

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners, Strata Plan KAS2084 v. The Owners, Strata Plan KAS1980*,  
2023 BCSC 1011

Date: 20230511  
Docket: S57513  
Registry: Vernon

Between:

**The Owners, Strata Plan KAS2084**

Petitioner

And

**The Owners, Strata Plan KAS1980**

Respondent

Corrected Judgment: The case name was corrected  
on June 21, 2023

Before: The Honourable Madam Justice Hardwick  
(Appearance via videoconference)

## **Oral Reasons for Judgment**

In Chambers

Counsel for the Petitioner  
appearing by videoconference:

K. Wheelhouse

Counsel for the Respondent  
appearing by videoconference:

C. Flannigan

Place and Date of Trial/Hearing:

Kelowna, B.C.  
May 5, 2023

Place and Date of Judgment:

Kelowna, B.C.  
May 11, 2023

[1] **THE COURT:** These are my oral reasons for judgment in respect of the petition filed by the petitioner, The Owners, Strata Plan KAS2084, as against the respondent, The Owners, Strata Plan KAS1980, on February 22, 2022.

[2] This petition concerns the interpretation of an easement which was registered with the relevant Land Title Office in Kamloops, British Columbia, in 1997 (“Easement”).

[3] Specifically, the petition addresses what methods of entry are reasonable to access certain property which falls within the definition of the Easement via a security gate that was, it is conceded, contemplated in the Easement itself. The Easement is registered in the Kamloops Land Title Office under charge number KL 35247 and is appended as Exhibit “C” to the affidavit of David Bissett sworn February 17, 2022. A copy of same shall be appended to these reasons for judgment as Schedule “A” in the event that a transcript is ordered of these oral reasons for judgment.

### **Factual Overview**

[4] The petitioner and respondent are both strata corporations duly incorporated under the laws of the Province of British Columbia.

[5] The petitioner and the respondent are, in particular, neighbouring strata corporations in an area of Vernon, British Columbia, which is generally known as the Kestrel Estates subdivision. Kestrel Estates, as I will refer to it, is part of a larger community known as Canadian Lakeview Estates. The neighbourhood is located in the vicinity of Okanagan Lake. It has certain amenities associated with its proximate location, which I accept are the reasons it is a gated community. It is clearly intended that the amenities are not intended to be accessed at will by the general public.

[6] By virtue of the layout of Kestrel Estates, access is only available to the strata owners of the petitioner or their authorized guests or agents through a main security gate (“Security Gate”). Access is not available to the petitioner strata owners through any other means other than through the Security Gate. Other owners in Canadian

Lakeview Estates, together with their guests or authorized agents, do have possible alternative access gates which they can utilize for entry. This is not the case for the petitioner owners. There is no way to access their strata units without passing through the Security Gate.

[7] For context, there are in total some approximately 70 units, whether it be strata units or single-family dwellings which require access to Kestrel Estates through the Security Gate. Some of these property owners are not part of either the petitioner strata corporation or the respondent strata corporation. The evidence in this regard is also slightly vague as there are some still seven undeveloped lots within the respondent strata corporation. In my view, however, this is not a material discrepancy. The interpretation of the Easement does not turn, in my view, on whether there are 63 units, 70 units or 77 units.

[8] Section 4 of the Easement, which I have noted is to be appended as Schedule "A" to these oral reasons for judgment, is the material document to be interpreted by this Court for the purposes of this petition.

[9] Specifically, subsections 4(b) and 4(c) the Easement require, in summary terms, the following:

- a) Installation of the Security Gate.
- b) A requirement that there be the same means of unlocking the Security Gate by both the dominant and servient tenants. Said more informally, there is no preferential treatment of any users who require access via the Security Gate.
- c) Access to the Easement area, through unlocking the Security Gate will be available to not just strata owners, but their respective employees, agents, contractors, and other persons authorized by the owners from time to time.

- d) Use of the Easement area shall not be unreasonably hindered or obstructed for the strata owners or their respective employees, agents, contractors, or other persons authorized by them.

[10] It is not controverted that there were originally three forms of access through the Security Gate:

- (a) a common gate code;
- (b) remote controls (akin to a garage opener) assigned to each strata unit owner; and
- (c) keypad intercom entry attached to the strata owners' landline telephone (which would be apparent to require someone to be present in the strata unit to actually receive that call).

[11] Abuse of the common code has been an issue for a considerable period of time. There is evidence before me in this regard which is generally not challenged. The abuse appeared to occur primarily in the summer months when access to the proximity to Okanagan Lake and other related amenities are sought after. In comparison, during the winter months the Security Gate is periodically left open entirely due to snow accumulation issues and abuse of access privileges to Kestrel Estates does not appear to be a significant issue during these periods. The efforts to address or manage the abuse of the common code are detailed in the affidavit #1 of Denis Maisonneuve. I am not going to read into the record the entire chronology, as it is set out in the petition record and the factual accuracy of the chronology was, again, generally not challenged by the petitioner.

[12] Of significance, the efforts started back in 2009. That is approximately 14 years ago. It is, thus, clearly not a new issue and there have been attempts to address the issues prior to the removal of the common code permanently in 2021. This included prior times where the common code was removed for specified periods and alternate methods of third-party access were utilized or experimented

with. In this regard, I find that the ultimate decision to remove the common code entirely in 2021 was not made capriciously.

[13] Other efforts had been made to address the abuse of the common code. The question that I will address in considering the merits of the petition is, thus, whether the removal of the common code was in breach of the terms of s. 4 of the Easement.

[14] Returning to the factual chronology, there have been important technological upgrades since the Easement was first registered back in 1997, the most significant being that the intercom can now be connected to a cellular phone so that an individual does not actually have to be physically present in the home or strata unit to answer the landline to authorize access or have a third party present in the home or strata unit to answer the landline. Apparently, this can be done even if an individual does not have data on their cellular device. I struggle somewhat to understand how that is so as it is my understanding that absent placing an outgoing emergency call, cellular devices rely on either data or Wi-Fi service. However, I do accept that it does not require a smartphone. A basic flip-phone will suffice. In my view, it is very probable that all strata unit owners in both the petitioner and respondent strata corporations possess a cellular device. If they do not, I conclude it is by lifestyle choice and not an inability to afford same. The cost of a basic cellular device with some modest prepaid minutes pales in comparison to the strata fees and property taxes associated with owning a unit in Kestrel Estates.

[15] Another technology upgrade is that many vehicles now have “in-car” wireless systems which eliminate the need to physically carry the remote opener. This is clearly convenient to those strata owners who have vehicles with this technology. Unlike possessing or obtaining a basic cellular phone, however, I accept that not all strata owners of either the petitioner or the respondent strata corporations have vehicles with this technology nor is it reasonable to expect to have such. There is a significant difference between purchasing a basic flip-phone with prepaid cellular minutes and a new car.

[16] Returning to the chronology again of the access methods through the Security Gate, abuse of the common code has, as noted, been persistent and unfortunate. But for that, the terms of the Easement seem to operate quite functionally and in accordance with what was intended when it was registered in the Land Title Office back in 1997. But for primarily seasonal abuse of the common code, there would not have been a need to remove this as a form of access either temporarily as in the past or permanently in 2021.

[17] Before turning to an analysis of the legal issues specifically, I shall confirm there was, also, no evidence before me which supports a conclusion that any particular home or strata owner or strata owners are responsible for the abuse of the common code. Rather, I accept it is an ongoing and, unfortunately, pervasive issue that individuals who are not strata owner obtained knowledge of the common code in some fashion and used it to access the easement area through the Security Gate for personal purposes and not for the purposes of providing services to the strata owner or being a guest who rightly has the permission to authorize access for themselves and approved guests/service providers.

### **Suitability for Determination by Petition**

[18] Neither party submitted that this matter was not suitable for determination on the basis of the petition record. Suitability is always in the discretion of the presiding justice and a consensus as to suitability does require the court to adjudicate where the necessary facts cannot be found even with regard to the flexibility principles as recently set forth by our Court of Appeal in *Cepuran v. Carlton*, 2022 BCCA 76. In this petition, however, I am satisfied that counsel has accurately identified this matter as suitable for determination on the affidavit evidence contained in the petition record without the need for cross-examination or other hybrid procedures.

### **Arbitration Clause**

[19] As a preliminary issue, the respondent submits that the petition should be stayed on account of the arbitration clause in the Easement. As set out in the easement at para. 10, the body of which I have already directed to be included as

Schedule “A”, there clearly is an arbitration clause. The arbitration clause, however, in my view, is limited to disputes concerning whether or not any maintenance, repair, or replacement is required to be undertaken in respect of the Security Gate and considering how and by whom such maintenance or repair work is to be undertaken and concerning who is responsible for the cost of such maintenance and repair work.

[20] The arbitration clause does not in any way address disputes about the methods of access through the Security Gate.

[21] I thus do not consider this to be a case where it is even arguable that the dispute falls within the term of an arbitration agreement as per the threshold test set forth by our Court of Appeal in *Clayworth v. Octaform Systems Inc.*, 2020 BCCA 117.

[22] This issue is thus, in my conclusion, properly before the Court for a determination and a stay of proceedings to pursue the dispute through arbitration is not appropriate or required.

[23] I will thus decline to order a stay on the basis of para. 10 of the Easement and will address the petition on its merits.

### **Contractual Interpretation**

[24] As submitted by the respondent, the easement is a written agreement. It is thus to be interpreted in accordance with the guiding principles set forth by the Supreme Court of Canada in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53. *Sattva* stands for the proposition that the relevant provisions of the Easement must be construed by reading the Easement as a whole in the context of the surrounding circumstances in which it was made (*Sattva* at para. 47). As further stated at para. 47 of *Sattva*, “Words alone do not have an immutable or absolute meaning”.

[25] Further, an ordinary and grammatical meaning of the words are important and the surrounding circumstances must never be allowed to overwhelm the language the parties agreed to effectively create a new agreement (*Sattva* at para. 57).

[26] Counsel for the petitioner referred to a more recent decision of *Smith v. Balen*, 2018 BCSC 918.

[27] *Smith v. Balen* are oral reasons for judgment of Mr. Justice Brundrett. Although *Sattva* is not expressly cited by Mr. Justice Brundrett, the principles of interpretation of an easement are helpfully summarized and are consistent, I find, with the *Sattva* principles.

[28] Specifically, in relying on the pre-*Sattva* decision of Mr. Justice Joyce of this Court in *Avanti Mining Inc. v. Kitsault Resort Ltd.*, 2010 BCSC 1181, at para. 61, the court cited of greatest significance, in my conclusion, the following four propositions:

- (a) The intention of the parties is to be determined by looking first to the plain and ordinary meaning of the words used, in the context of the whole of a contract and in a manner that does not render one part of the contract ineffective.
- (b) The words must be read in the context of the surrounding circumstances when the contract was made, including facts known to both parties but not negotiations or evidence of subjective intent.
- (c) The standard is an objective one.
- (d) If the words of the instrument are unambiguous that is the end of the matter. If there is ambiguity or if the plain language leads to an absurdity, a result that both parties could not have intended, then regard may be had to extrinsic evidence to assist in determining the parties' intent.

...

[29] Further, upon conducting some of its own research on this issue after the hearing of the petition in this matter, the Court confirmed that in *Robb v. Walker*, 2015 BCCA 117, at paras. 31–33, Mr. Justice Willcock affirmed that the contractual interpretation principles set out in *Sattva* apply to the interpretation of an easement. The Court is thus required to take a common-sense approach to interpreting the Easement, looking first to the plain and ordinary meanings of the words in the agreement to try and determine the true intention of the parties at that time.

**Conclusion Regarding Interpretation of the Easement**

[30] Applying the principles set forth in *Sattva* with consideration of the consistently incorporated principles in *Smith v. Balen* and *Robb v. Walker*, the interpretation of the Easement by the respondent, I conclude, is correct.

[31] The Easement clearly contemplates a security gate. The Easement further requires equal or equivalent unlocking privileges and access to all parties, subject to the Easement through the Security Gate. The Easement does not require a common access code to the Security Gate or any other specified form of access. Clearly, access cannot be unreasonably hindered or obstructed. That is evident from a plain reading of para. 4(c) of the Easement, but there is a genuine distinction between access being inconvenient and access being obstructed.

[32] Further, the surrounding circumstances are consistent with an interpretation of the easement that provides for the same methods of access to the petitioner strata owners and the respondent strata owners. If the respondent strata owners had access to a common code and this was denied to the petitioner strata owners, this petition would need to be decided in an entirely different factual matrix.

**Inconvenience**

[33] Returning to this issue of inconvenience, I entirely accept the submission of the counsel for the petitioner that the removal of the common access code is an inconvenience for the petitioner strata owners. As canvassed with counsel at the hearing of the petition, the Court can entirely foresee a situation where a homeowner needs to authorize access to allow for plumbing, electrical, landscaping, or housekeeping services. This is clearly not an exhaustive list, but just some common representative examples of typical occasions where a home or strata owner may legitimately need to have a third-party service provider or agent provide services to their strata unit. They are entirely within their right under the Easement to do so. Absent an emergency, these service providers would usually be attending during conventional business hours.

[34] If a strata owner is at home or simply in a position to answer their cellphone, the present protocol is entirely adequate. They receive a notification and thereafter authorize entry through the Security Gate.

[35] However, not all homeowners have unfettered access to their cellular phones at relevant times. The affidavit evidence speaks to an individual being unable to receive a call as they were skiing. I put to counsel that perhaps, in my view, the more persuasive argument is that neither the Court nor counsel are in a position to answer phone calls during the court day apart from during the morning or afternoon recesses or the lunch break. It may also be that a homeowner or strata owner has similar employment obligations and may not have a spouse or alternative contact who can answer these calls in their absence during the daytime hours when most access requests from service providers are likely to be necessary. The result being that the ability of the strata owner to authorize access to their strata unit is restricted without being able to provide a common gate code to these service providers or guests. I note, though, the need to admit guests at a time when the strata owner is not present would seem to be less likely of concern as the ability to arrange access at a time convenient to the strata owner is far greater in respect of a guest versus a third-party service provider. If an owner has guests from out of town arriving and is only able to answer their phone between say 12:00 p.m. and 1:00 p.m., the guests can arrange their entry accordingly. That possibility does not necessarily apply when dealing with the cable company, an electrician, or a plumbing contractor who have various other calls to attend to on any given day and not necessarily able to precisely accommodate the schedule of the strata owner.

[36] Balanced against this inconvenience, however, is the fact that the Easement is registered on title.

[37] Each of the strata owners who comprise the petitioner thus purchased their individual strata unit with the express knowledge that this was to be a gated community and that entry through the Security Gate would be required. The Easement is very plain and unambiguous on its face in this regard. The utilization of

the common code was certainly more efficient for these strata owners who may not be readily available to authorize access for guests and service providers, as I have addressed above. However, I accept that the abuse of the common code resulted in its removal after other attempts to curb the abuse were either unsuccessful or unwieldy to implement.

### **Conclusion**

[38] Having regard to the foregoing and interpreting the terms of the easement in accordance with *Sattva* and the other caselaw referred to, I have ultimately concluded that I must dismiss all the relief sought by the petitioner.

[39] The easement requires equal access rights of the petitioner strata owners and the respondent strata owners.

[40] The removal of the common access code is, I find, equally inconvenient to the respondent strata owners as it is to the petitioner strata owners. Were there some admissible evidence as to preferential access to the respondent strata owners, the analysis would be different. On the face of the petition record, however, no such evidence exists. All of the strata owners who require access to their unit solely through the Security Gate are subject to the same restricted methods of entry after the abolishment of the common code.

[41] As a result of my conclusion to dismiss all the relief sought in the petition, I am not going to engage in a detailed analysis of the test for injunctive relief. I will state, however, as follows:

- (a) Injunctive relief is not being sought on an interim basis. This is not a stopgap attempt to preserve the *status quo* pending further steps in the litigation. This is the litigation.
- (b) Portions of the evidence relied upon are not admissible for the purposes of seeking a final order for a permanent injunction.
- (c) The threshold for a permanent injunction is high.

- (d) There firstly needs to be an enforceable right. This is addressed in my analysis of the easement under the principles set forth in *Sattva* and other caselaw cited.
- (e) It is also a requirement (see, for example, *Qureshi v. Gooch*, 2005 BCSC 1584, at para. 29) that there be demonstrable harm. As per my findings of fact there is clear inconvenience, but that falls quite below the bar of demonstrable harm.
- (f) Lastly, the hardship analysis is difficult in this factual matrix because, as I have set out, the removal of the common code is not tied in the evidence to the conduct of a particular party. Further, the petitioner and respondent strata owners all maintain the same access methods for the Security Gate and neither group is being given preferential treatment on the basis of the evidence.

**Obiter Recommendation**

[42] I have, as set forth above, dismissed the relief sought by the petitioner on the basis that inconvenience in not having the common code is shared by the strata owners of the petitioner and the respondent equally. That is what is required, in my conclusion, upon the necessary interpretation of the Easement in accordance with the governing law.

[43] It would seem to me, however, that it would be to the benefit of all the parties to craft a system wherein each strata unit had a specific access code. There are some, as noted, approximately 70 properties or strata units engaged in this dispute. If each property had a specific access code that changed annually or even biannually, the ability to track unauthorized entry would be quite straightforward, it would seem, and the burden on the “gate committee” would not be undue as it was when there was a prior attempt to issue individual codes to each individual entering through the Security Gate. That, I accept, was unwieldy and unmanageable, particularly for volunteers.

[44] If the respondent can fashion a system in this regard that balances the competing objectives, this will be to the benefit of both the petitioner strata owners and the respondent strata owners. If they cannot, all of the owners of both the petitioner and respondent strata corporations will continue to be arguably inconvenienced by the lack of a common code, but that inconvenience is necessary having regard to the terms of the Easement which clearly and unambiguously states that Kestrel Estates is a gated community and that entry is permitted only through the Security Gate and on the terms set forth in the Easement.

### **Costs**

[45] Costs are awarded at the discretion of the court pursuant to R. 14-1 of the British Columbia *Supreme Court Civil Rules*.

[46] The general rule is that costs are awarded to the party that is substantially successful unless the court exercises its discretion to otherwise order.

[47] In this case, while I do recognize the inconvenience created as a result of the removal of the common code in 2021 that resulted in this petition, the respondent has been substantially successful in opposing the relief sought and I have preferred the respondent strata corporation's interpretation of the Easement. I shall thus order that the respondent is entitled to the costs of this matter on Scale B under the *Supreme Court Civil Rules* on the basis that it was a one-day hearing. I appreciate counsel is attending on a second day to receive these reasons, but as the hearing on its merits did not consume the full day, I consider this in my discretion to be a reasonable compromise in assessing costs under the tariff and consistent with the proportionality principle under the *Rules*. It should also, hopefully, avoid the need for an assessment of costs having to come back before the registrar of this court which would be more significant than the costs associated with attending for receiving these reasons for judgment.

[48] Those are my reasons for judgment.

“Hardwick J.”

Schedule "A"

Land Title Act  
Form C  
(Section 219.81)

Province of British Columbia  
GENERAL INSTRUMENT - PART 1

(This area for Land Title Office use)

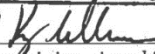
Page 1 of 3

97 DEC 10 12 25

KL135247  
This is Exhibit "C" referred to in the  
Affidavit of David Bissett  
affirmed before me at  
Vernon, British Columbia  
this 17th day of February 2022

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

DAVIDSON AND COMPANY  
Barristers and Solicitors  
#401-3205-32nd Street  
Vernon, B.C. V1T 2M4 545-5344  
(File #81539/WEC/tlg/cld/phase6a)

Signature of Agent 

A Commissioner in and for the  
Province of British Columbia
2. Parcel Identifier and Legal Description of Land: \*  
(PID) (Legal Description)  
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	<input checked="" type="checkbox"/>	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): \*  
C L D DEVELOPMENTS LTD., (Inc. No. 364363)
6. Transferee(s): (including occupation(s), postal address(es) and postal code(s)) \*  
C L D DEVELOPMENTS LTD., (Inc. No. 364363), having a mailing address of #16, 9060  
Tronson Road, Vernon, British Columbia, V1T 6L7
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)



WILLIAM E. CATUN  
3205 - 32nd STREET  
VERNON, B.C. V1T 2M4  
SOLICITOR

Execution Date

Y	M	D
97	4	28

Party(ies) Signature(s)

C L D DEVELOPMENTS LTD. by  
its authorized signatory:

  
Manfred Faetsch

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**

Enter the required information in the same order as the information must appear on the Freehold Transfer form, Mortgage form, or General Instrument form.

2. **Parcel Identifier and Legal Description of Land: \***  
(PID) (Legal Description)

023-919-299 Lot B DL 297 ODYD Plan KAP60209

3. **Nature of Interest: \***  
Description

**Document Reference**  
(page and paragraph)

**Person Entitled to Interest**

Easement

Entire Instrument

Registered Owner  
PID No. 023-919-302  
Lot C DL 297 ODYD Plan  
KAP60209

PID No. 018-267-670  
Lot 2 DL 297 ODYD Plan  
KAP49806

TERMS OF INSTRUMENT - PART 2

EASEMENT

WHEREAS:

A. The Transferor and the Transferee are the same corporation and this Easement is granted pursuant to the provisions of Section 18 of the Property Law Act, R.S.B.C. 1996 Chapter 377 and amendments thereto;

B. The Transferor is the registered owner of the land referred to in Item 2 of Land Title Act Form C attached hereto and forming part of this document and more particularly described in the Land Title Act Form B attached hereto and forming part of this document (herein called the "Transferor's Lands" being the servient tenement for the purposes of this Easement);

C. The Transferee is the registered owner of the following lands lying within the Vernon Assessment Area, Province of British Columbia (herein called the "Transferee's Lands" being the dominant tenements for the purposes of this Easement):

Parcel Identifier 023-919-302  
Lot C DL 297 ODYD Plan KAP60209

Parcel Identifier 018-267-670  
Lot 2 DL 297 ODYD Plan KAP49806;

D. Following the registration of this Easement the Transferor's Lands will be subdivided by way of bare land strata plan of subdivision and the Easement Area herein described will lie wholly within the common property within the boundaries of such bare land strata plan of subdivision;

E. The Transferee or its successors in title to the Transferee's Lands proposes, in the future, to develop the Transferee's Lands and to subdivide the Transferee's Lands by one or more strata plans of subdivision and the benefit of this Easement shall extend to each strata lot created by the registration of such strata plans of subdivision and to the common property lying within the boundaries of each such strata plan of subdivision.

NOW THEREFORE WITNESSETH that pursuant to Section 18 of the Property Law Act and in consideration of the recitals to this Agreement and the mutual covenants herein contained the Transferor/Transferee agrees as follows:

1. In this Easement Agreement and the recitals hereto:

"Easement Area" means that part of the Transferor's Lands shown as Easement on a Reference Plan of Easement in Lot B DL 297 ODYD Plan KAP60209 prepared from a survey conducted by Richard Shoesmith, B.C.L.S. and completed on the 16th day of September, 1997, a reduced photocopy of which is attached hereto.

*KAP* 60747

"Dominant Strata Corporation" means each strata corporation created by registration of one or more strata plans of subdivision of the Transferee's Lands.

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"Maintenance Costs" means all maintenance, repair and replacement costs and expenses incurred from time to time to maintain, in good operating condition and repair, the Road, Security Gate and such of the Utility Works within the Easement Area as provide utility services to both the Transferor's Lands and the Transferee's Lands from time to time.

"Road" means a paved road constructed on the Easement Area.

"Security Gate" means a security gate installed at or near that part of the Easement Area adjacent to the public road known as Kestrel Place at the most westerly end of the Easement Area.

"Servient Strata Corporation" means the strata corporation created by registration of a bare land strata plan of subdivision of the Transferor's Lands.

"Utility Works" means utility works and services of all kinds including, without limitation, storm drainage, sewerage and water pipelines, manholes and appurtenant works and services of all kinds, electrical, natural gas, cablevision, telecommunication and telephone works and services of all kinds.

2. The Transferor hereby grants to each Transferee and each Dominant Strata Corporation and their respective owners, employees, agents, contractors and other persons authorized by or on behalf of the Transferee and Dominant Strata Corporations from time to time for the benefit of the Transferee's Lands, an Easement in perpetuity to enter onto and use the Easement Area for the following purposes:

- (a) to construct, install, maintain, inspect, alter, repair and replace Utility Works from time to time on, over, under and within the Easement Area;
- (b) to connect Utility Works constructed and installed on, over, under and within the Transferee's Lands from time to time to Utility Works constructed and installed on, over, under and within the Easement Area for the purpose of extending the utility services provided by and through the Utility Works within the Easement Area to serve and benefit the Transferee's Lands, provided however that the utility services extended to and for the benefit of the Transferee's Lands shall be separately metered to the intent and effect that the Servient Strata Corporation shall not be obligated to pay for any of such utility services to the extent that they are provided to the Transferee's Lands or consumed by the Transferee and its successors in title to the Transferee's Lands;
- (c) to construct, install, maintain, alter, inspect, repair and replace Utility Works from time to time on, under, over and within the Easement Area to the extent reasonably necessary to accomplish the purposes and uses set forth in Subparagraph 2(a) above;
- (d) to transport and convey, to and from the Transferee's Lands through all Utility Works constructed and installed on, over, under and within the Easement Area, drainage water, domestic water, sewage and waste water, natural gas, electricity, cablevision, telephone and telecommunications signals and other things for which the Utility Works are designed;
- (e) to travel over and across the Road on the Easement Area on foot or by motor vehicle or other means of transportation at all times and from time to time to gain access to and from the Transferee's Lands;
- (f) to excavate the surface of the Easement Area from time to time for the purposes aforesaid provided that the Transferee or Dominant Strata Corporation causing such excavations to be made shall fill in all such excavations and repair any damage to the Road or Utility Works within the Easement Area caused by such excavations and shall cause the Utility Works and Road to be repaired and restored, as much as is reasonably practicable, to the condition in which such Utility Works and

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Road were found at the time that such excavations were made, and such repair and restoration work shall be carried out promptly when the work in respect of which the excavations were made is completed from time to time;

- (g) to enter onto the Easement Area from time to time together with vehicles and equipment as the Transferees or Dominant Strata Corporations may require to carry out the aforesaid purposes.

3. This Easement shall be construed as a covenant running with the lands provided that no part of the fee of the soil shall be vested in the Transferee by these presents.

4. The Transferor and Servient Strata Corporation and the owners thereof reserve the right to use the Easement Area in common with the Transferee and Dominant Strata Corporations and owners thereof for any or all of the uses and purposes set forth in Paragraph 2 hereof and for similar uses and purposes as the Transferor and Servient Strata Corporation may see fit, provided however that the Transferor and Servient Strata Corporation shall not cause or permit any other person or corporation (subject to the provisions of Paragraph 7 hereof):

- (a) to construct, erect, locate, store or otherwise place on, under, over or within any part of the Easement Area any building, structure or chattel except for the Road, Security Gate and Utility Works;
- (b) to fence the Easement Area or any part thereof so as to obstruct the full and free access thereto by the Transferees or the Dominant Strata Corporations and their respective owners, employees, agents, contractors and other persons authorized by the Transferees or the Dominant Strata Corporations from time to time, provided however that the Transferor or Servient Strata Corporation shall be entitled to install and maintain the Security Gate provided that the Transferor or Servient Strata Corporation shall provide to the Dominant Strata Corporations and the owners of the Transferee's Lands and each strata lot subdivided therefrom from time to time the same means for unlocking the Security Gate as is used by the owner of the Transferor's Lands or is given to the owners of strata lots subdivided from the Transferor's Lands in order to permit the owners of the Transferee's Lands and strata lots subdivided therefrom from time to time to unlock the Security Gate and gain access to the Easement Area at all times together with their respective employees, agents, contractors and other persons authorized by such owners from time to time;
- (c) to use the Easement Area in any manner that will unreasonably hinder or obstruct the use thereof by the Transferee, the Dominant Strata Corporations or the owners of strata lots subdivided from the Transferee's Lands from time to time and their respective employees, agents, contractors and other persons authorized by them for the purposes herein set forth, or use the Easement Area in any manner that will cause damage to any of the Utility Works constructed or installed on, over, under and within the Easement Area from time to time.

5. Save as aforesaid, the Transferees and their successors in title and the Dominant Strata Corporations and the owners thereof shall have quiet enjoyment of the rights hereby granted without disturbance, let or hinderance by any person, firm or corporation being the owner or occupier from time to time of the Transferor's Lands.

6. The Utility Works installed on, over, under or within the Easement Area by or on behalf of any Transferee or a Dominant Strata Corporation shall remain the property of the Transferee or Dominant Strata Corporation as the case may be notwithstanding that the same may be considered fixtures at law, and the Transferee or Dominant Strata Corporation as the case may be shall be entitled to leave such Utility Works in place in the event that the Transferee or Dominant Strata Corporation hereafter abandons the said Utility Works or releases this Easement.

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7. The Transferor, CLD Developments Ltd., reserves the right to grant to the City of Vernon, CLD Developments Ltd., CLU Utilities Ltd. and other bodies corporate entitled to hold statutory rights of way pursuant to Section 218 of the Land Title Act additional statutory rights of way, easements and covenants over the Easement Area.

8. Maintenance and repair of the Road, Security Gate and such of the Utility Works within the Easement Area as provide utility services to both the Transferor's Lands and Transferee's Lands, and the Maintenance Costs incurred with respect to such maintenance and repair shall be carried out and paid for in accordance with the following provisions:

- (a) the repair and maintenance (and replacement if necessary) of the Road, Security Gate and such Utility Works shall be carried out by or on behalf of the Servient Strata Corporation but if the Servient Strata Corporation shall fail to carry out or cause to be carried out such maintenance and repair, any Dominant Strata Corporation shall be entitled to carry out or cause to be carried out such maintenance and repair;
- (b) until such time as the Transferee's Lands or some of them have been subdivided by the registration of one or more plans of subdivision thereof, Maintenance Costs shall be borne by the Servient Strata Corporation or other owner of the Transferor's Lands;
- (c) as and when the Transferee's Lands or part thereof have been subdivided by one or more strata plans of subdivision the Maintenance Costs incurred from time to time shall be borne by the Servient Strata Corporation and each Dominant Strata Corporation in proportion to the number of strata lots created by the registration of the strata plans of subdivision creating the Servient Strata Corporation or Dominant Strata Corporation as the case may be to the intent that each such strata corporation (the responsible strata corporation) shall bear that portion of the Maintenance Costs calculated by multiplying the Maintenance Costs by the number of strata lots within the strata plan the registration of which created the responsible strata corporation, and by dividing the product thereof by the total number of strata lots created by the registration of all strata plans the registration of which created the Servient Strata Corporation and all Dominant Strata Corporations existing at the time that the Maintenance Costs are incurred;
- (d) provided however that extraordinary damage caused to the Road, Security Gate or such Utility Works by an owner of the Transferor's Lands or Transferee's Lands or any strata lot subdivided therefrom from time to time or by such owner's contractors, employees or agents, such as damage caused by construction vehicles or equipment used or employed by such owner or his contractors, employees or agents, shall be repaired and restored by the owner in question who shall be responsible to pay the resulting Maintenance Costs.

9. Performance by a Dominant Strata Corporation of its covenants and obligations contained in the immediately preceding Paragraph 8 of this Easement shall be a condition of the continuing right of such Dominant Strata Corporation and the owners thereof and the occupants of the owners' strata lots to continue to use the Easement Area for the purposes herein set forth which such right may be suspended by the Servient Strata Corporation while such Dominant Strata Corporation or owner of a strata lot is in default of such covenants or obligations. Provided however that if the question of whether or not the Dominant Strata Corporation is in default of any such covenants or obligations is in dispute and is referred to arbitration pursuant to Paragraph 10 hereof, any suspension imposed by the Servient Strata Corporation shall be lifted pending receipt of the arbitrator's decision or award.

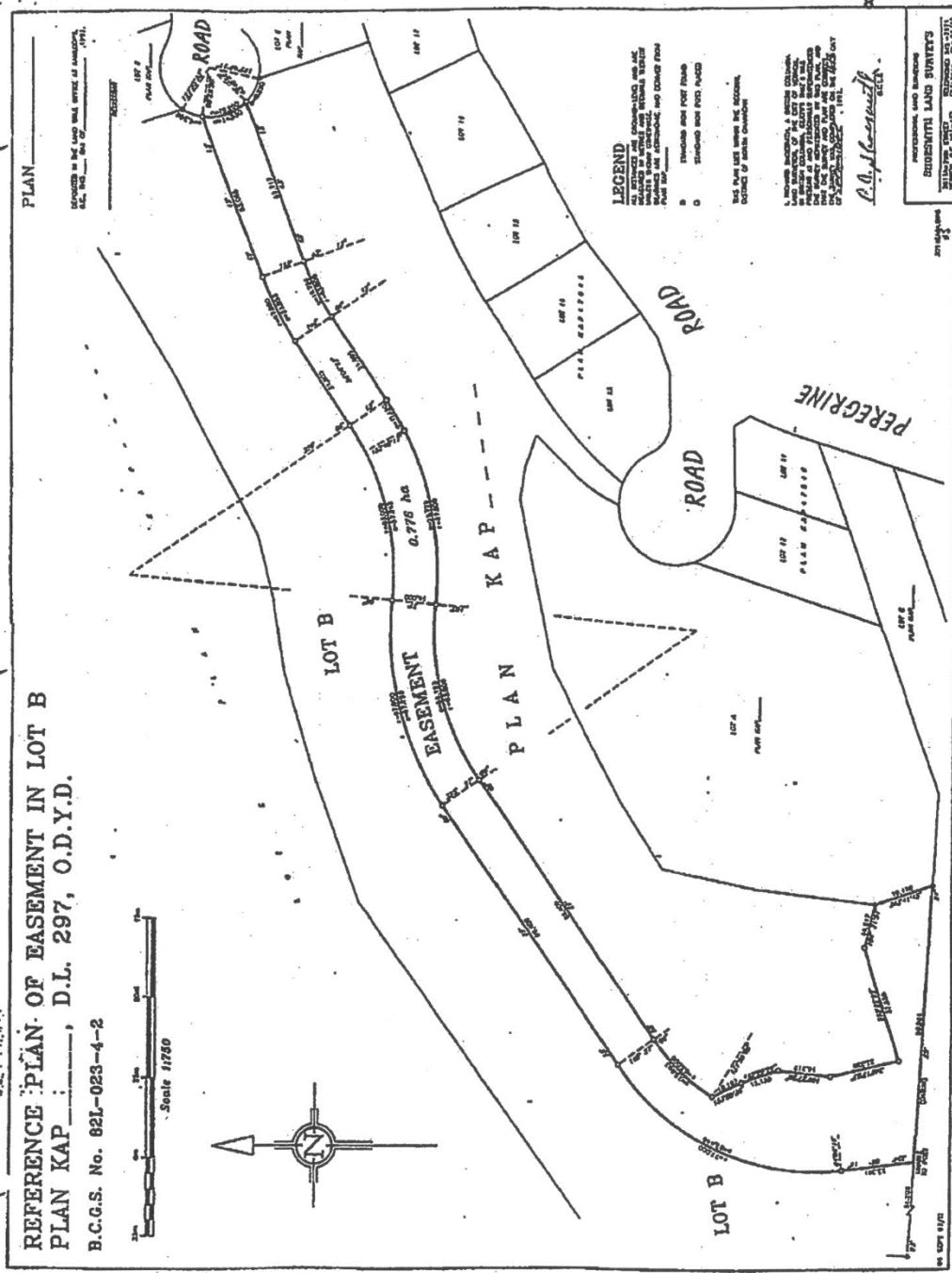
10. Any dispute arising from time to time between any Transferor, Transferee, Servient Strata Corporation, Dominant Strata Corporation or owner of a strata lot subdivided from time to time from the Transferor's Lands or the Transferee's Lands concerning whether or not any maintenance, repair or replacement

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is required to be undertaken in respect of the Road, Security Gate or any shared Utility Works within the Easement Area or concerning how and by whom such maintenance or repair work is to be undertaken, or concerning who is responsible to pay for the Maintenance Costs resulting from such maintenance or repair work being undertaken, shall be referred to arbitration pursuant to the Commercial Arbitration Act (British Columbia) and any owner of the Transferor's Lands or the Transferee's Lands, Servient Strata Corporation, Dominant Strata Corporation or owner of a strata lot subdivided from time to time from the Transferor's Lands or Transferee's Lands may refer such dispute to arbitration as aforesaid.

11. This Agreement and the terms, covenants and conditions herein contained shall enure to the benefit of and be binding upon the Transferee and Dominant Strata Corporations and the Transferor and Servient Strata Corporations and their respective successors and assigns.

12. Any reference herein to any person or corporation using the masculine singular pronoun shall be deemed to include the feminine, plural or body corporate as the context of this Agreement or the identity of such person or corporation may require.



LAND TITLE ACT  
FORM 11(a)  
(Section 99(1)(e), (j) and (k))

APPLICATION FOR DEPOSIT OF REFERENCE OR EXPLANATORY  
PLAN (CHARGE)

I, Terri Gourdine, Legal Secretary, of the firm of Davidson & Company, Barristers and Solicitors, 4th floor, 3205 - 32nd Street, Vernon, B.C., V1T 2M4, agent for C I D Developments Ltd. (inc. no. 364363), #16 - 9060 Tronson Road, Vernon, BC, V1T 6L7, owner of a registered charge, apply to deposit reference/explanatory plan of Easement


Parcel Identifier 023-919-299  
Lot B DL 297 ODYD Plan KAP60209

I enclose:

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

Dated the 2nd day of December, 1997.

REGISTERED PLAN NO.  
KAP 60747

  
Signature

- NOTE:
- (i) The following reproductions of the plan must accompany this application:
    - (a) one blue linen original (alternatively, white linen or original transparency),
    - (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 in an Agricultural Land Reserve, a release is required unless the parent property is less than 2 acres (app. 0.8094 hectare) or where, for permitted uses, an approving office has signed the plan under section 1(1)(a) and (b) of the Subdivision and Land Use Regulations (B.C. Reg. 93/75) 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 owners
    - (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 covenant under section 215, the instrument containing the covenant must be tendered with the plan.