

# REGIONAL DISTRICT OF NORTH OKANAGAN

## BYLAW No. 2195

A bylaw to authorize the Regional District to enter into a Servicing Agreement to develop the Vance Creek Reservoir and ancillary works for the Silver Star Water Utility

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**WHEREAS**, pursuant to Section 176 [*Corporate powers*] of the *Local Government Act*, R.S.B.C., 1996, Chapter 323, as amended, and Regulations passed pursuant thereto, the Board of the Regional District of North Okanagan may enter into agreements respecting the provision and operation of its services;

**AND WHEREAS** the Regional Board deems it expedient to enter into a Servicing Agreement with Silver Star Ski Resort Ltd. to develop the Vance Creek Reservoir and ancillary works for the Silver Star Water Utility;

**NOW THEREFORE**, the Board of the Regional District of North Okanagan, in open meeting assembled, hereby ENACTS AS FOLLOWS:

### CITATION

1. This bylaw may be cited for all purposes as "***Silver Star Vance Creek Reservoir Servicing Agreement Bylaw No. 2195, 2008***".

### ESTABLISHMENT

2. The Regional District of North Okanagan is hereby authorized to enter into the Servicing Agreement with Silver Star Ski Resort Ltd. in the form set out in Schedule "A" attached hereto and forming part of this bylaw.
3. The Regional Board Chair and Corporate Officer are hereby authorized to execute the attached agreement, together with any documents requiring execution in connection with the same, on behalf of the Regional District of North Okanagan and to affix the Corporate Seal of the Regional District thereto.

Read a **FIRST, SECOND and THIRD TIME**

this 16th day of September , 2008.

Reconsidered and **ADOPTED**

this 16th day of September , 2008.

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Chair



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Corporate Officer

**Schedule "A"** attached to and forming part of Bylaw 2195,  
being "Silver Star Vance Creek Reservoir Servicing  
Agreement Bylaw No. 2195, 2008".

SILVER STAR MOUNTAIN

WORKS AGREEMENT

VANCE CREEK RESERVOIR AND ANCILLARY WORKS

This agreement dated for reference September 10, 2008 is  
BETWEEN:

**SILVER STAR SKI RESORT LTD.** (Inc. No.BC0631004),  
PO Box 3002, Silver Star Mountain, B.C. V1B 3M1

(the "Developer")

AND:

**REGIONAL DISTRICT OF NORTH OKANAGAN,** 9848  
Aberdeen Road, Coldstream, B.C. V1B 2K9

(the "District")

GIVEN THAT:

- A. The Developer owns certain lands at Silver Star Mountain Resort and holds a license from the Province over certain untitled Crown lands, comprising all of the land defined herein as the "Benefiting Land", and the Developer intends to eventually develop such land and sell such land for development;
- B. The Developer wishes to ensure that water supply facilities are available to enable the development of the Benefiting Land and has petitioned the District to construct a new water reservoir and associated works to be owned and operated by the District through its Silver Star Mountain Community Water Utility for the purpose of providing water to the Benefiting Land;
- C. The District has adopted or intends to adopt certain bylaws for the purpose of paying for the design and construction of such water works;
- D. The Developer has designed and is nearing completion of construction of the new reservoir and related facilities, and the District wishes to purchase those works in accordance with the terms and conditions of this agreement.

THIS AGREEMENT is evidence that in consideration of \$1.00 paid by each party to the other and other good and valuable consideration (the receipt and sufficiency of which the parties respectively acknowledge), the Developer and the District each covenant to and agree with the other as follows:

## **Definitions**

1. In this agreement, in addition to words defined above, the following words and expressions have the following meanings:
  - (a) "Benefiting Land" means the land legally described in Schedule A.
  - (b) "Certificate of Acceptance" means a written certificate of final acceptance of the Works issued by the District Representative pursuant to section 0.
  - (c) "Certificate of Completion" means a written certificate of Completion of the Works issued by the District Representative pursuant to section 0.
  - (d) "Completion" means completion of the Works such that the Works have been fully tested, are functional and can be used for their intended purpose, all to the satisfaction of the District Representative, acting reasonably, as acknowledged by the issuance of a Certificate of Completion.
  - (e) "Consulting Professional" means a professional engineer retained by the Developer for a purpose referred to in this agreement, who is qualified to practice in British Columbia for that purpose.
  - (f) "Cost of the Works" means the direct costs of constructing and installing the Works plus the cost of engineering, supervision, contract administration, tendering, survey, other professional services, financing, including interest costs, land title office fees and other direct costs reasonably required for completion of the Works and the transfer thereof to the District in accordance with this agreement.
  - (g) "District Representative" means the District's Administrator, appointed from time to time by the Board of the District, or his or her designate.
  - (h) "Province" means the Province of British Columbia.
  - (i) "Reservoir Enabling Bylaws" means Silver Star Mountain Water Reservoir Borrowing Service Establishment Bylaw No. 2191, 2006, as amended, and Silver Star Mountain Water Reservoir Loan Authorization Bylaw No. 2192, 2006, as amended.
  - (j) "Servicing Plans" means the drawings, plans and other specifications for the Works listed on Schedule B.
  - (k) "Standards" means any and all laws, bylaws, statutes, regulations, rules, orders, permits, licences, codes, building codes, professional standards and specifications (including Canadian Standards Association standards) applicable to the Works as they are in force from time to time or in the latest current version, as the case may be.
  - (l) "Warranty Period" means the one-year period commencing from the date of issuance of Certificate of Completion.
  - (m) "Warranty Security" means the total amount of money retained by the District under section 18 as security for the performance of the Developer's obligations under section 0.

- (n) "Water License" means Conditional Water Licence 122226 under the *Water Act*, issued April 4, 2008 by the Regional Water Manager, Water Stewardship Division, Ministry of Environment.
- (o) "Works" means all of the works and services set out in the Servicing Plans, which works and services include, but are not limited to:
  - i. the Vance Creek reservoir,
  - ii. the pump station at the Vance Creek reservoir,
  - iii. the pipeline to connect the Vance Creek reservoir to the Paradise Reservoir transmission line and the surge tank, valving and fittings,
  - iv. a treatment plant,
  - v. associated works necessary to integrate the Vance Creek reservoir into the District's Silver Star Community Water Utility system; and
  - vi. valves, fittings and other works appurtenant to any of the foregoing works.

### **Design of Works**

- 2. The Developer represents and warrants to, and covenants with, the District that the Servicing Plans have been prepared under the direction of, and sealed under the professional seal of, a Consulting Professional.

### **Construction of Works**

- 3. The Developer shall be responsible for design, construction, installation and completion of all aspects of the Works, in the locations shown on the Servicing Plans, to the standards required by this agreement. In undertaking the Works, the Developer shall:
  - (a) construct, install and complete the Works in accordance with the Servicing Plans and all applicable Standards;
  - (b) obtain the prior written approval of the District Representative, acting reasonably, for any changes to the Servicing Plans;
  - (c) ensure that all Consulting Professionals retained by it for the purposes of this agreement each maintain professional liability and errors and omissions insurance of not less than \$1,000,000.00 per occurrence during the term of his or her engagement, and provide proof of such insurance to the District promptly following execution of this agreement;
  - (d) comply with any changes to the Works required by the District Representative, acting reasonably, as necessary to satisfy the District Representative, acting reasonably, that the Works will function and operate in a manner satisfactory to the District Representative, acting reasonably;
  - (e) not damage any of the District's works, services or property, or remove, alter or destroy any survey pins, posts, or monuments, and, if in default of such

obligations, to replace, repair and restore any damage to the satisfaction of the District Representative, acting reasonably;

- (f) pay the cost of connecting the Works to existing District services;
- (g) not engage any employee or contractor in the construction or installation of the Works who, in the reasonable opinion of the District Representative, acting reasonably, is unfit, incapable or unskilled;
- (h) at all times in connection with the construction and installation of the Works employ and keep on site a competent general works superintendent; and
- (i) promptly correct any deficiencies in the Works that are from time to time identified by the District Representative, to the satisfaction of the District Representative, acting reasonably.

### **Standards of Work**

4. The Works shall be designed, provided and constructed to a standard which is sufficient for their intended purpose and shall be designed and completed in accordance with generally accepted engineering practice to the satisfaction of the District Representative, acting reasonably, and in accordance with all Standards.

If, during the Warranty Period, the District Representative determines, acting reasonably, that the Works are in any way defective or do not operate in a satisfactory manner, the Developer shall, at its expense, modify and reconstruct the Works immediately so that the Works are fully operative and function in accordance with the standards set out in section 00.

### **Developer's Consulting Professionals**

5. At all times during the construction and provision of the Works, the Developer shall retain one or more Consulting Professionals to oversee the completion of the Works and provide competent on-site review to ensure the Works conform to the Servicing Plans.

With any application to the District for a Certificate of Completion, the Developer's Consulting Professional shall certify under seal in writing to the District that the Works have been constructed in accordance with the Servicing Plans.

### **Developer's Risk**

6. The Developer acknowledges and agrees that the Developer relies exclusively on the Developer's Consulting Professionals and contractors and that the District does not, by its approvals, inspections or acceptance of the Works or Servicing Plans, warrant or represent that the Works or the Servicing Plans are in compliance with any Standards or as to the quality, fitness for purpose, adequacy or safety of the Works, or that the Works are without fault or defect, and the Developer acknowledges and agrees that all approvals and inspection of the Works given or made by the District or the District Representative are for the sole benefit of the District and in no way relieve the Developer from designing, constructing and installing the Works in accordance with this agreement.

### **Entry Onto Land**

7. The Developer shall permit the District, or ensure the District is permitted, to by its employees, agents and contractors, at any time enter upon all land within which any of the Works are being constructed or installed as may be necessary or convenient for the carrying out of this agreement, including for the purposes of inspecting or undertaking the Works.

### **Insurance**

8. The Developer confirms that it has taken out and maintained, and the Developer shall continue to maintain, at all times from commencement of construction and installation of the Works until the issuance of a Certificate of Completion for the Works, with such insurance company or companies and on such terms as are acceptable to the District:
  - (a) comprehensive general liability insurance against claims for bodily injury (including death) and property damage or loss arising from the construction and installation of the Works (including failure to properly carry out or negligence in carrying out the Works), in an amount of not less than \$5,000,000.00 combined single limit per claim; and
  - (b) builder's risk insurance, insuring the Works against loss or damage to the full replacement cost of the Works, and if the District elects to complete the Works as provided in this Agreement, the Developer is conclusively considered to have assigned the benefit of that insurance, and all proceeds of it, to the District.

### **Policy Requirements**

9. All insurance policies required under this section must include the District as an additional insured, must include all of the Developer's contractors and subcontractors as unnamed insured's, must include a cross liability clause and must provide that coverage will not be changed or amended in any material way nor cancelled until 30 days after notice of such change or cancellation has been given to the District. The Developer agrees to deliver a copy of a certificate of insurance in respect of each policy to the District promptly following its execution of this agreement.

### **Transfer of Works to District**

10. **Warranty** – The Developer must, at its own cost,
  - (a) without unreasonable delay in light of the nature of the defect, remedy any defects in any of the Works appearing within the Warranty Period; and
  - (b) make good or pay for any damage to other works or property resulting from the defects under section 00.

If the Developer fails to comply with sections 10(a) or (b), the District may remedy such breach and may deduct the costs of doing so from the Warranty Security. If the Warranty Security is insufficient to cover the costs incurred by the District, the Developer must pay such deficiency to the District immediately upon receipt of the District's invoice. Upon the later of the expiry of the Warranty Period and the issuance of a Certificate of Acceptance by the District Representative, the District will release the Warranty Security or the unused portion thereof to the Developer, without interest.

**11. Issuance of Certificates** – The District Representative will:

- (a) within 60 days following application by the Developer for a Certificate of Completion under paragraph (b) of this section or a Certificate of Partial Completion under paragraph (d) of this section, determine, acting reasonably, if the Developer is entitled to the Certificate of Completion or Partial Completion, as the case may be;
- (b) issue a Certificate of Completion upon being satisfied, acting reasonably, that:
  - i. *the Works have reached Completion;*
  - ii. *the Developer has performed all obligations under this agreement that it is required to perform before issuance of a Certificate of Completion;*
  - iii. *the Developer has paid all amounts then owing under this agreement; and*
  - iv. *all of the conditions precedent under section 24 have been satisfied;*
- (c) issue a Certificate of Acceptance of the Works upon being satisfied, acting reasonably, that the Developer has fulfilled all of its obligations under section 0 and paid all amounts then due under this agreement;
- (d) notwithstanding the rest of this section, once all of the conditions precedent under sections 24 have been satisfied, the Developer may, in accordance with the rest of this section, apply to the District for a Certificate of Partial Completion with respect to the Works that have then reached Completion and if a Certificate of Partial Completion is issued pursuant to paragraph (a) of this section, the District will pay to the Developer the portion of the payment due under section 16 with respect to the portion of the Works with respect to which the Certificate of Partial Completion is issued. For clarity, the District acknowledges that for the purpose of issuing a Certificate under this paragraph (d), the Works for which the application is made will be considered to have reached Completion even if there are non-material deficiencies in such works provided that such Works are nevertheless functional and will be able to be used for their intended purposes once the rest of the Works have finally reached Completion.

**12. Works at Owner's Risk Before Completion** – The Works are at the sole risk of the Developer until a Certificate of Partial Completion is issued for the Works.

**13. Transfer of Works to District** – Upon the issuance of a Certificate of Partial Completion, the Developer is deemed to have assigned, transferred and conveyed to the District all of its right, title and interest in and to the Works, free and clear of any claim by the Developer or any person claiming through the Developer, without payment of any further compensation or consideration or any requirement for further documentation in this regard. Upon issuance of the Certificate of Completion, the District will be solely responsible for the maintenance, repair and replacement of the Works, except for the Developer's obligations under this agreement during the Warranty Period.

14. **As-Built Drawings** - The Developer will, before issuance of the Certificate of Completion, provide the District final as-built drawings sealed by a Consulting Professional, including 2 complete sets of prints, 1 set of mylar transparencies and 1 set in electronic digital form (Autodesk DWG File Format), of the Works as constructed and installed.
15. **No Compensation** – Despite any grant under this agreement of any property or any interests in land to the District for public use (including under the tenure to be issued), it is not the intention of the parties that any expropriation, deemed or otherwise, should thereby occur and the Developer will not claim any damages or compensation as a result of such dedication or commitment.

### **Payment to Developer**

16. **Payment** - Upon issuance of the Certificate of Completion or Partial Completion, as the case may be, by the District Representative, the Developer will invoice the District for the Cost of the Works (or, in the case of a Certificate of Partial Completion, the applicable part of the Works to which the Certificate relates) plus 10%, up to a maximum total amount of \$7,200,000.00 (inclusive of all taxes) for all of the Works, which invoice will detail the nature and amount of all costs claimed and with such invoice the Developer will submit copies of all invoices, payments and other records evidencing all costs claimed in the invoice. Subject to sections 17 and 18, the invoice shall be payable by the District within thirty (30) days of submission by the Developer, after which interest will accrue at a rate equal to the Bank of Montreal prime rate plus 2%, unless the District disputes the amount claimed in the invoice. In the event that a portion of the invoice is disputed by the District, the District will pay the undisputed portion within 30 days of the date of invoice and the disputed portion shall be paid into trust with the solicitors for the District to be held in an interest bearing trust account, to be paid out of trust (with trust account interest) upon agreement of the parties or the order of an arbitrator or the Supreme Court of B.C.
17. **Builders Lien Holdback** –
  - (a) For the purposes of this agreement, a Consulting Professional shall be the “payment certifier”, as that term is used in the *Builders Lien Act* (British Columbia).
  - (b) The District will deduct from the amount due to the Developer under section 16 a holdback pursuant to and in the amount required by the *Builders Lien Act* (British Columbia), if any.
  - (c) At such time as the Developer applies for a release of the holdback, the Developer shall submit to the District a sworn statement of an officer of the Developer that all accounts for labour, subcontracts, materials, construction machinery and equipment, and other indebtedness, up to the date of application, incurred by or on behalf of the Developer in designing, constructing, installing and completing the Works have been paid in full, except for holdback monies properly retained by the Developer.
  - (d) The District may avail itself of the rights under the *Builders Lien Act* (British Columbia), including paying the holdback or other retained monies into court to discharge any claim of lien or lien-related certificate of pending litigation or judgment, as the District may consider necessary in order to protect the District’s interests.



- (e) The Developer shall, at its sole risk and expense, do everything necessary, including through the institution, prosecution or defence of legal proceedings, to promptly discharge from title to any land any claims of lien and lien-related certificates of pending litigation and judgments related to the Works.

**18. Warranty Security** – In addition to the builder's lien holdback under section 17, the District may retain 5% of the amount owing under section 16 as security for the Developer's obligations under section 10.

**19. Capacity Expectations**

- (a) The District and the Developer confirm that under the Water License, the maximum quantity of water that may be diverted to fill the Vance Creek Reservoir and used for waterworks purposes is 203,613 cubic meters per annum (the "Capacity"). Based on that Capacity, the number of "pillows" available for development as a result of the addition of the Vance Creek Reservoir will be 14,625 based on a rating of .07183 "pillows" per cubic metre of the above noted storage capacity. Notwithstanding the foregoing, the District and the Developer confirm and agree that up to 60,000 cubic meters of water per annum may be used for snowmaking operations, which would thereby reduce the Allocation by the same amount in each year that such amount of water is used for snowmaking and other resort purposes.

- (b) The District confirms that:

- i. the developer has exclusive right to allocate the Capacity of the Vance Creek Reservoir for the purpose of enabling development until it exercises that right under (c) or the District provides notice under (e); and
- ii. this Capacity will be used only for the purpose of supplying water to the Benefiting Land.

- (c) The Developer confirms that the process for allocating the Capacity of the Vance Creek Reservoir shall be as follows:

- i. The Developer, as owner of all of the Benefiting Lands or as the only entity capable of acquiring title to any of the Benefiting Lands pursuant to the conditions of its Master Development Agreement with the Province of British Columbia, agrees that upon the sale, transfer or disposition of any portion of the Benefiting Lands, it will cause a restrictive covenant to be registered against title to such portion in the land title office (in priority to all legal notations, liens, charges and encumbrances except those existing at time of issuance of the Crown Grant) for the benefit of other land owned by the Developer, which restricts the potential development of the portion sold and thereby allocates Capacity to the portion sold.
- ii. The Developer shall be deemed to have allocated a portion of the Capacity to each portion of the Benefiting Lands so sold, transferred or disposed of proportionately to the number of pillows allocated to such parcel in accordance with the development restrictions set out in the restrictive covenant.

- (d) Subject to section (e) the process set out in (c) shall be the only process used to allocate Capacity.
- (e) Notwithstanding anything to the contrary in this section, the District may, by providing written notice to the Developer on or before December 31, 2011, permanently allocate and use 18,000 cubic metres of the Capacity for the purpose of providing water to lands other than the Benefiting Land, provided that in exchange therefore the District will pay to the Developer an amount equal to 9% of the total Cost of the Works (plus an amount equal to the amount paid by the Developer under section 21 towards District borrowing interest costs) with respect to that portion of the Work identified on Schedule C.

**20. District Water Supply Requirements** – The District will determine water supply requirements for development based on the following:

<u>Development Unit Type</u>	<u>Pillows per Unit</u>
Hotel Room (Studio)	4
1 Bedroom Suite	5
2 Bedroom Suite	6
3 Bedroom Suite	7
Townhouse (Individual Ground Level Entrance)	9
Single Family Lot	12
Duplex Lot	17
Hostel Room	3
Restaurant / Pub	0.2 per seat
Commercial Retail	1 per 500m <sup>2</sup>

**District Cost Recovery**

**21. Developer Payment** – Pursuant to the Reservoir Enabling Bylaws, the District intends to borrow funds for the purpose of paying the Developer for the Works under this agreement and in order to avoid the District having to requisition funds to be collected through the taxation of the Benefiting Land to repay that borrowing the Developer will pay to the District an amount equal to the total amount paid by the District to the Developer pursuant to section 16 in accordance with the following:

The Developer shall pay to the District all amounts that are from time to time payable by the District under its borrowing through the Municipal Financing Authority and Loan Authorization Bylaw No. 2192, 2006 within 30 days of issuance of the invoice for same.

**22. Payment Security** – The Developer will, as a pre-condition to the District being obligated to make any payment to the Developer pursuant to section 16 and in any event no later than December 31, 2008 and as security for the Developer's payment obligations

under section 21, grant a first mortgage to the District, registered in priority to all liens, charges, encumbrances and legal notations, utilizing the *Land Title Act* prescribed standard mortgage terms with a principal amount equal to the maximum amount set out in section 16, with repayment terms in accordance with section 21, over the properties identified in Schedule D.

### **Catchment Area Restrictions**

23. **Catchment Area Restrictions** – The Developer acknowledges and agrees that Interior Health Authority has granted an exemption with respect to surface water treatment filtration regarding water supplied by the Vance Creek Reservoir on the condition that the catchment area for water entering into the Treatment Plant is subject to certain controls over activities therein and the Developer covenants and agrees that, as holder of a Master Development Agreement from the Province under the Province's Commercial Alpine Ski Policy, the Developer will use reasonable efforts in carrying on its business of development and operating the Silver Star Mountain Resort to prevent contamination of the water entering the Works.

### **Miscellaneous**

24. **Condition Precedent** – The obligations of the District and the Developer hereunder are subject to the following conditions precedent being satisfied on or before December 31, 2008:
- (a) The District will have adopted the Reservoir Enabling Bylaws.
  - (b) The Province will have issued a Permit to Commence Construction under the Water Act with respect to the Works based on the applications submitted to the Province as of the reference date of this agreement.
  - (c) The Province of British Columbia has issued to the District a Licence of Occupation for the lands which are the subject matter of the Works.

If any of these conditions precedent is not satisfied within the time provided, this agreement will automatically terminate and the parties will have no further obligations to each other hereunder. With respect to paragraph (a) of this section, while the District is not contractually obligated to adopt the Reservoir Enabling Bylaws and this agreement does not fetter the District Board's discretion in that regard, the District will, once the conditions under paragraphs (b) and (c) of this section have been satisfied and all pre-conditions to such Bylaws under the *Local Government Act* have been satisfied, present those Bylaws for consideration by the Board of the District in a timely manner.

It is the intention of both the District and the Developer that if the District does not acquire the Works pursuant to this agreement, the Developer would establish a private water utility to operate the Works and would apply to the Province for a license to operate the Works as a utility and that the District would support such establishment and application.

**25. Indemnity** – The Developer must release, indemnify and save harmless the District from and against:

- (a) all liabilities, actions, proceedings, damages, expenses, claims and demands whatsoever and by whomsoever brought by reason of the design, construction and installation of the Works, including defects in the Works except to the extent the design, construction or installation was done by or on behalf of the District;
- (b) all expenses incurred by the District as a result of any damage to any property during the construction of the Works; and
- (c) all expenses that may be incurred by reason of liens, non-payment for labour or materials, federal or provincial taxes, workers' compensation assessments, employment insurance or union dues check off.

For clarity, in this section the term "expenses" includes all legal fees and disbursements.

**26. Assignment** – The Developer shall not assign its rights under this agreement without the written consent of the District, which shall not be unreasonably withheld.

**27. Dispute Resolution** – In the event of a dispute between the Developer and the District regarding this agreement, the parties shall meet and attempt to resolve the dispute. If the parties are unable to resolve the dispute within 45 days after a party first requests a meeting for that purpose, the dispute shall be referred to arbitration pursuant to the *Commercial Arbitration Act* (British Columbia), before a single arbitrator mutually acceptable to the parties or otherwise appointed in accordance with that Act.

**28. Performance Exclusions** - Notwithstanding anything in this Agreement to the contrary, neither party to this agreement shall be deemed to be in default in respect of the performance of any of the terms, covenants and conditions of this Agreement if any failure or delay in such performance is due to any strike, lockout, civil commotion, war-like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain any materials or services or Act of God.

**29. District Representative's Discretion** – Wherever in this agreement the approval of the District Representative is required, some act or thing is to be done to the satisfaction of the District Representative or the District Representative is entitled to form an opinion :

- (a) the approval, opinion or expression of satisfaction shall be made in writing, signed by the District Representative; and
- (b) the approval, opinion or satisfaction shall be made by the District Representative acting reasonably in accordance with generally accepted municipal engineering practice in British Columbia.

**30. No Effect on Powers** – This agreement does not:

- (a) affect or limit the discretion, rights, duties or powers of the District under the common law or any statute, regulation, bylaw or other enactment, nor does it create, or is it the parties' intention to create, any implied obligations regarding such discretion, rights, duties or powers;

- (b) affect or limit the common law or any statute, regulation, bylaw or other enactment applying to the Benefiting Land; or
- (c) relieve the Developer from complying with the common law or any statute, regulation, bylaw or other enactment.

- 31. Regulation of Use of Works** – The use of the Works shall be regulated and managed by the District in accordance with its ordinary jurisdiction over its works and services. Nothing in this agreement entitles the Developer or any person claiming through the Developer to any extraordinary right to use the Works.
- 32. No Representations** – The Developer and the District each acknowledge and agree that the other party has made no representations, covenants, warranties, guarantees, promises or agreements with respect to the subject matter of this agreement, other than those in this agreement.
- 33. Notice** – Any notice which may be or is required to be given under this agreement must be in writing and either be delivered or sent by fax, addressed as follows:

**To the Developer:**

Silver Star Ski Resort Ltd.  
PO Box 3002  
Silver Star Mountain, B.C. V1B 3M1

Attention: Chief Executive Officer  
Fax No.: (250) 542-1236

**To the District:**

Regional District of North Okanagan  
9848 Aberdeen Road  
Vernon, B.C., V1B 2K9

Attention: Administrator  
Fax No.: (250) 550-3701

or to such other address or fax number of which notice has been given as provided in this section. Any notice that is delivered or faxed is to be considered given on the day it is delivered or faxed, provided that in either case if that day is a Saturday, Sunday or B.C. statutory holiday, then the notice will be considered to be given on the next day that is not such a day. If a party changes its address or fax number, or both, it must promptly give notice of its new address or fax number to the other party as provided in this section.

- 34. Interpretation** – In this agreement:
- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
  - (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this agreement;

- (c) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this agreement;
  - (d) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
  - (e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
  - (f) the provisions of s. 25 of the *Interpretation Act* with respect to the calculation of time apply; and
  - (g) where the word “including” is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word “including”.
35. **Further Acts** – Both parties will do all things and prepare and execute all documents necessary to give effect to the intention of this agreement.
36. **Time of the Essence** – Time is of the essence of this agreement.
37. **Waiver** – Waiver of a party of the other party’s default under this agreement will not be deemed to be a waiver of any subsequent default by that party.
38. **Severance** – If any part of this agreement is for any reason held to be invalid by a decision of a court with the jurisdiction to do so, the invalid portion is to be severed and the rest of this agreement will remain valid and in effect.
39. **Schedules** – The following Schedules are attached to this agreement, and such Schedules and all documents referenced therein, form integral parts of this agreement:
- Schedule A – Description of Benefiting Lands
  - Schedule B – Servicing Plans
  - Schedule C – District Allocation Payment Works
  - Schedule D – Mortgage Lands
40. **Governing Law** – This agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia which is deemed to be the proper law thereof.
41. **Enurement** – This agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, as the case may be.

As evidence of their agreement to be bound by the above terms, the parties each have executed this agreement below, under seal.

The Corporate Seal of **SILVER STAR**

**SKI RESORT LTD.** was hereunto

affixed in the presence of:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

)  
)  
) C/S  
)  
)  
)

The Corporate Seal of **REGIONAL**

**DISTRICT OF NORTH OKANAGAN**

was hereunto affixed in the presence

of:

\_\_\_\_\_  
Chair:

\_\_\_\_\_  
Corporate Officer:

)  
)  
) C/S  
)  
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**Schedule A**  
**Benefiting Land**

**Legal Descriptions of Benefiting Lands**

Developer Lands that will benefit from the Vance Creek Water Reservoir are listed as follows:

	<b>Site</b>	<b>Legal Description</b>	<b>Comments</b>
<b>1</b>	Silver Star Controlled Recreation Area	Lease Agreement #33446	Snowmaking, landscaping, etc.
<b>2</b>	Firehall West	Block AD, DL 1355, ODYD	Future Development
<b>3</b>	Snowbird Lodge – Stage 1	KAS 3027, DL 1355, 5262 & 5309, ODYD	Future Redevelopment
<b>4</b>	Snowbird Lodge – Stage 2	Lot B, KAP79848, DL 1355 & 5262, ODYD	Future Development
<b>5</b>	Silver Lode Inn	Lot 5, Plan 36603, DL 1355, ODYD	Future Redevelopment
<b>6</b>	Main Administration Building	Lot A, KAP76316, DL 1355, ODYD	Future Redevelopment
<b>7</b>	Kids Centre	Block AF, DL 1355, ODYD	Future Redevelopment
<b>8</b>	Block H Subdivision	Block AG, DL 1355 & 5346, ODYD	Future Development
<b>9</b>	Firelight Lodge	Block AA, DL 1355, ODYD	Mixed apportionment from Well #12 and Vance Creek
<b>10</b>	Lot E	DL 5334, ODYD	Future Development
<b>11</b>	Remnant of Carpark D	Block AB, ODYD	Future Development
<b>12</b>	MDA Lands	Lease Agreement #33446	Future Development. The service area boundaries will be need to be amended in Bylaw 2191, 2006 to account for future development of MDA Lands

In accordance with Clause 19. e) of this Agreement, the District has the option to acquire 18,000 cubic meters of water from Vance Creek Reservoir to facilitate infill development within the Silver Star Water Utility Service Area.



**Schedule B**  
**Vance Creek Reservoir Servicing Plans & Reports**

**1. EBA ENGINEERING, Project No. 8800253;**

- a. Figures 1-7, 12, 15A, & 16 stamped and dated April 30, 2008; and
- b. Figures 8-11, 13, 17A, 17B, 18, 19A, 19B, 20 & 21 stamped and dated April 29, 2008.

**2. MMM GROUP, Project No. 4353;**

- a. Drawing No. C-001 : Title Sheet dated August 22, 2008;
- b. Drawing No. C-002, Rev. G : Overall Site Plan dated August 23, 2008;
- c. Drawing No. C-003, Rev. E : Vance Creek Reservoir Area Site Plan dated August 23, 2008;
- d. Drawing No. C-004, Rev E : Paradise Reservoir Area Site Plan dated August 23, 2008;
- e. Drawing No. C-005, Rev E : Paradise Reservoir Building Site Plan dated August 23, 2008;
- f. Drawing No. C-010, Rev E : Paradise to Vance Creek Reservoir Plan & Profile (at Paradise) dated August 23, 2008;
- g. Drawing No. C-011, Rev D : Paradise to Vance Creek Reservoir Plan & Profile (at Vance Creek) dated August 23, 2008;
- h. Drawing No. C-012, Rev E : Vance Creek Pump Station Area Site Plan dated August 23, 2008;
- i. Drawing No. C-013, Rev D : Vance Creek Reservoir Outlet Detail dated August 23, 2008;
- j. Drawing No. C-014, Rev D : Vance Creek Raw Water Reservoir Low Level Outlet dated August 23, 2008;
- k. Drawing No. M-000, Rev C : Vance Creek and Paradise Reservoir Water System Schematic dated August 23, 2008;
- l. Drawing No. M-001, Rev D : Vance Creek Reservoir Building Mechanical dated August 23, 2008;
- m. Drawing No. M-002, Rev D : Paradise Creek Reservoir Building Mechanical dated August 23, 2008;and
- n. 2008 Vance Creek and Paradise Reservoir Integration Design Brief dated July – 2008 and the Silver Star Water Supply Integration with RDNO Water System Report dated August 2007.

**Schedule B (Continued)**

**3. PWRCO ENGINEERING LTD., Project No. 08050;**

- a. Drawing No. VCR-E01, Rev. 0 : Vance Creek Reservoir Single Line, Layouts, BOM dated August 05, 2008;
- b. Drawing No. VCR-E02, Rev. 0 : Vance Creek Reservoir Power Ladder, Block Diagram dated August 05, 2008;
- c. Drawing No. VCR-E03, Rev. 0 : Vance Creek Reservoir Schematics dated August 05, 2008;
- d. Drawing No. VCR-E04, Rev 0 : Vance Creek Reservoir PLC Wiring dated August 05, 2008;
- e. Drawing No. PCF-E01, Rev 1 : Paradise Reservoir Single Line, Layouts, Panel Schedule dated August 21, 2008;
- f. Drawing No. PCF-E02, Rev 1 : Paradise Reservoir Block Diagram, Schematics dated August 21, 2008; and
- g. Drawing No. PCF-E03, Rev 1 : Paradise Reservoir PLC Wiring dated August 21, 2008.

**4. K D KETCHEN & ASSOCIATES LTD., Project No. 08-118;**

- a. Drawing No. 08-118-S1, Rev. 0 : Paradise Reservoir Mechanical Building Expansion General Specifications stamped and dated August 15, 2008;
- b. Drawing No. 08-118-S2, Rev. 0 : Paradise Reservoir Mechanical Building Expansion Details stamped and dated August 16, 2008; and
- c. Drawing No. 08-118-S3, Rev. 0 : Paradise Reservoir Mechanical Building Expansion Sections & Doorway Reinforcing Details stamped dated August 16, 2008.

**Schedule C**  
**District Allocation Payment Works**

**The Works referred to in Clause 19. e) of the Servicing Agreement for the Vance Creek Reservoir are a 9% portion of the Works as described in Schedule 'B' of this Servicing Agreement.**

### Schedule D Mortgaged Lands

The legal description of the Mortgaged Lands referred to in Clause 22 is as follows:

**Parcel Identifier:** 027 – 556 – 085

**Legal Description:** Block AG of District Lots 1355 and 5346, Osoyoos Division Yale District.

