

# **ALBERTA GOVERNMENT SERVICES LAND TITLES OFFICE**

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## **ADVISORY**

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## UTILITY RIGHT OF WAY

THIS AGREEMENT MADE this 3<sup>rd</sup>. day of December, 2002

BETWEEN:

**COVE PROPERTIES LTD.**  
of the City of Edmonton, in the Province of Alberta;  
and  
**MEDICAN DEVELOPMENTS INC.**  
of the City of Medicine Hat, in the Province of Alberta  
(both hereinafter called the "Grantor")

- and -

**TOWN OF CANMORE**  
A municipal corporation in the Province of Alberta  
(hereinafter called the "Grantee")

**WHEREAS** The Grantor is the registered owner of those certain parcels of land located within the Town of Canmore, in the Province of Alberta, and described as follows:

Plan 011 1272

Block 1

Lot 1

Excepting thereout all mines and minerals

(hereinafter called the "Lands");

**AND WHEREAS** The Grantee desires to ensure adequate and proper maintenance, operation, repair, and/or replacement of certain utility facilities and appurtenances necessarily thereto over, across under and through a portion of the Lands;

**AND WHEREAS** The Grantor has agreed to grant to the Grantee an easement over, across, under and through those portions of the Lands, for the purposes described herein, subject to the terms, covenants and conditions contained herein;

**AND WHEREAS** The Town is the owner and operator of municipal potable water, waste water and storm water utility systems with main lines adjacent to the Lands, to which the private water, wastewater and storm water services within the Lands are connected, flow and form in part an integral portion of the municipal system adjacent to the Lands.

### RECITALS & DEFINITIONS

- a) "Stormwater Best Management Practices (BMPs)" means those methods of managing Stormwater Runoff that retain as much of the natural runoff characteristics and infiltration components of the undeveloped site as possible and reduce or prevent surface water and groundwater quality degradation, inclusive of maintenance of vegetation cover on landscaped surfaces, regular sweeping of hard-surfaced road and

parking areas, regular cleaning of catchbasins, oil/grit separators and drywells, frequent removal of litter, use of non-toxic materials to de-ice roads and walkways, limited use of fertilizers and non-use of toxic pesticides and herbicides in accordance with recommendations made in the Stormwater Management Guidelines for the Province of Alberta;

- b) **"Stormwater Drainage Facilities or Stormwater Management System"** means those works that collect, divert, convey and treat Stormwater Runoff, inclusive of graded surfaces, roof leaders, drains, swales, gutters, channels, depression detention areas, inlets, catchbasins, pipes, runoff and flow control devices, manholes, oil/grit separators, ponds, basins, outfalls, riprap, drywells and infiltration areas, together with the usual appurtenance thereto, constructed or designed to be constructed by the Grantor in accordance with plans accepted or to be accepted by the Town of Canmore;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the sum of One (\$1.00) Dollar paid by the Grantee to the Grantor (the receipt and sufficiency of which is hereby acknowledged by the Grantor), and of the covenants, conditions and stipulations contained herein, the Grantor does hereby grant to the Grantee, its servants, agents, contractors, licensees, invitees, successors and assigns the right, licence, privilege and easement across, over, under, on and through the Lands for the purposes of excavating, connecting, disconnecting, repairing, maintaining and inspecting potable water and sanitary sewer and storm sewer lines, and storm drainage facilities together with the appurtenances incidental thereto, subject only to the following terms and conditions, namely:

#### **GENERAL PROVISIONS**

1. The Grantor and or their successors in title will construct or cause to be constructed and maintain or cause to be maintained on all of the Lands potable water and sanitary sewer pipes and appurtenances incidental thereto, to service all of the parcels commonly in accordance with plans accepted or to be accepted by the Town of Canmore and authorized or to be authorized by Alberta Environment, attached to and forming part of this Agreement as Schedules A and B.
2. The Grantor and or their successors in title will construct or cause to be constructed and maintain or cause to be maintained on all of the Lands Stormwater Drainage Facilities, in accordance with stormwater management plans accepted or to be accepted by The Town of Canmore and approved or to be approved by Alberta Environment, and the Grantor agrees to allow the orderly flow of stormwater through all of the Lands in accordance with stormwater management plan as may be amended from time to time, subject to the acceptance of the Town and authorization from Alberta Environment.
3. The right, licence, privilege and easement shall be for so long a period as the Grantee, its successors and assigns shall require.
4. The Grantee shall have the right to do whatever may be requisite for the enjoyment of the rights granted in this Agreement.
5. Upon the execution of this Agreement by the Grantor, and at all times thereafter, the Grantee, or any person, firm or corporation acting on its behalf shall be entitled to enter upon and occupy the Lands with its employees, agents, servants, contractors and invitees, and with or without vehicles, machinery and equipment, for the purposes contained in this Agreement.

6. The Grantor shall not without the prior written consent of the Grantee excavate, drill, install, erect, or permit to be excavated, drilled, installed, or erected over, under or through the Lands, any pit, well, trees, wall, foundation, pavement, building, or other structure or installation, that would interfere, prevent or compromise the ability to effect the operation, repair or maintenance of the water and sanitary sewer and storm sewer lines, and storm drainage facilities, but otherwise the Grantor shall have the right to fully use and enjoy the Lands so long as such use does not interfere with or detract from the use and enjoyment thereof for the purposes herein granted to the Grantee.
7. The Grantee performing and observing the covenants and conditions herein contained shall peaceably hold and enjoy all the rights, privileges, liberties and covenants hereby granted without any hindrance and interruptions from the Grantor or any person or persons claiming by, through, under or in trust for them or any person or persons whatsoever.

#### **GRANTOR OBLIGATIONS REGARDING MAINTENANCE OF WATER AND SEWER SYSTEM**

8. Each Grantor, its successors in title and assigns, shall at all times maintain and repair, at their own cost, the potable water and sanitary sewer pipes and appurtenances incidental thereto serving the Lands and located within the Lands, in good repair and capable of distributing water to and conveying wastewater from the Lands.
9. In the event that any Grantor or its successors in title or assigns do not maintain and repair the potable water and sanitary sewer pipes and appurtenances incidental thereto as required by this Agreement, then the Grantee, upon having given 48 hours written notice, except in the case of emergency, may enter onto the Lands to effect such repairs or replacements as are necessary, and such defaulting Grantor or its successors in title or assigns shall, upon demand, reimburse the Town of Canmore for the cost of such repairs or replacements which are effected under this paragraph, and each Grantor and its successors in title and assigns agree that all sums payable hereunder shall be a lien and charge upon its Parcel respectively. Furthermore, in the event that the Grantee exercises its right to enter onto the Lands then the Grantee, its tenants, contractors, subcontractors, officers, servants, agents and workmen, shall have the full and free right and liberty to have ingress, egress and to pass and re-pass on the Lands either on foot or by means of vehicles or necessary machines whatsoever, and to remain on the Lands for all purposes of digging, connecting, disconnecting, repairing, replacing, maintaining and inspecting the potable water and sanitary sewer pipes and appurtenances incidental thereto.
10. Each Grantor, its successors in title and assigns, shall regularly inspect, maintain, test, keep records and file reports with the Town of Canmore on the hydrants serving the Lands in accordance with Article 6.6.4 of the Alberta Fire Code 1997 or latest revision thereof. Reports shall be compiled on an annual basis and submitted to the Town in a format acceptable to the Town within two months of the end of each year.
11. In the event that any Grantor, its successors in title and assigns, do not regularly inspect, maintain, test, keep records and file reports as required by this Agreement, then the Town or its designated agents, upon having given one months written notice, may enter on to the Lands to effect such inspections, tests and reports, and such defaulting

Grantor, its successors in title and assigns, shall upon demand reimburse the Town for the cost of such inspections, tests and reports which are effected under this paragraph and each Grantor, its successors in title and assigns, agree that all sums payable hereunder shall be a lien and charge upon its Lands respectively.

12. The Grantor or Grantee in carrying out any of the aforesaid operations covenants to not turn or allow to be turned any valves on the water lines, nor block or allow to be blocked any flow in the sanitary wastewater lines, or otherwise interfere with the operation of the the potable water and sanitary sewer pipes and appurtenances incidental thereto except as authorized by the Town of Canmore or its designated agents.

#### **GRANTOR OBLIGATIONS REGARDING THE STORMWATER MANAGEMENT SYSTEM**

13. Each Grantor shall not permit their portion of the Lands, so designated as parking lot and/or driveway, swale or stormwater detention area to become obstructed (for an unreasonable length of time in the circumstances) so as to prevent the reasonable flow of stormwater runoff through the Lands in accordance with the approved stormwater runoff design.
14. Each Grantor, its successors in title and assigns, covenants to at all times operate, maintain and repair, at their own cost, the Stormwater Management System serving their respective portions of the Lands in good repair and capable of collecting, attenuating, conveying, treating and disposing of Stormwater Runoff from the Lands to the final discharge location.
15. In the event that any Grantor or its successors in title or assigns do not operate, maintain and repair the Stormwater Management System as required by this Agreement, then the Town of Canmore, upon having given 48 hours written notice, except in the case of emergency, may enter onto the Lands to effect such repairs or replacements as are necessary, and such defaulting Grantor or its successors in title or assigns shall, upon demand, reimburse the Town of Canmore for the cost of such repairs or replacements which are effected under this paragraph, and each Grantor and its successors in title and assigns agree that all sums payable hereunder shall be a lien and charge upon its Lands respectively. Furthermore, in the event that the Town of Canmore exercises its right to enter onto the Lands then the Town of Canmore, its tenants, contractors, subcontractors, officers, servants, agents and workmen, shall have the full and free right and liberty to have ingress, egress and to pass and re-pass on the Lands either on foot or by means of vehicles or necessary machines whatsoever, and to remain on the Lands for all purposes of digging, connecting, disconnecting, repairing, replacing, inspecting and operating the Stormwater Management System .
16. Each Grantor, its successors in title and assigns, covenants to regularly inspect, maintain, test, keep records and file reports with the Town of Canmore on the Stormwater Management System on their respective portion of the Lands in accordance with Alberta Environment Stormwater Management Guidelines Section 7 or latest revision thereof. Reports shall be compiled on an annual basis and submitted to the Town in a format acceptable to the Town within two months of the end of each year.
17. In the event that any Grantor, its successors in title and assigns, do not regularly inspect, maintain, test, keep records and file reports as required by this Agreement, then the Town or its designated agents, upon having given one months written notice, may enter

on to the Lands to effect such inspections, tests and reports, and such defaulting Grantor, its successors in title and assigns, shall upon demand reimburse the Town for the cost of such inspections, tests and reports which are effected under this paragraph and each Grantor, its successors in title and assigns, agree that all sums payable hereunder shall be a lien and charge upon its Lands respectively.

18. The Grants and covenants made by this Agreement shall be subject to the rights and obligations of the Town of Canmore to prescribe rules and regulations for the government and operation of the Stormwater Management System of the Town pursuant to Alberta Environment Approval No. 483-02-06 and subsequent amendments thereto, and to Town of Canmore Land Use Bylaw No. 09-99 Part C, Section 20 and latest revisions thereto.
19. The Grantor in carrying out any of the aforesaid operations covenants to use and apply Stormwater Best Management Practices described in Alberta Environment Stormwater Management Guidelines Section 6 to the extent such practices are appropriate to the Lands.

#### **DEFAULT**

20. In the event that the Grantor shall be in default hereunder, the Grantee shall have, in addition to all rights and remedies available to him at law or in equity, the right to enter on the defaulting Lands and do such things necessary and reasonable to remedy the default.
21. For the purposes hereof, default shall include a continual and persistent breach of any of the covenants and restrictions herein contained.
22. The Grantee in carrying out any of the aforesaid actions allowed in this Agreement will do so in a good and workmanlike manner and will cause or do as little damage and inconvenience to the owner or occupier of the Lands, as is possible, and any excavations or workings made or done in connection therewith shall, so far as is reasonably practicable, be restored to their former condition.

#### **ADMINISTRATIVE PROVISIONS**

23. Nothing contained shall be deemed to vest in the Grantee any right, title or interest in any mines or minerals in and under the right of way, except only the parts thereof that are necessary to be dug, carried away, or used in the construction, maintenance or repair of the Grantee's facilities or work of the Grantee.
24. The Grantor and the Grantee mutually covenant and agree each with the other:
  - (a) that the rights, licence and easement herein granted to the Grantee and mutual obligations of the parties shall enure to the benefit of and shall be binding upon the respective heirs, executors, administrators, successors and assigns of the parties hereto; and
  - (b) that the rights, licence and easement herein granted to the Grantee, and mutual obligations of the parties and the public at large, shall have the same force and effect as covenants and conditions which shall run with the lands and shall enure to the benefit of and be binding upon the transferees, respective heirs, executors, administrators, successors and assigns of the parties hereto, until such time as



this Agreement shall be withdrawn by the parties hereto or alternatively, upon order of the Court; and

- (c) that wherever the singular or masculine pronouns are used throughout this Easement, the same shall be construed as meaning the plural, the feminine or the neuter, where the context or the parties hereto so require.

25. All notices to be given hereunder may be given by registered letter addressed to the Grantor and the Grantee as follows:

(a) to the Grantee at:           Town of Canmore  
600 - 9th Street  
Canmore, Alberta  
T1W 2T2

(b) to the Grantor at:       Cove Properties Ltd.  
260, 8702 - 48 Avenue  
Edmonton, Alberta  
T6E 5L1


Medican Developments Inc.  
1870A - 6 Avenue S.W.  
Medicine Hat, Alberta  
T1A 7X7

or such other addresses as the Grantor and the Grantee may respectively from time to time designate in writing, and any such notice shall be deemed to have been given to and received by the addressee fourteen (14) days after the mailing thereof by prepaid registered post.

12. In the event that any provision or portion of this Agreement is found to be illegal or otherwise unenforceable, the offending provision or portion shall be considered separate and severable from the remaining provisions of this Agreement, and the remaining provisions shall remain in full force and effect and be binding as though the illegal or unenforceable provision or portion had never been included.

IN WITNESS WHEREOF the parties hereto have caused to be fixed their corporate seals duly authenticated by their proper officers in that regard effective as of the date and year first above written.

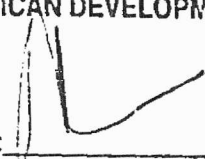
COVE PROPERTIES LTD.

PER: 

c/s

PER: \_\_\_\_\_


MEDICAN DEVELOPMENTS INC.


PER: 

c/s

PER: \_\_\_\_\_

TOWN OF CANMORE

PER: 

PER:  c/s

\_\_\_\_\_  
Approved for Content - Engineering Dept



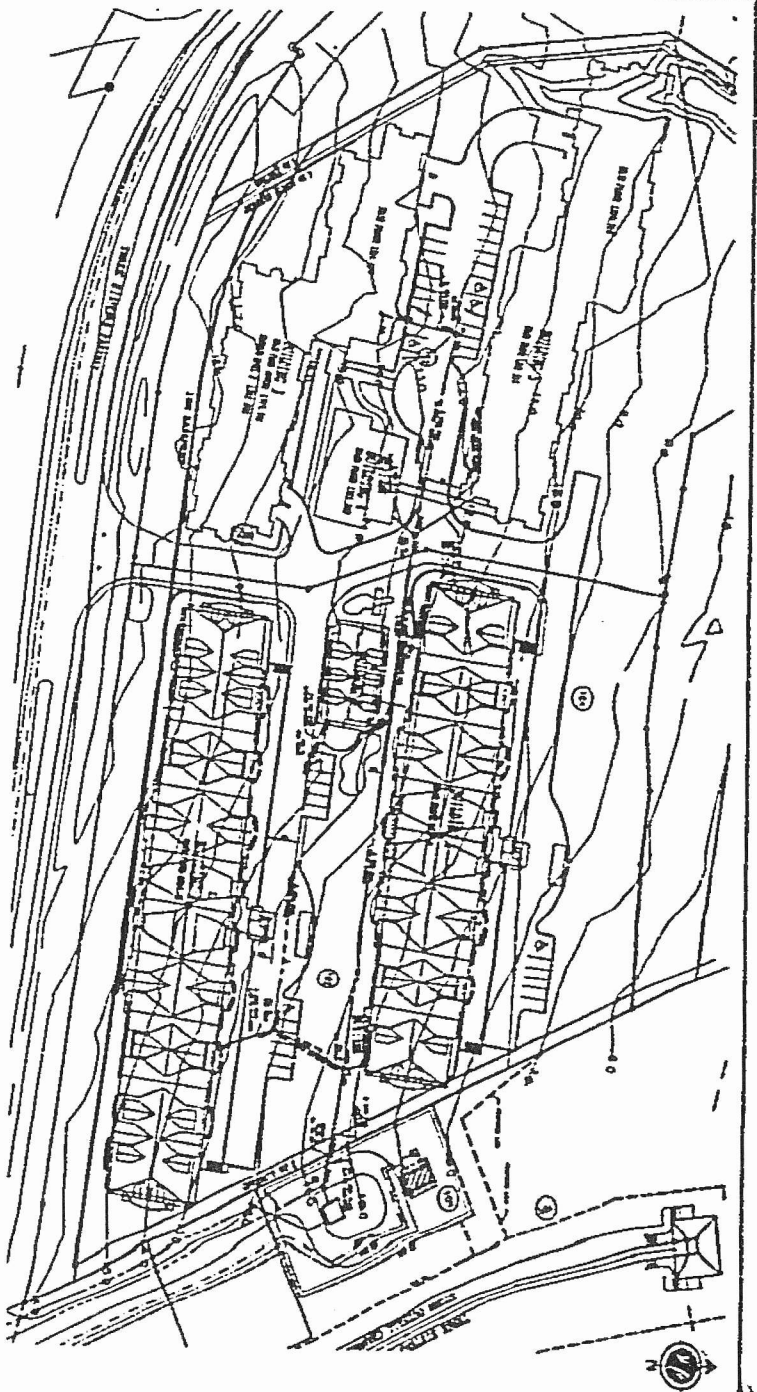
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Approved for Content - Planning Dept



014-000000-000

**SCHEDULE A**

Copies of the approved site servicing drawings showing sanitary and water lines.



1. All work shall be done in accordance with the following:
2. All work shall be done in accordance with the following:
3. All work shall be done in accordance with the following:
4. All work shall be done in accordance with the following:
5. All work shall be done in accordance with the following:
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9. All work shall be done in accordance with the following:

10. All work shall be done in accordance with the following:

Item	Description	Quantity	Unit	Price
1	Excavation and backfill	100	cubic meters	10.00
2	Foundation work	50	square meters	20.00
3	Structural steel	100	tons	150.00
4	Roofing	100	square meters	5.00
5	Interior finishing	100	square meters	10.00
6	Exterior finishing	100	square meters	5.00
7	Landscaping	100	square meters	5.00
8	Utilities	100	square meters	5.00
9	Security	100	square meters	5.00
10	Other	100	square meters	5.00



**SHARPEC**  
 10000 Highway 100  
 Suite 100  
 Richmond, BC V6V 1A6  
 Tel: (604) 271-1111  
 Fax: (604) 271-1112  
 Email: info@sharpec.com

Item	Description	Quantity	Unit	Price
1	Excavation and backfill	100	cubic meters	10.00
2	Foundation work	50	square meters	20.00
3	Structural steel	100	tons	150.00
4	Roofing	100	square meters	5.00
5	Interior finishing	100	square meters	10.00
6	Exterior finishing	100	square meters	5.00
7	Landscaping	100	square meters	5.00
8	Utilities	100	square meters	5.00
9	Security	100	square meters	5.00
10	Other	100	square meters	5.00

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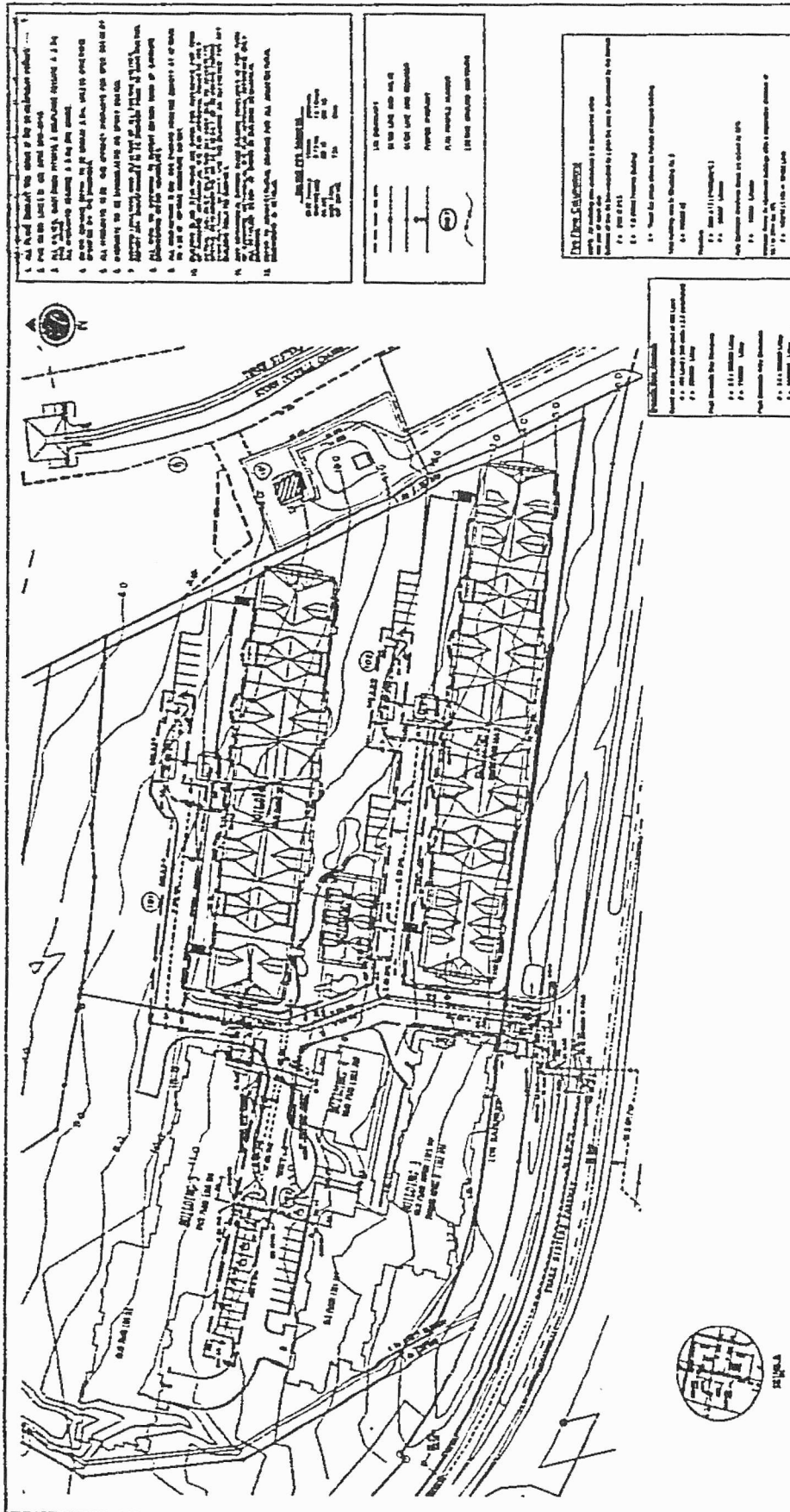
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**SHARPEC**  
 10000 Highway 100  
 Suite 100  
 Richmond, BC V6V 1A6  
 Tel: (604) 271-1111  
 Fax: (604) 271-1112  
 Email: info@sharpec.com

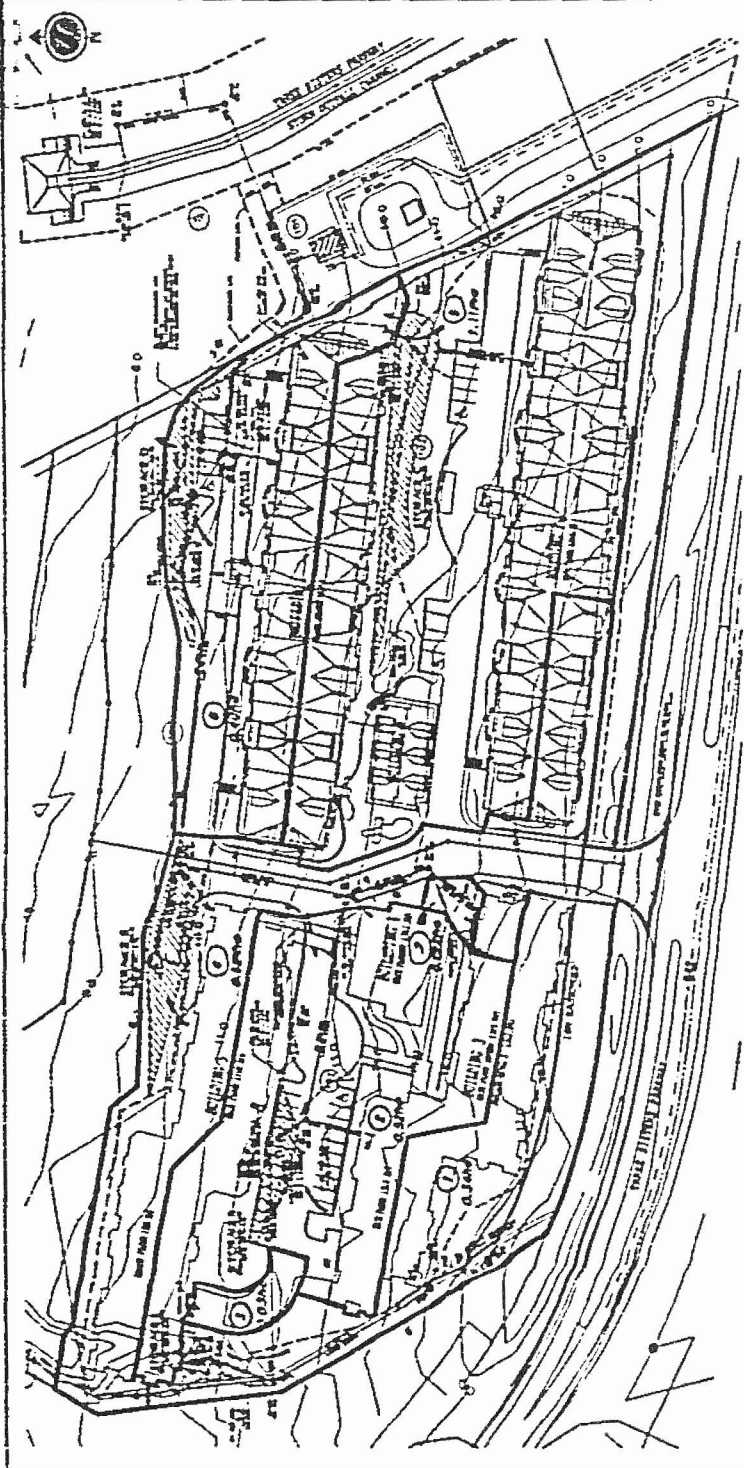
**SHARPEC**  
 10000 Highway 100  
 Suite 100  
 Richmond, BC V6V 1A6  
 Tel: (604) 271-1111  
 Fax: (604) 271-1112  
 Email: info@sharpec.com



**Exclusives**  
**COVER PROMINENT LTD**  
**THE CROCODON AT CAMBODGE**

**SCHEDULE B**

Copies of the approved stormwater management plans.

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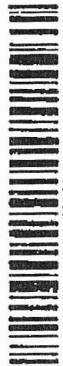
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