

PAGE 1 OF 10 PAGES

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- Deduct LTSA Fees? Yes
- ☒

- Related Plan Number:
- EPP81335**

- OVER PART ON PLAN EPP81335

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

- CITY OF KELOWNA

- CANADA

- NIL

- CITY OF KELOWNA, by its
Authorized Signatory(ies):**

Execution Date		
Y	M	D

Name:

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.

PAGE 2 of 10 PAGES

Execution Date

Transferor / Borrower / Party Signature(s)

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

Y	M	D
18	07	30

**1324632 ALBERTA INC., by its
Authorized Signatory:**

Name: PHIL MILROY

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.

TERMS OF INSTRUMENT – PART 2

WHEREAS:

- A. The Transferor has the right of possession, regulation, control and ownership of a highway known as Queensway Avenue which is dedicated as road by plans 505 and 5027 (the "Highway") adjacent to the Dominant Tenement Lands (as hereinafter defined).

(the "Transferor's Lands")

- B. The Transferee is the registered owner in fee simple of those certain parcel(s) of land in the City of Kelowna, in the Province of British Columbia, legally described below, which are adjacent to the Highway:

PID: 030-386-543

Lot 1, District Lot 139, ODYD, Plan EPP77920

(the "Dominant Tenement Lands")

- C. The Transferee has constructed a protrusion on the Dominant Tenement Lands (the "Encroaching Improvement"), which encroaches over the Highway.

- D. The Transferee has requested that the Transferor grant an easement over part of the Highway for the purpose of constructing, using and maintaining the Encroaching Improvement located above the Highway.

- E. The Transferor has authority under section 31(11) of the *Community Charter* to grant a licence of occupation or an easement in respect of, or permit an encroachment upon the Highway.

- F. The Transferor as agreed to grant the transferee an easement over a portion of the Highway on the terms hereinafter set forth for the consideration hereinafter appearing.

NOW THIS AGREEMENT WITNESSES that in consideration of the sum of \$1.00 and the premises and covenants herein contained, the receipt and sufficiency of which are acknowledged, the parties covenant and agree with each other as follows:

ENCROACHMENT ON HIGHWAY

1 The Grantor hereby grants to the Grantee, its heirs, executors, administrators, successors, assigns, servants, agents, licensees, guests, and invitees the non-exclusive right, easement and permission to encroach upon, over, use and occupy, for the purpose of constructing, occupying, using and maintaining the Encroaching Improvement, over that portion of the Highway as shown "easement" in heavy outline on the Reference Plan of Easement over Part of Queensway Avenue in District Lot 139, ODYD, being part of Road Dedicated by Plans 505 and 5027, prepared by Mark

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Cahill, BC Land Surveyor, and deposited for and registered in the Land Title Office in Kamloops, British Columbia, under number EPP81335 (the "Easement Area"), a reduced size copy of which is attached as Schedule "A" hereto.

NO RESTRICTIONS OR REQUIREMENTS ON GRANTOR

2 The Grantee acknowledges and agrees that the Easement Area is a highway and that the Grantor has limited power to authorize the private use of a highway. The Grantee further acknowledges and agrees that any rights granted by the Grantor to the Grantee are not exclusive and subject to the public's right to pass and repass over the Highway.

3 The Grantee covenants and agrees that this Agreement shall not in any way restrict the right of the Grantor or require the Grantor at any time to:

- (a) alter any road, curb, gutter, sidewalk or boulevard abutting the Easement Area and notwithstanding that the effect of such alteration may be to render the Encroaching Improvement useless or of less value for the purposes of the Grantee; or
- (b) inspect, construct, improve, widen, raise, lower, alter or maintain the Highway or any form of structure, service or utility on, over or under any portion of the Highway on or in which the Encroaching Improvement are located.

RESTRICTIONS OR REQUIREMENTS ON GRANTEE

4. The Grantee agrees to use the Easement Area exclusively for the purpose of constructing, occupying, using and maintaining the Encroaching Improvement and for no other purpose.

5. The Grantee agrees that it shall not undertake any renovations, structural changes or other alterations to the Encroaching Improvement or any related structure located in the Easement Area without the approval in writing of the Grantor, with the Grantor having the right and power at all times to grant or withhold the same

6. If the Encroaching Improvement, or the building to which it is attached, is demolished or are voluntarily taken down or redeveloped or replaced this Agreement shall become void and be of no effect.

7. The execution of this Agreement does not constitute approval by the Grantee of any retaining walls or other structures on the Dominant Tenement Lands that are constructed or used in connection with the Encroaching Improvement.

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CONSTRUCTION AND MAINTENANCE

8. The Grantee will carry out all work in a proper and workmanlike manner so as to do as little injury to the Highway and Easement Area as possible and comply with all engineering and construction standards of the Grantor.

9. The Grantee will:

- (a) maintain the Encroaching Improvement in good and sufficient repair, in such a manner that it properly supports and causes no damage to the Highway;
- (b) promptly remove all rubbish and construction material placed thereon so that the Easement Area is in a neat and clean condition

10. Should the Grantee fail to satisfy the requirements of paragraph 9, the Grantor may, upon twenty-four (24) hours' notice to the Grantee, do any work necessary to fulfill the condition as determined in the sole discretion of the Grantor's Director of Engineering Services.

11. The Grantee will make good at its own expense and repair and restore to its pre-damaged condition as is reasonably practical with reasonable dispatch, all damage or disturbance which may be caused to the surface of the Highway and Easement Area in the exercise of its rights hereunder.

12. The Grantee will, in the event of the termination of this Agreement as far as reasonably possible, restore any sidewalks, curbs, gutters, road markings and other improvements, at its own expense, as nearly as may be reasonably possible to the same condition, or better, than they were in prior to any entry by the Grantee upon the Easement Area.

13. Should the Grantee:

- (a) fail to keep the Encroaching Improvement in good and sufficient repair to the satisfaction of the Grantor's Director of Engineering Services; or
- (b) fail to return the Easement Area in as good or better condition upon termination of this Agreement, or
- (c) fail to otherwise abide by any condition of this Agreement,

then the Grantor's Director of Engineering Services, upon thirty (30) days' written notification of such failure and provided that the Grantee has not resolved the failure within that period of time, may:

- (d) make such repairs including structural changes, when deemed necessary by it, or

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(e) do any work necessary to fulfill any condition of this Agreement,

as the case may require, in the sole discretion of the Grantor's Director of Engineering Services.

14. The Grantee shall pay the costs of work done under paragraph 10 and 13 to the Grantor forthwith and covenants and agrees that if in default of payment, the amount of such costs and interest at the prime lending rate of the Royal Bank of Canada plus 2% per annum may be recovered in any Court of competent jurisdiction.

15. In making the repairs or doing the maintenance, the Grantor may bring and leave upon the Highway and Easement Area, the necessary materials, tools and equipment, and the Grantor shall not be liable to the Grantee for any inconvenience, annoyance, loss of business or other injuries suffered by the Grantee by reason of the Grantor effecting the repairs or maintenance or doing any work under paragraphs 3, 10 or 13.

16. The Grantee releases the Grantor its elected and appointed officers, employees and agents from and waives any claim, right, remedy, action, cause of action, loss, damage, expense, fee or liability which the Grantee may have against any or all of them in respect of this Agreement or its performance or its breach except insofar as such claim, right, remedy, action, cause of action, loss, damage, expense, fee or liability arises from the negligence of the Grantor, its elected and appointed officers, employees and agents

INDEMNIFICATION

17. The Grantee hereby releases, indemnifies and saves harmless the Grantor from any and all liability including to third parties whatsoever arising out of:

- (a) the Encroaching Improvement encroaching upon, under or over the Highway and Easement,
- (b) the Grantee's installation or construction of anything upon, under or over the Easement,
- (c) the Grantee's maintenance or lack of maintenance of the Easement and of anything upon, under or over the Easement; and
- (d) the Grantee's occupation or use of the Highway and Easement Area or the ground below or the air above for the purpose of such encroachment by the Encroaching Improvement.

and without limiting the generality of the foregoing, the Grantee releases, indemnifies and saves harmless the Grantor from all injuries, including death, to any person including members of the general public sustained while present on the Easement Area.

18. In the event that the construction, maintenance, use or removal of the Encroaching Improvement necessitates any alteration or change to any meter, water service, sewer or other

public works or utility in the vicinity of the Encroaching Improvement, the Grantee will reimburse the Grantor for whatever sums may be incurred by the Grantor in making such alterations or changes as may be deemed necessary by the Grantor's Director of Engineering Services.

19. The Grantee will indemnify the Grantor from and against any liens for wages or materials, for damage to persons or property caused during the making of or in connection with any excavation, construction, repairs, alterations, installations and additions which the Grantee may make or cause to be made on, in or to the Highway and the Encroaching Improvement in the Easement Area.

REGULATIONS

20. The Grantee will at all times observe and perform the provisions of the Bylaws of the Grantor and the British Columbia Building Code in relation to the construction, occupation, maintenance and repair of the Encroaching Improvement, and this Agreement shall be at all times subject thereto. If the Grantee fails to comply with the provisions of the said Bylaws or the British Columbia Building Code, or any of them, or of this Agreement, all rights of the Grantee hereunder shall thereupon lapse and be absolutely forfeited

Nothing contained or implied herein shall prejudice or affect the rights and powers of the Grantor in the exercise of its functions pursuant to the *Local Government Act* or the *Community Charter* or its rights and powers under all of its public and private statutes, bylaws, order and regulations.

21. The Grantor, nevertheless, shall be entitled to proceed with the enforcement of any security or indemnity herein provided, or upon any bond or otherwise in satisfaction of any claim, loss or expenses of whatsoever kind arising under this Agreement, or from the permission hereby granted.

FORFEITURE

22. The Grantor, by waiving or neglecting to enforce the right to forfeiture of this Agreement or the right of re-entry upon breach of this Agreement, does not waive the Grantor's rights upon any subsequent breach of the same or any other provision of this Agreement.

NO COMPENSATION

23. The Grantee shall not be entitled to compensation for any loss or injurious affection or disturbance resulting in any way from the termination of the Agreement or the loss of the Grantee's interest in any building, structure or improvement built or placed on the Highway or the Easement Area.

ASSIGNMENT

24. The Grantee covenants and agrees not to transfer the Dominant Tenement Lands, or any portion thereof; without advising the purchaser or transferee of this Agreement.

NOTICES

25. It is hereby mutually agreed that any notice required to be given under this Agreement shall be deemed to be sufficiently given:

- (a) to be delivered at the time of delivery and
- (b) if mailed from any government post office in the Province of British Columbia by prepaid registered mail addressed as follows:

- (i) if to the Grantor:

c/o Engineering Services
1435 Water Street
Kelowna, BC V1Y 1J4

- (ii) if to the Grantee:

Suite 220, 8512 – 112 Street NW
Calgary, Alberta, T6G 2C8

or at the address a party may from time to time designate, then the notice shall be deemed to have been received forty-eight hours after the time and date of mailing. If, at the time of mailing the notice, the delivery of mail in the Province of British Columbia has been interrupted in whole or in part by reason of a strike, slow-down, lock-out or other labour dispute, then the notice may only be given by actual delivery.

26. With respect to the verbal notice provisions of paragraph 10, the Grantee agrees to promptly advise the Grantor, in writing, of alternate contacts should the listed contacts or their titles change over time. The Grantee agrees that its failure to do so entitles the Grantor to do any work under paragraph 10 or 13 after it has made two (2) attempts to contact the listed contacts.

INTERPRETATIONS.

27. When the singular or neuter is used in this Agreement they include the plural or the feminine or the masculine or the body politic where the context or the parties require.

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28. The headings to the clauses in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.

29. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors, administrators and permitted assignees.

30. This Agreement shall be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

31. All provisions of this Agreement are to be construed as covenants and agreements as though the word importing covenants and agreements were used in each separate paragraph.

32. This Agreement is the entire agreement between the parties and the Grantor has made no representations, warranties, guarantees, promises, covenants or agreements (oral or otherwise) to or with the Grantee other than those expressed in this Agreement.

33. 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 will be severed and the decision that it is invalid will not affect the validity of the remainder of this Agreement.

IN WITNESS WHEREOF the parties hereto have caused these presents to be executed in accordance with the Land Title (Transfer Forms) Regulation under the *Land Title Act*.

END OF DOCUMENT

Pushor Mitchell

BCG8 02E.003

PLAN EPP81335

- LEGEND**
 All distances are in metres.
- Iron post found
 - Iron post set
 - Lead plug found
 - Control monument found
- W. L. Wilness

This plan shows witness points that are not set on the true corner.

The UTM coordinates and estimated horizontal positional accuracy for the 1000 points are shown in Table 1. The UTM coordinates are derived from the NASCOOT published coordinates and the standard deviations for geodetic control monuments BSM11851 and BSM23736.

This plan shows horizontal ground-level distances unless otherwise specified. To compute grid distances, multiply ground-level distances by the combined factor of 0.999446 which has been derived from geoidic control monument 83H1961.

Schedule "A"
Not to Scale

The field survey represented by this plan was completed on the 2nd day of April, 2018.

J.A. GODDARD SURVEYS
707-1388 SL Paul Street, Kilmarnock, SC

