

418

Land Title Act

Form C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office use)

Page 1 of 7 pages

18 FEB 2003 14 19

KV018495

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SUBMITTED BY: KERSHAW
KUROKAWA REGISTRY

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 blanket utilities
TMA 39717.15/ls/Feathertop

Signature of Applicant's Solicitor or Agent

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

(PID)

(LEGAL DESCRIPTION)

See Schedule

See Schedule

3. NATURE OF INTEREST:*

DESCRIPTION

DOCUMENT REFERENCE

PERSON ENTITLED TO INTEREST

(page and paragraph)

Statutory Right of Way

Entire Document

Transferee

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

(a) Filed Standard Charge Terms

☐

D.F. No.

01 03/02/18 14:19:53 01 KL

604980

(b) Express Charge Terms

☒

Annexed as Part 2

CHARGE

\$55.00

(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, British Columbia V1X 4K5;

6. TRANSFEREE(S):* **BIG WHITE GAS UTILITY LTD.** (Inc. No. 539629) **DF KL129302**, **BIG WHITE WATER UTILITY LTD.**, (Inc. No. 342069), **DF KK5293**; and **BIG WHITE SEWER UTILITY LTD.**, (Inc. No. 337409), **DF KE77485**, **BIG WHITE CABLE CO. LTD.**, (Inc. No. 454932), **DF KL129303**, all of Post Office Box 2434, Station R, Kelowna, British Columbia, V1X 6A5

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. Ann

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

Execution Date

Y	M	D
2003	02	12

Party(ies) Signature(s)

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


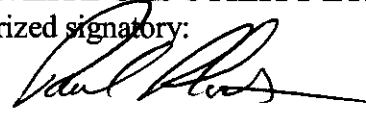






Paul Plocktis

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

Officer Signature(s)	Y	M	D	Party(s) Signature(s)
 THERESA M. ARSENAULT Barrister and Solicitor 3 rd Floor, 1665 Ellis Street Kelowna, BC V1Y 2B3	2003	02	12	BIG WHITE GAS UTILITY LTD. by its authorized signatory:  Paul Plocktis
 THERESA M. ARSENAULT Barrister and Solicitor 3 rd Floor, 1665 Ellis Street Kelowna, BC V1Y 2B3	2003	02	12	BIG WHITE WATER UTILITY LTD. by its authorized signatory:  Paul Plocktis
 THERESA M. ARSENAULT Barrister and Solicitor 3 rd Floor, 1665 Ellis Street Kelowna, BC V1Y 2B3	2003	02	12	BIG WHITE SEWER UTILITY LTD. by its authorized signatory:  Paul Plocktis
 THERESA M. ARSENAULT Barrister and Solicitor 3 rd Floor, 1665 Ellis Street Kelowna, BC V1Y 2B3	2003	02	12	BIG WHITE CABLE CO. LTD. by its authorized signatory:  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 additional page(s) in Form D.

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

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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

Lot 2, DL 4222, SDYD, Plan KAP

72799

Lot 3, DL 4222, SDYD, Plan KAP

72799

Lot 4, DL 4222, SDYD, Plan KAP

72799

TERMS OF INSTRUMENT – PART 2

- A. The Transferor is the registered owner of an estate in fee simple of those certain parcels of land and premises in the Penticton Assessment Area, in the Province of British Columbia, legally described as:

Lots 1, 2, 3 and 4
District Lot 4222
Similkameen Division Yale District
Plan KAP 72799

(the “Lands”)

- B. This Statutory Right of Way is necessary to facilitate the installation, operation and maintenance of the following:
- (a) a system of propane gas works including all pipes, valves, fittings, meters and facilities in connection therewith by Big White Gas Utility Ltd.;
 - (b) a system of water works and/or drainage works, including all pipes, valves, fittings and facilities in connection therewith by Big White Water Utility Ltd.;
 - (c) a system of sewerage works and/or drainage works, including all pipes, valves, fittings and facilities in connection therewith by Big White Sewer Utility Ltd; and
 - (d) a system of communications facilities including all wires, poles, conduits and other facilities in connection therewith by Big White Cable Co. Ltd.

(collectively called the “Works”);

- C. The Transferor has agreed to permit the construction by the Transferee of the Works on the Lands (the “**Right of Way**”).

In consideration of the sum of \$1.00, now paid by the Transferee to the Transferor (the receipt of which is hereby acknowledged), and in consideration of the covenants and conditions in this Agreement to be observed and performed by the Transferee and for other valuable consideration:

1. The Transferor does hereby:
- (a) grant, convey, confirm and transfer, in perpetuity, to the Transferee the full, free and uninterrupted right, licence, liberty, privilege, permission and right of way to lay down, install, construct, entrench, operate, maintain, inspect, alter, remove, replace, bury, cleanse, string, and otherwise establish one or more systems of Works upon, over, under and across the Right of Way;

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- (b) covenant and agree to and with the Transferee that for the above purposes already described and upon, over, under and across the Right of Way, 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, carry away soil or other surface or subsurface materials, clear of all trees, growth, or obstruction now or hereafter in existence, as may be necessary, useful or convenient in connection with the operations of the Transferee in relation to the Works.
2. The Transferor covenants and agrees with the Transferee, that the Transferor will:
- (a) except for buildings and improvements approved by the Transferee, not, nor permit any other person to erect, place, install or maintain any building, structure, mobile home, concrete driveway or patio, pipe, wire or conduit on, over or under any portion of the Right of Way so that it in any way interferes with or damages or prevents access to or is likely to cause harm to Works authorized hereby to be installed in or upon the Right of Way;
- (b) except for buildings and improvements approved by the Transferee, not, nor permit any other person to erect, place, install or maintain any building, structure, pipe, wire or conduit in the airspace above the Right of Way;
- (c) not do nor knowingly permit to be done any act or thing which will interfere with or injure the said Works and in particular will not carry out any blasting or excavation on or adjacent to the Right of Way without the consent in writing of the Transferee, provided that such consent shall not be unreasonably withheld;
- (d) not substantially diminish or increase the soil cover over any of the Works installed in the Right of Way and in particular, without in any way limiting the generality of the foregoing, will not construct open drains or ditches along or across any of the Works installed in the Right of Way;
- (e) from time to time and at all times upon every reasonable request and at the cost of the Transferee do and execute or cause to be made, done or executed all such further and other lawful acts, deeds, things, devices, conveyances and assurances in law whatsoever for the better assuring unto the Transferee of the rights hereby granted.
3. The Transferee covenants to and agrees with the Transferor that the Transferee will:
- (a) Notwithstanding the provisions of Paragraph 2, restrict its use of the Right of Way to those areas not covered by buildings, nor proposed to be covered by buildings as approved by Big White Ski Resort Ltd., or its nominee or in any manner which would detrimentally affect the development or use of the Lands as contemplated in the plans and specifications for buildings approved by Big White Ski Resort Ltd.
- (b) not bury any debris or rubbish of any kind in excavations or backfill, and will remove shoring and like temporary structures as backfilling proceeds;

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- (c) thoroughly clean all lands to which it has had access hereunder of all rubbish and construction debris created or placed thereon by the Transferee and will leave the Lands in a neat and clean condition;
 - (d) as soon as weather and soil conditions permit, and so often as it may exercise its right of entry hereunder to any of the Lands, replace the surface soil as nearly as may be reasonably possible to the same condition as it was prior to such entry, in order to restore the natural drainage to such lands, provided however that nothing herein contained shall require the Transferee to restore any trees or other surface growth but the Transferee shall leave such lands in a condition which will not inhibit natural regeneration of such growth.
 - (e) as far as reasonably possible, carry out all work in a proper and workmanlike manner so as to do as little injury to the Lands as possible;
 - (f) make good at its own expense all damage or disturbance which may be caused to the surface soil of the Lands in the exercise of its rights hereunder;
 - (g) as far as reasonably possible, restore any fences, lawns, flower beds, and driveways, at its cost as nearly as may be reasonably possible to the same condition that they were in prior to any entry by the Transferee upon the Lands.
4. The Transferee further covenants with the Transferor and its assigns and successors in title to the Lands, that the Transferee will 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 of the rights and privileges granted to them.
5. The Parties hereto each covenant and agree with the other, as follows:
- (a) the said Works, referred to above, together with all pipes, valves, conduits, wires, casings, fittings, lines, meters, appliances, facilities, attachments or devices used in connection therewith shall constitute the Works;
 - (b) notwithstanding any rule of law or equity to the contrary, the Works brought onto, set, constructed, laid, or erected in, upon or under the Right of Way by the Transferee shall at all times remain the property of the Transferee notwithstanding that the same may be annexed or affixed to the freehold and shall at any time and from time to time be removable in whole or in part by the Transferee;
 - (c) in the event that the Transferee abandons the Works or any part thereof, the Transferee may, if it so elects, leave the whole or any part thereof in place;
 - (d) 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 Lands subject only to the rights and restrictions herein contained;

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- (e) that the covenants herein contained shall be covenants running with the 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 Lands, and with respect only to that portion of the Lands of which the Transferor shall be seised or in which he shall have an interest, but that the Lands, nevertheless, be and remain at all times charged therewith;
 - (f) if at the date hereof the Transferor is not the sole registered owner of the Lands, this Agreement shall nevertheless bind the Transferor to the full extent of his interest therein, and if he shall acquire a greater or the entire interest in fee simple, this Agreement shall likewise extend to such after-acquired interest;
 - (g) 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;
 - (h) 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.
6. At any time after completion of the building to be constructed on the Lands, the Transferor may provide to the Transferee an explanatory or reference plan prepared by a British Columbia Land Surveyor delineating that portion of the 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 Statutory Right of Way from the area shown in the explanatory/reference plan. The Transferor shall bear the cost of preparing and registering the explanatory/reference plan.

END OF DOCUMENT

TMA 39717.15/lxs/Feathertop

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