated utilities, including, without limiting the generality of the foregoing, all reservoirs, booster stations, buildings pipes, pumps, valves, conduits, casings, fittings, lines, cables, meters and appliances, attachments or devices used in connection therewith (the "**Works**") upon, over, under and across those parts of the Lands shown outlined in heavy black on a Reference Plan of Statutory Right of Way of Part of Lot D.L.

the "Right of Way"):

(b) At all reasonable times to enter upon and to pass and repass over such of the Lands as may reasonably be required for the purposes of ingress to and egress from the Right of Way.

2. The Grantor hereby covenants and agrees with the Grantee as follows:

(a) That for the purposes aforesaid and upon, over, under and across the Right of Way the Grantee shall, for itself and its servants, agents, workmen, contractors and licensees, with or without machinery, vehicles, equipment or materials, be entitled at all times to enter, use, pass and repass, labour, dig, carry away soil and other surface or subsurface materials, clear of all trees, growth, buildings or obstructions now or hereafter in existence, as may be necessary, useful or convenient in connection with the Works or the operation thereof;

(b) That the Grantor will not, nor permit any other party to, erect, place, install or maintain any building, structure, mobile home, driveway or patio, pipe, wire or other conduit on, over or under any portion of the Right of Way which in any way interferes with or damages or prevents access to, or is likely to cause harm to the Works;

(c) That the Grantor will not do nor knowingly permit to be done any act or thing which might interfere with or injure the Works, and in particular but without limitation will not carry out any blasting on or adjacent to the Right of Way without the prior consent in writing of the Grantee;

- (d) That the Grantor will not substantially diminish the soil cover over any of the Works, and in particular but without limitation will not construct open drains or ditches along or across the Right of Way;
- (e) That the Grantor will from time to time and at all times upon every reasonable request and at the cost of the Grantee do and execute or cause to be made, done or executed all such further and other lawful acts, deeds, assurances and things which may be requisite for the better assuring unto the Grantee of the rights hereby granted.

3. The Grantee hereby covenants and agrees with the Grantor as follows:

- (a) That the Grantee will, as soon as weather and soil conditions permit, and so often as it may exercise its right of entry hereunder, replace the surface soil as nearly as may be reasonably possible to the same condition as it was prior to such entry, provided that nothing herein contained shall require the Grantee to restore any trees or other surface growth;
- (b) That the Grantee will, as far as reasonably possible, carry out all work in a proper and workmanlike manner so as to do as little injury to the Lands as possible.

4. The parties each hereby covenant and agree with the other, as follows:

- (a) That the Work shall at all times remain the property of the Grantee notwithstanding that the same may be annexed or affixed to the freehold and shall at any time and from time to time be removable in whole or in part by the Grantee;
- (b) That if the Grantee abandons the Works or any part thereof the Grantee may, if it so elects, leave the whole or any part thereof in place;
- (c) That the covenants herein contained shall be covenants running with the land and such covenants on the part of the Grantor shall be personally binding upon the Grantor only so long as the Grantor retains an interest in the Lands, but the Lands shall nevertheless be and remain at all times charged with the burden of such covenants;
- (d) Where the Grantor is more than one, all covenants herein contained on the part of the Grantor shall be several as well as joint;
- (e) Subject as herein expressly provided this Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors and assigns, as the case may



be, and wherever the singular or masculine is used, it shall be construed as if the plural or the feminine or neuter had been used, where the parties or the context so requires.