

# Feathertop Easements KV18498 & KV18499

Both Easement documents appear, to me, identical in wording and maps. The copies I have been supplied with have different dates and markings referring to when they were faxed, but that seems of no significance.

The differences in how they apply appears to be:

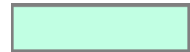
**KV18498** - applies *only* to strata 'Common Property', and appears on the KAS3134 Common Property title.

**KV18499** - applies to strata 'Common Property' *and* Lots on Feathertop - it appears on the KAS3134 Common Property title and the titles for various Feathertop Lots I have titles for.

Attached are the 10 pages of the easements. I have highlighted in yellow



the sections specific to **KV18498**, and in blue those specific to **KV18499**



On page 3, the **NATURE ON INTEREST** section details 2 areas:

1. As shown on **KAP72801** (map on page 9) - essentially the ski-run between White Spirit Lodge and Sundance, that runs over the skiers bridge, towards the Black Forest chair between Copper Kettle and Feathertop. This affects *parts* of Sundance ('**Lot 1**'), Copper Kettle ('**Lot 3**') and Feathertop ('**Lot 4**').

On page 5 para 1 this is described as "**Easement Area A**".

2. Applies to all the land of Sundance ('**Lot 1**'), Terraces ('**Lot 2**'), Copper Kettle ('**Lot 3**') and Feathertop ('**Lot 4**').

On page 5 para 2 this is described as "**Easement Area B**".

## Conclusion(s)

My reading of the Easements is that **KV18499 / Easement Area B** applies to the individual Lots on Feathertop (and Sundance, Terraces and Copper Kettle). It gives Big White skiers, boarders, cyclists, horses, pedestrians, ski grooming equipment and snowmobiles ('*the Purposes*') full rights of access over all lots except where they are '*covered by buildings*'. Furthermore, the Lot owners ('*Transferors*') may not '*permit to be done any act or thing*' to interfere with the '*use and enjoyment*' of skiers etc ('*the Purposes*') - which I guess refers to erecting fences or putting signs up (for example) that prevent or discourage access over Lots.

**Insurance:** Page 6 paras 3 a) c) I read as Big White will insure for the access, and indemnify Lot owners from any consequences.

**Disclaimer** I am not a lawyer, and my interpretations are only worth what you paid for them! I have added notes in **blue** on the following pages, also subject to this disclaimer.

*Andy Hill*

Feathertop Strata Council  
4 December 2020

I think KVO18499 refers to 'Easement Area B'  
i.e. applies to ALL (Lots) in Sundance,  
Copper Kettle and Feathertop

I think KVO18498 refers to 'Easement Area A'  
i.e. limited to Lots adjoining the map on p9

B 2003 Land Title Act  
Form C

(Section 233)

Province of British Columbia

AMLCORE GENERAL INSTRUMENT - PART 1

(This area for Land Title Office use)

Page 1 of 8 pages

KVO18499

18 FEB 2003 14 20

KVO18498

LAND TITLE OFFICE  
KAMLOOPS

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

**PUSHOR MITCHELL** Lawyers, 3rd Floor, 1665  
Ellis Street, Kelowna, British Columbia V1Y 2B3,  
Phone (250) 762-2108 Client No. 10332  
TMA 39717.14/lxs/ skier easement/Feathertop

Lisa Satterthwaite  
Lisa Satterthwaite, Applicant's Agent

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:\*

(PID)

(LEGAL DESCRIPTION)

See Schedule

See Schedule

3. NATURE OF INTEREST:\*

DESCRIPTION

DOCUMENT REFERENCE  
(page and paragraph)

PERSON ENTITLED TO INTEREST

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

(c) Release

☐ There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in item 3 is released or discharged as a charge on the land described in item 2.

5. TRANSFEROR(S):\* **BIG WHITE REAL ESTATE LTD.** (Inc. No. 633367), PO Box 2039, Station R, Kelowna, BC V1X 4K5 and then passed to individual Lot owners...

6. TRANSFEREE(S):\* **BIG WHITE SKI RESORT LTD.** (Inc. No. 286951), PO Box 2039, Station R, Kelowna, BC V1X 4K5

7. ADDITIONAL OR MODIFIED TERMS:\* N/A

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)

T. Arsenault

Theresa Arsenault  
Lawyer  
3rd Floor, 1665 Ellis Street  
Kelowna, BC V1Y 2B3

Execution Date

Y	M	D
03	01	09

Party(ies) Signature(s)

**BIG WHITE REAL ESTATE LTD.** by  
its authorized signatory:

Paul Plocktis

Paul Plocktis

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.

\* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

\*\* If space insufficient, continue executions on addition page(s) in Form D.

Land Title Act  
FORM D

EXECUTIONS CONTINUED

Page 2

Execution Date

Officer Signature(s)

Y M D

Transferor/Borrower/Party

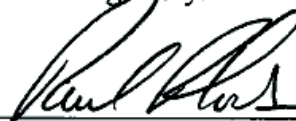
Signature(s)

**BIG WHITE SKI RESORT LTD.** by its  
authorized signatory:



Theresa Arsenault  
Lawyer  
3<sup>rd</sup> Floor, 1665 Ellis Street  
Kelowna, BC V1Y 2B3

03	01	09
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Paul Plocktis

**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.

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LAND TITLE ACT  
FORM E

SCHEDULE

Page 3

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM OR GENERAL DOCUMENT FORM.

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:\*

(PID)

(LEGAL DESCRIPTION)

Lot 1, DL 4222, SDYD, Plan KAP

72799

Sundance  
Terraces

Lot 2, DL 4222, SDYD, Plan KAP

72799

Lot 3, DL 4222, SDYD, Plan KAP

72799

Copper Kettle  
Feathertop

Lot 4, DL 4222, SDYD, Plan KAP

72799

3. NATURE OF INTEREST:\*

DESCRIPTION

DOCUMENT REFERENCE  
(page and paragraph)

PERSON ENTITLED TO INTEREST

Easement over part of Lots 1, 3 and 4  
shown on Plan KAP 72801

Page 4, Par. 1

Assume should be:  
"Page 5, Par 1

Registered owner of: Lot A, DL 4109s  
and 4186s, SDYD, Plan KAP51740,  
except Plans KAP56242, KAP61056,  
KAP61280, KAP62647, KAP65363 and  
KAP72031

Easement over Lots 1 to 4, inclusive

Page 5, Par 2

Registered owner of: Lot A, DL 4109s  
and 4186s, SDYD, Plan KAP51740,  
except Plans KAP56242, KAP61056,  
KAP61280, KAP62647, KAP65363 and  
KAP72031

Skier access easement

**TERMS OF INSTRUMENT - PART 2**

**WHEREAS:**

- A. The Transferor is the registered owner of that certain parcel of land situate in Penticton Assessment Area, in the Province of British Columbia, described as:

Lots 1 to 4, inclusive,  
District Lot 4222, SDYD  
Plan KAP 72799

(the "Transferor's Lands")

- B. The Transferee is the registered owner of that certain parcel of land situate in Penticton Assessment Area, in the Province of British Columbia, described as:

Lot A, DL 4109s and 4186s, SDYD,  
Plan KAP51740, except Plans KAP56242,  
KAP61056, KAP61280, KAP62647, KAP65363 and KAP72031

(the "Transferee's Lands")

- C. The Transferor intends to grant an easement over part of the Transferor's Lands, described as for the benefit of the Transferee's Lands, for skier, boarder, cyclist, horseback, pedestrian, snow grooming equipment and snowmobile access over the easement areas (the "Purposes");
- D. The Transferor intends to grant an easement over part of the Transferor's Lands, described as for the benefit of the Transferee's Lands, for the construction, use, reconstruction, maintenance, and repair of a skier over pass (the "Bridge").

In consideration of the premises, covenants, warranties and representations in this agreement, and of the sum of One (\$1.00) Dollar now paid by the Transferee to the Transferor (the receipt and sufficiency of which is acknowledged by the Transferor) and for other good and valuable consideration, the parties agree as follows:



ASSIGNED PLAN NO.  
KAP 72801

1. The Transferor does: **KAP72799 is Map on p9**
  - (a) grant an Easement over that part of the Transferor's Lands outlined in heavy black on Reference Plan of Easements over Parts of Lots 1, 3 and 4, Plan KAP **72799**, DL 4222, SDYD, prepared by Neil R. Denby, British Columbia Land Surveyor and dated January 8, 2003 (the "Easement Area A") to and for the benefit of the Transferee, its servants, agents, invitees, licensees, successors and assigns together with a full, free and uninterrupted right, license, liberty, privilege, permission and right-of-way forever, at all times and from time to time, to pass over, under, in and through Easement Area A together with the right of uninterrupted ingress, egress and regress for the Transferee, its servants, agents, invitees, licensees, guests and customers with or without vehicles, supplies or equipment, for the Purposes and to construct, reconstruct, maintain, and repair the Bridge;
  - (b) covenant and agree to and with the Transferee that in relation to the Bridge, the Transferee shall for itself and its servants, agents, workmen, contractors, and all other licensees of the Transferee together with machinery, vehicles, equipment, and materials be entitled at all times to enter, use, pass and repass, labour, construct, erect, install, dig, place, fill, carry away soil or other surface or subsurface materials, vary the grading of the approach to and departure from the Bridge, clear of all trees, growth, or obstruction now or hereafter in existence, as may be necessary, useful or convenient in connection with the Bridge.
2. The Transferor grants an Easement over the Transferor's Lands (the "Easement Area B") to and for the benefit of the Transferee, its servants, agents, invitees, licensees, successors and assigns together with a full, free and uninterrupted right, license, liberty, privilege, permission and right-of-way forever, at all times and from time to time, to pass over, under, in and through the Easement Area B together with the right of uninterrupted ingress, egress and regress for the Transferee, its servants, agents, invitees, licensees, guests and customers with or without vehicles, supplies or equipment, for the Purposes.

**NB:** Easement Area A and Easement Area B are collectively referred as the "Easement Area"

1. Except for the construction of buildings and improvements approved by the Transferee, the Transferor covenants and agrees with the Transferee, that with respect to Easement Area A, the Transferor will:
  - a) not, nor permit any other person to erect, place, install or maintain any building, structure, mobile home, concrete driveway or patio, retaining wall, pipe, wire or conduit on, over or under any portion of Easement Area A so that it in any way interferes with or damages or prevents access to the Easement Area A for the Purposes;
  - b) not, nor permit any other person to erect, place, install or maintain any building, structure, pipe, wire or conduit in the airspace above Easement Area A;

- c) not do nor knowingly permit to be done any act or thing which will interfere with the Transferee's use and enjoyment of Easement Area A for the Purposes;
- d) not do nor knowingly permit to be done any act or thing which will interfere with or injure the Bridge or the structural integrity of the Bridge; and in particular will not carry out any blasting or excavation on or adjacent to the Easement Area without the consent in writing of the Transferee, provided that such consent shall not be unreasonably withheld;
- e) not in any way diminish or increase the soil or disturb the natural grade of the Easement Area A and in particular, without in any way limiting the generality of the foregoing, will not construct open drains or ditches along or across the Easement Area A except as approved by the Transferee; and
- f) not, nor permit the construction of roofs on buildings such that snow or ice will fall and accumulate on Easement Area A;
- g) not, nor permit the dumping of ice or snow onto Easement Area A such that it increases or decreases or in any way impedes the use and enjoyment of Easement Area A for the Purposes.

2. Except for the construction of buildings and improvements approved by the Transferee, the Transferor covenants and agrees with the Transferee, that with respect to Easement Area B, the Transferor will: Only applies buildings/improvements approved by Big White

- a) not, nor permit any other person to erect, place, install or maintain any building, structure, mobile home, concrete driveway or patio, retaining wall, pipe, wire or conduit on, over or under any portion of Easement Area B so that it in any way interferes with or damages or prevents access to the Easement Area B for the Purposes; =skiers/boarders/horses/ groomers etc
- b) not, nor permit any other person to erect, place, install or maintain any building, structure, pipe, wire or conduit in the airspace above Easement Area B; = No overhanging Balconies/ Decks/ Roofs over Ski-ways
- c) not do nor knowingly permit to be done any act or thing which will interfere with the Transferee's use and enjoyment of Easement Area B for the Purposes; = No Fences / Notices / Obstructions to skiers across Lots etc
- d) not in any way diminish or increase the soil or disturb the natural grade of the Easement Area B and in particular, without in any way limiting the generality of the foregoing, will not construct open drains or ditches along or across the Easement Area B except as approved by the Transferee; and

3. The Transferee covenants and agrees with the Transferor, that the Transferee will:

- a) effect and keep in force insurance protecting the Transferor and the Transferee against claims for personal injury, death, property damage or third party, or public liability claims arising from any accident or occurrence on the Easement Area or the Transferor's Lands to an amount not less than \$5,000,000.00 per occurrence;

Big White agrees to provide \$5M insurance over all Feathertop (and Sundance / Terraces / Copper Kettle)



- b) notwithstanding the provisions of Paragraphs 2 and 4, the Transferee acknowledges that the Transferor will be constructing improvements on the Transferor's Lands. At any time after completion of the building to be constructed on the Transferor's Lands, the Transferor may provide to the Transferee an explanatory or reference or other plan, registerable in the Land Title Office, prepared by a British Columbia Land Surveyor delineating that portion of the Transferor's Lands wholly enclosed within the exterior walls of the building. Provided such explanatory/reference plan is satisfactory to the Transferee acting reasonably, the Transferee agrees to discharge this Easement from the area shown in the explanatory/reference plan. The Transferor shall bear the cost of preparing and registering the explanatory/reference plan;
- c) indemnify and save harmless the Transferor from any and all actions, proceedings, claims and demands of any corporation or person against the Transferor for all damage and expense arising out of the exercise by the Transferee, its employees and invitees of the rights and privileges granted to them;
- d) maintain the snow surface on the Bridge, the Bridge ski run approach area and the Bridge ski run departure area adjacent to the Bridge, including snow removal and grooming, in a safe and prudent manner appropriate for a ski run; and

e) limit its use of the Easement Area to those areas not covered by buildings.

Skiers/Boarders/Horses/Bikes etc only have rights where not "covered by a building i.e. seems not under roofs, decks, balconies

- 4. The Transferor covenants with the Transferee that the Transferor has the right to enter into this Agreement and will not at any time hereafter do or knowingly permit to be done any act whatever nature or kind that will jeopardize or interfere with the exercise of the Easement or knowingly permit to be done any other thing which might reasonably be expected to cause any damage to or interfere therewith.
- 5. The Parties each covenant and agree with the other, as follows:
  - (a) that no part of the title in fee simple to the soil shall pass to or be vested in the Transferee under or by virtue of these presents and the Transferor may fully use and enjoy all the Transferor's Lands subject only to the rights and restrictions herein contained;
  - (b) that the covenants herein contained shall be covenants running with the Transferor's Lands and that none of the covenants herein contained shall be personal or binding upon the parties hereto, save and except during the Transferor's seisin or ownership of any interest in the Transferor's Lands, and with respect only to that portion of the Transferor's Lands of which the Transferor shall be seised or in which he shall have an interest, but that the Transferor's Lands, nevertheless, be and remain at all times charged therewith;
  - (c) this Easement is appurtenant to the Transferee's Lands which lands will, for the purpose of this Easement be the dominant tenement and the Transferor's Lands will be the servient tenement.

\_\_\_\_\_  
Pushor Mitchell  
\_\_\_\_\_



- (d) where the expression "Transferor" includes more than one person, all covenants herein on the part of the Transferor shall be construed as being several as well as joint;
- (e) this Agreement shall enure 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, as the case may be, had been used, where the parties or the context hereto so require and the rest of the sentence shall be construed as if the grammatical and terminological changes thereby rendered necessary had been made.

TMA Feathertop/39717.15/lxs

\_\_\_\_\_  
Pushor Mitchell  
\_\_\_\_\_

## RCVD: 2003-02-18 ROST: 2020-04-07 17:35:51



NO NUMBER  
PLAN 50.

## LAND TITLE ACT

## FORM 11(a)

(Section 99(1) (e), (j) and (k))

**APPLICATION FOR DEPOSIT OF REFERENCE  
OR EXPLANATORY PLAN (CHARGE)**

I, Lisa Satterthwaite, Legal Assistant, 3rd Floor, 1665 Ellis Street, Kelowna, BC, V1Y 2B3 agent of Big White Ski Resort Ltd., Inc. No. 286951, PO Box 2039, Station R, Kelowna, British Columbia V1X 4K4, the owner of a registered charge apply to deposit **Reference Plan of Easement over part of Lots 1, 3 and 4, Plan KAP 72799, District Lot 4222, SDYD**

I enclose:

1. The reference/explanatory plan.
2. The reproductions of the plan required by section 67(s)(see below).
3. Fees of \$ 50.00.

Dated the 17<sup>th</sup> day of February, 200301 03/02/18 14:20:23 01 KL  
S/S/OT PLANS604980  
\$50.00

Lisa Satterthwaite  
SIGNATURE

NOTE: (i) Under section 67(s) the following reproductions of the plan must accompany this application:

- (a) one blue linen original (alternatively white linen or original transparencies).
- (b) one duplicate transparency.
- (c) one whiteprint is required as a worksheet for the land title office.

(ii) The following further requirements may be necessary:

- (a) If the parent property is an Agricultural Land Reserve, a release is required unless the parent property is less than 2.0 acres (app. .8094 hectares) or where, for permitted uses, an approving officer has signed the plan under section 1(1)(a) and (b) of the Subdivision and Land Use Regulation (B.C. Reg. 7/81) under the *Agricultural Land Commission Act*.
- (b) Where a notice respecting a grant under the *Home Purchase Assistance Act* is endorsed on title, an extra white print must accompany the application, unless the Ministry of Lands, Parks and Housing agrees otherwise in writing. This extra print must contain the following endorsement:

"The eligible residence as defined by the *Home Purchase Assistance Act* is located on lot created by this plan.

B.C.L.S. or solicitor for the owner"

- (c) Controlled access approval must be evident on the plan where parent property adjoins a highway that is designated as a controlled access highway.
- (d) Where the plan refers to a restrictive covenant to be made under section 219, the instrument containing the covenant must be tendered with the plan.

TMA 39717.15/lxs(Feathertop/easement)

ASSIGNED PLAN NO.  
**KAP 72801**