

**ALBERTA GOVERNMENT SERVICES  
LAND TITLES OFFICE**

**IMAGE OF DOCUMENT REGISTERED AS:**

**031432692**

**ADVISORY**

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**MUTUAL ACCESS EASEMENT AGREEMENT**

**DATED** this 28th day of November, A.D. 2003.

**BETWEEN:**

**STONE CREEK PROPERTIES INC.**  
a corporation duly incorporated in the Province of Alberta  
(the "Unit 17 Owner")

- and -

**STONE CREEK PROPERTIES INC.**  
a corporation duly incorporated in the Province of Alberta  
(the "Unit 18 Owner")

**RECITALS:**

A. The Unit 17 Owner is the registered owner of those lands ("Unit 17") legally described as:

Plan 031 3512  
Unit 17

And 180 undivided one ten thousandth shares of the common property  
Excepting Thereout All Mines and Minerals.

B. The Unit 18 Owner is the registered owner of those lands ("Unit 18") legally described as:

Plan 031 3512  
Unit 18

And 180 undivided one ten thousandth shares of the common property  
Excepting Thereout All Mines and Minerals.

C. There is or is to be constructed on Unit 17 and Unit 18 Private Utility Lines and a Common Driveway.

D. The Private Utility Lines will lie within the Right-of-Way and the Common Driveway will be constructed over the Right-of-Way.

E. The Unit 17 Owner wishes to grant to the Unit 18 Owner and the Unit 18 Owner wishes to grant to the Unit 17 owner reciprocal easements respecting those portions of the Right-of-Way lying over their respective lands.

**IN CONSIDERATION** of the mutual covenants contained herein, the payment of One Dollar (\$1.00) by each of the parties to the other party hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

**1. DEFINITIONS**

- (a) "Agreement" means this Mutual Access Easement Agreement and all amendments and schedules thereto;
- (b) "Common Driveway" means the common driveway which is to be constructed on all or any part of the Right-of-Way;
- (c) "Private Utility Lines" means any private sewer and water service systems or connections, or any one or both of them, together with the usual and ordinary appurtenances thereto which are to or may be constructed on Unit 17 and Unit 18 and which lie within the Right-of-Way;
- (d) "Right-of-Way" means that portion of Unit 17 and Unit 18 shown on Right-of-way Plan 031 35/5 registered at the Land Titles Office for the South Alberta Land Registration District; and
- (e) "Town" means the Town of Canmore, a municipal corporation subsisting pursuant to the *Municipal Government Act*, R.S.A. 2000, c. M-26.

**2. TERM OF AGREEMENT**

This Agreement shall come into full force and effect on the date noted on the first page of this Agreement and shall continue in full force and effect in perpetuity, unless terminated by written agreement of the parties hereto. Notwithstanding that the Town is not a party to this Agreement, the parties hereto agree that they shall not surrender their rights hereunder or agree to a discharge this Agreement from the title to Unit 17 or Unit 18 without the prior written consent of the director of planning for the Town, or his or her equivalent. Any request for the Town's consent shall be in writing, accompanied by a true copy of this Agreement.

**3. GRANT OF EASEMENT**

- (a) The Unit 17 Owner does hereby grant to the Unit 18 Owner and the Unit 18 Owner does hereby grant to the Unit 17 Owner, for the benefit of each of Unit 18 and Unit 17 respectively, the perpetual and non-exclusive right, privilege and easement in, through and over the Right-of-Way, at all times hereafter, for the purposes of:
  - (i) digging, putting down, taking up, relaying, connecting, disconnecting, constructing, repairing, replacing, maintaining, inspecting and operating the Private Utility Lines;
  - (ii) maintaining free and perpetual vehicular and pedestrian access over the Right-of-Way for the use and enjoyment of each of the Unit 17 Owner and the Unit 18 Owner respectively, and the occupiers of Unit 17 and Unit 18 respectively, from time to time; and

- (iii) allowing the Unit 17 Owner and the Unit 18 Owner, or either of them, to construct, repair, replace, maintain, inspect and operate the Common Driveway,

the said right, privilege and easement being subject to the terms and conditions contained within this Agreement.

- (b) Each of the Unit 17 Owner and the Unit 18 Owner shall retain a right of egress and ingress on and over that portion of the Right-of-Way upon their respective land.
- (c) Each of the Unit 17 Owner and the Unit 18 Owner covenant and agree for themselves and their successors in title and assigns that they will not:
  - (i) perform any act which would damage the Right-of-Way, Common Driveway or Private Utility Lines or otherwise interfere with the other party's rights under this Agreement; or
  - (ii) build, erect, plant or maintain, nor permit or suffer to be built, erected, planted or maintained on or near the Right-of-Way, any building, structure, fencing, trees, shrub vegetation or landscaping other than the Private Utility Lines and Common Driveway which prevents or interferes, or may prevent or interfere with the exercise of the other party's rights under this Agreement.
- (d) The cost of constructing, repairing, replacing, maintaining, inspecting and operating the Private Utility Lines and the Common Driveway shall be borne equally by the owners from time to time of Unit 17 and Unit 18, other than costs arising out of the negligence or wilful actions of any one of the Unit 17 Owner or the Unit 18 Owner or their respective tenants, employees, agents, contractors, subcontractors, officers, servants, guests and invitees, which costs shall be borne solely by the responsible owner.
- (e) The rights and privileges herein granted to the Unit 17 Owner and the Unit 18 Owner, or either of them, shall extend to the benefit of their respective tenants, employees, agents, contractors, sub-contractors, officers, servants and invitees.
- (f) The parties hereto, in exercising and performing their respective rights, privileges and obligations under this Agreement, will do so in a good and workmanlike manner and will cause or do as little damage and inconvenience to the other party and the other party's land as is possible. Upon completion of any excavations or workings made or done under this Agreement, the affected lands shall, so far as is reasonably practicable, be restored to their former condition. Without limiting the generality of the foregoing, the replacement of any building, structure, fencing, trees, shrub vegetation, or landscaping or any other development that is allowed to be

erected upon the Right-of-Way in accordance with this Agreement, shall be included in the obligation to restore.

- (g) Each of the Unit 17 Owner and the Unit 18 Owner will indemnify and save harmless the other from and against all claims, damages, debts, suits, dues, actions, liabilities and causes of action, costs (including legal costs on a solicitor and his or her own client basis), or sums of money whatsoever that the Unit 17 Owner or the Unit 18 Owner may suffer to be put to by reason of anything done by the other of them in the exercise of any one or more of the rights and privileges granted in this Agreement.
- (h) This Agreement and all of the covenants granted herein are deemed to be and shall be covenants running with each of Unit 17 and Unit 18 and each of the Unit 17 Owner and the Unit 18 Owner are entitled to register this Agreement against title to Unit 17 and Unit 18 by way of Caveat or in accordance with Sections 67 and 68 of the *Land Titles Act*.

#### 4. GENERAL

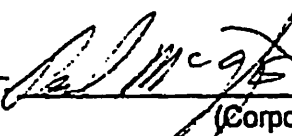
- (a) This Agreement shall be governed by the laws in force in the Province of Alberta.
- (b) No term of this Agreement may be waived or varied, except in writing signed by the parties hereto, with the approval of the director of planning of the Town or his or her equivalent.
- (c) This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, successors-in-title and assigns.
- (d) Throughout this Agreement, the singular shall include the plural and the masculine shall include the feminine, as the case may be, and vice versa. Should the Unit 17 Owner or the Unit 18 Owner from time to time comprise two or more persons, each such person shall be jointly and severally bound with the other and others for the due performance of the parties respective obligations.
- (e) The rights, privileges and easements granted in this Agreement shall be subject to any restrictions or other provisions contained in any other easement granted over the Right-of-Way for the installation, use or operation of any utility on the Right-of-Way or any part of it.
- (f) No action shall lie against any party to this Agreement for damages, for breach of any one or more of the covenants contained in this Agreement, unless such party was, at the time of the alleged breach, the registered or beneficial owner of Unit 17 or Unit 18, or either of them. This covenant shall constitute an absolute defence to any such action and may be pleaded as such.

- (g) The parties acknowledge that this Agreement contains the entire agreement, between the parties respecting the Right-of-Way and that there are no terms, conditions, warranties or other agreements, except as stated in this Agreement.
- (h) If any covenant, term or provision of this Agreement, or application hereof to any person or circumstance shall be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining covenant, term or provision shall be valid and enforceable to the extent permitted by law.
- (i) The headings in this Agreement have been inserted for convenience of reference only.
- (j) The Recitals set forth above are true and form part of this Agreement.

IN WITNESS WHEREOF the parties have hereunto affixed their signatures and seals as of the day and year first above written.

Unit 17 Owner

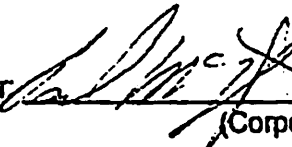
Stone Creek Properties Inc.

Per   
(Corporate Seal)

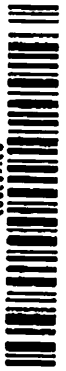
Per. \_\_\_\_\_

Unit 18 Owner

Stone Creek Properties Inc.

Per   
(Corporate Seal)

Per. \_\_\_\_\_



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EASE - EASEMENT

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