

**LAND TITLE ACT  
FORM C (Section 233) CHARGE  
GENERAL INSTRUMENT - PART 1 Province of British Columbia**

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.



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

**PUSHOR MITCHELL LLP, Lawyers**  
301 - 1665 Ellis Street

Phone 250-762-2108  
Client No. 10332  
BCC/43795.21-mlw (Covenant & SRW)

Kelowna BC V1Y 2B3

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:  
[PID] [LEGAL DESCRIPTION]

**030-386-543 LOT 1, DISTRICT LOT 139, ODYD, PLAN EPP77920**

STC? YES

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

**SEE SCHEDULE**

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

(a)  Filed Standard Charge Terms D.F. No.

(b)  Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

**SEE SCHEDULE**

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

**CITY OF KELOWNA**

1435 WATER STREET

KELOWNA

BRITISH COLUMBIA

V1Y 1J4

CANADA

7. ADDITIONAL OR MODIFIED TERMS:

NIL

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)

**BRADLEY C. CRONQUIST**  
BARRISTER & SOLICITOR  
#301 - 1665 Ellis Street  
Kelowna, BC V1Y 2B3  
Phone: (250) 762-2108

Execution Date

Y	M	D
18	07	30

Transferor(s) Signature(s)

3124632 ALBERTA INC., by its  
Authorized Signatory:

Name: PHIL MILROY

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.

**LAND TITLE ACT  
FORM D**

**EXECUTIONS CONTINUED**

Officer Signature(s)

\_\_\_\_\_

**Execution Date**

Y	M	D

Transferor / Borrower / Party Signature(s)

CITY OF KELOWNA, by its Authorized Signatories:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

HSBC BANK CANADA, by its Authorized Signatories:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

As to both signatures if more than one

\_\_\_\_\_

As to both signatures if more than one

\_\_\_\_\_

**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.

**LAND TITLE ACT  
FORM E****SCHEDULE**

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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Statutory Right of Way		Part on Plan EPP81169, Paragraph 1

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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Granting Statutory Right of Way bearing registration number 1 less than the within instrument priority over Mortgage CA6044592 and Assignment of Rents CA6044593

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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Paragraph 2

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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Granting Covenant bearing registration number 1 less than the within instrument priority over Mortgage CA6044592 and Assignment of Rents CA6044593

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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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**LAND TITLE ACT  
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.

**5. TRANSFEROR(S):**

1324632 ALBERTA INC. (INC. NO. A72431), as to Statutory Right of Way and Covenant

HSBC BANK CANADA, as to Priority

**TERMS OF INSTRUMENT – PART 2**

**STATUTORY RIGHT OF WAY and SECTION 219 COVENANT (PUBLIC PLAZA)**

THIS AGREEMENT, dated for reference the 1<sup>st</sup> day of May, 2018, is

BETWEEN:

**1324632 ALBERTA INC.** (Inc. No. A72431), Suite 200, 8512 – 112 Street NW,  
Edmonton, Alberta, T6G 2C8

(the “Grantor”)

AND:

**CITY OF KELOWNA**, 1435 Water Street, Kelowna, British Columbia, V1Y 1J4

(the “Grantee”)

WHEREAS:

- A. The Grantor is the registered owner in fee simple of that parcel of land located at 289 Queensway Avenue in Kelowna, British Columbia, legally described as Parcel Identifier: 030-386-543, Lot 1 District Lot 139 Osoyoos Division Yale District Plan EPP77920 (the “Hotel Lands”);
- B. The Grantee has ownership and possession of the dedicated highway located adjacent to the Hotel Lands, commonly known as Queensway Avenue (the “Road”) and a park commonly known as Kerry Park (the “Park”), and a portion of such Road and Park are shown on a sketch plan to accompany maintenance agreement, a copy of which is attached as schedule ‘D’ (the “Road and Park Areas”);
- C. The Grantor, as part of and in connection with the construction of a hotel (the “Hotel”) on the Hotel Lands, has agreed to construct and maintain a public plaza (the “Plaza”) on a portion of the Hotel Lands and the Road and Park Areas, which Plaza may include a public walkway with bollards, a water feature, a sculpture, a signage wall, public parking and loading, lighting, and landscaping, and will be substantially as shown on the design drawings attached as Schedule “A”, including all appurtenances ancillary and incidental thereto (together, the Plaza and all related structures, installations and works are referred to herein as the “Plaza Works”), to a standard satisfactory to the Grantee;
- D. The Grantor has entered into a servicing agreement (the “Servicing Agreement”) with the Grantee for the construction of the Plaza Works on the Hotel Lands and the Road and Park Areas;

- E. Section 218 of the *Land Title Act*, R.S.B.C. 1996, c. 250 enables the Grantor to grant in favour of the Grantee an easement without a dominant tenement to be known as a statutory right of way, and the Grantor has agreed to grant to the Grantee a statutory right of way pursuant to section 218 of the *Land Title Act* for the ongoing operation and public use of any portion the Plaza Works located on the Hotel Lands, and this statutory right of way is necessary for the operation and maintenance of the Grantee's undertaking; and
- F. By the provision of section 219 of the *Land Title Act*, R.S.B.C. 1996, c. 250, a covenant, whether of a negative or positive nature, in respect of the use of land, in favour of the Grantee, may be registered as a charge against the title to that land and is enforceable against the owner and its successors in title, even if the covenant is not annexed to land owned by the Grantee, and the Grantor has further agreed to grant to the Grantee a covenant pursuant to section 219 of the *Land Title Act* for the ongoing maintenance and repair of the Plaza Works;

THIS AGREEMENT is evidence that, pursuant to sections 218 and 219 of the *Land Title Act*, and in consideration of ONE DOLLAR (\$1.00) paid by the Grantee to the Grantor and other good and valuable consideration (the receipt and sufficiency of which the Grantor hereby acknowledges), the Grantor grants to and covenants with the Grantee as follows:

1. **Statutory Right of Way for Plaza Works** – The Grantor hereby grants, conveys and confirms to the Grantee in perpetuity the full, free and uninterrupted right, liberty, easement and statutory right of way (the "Statutory Right of Way") for the Grantee, its officers, employees, contractors, agents and licensees, in common with the Grantor, at all times hereafter from time to time at their will and pleasure to enter, go, be on, pass and repass upon, over, and across that portion of the Hotel Lands (the "Right of Way Area") shown outlined in bold on the Reference Plan EPP81169, a copy of which is attached hereto as Schedule "B", to:
  - (a) to permit the public to travel across the Right of Way Area on foot, by bicycle, or by other means of conveyance but not by motor vehicles;
  - (b) have unobstructed access to and from the Right of Way Area at any and all times from adjacent public streets provided that the installation of decorative structures, the parking of vehicles or the general operation of a hotel within the Right of Way Area shall be permitted if such installation, parking and operations do not obstruct or prevent the safe and effective public passage to and from, and across, the Right of Way Area.
  - (c) remove from the Right of Way Area such structures, improvements, fixtures, and other obstructions whatsoever as, in the Grantee's opinion, acting reasonably, is necessary in order to ensure the safe and effective passage by the public over the Right of Way Area, provided that the Grantee gives the

Grantor 7 days prior written notice of its intention to do so, except no notice shall be required in emergency situations; and

- (d) do all other things on the Right of Way Area as may be reasonably necessary, desirable or incidental to the foregoing.

2. **Section 219 Covenant to Repair and Maintain Plaza Works** – The Grantor covenants and agrees as follows:

- (a) the Grantor shall complete the construction and installation of the Plaza Works on the Right of Way Area and the Road and Park Areas in a good and workmanlike manner in accordance with the Servicing Agreement and, thereafter, the Grantor shall maintain the Plaza Works on the Right of Way Area and the Road and Park Areas, as the case may be, in accordance with this section 2;
- (b) the Grantor shall, in perpetuity, keep clean, repair, and maintain the Plaza Works in good, safe and sufficient repair and condition as a reasonably prudent owner would do, and shall maintain all landscaping on the Plaza to the standards attached hereto as Schedule "C", and the Grantor shall ensure that the Plaza Works are at all times safe for the use of the public, including children, all to the reasonable satisfaction of the Grantee;
- (c) the Grantor shall be solely responsible for the full cost of the work required pursuant to subsections 2(a) and (b) and the Grantor shall supply all licenses, permits, tools, equipment, labour and materials necessary and required to complete all work specified therein;
- (d) following the construction and installation of the Plaza Works, the Grantor shall not thereafter remove any portion of the Plaza Works from the Right of Way Area or the Road and Park Areas without the Grantee's prior written consent unless the Grantor promptly replaces, at its own cost, such Plaza Works with similar works of an equal or greater value and condition, to the satisfaction of the Grantee;
- (e) as security for the due and proper performance of all the terms and conditions in this Agreement, the Grantor shall, prior to applying for and receiving a Certificate of Acceptance under the Servicing Agreement for the construction of the Plaza Works, deposit with the Grantee security in a form satisfactory to the Grantee in the total amount of \$32,000 (the "Security"). The Grantor shall, without notice from the Grantee, renew any Security prior to the expiration of its term. If the Grantor fails or neglects to renew any Security not less than one month prior to the expiration of its term, the Grantee may make demand upon such Security and hold the proceeds so obtained in place of the Security. The amount of the Security may be reduced at any time in the Grantee's discretion,

with the written approval of the Grantee's Director of Planning, acting reasonably;

- (f) if the Grantor fails to keep, repair, and maintain the Plaza Works on the Right of Way Area and the Road and Park Areas in good, safe and sufficient repair to the standards required by this Agreement, to the reasonable satisfaction of the Grantee, the Grantee shall be entitled to do such work (and to enter on the Right of Way Area in order to do such work, as needed) if, after giving 7 days prior written notice to the Grantor (except in the case of an emergency, in which case no notice is required) specifying the default and requiring it to be remedied, the Grantor has failed to carry out such work within such 7 day period, or if the work requires longer than 7 days to carry out, the Grantor has failed to commence carrying out the work and to diligently proceed with the work thereafter, and for that purpose the Grantee may expend the Security in whole or in part. It is understood that the Grantee may do such work either by itself or by contractors employed by the Grantee. If the Grantee expends any portion of the Security, the Grantor shall promptly replenish the Security by the amount expended or the Grantor shall be in default under this Agreement. In the event that the Security is not sufficient to cover the costs incurred by the Grantee, the Grantor agrees and covenants to pay the balance owing to the Grantee forthwith upon receipt of its invoice;
- (g) the Grantor agrees that the Grantee is entitled to obtain an order for specific performance or a prohibitory or mandatory injunction in respect of any breach by the Grantor of this section 2. The Grantor agrees that this section is reasonable given the public interest in the need for effective maintenance and protection of the Plaza Works from breaches of this section 2;
- (h) subject to section 16, the covenants contained in this section 2 shall run with the Hotel Lands and each and every part into which the Hotel Lands may be subdivided or consolidated by any means (including subdivision plan, reference or explanatory plan, strata plan, bare land strata plan or lease), but no part of the fee of the Hotel Lands passes to or is vested in the Grantee under or by this section 2 and the Grantor may fully use the Right of Way Area and the Hotel Lands subject only to the common law and the rights, obligations and restrictions expressly set out in this Agreement; and
- (i) if there is more than one owner of the Hotel Lands then they are jointly and severally responsible for performance of the obligations hereunder.

**3. Grantor's Obligations – The Grantor must:**

- (a) not do or permit to be done anything in the Right of Way Area which in the opinion of the Grantee, acting reasonably, may interfere with, injure or impair



the operating efficiency of, or obstruct access to or the use of the Right of Way Area, the Plaza Works, or the rights granted under this Statutory Right of Way;

- (b) permit the Grantee to peaceably hold and enjoy the rights hereby granted;
  - (c) permit the Grantee to do all other things in the Right of Way Area which in the reasonable opinion of the Grantee are reasonably necessary for the safe use and preservation of the Right of Way Area for the purposes of the Plaza Works and the Statutory Right of Way;
  - (d) not deposit or place garbage, debris or other material in the Right of Way Area;
  - (e) at its own expense, do or execute or cause to be done or executed all such further and other lawful acts, deeds, things, conveyances and assurances whatsoever for better assuring to the Grantee the rights, liberties, and right of way hereby granted.
4. **Acknowledgment of Existing Underground Utilities** – The Grantor acknowledges that there are existing underground utilities located in the Road and Park Areas, including utility works owned by the Grantee. In the event that the Grantee requires emergency access to its utility works and, in accessing those works, causes damage to the Plaza Works, the Grantee will be responsible for repairing the Plaza Works only to a compacted road standard, and to provide financial contribution to the Grantor in an amount equal to the cost of constructing the Road and Park Areas from a compacted road standard, to an asphalt road standard. Following such repair by the Grantee, the Grantor will be responsible for replacing and repairing the Plaza Works to their previous condition and to the standard required by this Agreement, at its own cost. Provided, however, that the Grantor must provide reasonable notice to the Grantee, or to the extent reasonable notice is possible in the circumstances, prior to the Grantor accessing the utility works, to permit the Grantee to mitigate any damage to the Plaza Works.
5. **Grantee's Obligations** – The Grantee must do all things hereby authorized to be done by it over, through, and upon the Right of Way Area in a good and workmanlike manner so as to cause no unnecessary damage or disturbance to the Grantor, the Hotel Lands, or the Right of Way Area or to any improvements thereon.
6. **Grantee's Rights** – The Grantee:
- (a) is entitled to peaceably hold and enjoy the rights, liberties and Statutory Right of Way hereby granted without hindrance, molestation or interruption by the Grantor or any person, firm or corporation claiming by, through, under or in trust for the Grantor;
  - (b) may remove upon delivery of written notice to and upon consultation with the Grantor anything placed on the Right of Way Area by the Grantor which in the

reasonable opinion of the Grantee may interfere with, injure or impair the operating efficiency of, or obstruct access to or the use of the Plaza Works or the rights granted by the Statutory Right of Way;

- (c) without limiting subsection 2(f), on default by the Grantor of any of its obligations under this Agreement, may, but is not obliged to, rectify the default, and for that purpose the Grantee may expend the Security in whole or in part, provided that, except in the case of an emergency (in which case no notice is required), the Grantee must first give 7 days prior notice to the Grantor specifying the default and requiring it to be remedied and the Grantor fails to carry out such work within such 7 day period, or if the work requires longer than 7 days to carry out, the Grantor has failed to commence carrying out the work and to diligently proceed with the work thereafter. In the event that the Security is not sufficient to cover the costs incurred by the Grantee, the Grantor agrees and covenants to pay the balance owing to the Grantee forthwith upon receipt of its invoice.

7. **Indemnification of Grantee** – The Grantor shall at all times and does hereby indemnify, save harmless, release and forever discharge the Grantee from and against all manner of actions, causes of action, claims, debts, suits, damages, demands and promises, at law or in equity, whether known or unknown, including without limitation for injury to persons or property including death, of any person directly or indirectly arising or resulting from, or attributable to, any act, omission, negligence or default of the Grantor in connection with or in consequence of this Agreement, save and except to the extent caused by any act, omission, negligence or default of the Grantee, in which case the Grantee shall indemnify the Grantor under section 8 of this Agreement.
8. **Indemnification of Grantor** – The Grantee shall at all times and does hereby indemnify, save harmless, release and forever discharge the Grantor from and against all manner of actions, causes of action, claims, debts, suits, damages, demands and promises, at law or in equity whether known or unknown, including without limitation for injury to persons or property including death, of any person directly or indirectly arising or resulting from, or attributable to, any act, omission, negligence or default of the Grantee in connection with or in consequence of this Agreement, save and except to the extent caused by any act, omission, negligence or default of the Grantor, in which case the Grantor shall indemnify the Grantee under section 7 of this Agreement.
9. **No Waiver** – No waiver of default by either party is effective unless expressed in writing by the party waiving default, and no condoning, overlooking or excusing by either party of a previous default of the other is to be taken to operate as a waiver of any subsequent default or continuing default, or to in any way defeat or affect the rights and remedies of the non-defaulting party.

10. **Discretion** – Wherever in this Agreement the approval of the Grantee is required, some act or thing is to be done to the Grantee's satisfaction, the Grantee is entitled to form an opinion, or the Grantee is given a sole discretion:
  - (a) the relevant provision is not deemed to have been fulfilled or waived unless the approval, opinion or expression of satisfaction is in writing signed by the Grantee's Director of Planning or any other person duly authorized by the Council of the City of Kelowna to perform the functions of the Director of Planning;
  - (b) the approval, opinion or satisfaction is in the discretion of the Director of Planning acting reasonably in accordance with municipal engineering practice.
11. **No Effect on Powers** – This Agreement does not:
  - (a) affect or limit the discretion, rights, duties or powers of the Grantee under the common law or any statute, bylaw, or other enactment;
  - (b) affect or limit the common law or any statute, bylaw or other enactment applying to the Hotel Lands or the Road and Park Areas; or
  - (c) relieve the Grantor from complying with the common law or any statute, bylaw or other enactment.
12. **Notice** – Any notice to be given pursuant to this Agreement must be in writing and must be delivered personally. The addresses of the parties for the purpose of notice are the addresses hereinbefore set out. Notice may be left at the relevant address in the same manner as ordinary mail is left by Canada Post and is to be deemed to have been given when delivered. Any party may at any time give notice in writing to the other of any change of address and from and after the receipt of notice the address therein specified is to be deemed to be the address of such party for the giving of notice.
13. **Severance** – 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 is to be severed and the decision that it is invalid does not affect the validity of the remainder of this Agreement, the parties hereby agreeing that they would have entered into the Agreement without the severed provision.
14. **Entire Agreement** – No amendment of this Agreement, is valid or binding unless in writing and executed by the parties.
15. **Headings** – The headings in this Agreement are inserted for reference and convenience only and must not be used to construe or interpret the provisions hereof.
16. **Discharge of Agreement** – The Parties acknowledge that the Hotel Lands may be subdivided to create an air space parcel over which a strata plan may be filed. The air

space parcel is intended to create a lot in which the top floors of the building, constructed on the Hotel Lands, will be subdivided into strata lots, with the remainder land being used for the operation of a hotel. If the Grantor files a subdivision plan to create an air space parcel over which a strata plan is intended to be filed, leaving the hotel within the remainder parcel, as contemplated in this section, the Grantee will execute a release of this Agreement from title to the air space parcel, which release shall be prepared and registered by and at the expense of the Grantor.

17. **Schedules** – Schedule “A” being drawings showing the general form and location of the Plaza Works, Schedule “B” being a copy of Plan EPP81169, Schedule “C” being the required maintenance standards, and Schedule “D” being a copy of sketch plan to accompany maintenance agreement.
18. **Interpretation** – In this Agreement:
  - (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
  - (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
  - (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) if 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;
  - (e) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
  - (f) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
  - (g) the provisions of s. 25 of the *Interpretation Act* with respect to the calculation of time apply;
  - (h) time is of the essence;
  - (i) all provisions are to be interpreted as always speaking;
  - (j) reference to a “party” is a reference to a party to this Agreement and to their respective successors, assigns, trustees, administrators and receivers;

- (k) reference to a “day”, “month”, “quarter” or “year” is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided; and
  - (l) where the word “including” is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word “including”.
19. **Parties** – Every reference in this Agreement to a party is deemed to include the heirs, executors, administrators, successors, assigns, employees, agents, officers, and invitees of such party wherever the context so requires or allows.
20. **Interest In Land and Enurement** – Subject to section 16, this Agreement runs with the Hotel Lands and each and every part into which the Hotel Lands may be subdivided or consolidated by any means (including subdivision plan, reference or explanatory plan, strata plan, bare land strata plan or lease), but no part of the fee of the Hotel Lands passes to or is vested in the Grantee under or by this Agreement and the Grantor may fully use the Right of Way Area and Hotel Lands subject only to the common law and the rights, obligations and restrictions expressly set out in this Agreement. This Agreement enures to the benefit of and is binding on the parties notwithstanding any rule of law or equity to the contrary.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement by executing Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

## CONSENT AND PRIORITY AGREEMENT

WHEREAS **HSBC BANK CANADA** (the "Chargeholder") is the holder of a Mortgage and an Assignment of Rents (called the "Charges") encumbering the lands (the "Lands") described in item 2 of the *Land Title Act* Form C attached hereto, which were registered in the Kamloops Land Title Office under numbers **CA6044592** and **CA6044593** respectively.

THEREFORE THIS CONSENT AND PRIORITY AGREEMENT IS EVIDENCE THAT IN CONSIDERATION OF \$1.00 AND OTHER GOOD AND VALUABLE CONSIDERATION PAID BY THE TRANSFEREE TO THE CHARGEHOLDER:

1. The Chargeholder hereby consents to the granting and registration of the Statutory Right of Way and Section 219 Covenant attached hereto (the "SRW/Covenant") and the Chargeholder hereby agrees that the SRW/Covenant shall be binding upon its interest in and to the Lands.
2. The Chargeholder hereby grants to the transferee described in item 6 of the *Land Title Act* Form C attached hereto priority for the SRW/Covenant over the Chargeholder's right, title and interest in and to the Lands, and the Chargeholder does hereby postpone the Charges and all of its right, title and interest thereunder to the SRW/Covenant as if the SRW/Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Charges.

IN WITNESS WHEREOF, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing the *Land Title Act* Form D above which is attached hereto and forms part of this Agreement.

**SCHEDULE "A"**

**PLAZA DESIGN DRAWINGS**





**SCHEDULE "B"**

COPY OF PLAN EPP81169



## SCHEDULE "C"

### LANDSCAPING MAINTENANCE STANDARDS

#### GRASS CUTTING (if applicable)

- Cutting Frequency – Grass on the Plaza (including that portion of the Plaza located on the Hotel Lands and that portion of the Plaza located on the Road and Park Areas) shall be cut at least once per week through the growth season.
- Height of Cut – Grass shall be 2 1/2 inches (60mm) for all areas in the Plaza unless otherwise stated, and adjusted by the Grantor as directed by the Grantee.
- Equipment Maintenance – The Grantor's cutting equipment shall be maintained in good condition with sharp cutting edges.
- Mowing Equipment – Any operator-mounted mowing equipment must be equipped with low pressure floatation tires designed for use on turf.
- Removal of Debris – All debris shall be removed from turf grass areas prior to mowing.
- No Damage – All trees, posts, rocks, signs, curbs, sidewalks, benches, tables and ground level objects to be neatly trimmed at the time of each mowing, with no scalping of turf or damage to bark of trees or finish of objects.
- Soil Edge – Where a grassed area abuts sidewalks, curbs, structures, hard surfaced areas, flower beds, shrub planting, the turf and soil edge shall be edged with power blade edgers and the grass clippings removed or dispersed in such a way as to prevent an unsightly finish. The soil edge is to be kept free of weeds and grass clippings. This work shall be performed by the Grantor every two weeks during the growing season.

**NOTE: Grass edges cut or trimmed with a string type weed and grass cutting machine is not acceptable.**

- Damage – Preventative measures must be taken to ensure that no damage is caused by the Grantor's equipment to sprinkler heads, monuments or other ground level, or above grade fixtures. The Grantor is responsible for repairs to Grantee's satisfaction if damage occurs.
- Tree Protection – Trees and shrubs planted in grassed areas shall be encircled with a growth-free, 30-cm wide soil strip. The Grantee may, at its sole discretion, waive the requirement of the 30-cm wide soil strip for certain trees on the basis of the size and species. The purpose of this bare soil area is to prevent mowing machine damage to the tree's basal area. The Grantor shall keep these tree circles free of grass and weed growth by hand weeding or manual shallow cultivation. Where string trimmers or

mowing machines are used and contact the tree, causing bark damage, and if the bark damage exceeds more than one-third of the trunk circumference, upon direction of the Grantee, the Grantor must replace such tree promptly and at its own cost.

- Hours – Mowing operations shall not commence before 07:00 hours and must be completed before 19:00 hours.

#### **GRASS PICK-UP AND SITE MAINTENANCE (if applicable)**

- Grass Pick-Up – The Grantor must pick up all grass clippings during each cutting period from the site.
- Extra Grass Cutting – The Grantor must be aware of high growth periods, for example the annual spring flush of growth, or after a fertilizer application by the Grantee. During this time period extra grass cutting may be required to keep the lawns tidy in appearance.
- Clean and Tidy Work Areas – All work areas shall be cleaned and left in a neat and orderly condition after each cutting. This shall include cleaning grass clippings from sidewalks, steps and paved areas.

#### **CUTTING SCHEDULE**

- Scheduling – The Grantor shall establish and supply to the Grantee yearly schedule for sequence of cutting the agreed work areas. However, the Grantee reserves the right to have the Grantor change the sequence for any particular area.

#### **LITTER CONTROL**

- Litter Collection and Removal – The Grantor shall be responsible for collection and removal of trash, waste, broken glass, bottles, cans, paper, leaves, cigarette butts, branches, feces and other unsightly matter from all areas within and adjacent to the Plaza (including that portion of the Plaza located on the Hotel Lands and that portion of the Plaza located on the Road and Park Areas) such as but not limited to: grass areas, driveways, walkways, parking lots, and shrub beds. Litter control shall include a thorough inspection of the Plaza site and adjacent areas each time this task is done.
- Daily Completion – Litter control shall be completed by the Grantor each day, no later than 9:00 am.

**NOTE: In no case shall any litter receptacle be allowed to overflow, become unsanitary or create noxious odours and all litter must be removed from the litter receptacle when performing this task.**

- Disposal – The Grantor shall be responsible for removing all litter off site and responsible for all disposal fees.
- Containers – Litter containers shall be supplied by the Grantee. The Grantor shall supply and insert the bags in these containers as required.
- Sprinklers – Damage to sprinkler heads or malfunction of sprinklers must be repaired promptly by the Grantor. The Grantee shall be responsible for maintaining the irrigation system. [

**SNOW REMOVAL**

- Sidewalks and roads (including that portion of the Road and Park Areas on which the Plaza is located) must be cleared by the Grantor within 24 hours of snowfall, as per City of Kelowna Traffic Bylaw 8120.
- All snow cleared must be removed from the downtown core and, more specifically, may not be stored on the Hotel Lands or on the Road and Park Areas.
- Sand is not to be used on the Road and Park Areas surface unless temperatures drop below -6 degrees Celsius.

**ROAD/PAVER MAINTENANCE**

Sidewalk/Walkway Inspection Procedures

- Inspections will take place once all the frost is out of the ground, snow has melted, and spring sweep is completed.
- Inspections will be carried out by a qualified person so as to maintain consistency in the way the inspections are recorded.
- Hazards are to be recorded on a field survey form as per the following ratings:

HAZARD TYPES:	DEFINITIONS:	HAZARD RATINGS:
1. Cracks or Separations	Crack in sidewalk panel with no deflection	1. More than 2.5 cm in width 2. 1.25 cm to 2.5 cm in width 3. Less than 1.25 cm in width

2. Heave or Settlement	Any change in elevations whether it's at a crack or a joint	<ol style="list-style-type: none"> <li>1. More than 2.5 cm in height/depth</li> <li>2. 1.25 cm to 2.5 cm in height/depth</li> <li>3. Less than 1.25 cm in height/depth</li> </ol>
3. Deflections	Where one or two panels have either heaved or settled with no change in elevation @ the joint or crack	<ol style="list-style-type: none"> <li>1. More than 5 cm change over 1.5 M</li> <li>2. 2.5 cm to 5 cm change over 1.5 M</li> <li>3. Less than 2.5 cm change over 1.5 M</li> </ol>
4. Filets	Any section within the sidewalk that is smaller than the neighbouring panels	<ol style="list-style-type: none"> <li>1. More than 2.5 cm in height/depth</li> <li>2. 1.25 cm to 2.5 cm in height/depth</li> <li>3. Less than 1.25 cm in height/depth</li> </ol>
5. Scaling	Top layer of concrete is failing, leaving the appearance of exposed aggregate	<ol style="list-style-type: none"> <li>1. More than 2.5 cm in depth</li> <li>2. 1.25 cm to 2.5 cm in depth</li> <li>3. Less than 1.25 cm in depth</li> </ol>
6. Obstacles	Items such as rebar sticking out of the concrete	<ol style="list-style-type: none"> <li>1. More than 2.5 cm in projection/depression</li> <li>2. 1.25 cm to 2.5 cm in projection/depression</li> <li>3. Less than 1.25 cm in projection/depression</li> </ol>

**Sidewalk/Walkway Replacement and Repair**

- All hazards with a rating of Level 1 must be repaired within 6 months of the completion of the inspection.
- All Level 1 hazards will be ranked in order of severity, taking into consideration height of trip hazard and location, with the most severe being repaired first.

- Once all Level 1 hazards have been repaired, those hazards with a rating of Level 2 will be checked and monitored. Level 2 hazards may be repaired as resources permit.
- Hazard ratings will be based on the following:

<b>HAZARD TYPES:</b>	<b>HAZARD RATINGS:</b>	<b>REPAIR TYPES:</b>
1. Cracks or Separations	1. More than 2.5 cm in width 2. 1.25 cm to 2.5 cm in width 3. Less than 1.25 cm in width	1. Remove & Replace 2. Fill
2. Heave or Settlement	1. More than 2.5 cm in height/depth 2. 1.25 cm to 2.5 cm in height/depth 3. Less than 1.25 cm in height/depth	1. Remove & Replace 2. Grind 3. Fill
3. Deflections	1. More than 5 cm change over 1.5 M 2. 2.5 cm to 5 cm change over 1.5 M 3. Less than 2.5 cm change over 1.5 M	1. Remove & Replace 2. Grind Joint 3. Mud Jacking
4. Filets	1. More than 5 cm changes over 1.5 M 2. 1.25 cm to 5cm in height/depth 3. Less than 1.25 cm in height/depth	1. Remove & Replace 2. Grind 3. Fill

**LIGHTING**

- All lighting equipment repairs and bulb replacement shall be completed in a prompt fashion and at the sole cost and expense of the Grantor.

**PUBLIC ART**

- Public art is to be maintained and repaired as per the manufacturer and/or artist's recommendations.



**SCHEDULE "D"**

**Sketch Plan to Accompany Maintenance Agreement**

SCHEDULE "D"

BLOCK F  
DL 1527

QUEENSWAY AVENUE

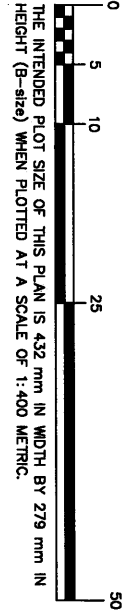
PLAN A  
KAP83363

MAINTENANCE AGREEMENT AREA  
1.182 m<sup>2</sup>

PLAN 1  
EPP77920

LANE

PLAN TO ACCOMPANY MAINTENANCE AGREEMENT  
OVER PORTIONS OF QUEENSWAY AVENUE,  
WATER STREET, LOT A, DL 139, ODDY, PLAN KAP83363  
AND THAT PART OF WATER STREET IN DL 139 ODDY  
BEING PART OF ROAD DEDICATED BY PLAN 462  
AS SHOWN ON PLAN EPP43859 EXCEPT PLAN EPP77919.

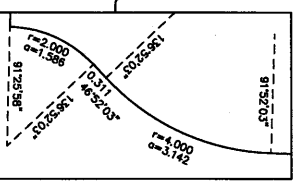


All distances are in metres and decimals thereof.  
Grid bearings are derived from Plan EPP77920.



WATER STREET

REMAINDER  
THAT PART OF WATER  
STREET IN DL 139 ODDY  
BEING PART OF ROAD  
DEDICATED BY PLAN 462  
AS SHOWN ON PLAN EPP43859  
EXCEPT PLAN EPP77919



D.A. GODDARD SURVEYS  
103-1358 ST. PAUL STREET, KELOWNA,  
file 416204-SK2 March 30, 2018.

PLAN 1  
2207

