

Schedule “H”  
Common Lot Covenant

## TERMS OF INSTRUMENT – PART 2

### WHEREAS:

- A. “Common Lot” means Lot 1, Section 23, Township 23, Range 2 West of the 6th Meridian, Kootenay District, as shown on Plan of Subdivision registered under number EPP\_\_\_\_\_;
- B. “Lands” means collectively the land described in Form C – Part 1, Item 2 hereto;
- C. “Transferors” means the parties described in Form C – Part 1, Item 5 hereto;
- D. “Transferee” means the party described in Form C – Part 1, Item 6 hereto;
- E. Section 219 of the Land Title Act, R.S.B.C., 1996 c. 250, provides that a covenant, in favour of the Transferee, whether of a negative or positive nature, in respect of the use of the Lands or that the Lands are or are not to be built on, may be registered as a charge against the title to the Lands and is enforceable against the Transferor and its successors in title even if the covenant is not annexed to land owned by the Transferee;
- F. The Transferee has been designated under section 219(3)(c) of the Land Title Act, evidence of which designation has been filed in the Kamloops / Nelson Land Title Office under instrument number LB090393;
- G. The Transferors have agreed to enter into this Covenant with the Transferee in accordance with section 219 of the Land Title Act to establish the condition that the Common Lot may only be used for utility, access and visitor parking purposes and to set out the requirements the Transferors must comply with to permit use of and access to the Common Lot; and
- H. The Transferors attest that the Lands encumbered by this Agreement do not lie within an Agricultural Land Reserve.

Now therefore in consideration of the promises set forth in this Covenant and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

- 1. Hereafter the Common Lot shall not be used for any purpose other than as a utility corridor, private access road, and visitor parking.
- 2. The Transferors covenant and agree that the Common Lot will only be used in accordance with and on the terms and conditions set out in this Agreement.
- 3. The Transferors covenant and agree that the Transferors shall only use the Common Lot on the following terms:
  - a) to maintain the Common Lot in such a condition as to satisfy the purposes defined in the paragraph 1 of this Agreement;
  - b) all decisions regarding the maintenance, including snow removal, repair and replacement of the Common Lot for access purposes will be agreed upon by a majority vote of the Transferors;

- c) to contribute to the total costs of such maintenance, repair and replacement approved in accordance with paragraph 3(b) in proportion to their respective registered interest in the Common Lot;
- d) to take out and keep, or cause to be taken out and kept in force, the following insurance policies for the benefit of the Transferor:
  - i) insurance against fire and other risks of physical loss or damage covered by a standard all-risks policy, and insurance against all other hazards covered by policies normally in use from time to time by prudent owners of properties similar to the Common Lot for access purposes in an amount equal to the full replacement cost thereof; and
  - ii) comprehensive public liability insurance, including all risk normally insured by prudent owners in connection with the use and occupancy of properties similar to the Common Lot for access purposes, in respect of the use and occupancy thereof, for claims for personal injury, death, or property damage arising out of any one occurrence with limits that are prudent for owners of properties similar to the Common Lot for access purposes;
- e) to provide, within a reasonable time after request by the Transferee, a copy of the certificates evidencing such valid insurance required under paragraph 3(d);
- f) to indemnify and save harmless the other Transferors in respect of all actions, causes of action, suits, losses, expenses, costs and damages of any kind or nature whatsoever suffered by the other Transferors, arising out of or in any way related to the exercise of the Transferors of its rights including any injury or death to any person or any damage to or loss of property, except to the extent any of the foregoing is caused by the negligence or wilful misconduct of any of the other Transferors, or any of them or any person for whose conduct any of the other Transferors are responsible for in law;
- g) to not create or permit to remain and shall remove and discharge or cause to be removed and discharged promptly, any lien, encumbrance or charge on the Common Lot which arises out of the exercise of its rights or observance or performance of any of its obligations under this Agreement, at the cost and expense of the Transferor whose exercise of rights, observance or performance resulted in the lien, encumbrance, or charge;
- h) that if any Transferor uses the Common Lot so as to cause damage to the Common Lot then the responsibility of the repair of the damage is that of the Transferor that caused it;
- i) that a Transferor may, from time to time, temporarily interrupt the use and enjoyment of the whole or any part of the Common Lot for the purposes of maintenance, repair or replacement provided the interruption is of as short a duration as reasonably possible and the Transferor provides 48 hours written notice (except in the case of a bona fide emergency when no notice shall be required) to the other Transferors;
- j) that if required by a municipal, provincial or federal government or any other authority (including public utilities) (the "Authority"), the Transferors will grant statutory rights of way, covenants, easements or any other encumbrances in favour of such Authority over the whole or any part of the Common Lot provided the encumbrance is not inconsistent with the provisions of this Agreement;
- k) the cost-sharing arrangements shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns;

- l) If the parties to this Agreement do not agree on any matter contemplated under this Agreement, any such disagreement will be referred to a single arbitrator for arbitration under the Arbitration Act, R.S.B.C. 1996, c. 55, as amended from time to time (the "Act"). The single arbitrator will be appointed by agreement between the parties within 15 days (or such extended time as the parties may agree on) of any party notifying the others in writing of a disagreement, failing which the arbitrator will be appointed in the manner provided under the Act. The costs of the arbitrator and the award will be in the discretion of the arbitrator, who may direct to whom and by whom and in what manner those costs or any part thereof will be paid, and may tax or settle the amount of costs to be paid or any part thereof and may be final and binding on the parties.
4. The Transferors agree to ensure that all authorities having jurisdiction have unrestricted access over, across and through the Common Lot for the purposes of firefighting, suppression, control and prevention.
5. Pursuant to Section 219 of the Land Title Act, the covenants herein contained shall be covenants running with the Lands and shall enure to the benefit of and be binding upon the Transferor and the Transferor's heirs, executors, administrators, successors, assigns and successors in title.
6. A Transferor is only liable for breaches of this Agreement that occur while the Transferor is a registered owner of the Common Lot.
7. In this Agreement unless the context otherwise requires, the singular includes the plural and vice versa.
8. This Agreement will be interpreted according to the laws of the Province of British Columbia.
9. If any part of this Agreement is found to be illegal or unenforceable, that part will be considered separate and severable and the remaining parts will not be affected thereby and will be enforceable to the fullest extent permitted by law.
10. Nothing contained or implied in this Agreement shall prejudice or affect the exercise of any of the Transferee's functions under any source of authority including, without limitation, any statutes, regulations, bylaws, orders or other constating documents, all of which may be fully and effectively exercised by the Transferee.
11. The Transferors will do or cause to be done all things and execute or cause to be executed all documents and give such further and other assurances which may be reasonably necessary to give proper effect to the intent of this Agreement.
12. This Agreement will not be modified or discharged except in accordance with the provisions of Section 219(9) of the Land Title Act.

IN WITNESS THEREOF the parties acknowledge that this Agreement has been duly executed and delivered by the parties executing Part 1 of Form C attached to and forming part of this Agreement.