**TERMS OF INSTRUMENT – PART 2**

**SECTION 219 COVENANT**

BETWEEN:

 **1107439 B.C. LTD.,** Inc. No. BC1107439

PO Box 797

Cache Creek, BC V0K 1H0

 (the “Transferor”)

AND:

 **HIS MAJESTY THE KING IN RIGHT OF THE**

 **PROVINCE OF BRITISH COLUMBIA**

 as represented by the Minister of Transportation and Infrastructure

 Parliament Buildings, Victoria BC V5C 2H6

 **REGIONAL DISTRICT OF KOOTNEAY BOUNDARY**

 202 – 843 Rossland Avenue

 Trail, BC V1R 4S8

 (the “Transferee”)

**WHEREAS:**

1. The Transferor is the registered owner of land and premises located in the Penticton Assessment Area, British Columbia, more particularly known and described as:

LOT 14 AND AN UNDIVIDED 1/6 SHARE IN LOT 25 DL 1909S SDYD PLAN EPP115865

LOT 15 AND AN UNDIVIDED 1/6 SHARE IN LOT 25 DL 1909S SDYD PLAN EPP115865

LOT 21 AND AN UNDIVIDED 1/6 SHARE IN LOT 25 DL 1909S SDYD PLAN EPP115865

LOT 22 AND AN UNDIVIDED 1/6 SHARE IN LOT 25 DL 1909S SDYD PLAN EPP115865

LOT 23 AND AN UNDIVIDED 1/6 SHARE IN LOT 25 DL 1909S SDYD PLAN EPP115865

LOT 24 AND AN UNDIVIDED 1/6 SHARE IN LOT 25 DL 1909S SDYD PLAN EPP115865

(hereinafter collectively the “Lots”)

1. The Lots were created by way of a Subdivision Plan of District Lot 1909S Similkameen Division Yale District Except Plan 39905 and registered in the Land Title Office under Plan EPP115865 (the “Plan of Subdivision”) and include Lot 25 (“Lot 25”) which is designated as a common access lot (the “Common Lot Road”).
2. Lot 25 provides access to the Lots and is intended to provide:
3. a utility corridor for private and public utility works and service (the “Utility Works”);
4. drainage works (the “Drainage Works”); and
5. access to the Lots for emergency vehicles.
6. Ownership of Lot 25 is allocated among the owners of the Lots as shown on Plan EPP115865.
7. The costs associated with Lot 25 will be allocated amongst the owners of the Lots based on their proportionate ownership of Lot 25, including the ongoing maintenance, repair and replacement of any common roadway, bridge, private utility works and drainage works.
8. The Transferee has requested that the Transferor, as owner of the Lots, enter into this Covenant with the Transferee as a condition of the grant of subdivision and the Transferor has agreed to do so.
9. Section 219 of the Land Title Act, R.S.B.C. 1996, c.250 (the “Act”) provides, inter alia, that there may be registered as a charge against title to land a covenant, whether positive or negative in nature, in respect of the use of land or the use of a buildings or buildings erected or to be erected on land, in favour of a Municipality or the Crown.

**NOW WHEREFORE** in consideration of the sum of ONE (1) DOLLAR and other good and valuable consideration (the receipt and adequacy of which is hereby acknowledged), the parties hereto covenant and agree as follows;

1. From and after the date of this Agreement, no building, mobile home or unit, modular home, structure or improvement of any kind shall be constructed, reconstructed, moved, or extended on any portion of Lot 25.
2. Notwithstanding paragraph 1 above, nothing herein shall prevent or prohibit the:
3. use of Lot 25 for the Common Lot Road, Utility Works or Drainage Works; and
4. paving or hard surfacing of Lot 25.
5. It is a condition of this Covenant that the Common Lot Road be maintained in a standard similar to that of local access roads and that all work be conducted in a good and workmanlike manner and that the cost of maintenance (including snow removal), upkeep, repair and replacement of the Common Lot Road will be allocated amongst the owners of the Lots in proportion with their ownership of the Common Lot Road.
6. The owners of the Lots will:
7. inspect, maintain and repair the Common Lot Road to a good engineering standard;
8. retain a professional engineer who is registered or licensed to practice engineering under the provisions of the Professional Governance Act to oversee the inspection, maintenance and repair of the bridge within the Common Lot Road;
9. retain a professional engineer at least once every five years to undertake a detailed inspection of the bridge;
10. adhere to the recommendations, from time to time, of the professional engineer; and
11. perform all work in a good and workerlike manner
12. Any dispute involving this Agreement or the use or maintenance of the Common Lot Road, private Utility Works and Drainage Works for the intended purposes shall be resolved by the owner or owners from time to time of the Lots, each acting reasonably, and failing such resolution, such dispute shall be referred for resolution to a single Arbitrator pursuant to the Commercial Arbitration Act, R.S.B.C 1996, c. 55 and amendments thereto The situs of any such arbitration shall be Kelowna, British Columbia.
13. The covenants contained in this Agreement are and shall be deemed to be covenants running with the Lands pursuant to Section 219 of the Act and shall be binding upon the Transferor and its successors in title to the Lands and shall enure to the benefit of the Transferee and its successors, in perpetuity, and may only be modified or discharged pursuant to the provisions of the Section 219 of the Act or pursuant to the provisions of an order of a Court of competent jurisdiction.
14. Notwithstanding anything contained herein, neither the Transferor nor any future owner of the Lands shall be liable under any of the covenants or agreements herein where such liability arises by reason of an act or omission occurring after the Transferor or such future owner ceases to have any further interest in the Lands.
15. Wherever masculine singular pronoun is used in this Agreement, same shall be deemed to include and mean the plural, feminine, or body corporate or body politic as the context may require.
16. The Transferor acknowledges and agrees that damages are not an adequate remedy for breach of the covenants herein contained and further that the Transferee, in the event of any such breach shall be entitled to apply to a Court of competent jurisdiction for an Order restraining and prohibiting the continuance of such breach.
17. The Transferor hereby releases and forever discharges the Transferee of and from any claim, cause of action, suit, demand, expenses, costs and legal fees, whatsoever which the Transferor can or may have against the Transferee for any loss or damage or injury that the Transferor may sustain or suffer arising directly or indirectly as a result of the breach, violation or non-performance of any term, condition or of any of the provisions of this Agreement.
18. The Transferor covenants and agrees to indemnify and save harmless the Transferee from any and all claims, causes of action, suits and demands, whatsoever that anyone has, or may have in the future, as an owner occupier, tenant, visitor, invitee or use of the Lands, including, without limitation, claims, causes of action, suits and demands for loss of life and/or injury to a person or property, that arises directly or indirectly as a result of the breach, violation or non-performance of any term, condition or of any of the provisions of this Agreement.
19. This Agreement is to be registered as a charge against the Lands and the Transferor agrees to execute and deliver all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
20. If any part of this Agreement is found to be illegal or unenforceable, that part will be considered separate and severable from the rest, and the remaining parts will not be affected thereby and will be enforceable to the fullest extent permitted by law.
21. Nothing contained or implied in this Agreement shall prejudice or affect the Transferee’s rights and powers in the exercise of its functions pursuant to the *Local Government Act* of British Columbia or its rights and powers under all of its public and private statutes, bylaws, orders and regulations to the extent that the same are applicable to the Lands, all of which may be fully and effectively exercised in relation to the Lands as if these covenants had not been executed and delivered by the Transferor.
22. The parties agree that the Transferee is not responsible to inspect the Lands or to otherwise ensure compliance with this Agreement, nor is the Transferee required to remedy a default of this Agreement and a failure to enforce this Agreement by the Transferee will not constitute a waiver of its rights hereunder.

**IN WITNESS WHEREOF** the parties acknowledge that this Agreement has been duly executed and delivered by the parties executing on or more pages of the General Instrument