

PRIVATE UTILITY RIGHT-OF-WAY AGREEMENT

BETWEEN:

**THE GLENCOE GOLF AND COUNTRY CLUB LTD., a body corporate
having offices at 636 - 29th Avenue S.W.,
in the City of Calgary, in the Province of Alberta
(hereinafter referred to as the "Grantor")**

OF THE FIRST PART

- and -

**ELBOW RIVER ESTATES CO-OPERATIVE LTD., a body corporate
having offices c/o 2200, 250 - 5th Avenue S.W.,
in the City of Calgary, in the Province of Alberta
(hereinafter referred to as the "Grantee")**

OF THE SECOND PART

WHEREAS the Grantor is the registered owner of the Lands;

**AND WHEREAS the Grantee is a water utility, the members of which are the owners
from time to time of the lots of the Subdivisions situated adjacent to the Lands;**

**AND WHEREAS the Wells providing the source of the Grantee's water supply and
other portions of the Water System required to service the Subdivisions are located on the Grantor's
lands;**

**AND WHEREAS the Water System was constructed by the original developer of the
Subdivisions and is now owned and operated by the Grantee;**

**AND WHEREAS there is located in the Right-Of-Way Lands certain portions of the
Water System, the TransAlta Power Lines and the Abandoned Gas Line;**

**AND WHEREAS the Grantee has contracted with TransAlta Utilities Corporation for
power to operate its Water System, which power is to be transmitted in part through the TransAlta
Power Lines;**

**AND WHEREAS the Grantor has, subject to the terms and conditions hereinafter
contained, agreed to grant and convey unto the Grantee an easement of right-of-way under, through
and within the Right-of-Way Lands together with certain rights in connection with the maintenance
and operation of that portion of the Grantee's Water System located within, upon, under or adjacent
to the Right-of-Way Lands.**

**THIS AGREEMENT WITNESSETH that in consideration of the sum of \$10.00 paid
by the Grantee to the Grantor (receipt whereof is hereby acknowledged) and of the mutual covenants,
conditions and stipulations herein contained the parties hereto covenant and agree each with the other
as follows:**

ARTICLE 1
DEFINITIONS

1.1 In this Agreement, including this clause, and all of the recitals hereto, the following words and phrases shall have the meaning set out unless the context otherwise requires;

- (a) "Abandoned Gas Line" means that gas transmission line which was laid in the Right-Of-Way Lands by Canadian Western Natural Gas Company Limited and which has now been disconnected;
- (b) "Auxiliary Well" means the existing producing water well Number 75-01-30-04, owned by the Grantee, including the casing installed therein, located adjacent to and approximately 124 feet west of the Original Well, licensed pursuant to water well License dated April 29, 1986 issued by the Province of Alberta (file 16462);
- (c) "Auxiliary Well Transmission Pipeline" means the existing 2" pipeline owned by the Grantee connecting the Auxiliary Well to the Pumphouse;
- (d) "Co-op Power Lines" means the underground cables owned by the Grantee extending from the Transformers to the Pumphouse and to the Auxiliary Well and which provide 120/240 volt 3 Ø power for the operation of the submersible pumps located in the casing of each of the Wells;
- (e) "Dominant Tenement" means each of those lots contained in the Subdivisions in respect to which the Lands shall constitute the Servient Tenement;
- (f) "Grantee" shall mean the Elbow River Estates Co-Operative Association Ltd., a corporation formed under the Co-Operative Associations Act (Alberta) by Memorandum of Association dated the 29th day of April, 1977 and continued under the Rural Utilities Act (Alberta), and shall include its successors and assigns;
- (g) "Grantor" shall mean The Glencoe Golf and Country Club, a company formed under Part 9 of the Companies Act (Alberta) by Memorandum of Association dated 31st January, 1984 and shall include its successors and assigns and any successor in title to The Glencoe Golf and Country Club to the Lands and any successor to the successor in title to the Lands;
- (h) "Lands" shall mean those lands and premises, situated and being in the Province of Alberta and legally described as Plan 8510485, Block Fifty (50), containing 136.75 hectares (337.9 acres), more or less, excepting thereout all mines and minerals;
- (i) "Original Well" means the existing producing water well Number 75-01-30-01 owned by the Grantee, including the casing installed therein, licensed pursuant to water well License dated April 29, 1986 issued by the Province of Alberta (file 16462);
- (j) "Pumphouse" shall mean the concrete block structure owned by the Grantee located at the northerly end of the Right-Of-Way Lands enclosing the Original Well, the wellhead and all mechanical and electrical equipment relating thereto;
- (k) "Right-Of-Way" shall have the meaning ascribed to it in clause 2 herein;
- (l) "Right-Of-Way Lands" shall mean that portion of the Lands contained within the Utility Right-Of-Way shown on Plan 7510836 filed in the Land Titles Office for the South Alberta Land Registration District at Calgary, Alberta, a copy of which is attached as Schedule "A" attached hereto;

- (m) "Seryient Tenement" shall mean the Right-Of-Way Lands and any portion of the Lands adjacent thereto within, upon or under which the Water System or any part thereof is presently situated, in respect to which each of those lots contained in the Subdivisions shall constitute the Dominant Tenement;
- (n) "Subdivisions" shall mean lots One (1) to Thirty-One (31) inclusive, Plan MD Rockyview 7510835 and lots Thirty-Two (32) to Fifty-Three (53) inclusive, Plan Elbow River Estates 7910905;
- (o) "TransAlta Power Lines" means the two primary cables owned by TransAlta Utilities Corporation, each energized at 14,400 line-to-ground resulting in 25,000 volt line to line which provide voltage to the Transformers, which extend from the South boundary of the Grantor's Lands to the Transformers and with respect to which the Grantor has granted to TransAlta Utilities Corporation an Easement For Right-Of-Way registered in the Land Titles Office for the South Alberta Land Registration District at Calgary, Alberta on November 10, 1986 as number 861186016;
- (p) "Transformers" means the 2-15 KVA step-down transformers owned by TransAlta Utilities Corporation contained within a steel container measuring 7' long, 5' wide and 4' high, situated approximately 10 feet west from the Pumphouse upon a concrete pad measuring approximately 8' long and 6' wide;
- (q) "Transmission Lines" shall mean collectively the Water Transmission Pipelines, the Auxiliary Well Transmission Pipeline and the Co-op Power Lines;
- (r) "Water Transmission Pipelines" means the 3" and the 6" water lines lying within the Right-Of-Way Lands extending from the Pumphouse to the boundary of the Grantors Lands;
- (s) "Water System" means the Wells, the Transmission Lines, the Pumphouse and the Transformers;
- (t) "Wells" shall mean the Original well and the Auxiliary Well.

ARTICLE 2 RIGHT-OF-WAY

2.1 The Grantor, as registered owner of the Lands, on its behalf and on behalf of its successors and assigns and its successors in title, hereby grants and conveys unto the Grantee and to the owners of the lots in the Subdivisions and their successors in title, in common with the Grantor, its contractors, subcontractors, officers, agents and workmen, subject to the terms and conditions hereinafter set forth:

- (a) the right of an easement of right-of-way under, through and within the Lands contained within the Utility Right-Of-Way Plan 7510836 as shown on Schedule "A" attached hereto (herein referred to as the "Right-of-Way") for the maintaining, inspecting and operating the Transmission Lines laid under, through and within the Right-Of-Way Lands or portions of the Lands adjacent thereto and any replacement lines (which shall not exceed the capacity or size of the existing lines) for the sole purpose of providing water for domestic use to the lots in the Subdivisions;
- (b) the right, in connection therewith, to maintain, inspect and operate the Wells; and
- (c) the right, in connection therewith, to maintain, inspect and operate the Pumphouse and Transformers;

the said rights being subject to the following terms and conditions which are hereby agreed to by and between the Grantee and Grantor and it is understood that the Right-Of-Way shall specifically extend to and encompass the Auxiliary Well, the Auxiliary Well Transmission Line and the Co-op Power Lines. In exercising any such rights the Grantee shall have the absolute obligation and duty to prevent the escape of water from the Water System onto or under the surface of the Lands.

2.2 The Right-Of-Way hereby granted shall be for such length of time as the Water System is required by the Grantee.

2.3 The Grantee, subject to the pre-conditions set out in clauses 2.5 and 2.6, its contractors, subcontractors, officers, agents and workmen shall have the right of ingress, egress and to pass and re-pass on the Right-Of-Way Lands either on foot or by means of vehicles or necessary machines, and to remain on the Right-of-Way Lands for the purposes of taking up, re-laying, connecting, disconnecting, repairing, maintaining, inspecting and operating the Transmission Lines.

2.4 The Grantee in carrying out any of the aforesaid operations will do so in a good and workmanlike manner and will cause or do as little damage and inconvenience to the owner, occupier or other user of the Lands as is possible, including, without restricting the generality of the foregoing to the holder of any easements, license, lease or other right granted by Grantor or to any member, employee, contractor, subcontractor, officer, agent or workmen of any of the foregoing, and any excavations made on the Lands shall be filled in, any workings placed on the Lands shall be removed and the Lands restored to their former condition all at the expense of the Grantee. Without limiting the generality of the foregoing, the restoration, repair or replacement of any landscaping, hardsurfacing, grass, sand traps, irrigation and water lines, power lines (including the TransAlta Power Lines) water courses or other works (including the Abandoned Gas Line) on or off the Right-Of-Way Lands which are damaged by the Grantee shall be included in the aforesaid obligation of the Grantee. Any excavation shall be protected by suitable covering to prevent injury to persons or damage to vehicles, machinery and equipment using the golf course or working on the Lands.

2.5 Notwithstanding the provisions of clauses 2.1 through 2.4 inclusive, the Grantee shall, prior to exercising any right, notify the Grantor of its intention to exercise such right. In the event that any repairs are required to the Water System or any part thereof, the Grantee shall consult with the designated representative of the Grantor as to the work involved. In the event of any work being required which would entail a disturbance of Lands or any part thereof such work shall, after consultation with the Grantee, be performed by the Grantor at the expense of the Grantee. Should the Grantor fail to commence work within six hours of receiving the Grantees approval to the work and cost thereof, the Grantee shall have right to have such work done by others in accordance with the terms and conditions of this Agreement. In the event the Grantor is of the opinion that repairs to the Water System are required immediately in order to prevent or reduce damages to the property of the Grantor and the Grantor is unable within a reasonable period of time to consult with or obtain the approval of the Grantee to the work and cost thereof the Grantor shall have the right to proceed with the repairs or cause such repairs to be made at the expense of the Grantee. Each of the parties hereto shall have the right to have a designated representative present during the performance of the work.

2.6 The Grantee shall have access to the Pumphouse and Transformers located on the Right-Of-Way Lands for the purpose of inspection, repair and maintenance from time to time. Reasonable access shall be mutually agreed on by the Grantor and Grantee. The Grantee shall from time to time designate in writing to the Grantor its representative, who shall obtain the prior consent of the Grantor for entry onto the Right-Of-Way Lands and shall be accompanied by a representative of the Grantor, at the Grantor's discretion. The Grantor shall be provided emergency access to the Pumphouse.

2.7 The Grantee acknowledges that the Grantor's fairways, irrigation and waterlines, water courses, power lines, cart paths, sand traps and other improvements may cross or be situated in, on or under the Right-Of-Way Lands. The Grantor's obligations with respect to any damage

caused by the Grantor to the physical assets of the Grantee's Water System located on or under the Right-Of-Way Lands as a result of its use of such improvements shall be limited to the repair thereof. The Grantor shall not be responsible, unless caused by the Grantor's, its agent's, employee's or invitee's, gross negligence or wilful misconduct, for any damages caused to the Grantee or to its members by reason of any interruption in the supply of water service to the Subdivisions. The Grantee shall assume the entire risk of ensuring that water delivered through the Water System is potable. The Grantee in turn shall compensate the Grantor for any damage caused to the Grantors improvements as a result of the Grantees use of its Water System and to hold harmless the Grantor therefore and in particular, without restricting the foregoing, shall compensate the Grantor for any damage to the Grantor's improvements whether on or off the Right-Of-Way Lands, resulting from any escape of water from the Water System within, upon or under the Lands.

2.8 In the event the Grantee is of the opinion that the Transmission Lines, or any one of them requires replacement, they shall prepare a proposal with full particulars to be given to the Grantor who shall, at the Grantee's expense, upon receipt of a bond, bank letter of credit or guarantee for all costs, perform the work of replacement at a mutually agreeable time so as to interfere as little as possible with the Grantors use of the Lands and also to facilitate the Grantee's needs. Any replacement of any one or more of the Transmission Lines shall be located below the surface of the Lands within the Right-Of-Way Lands and shall not interfere with the Grantors improvements or the improvements of third parties located within, upon or under the Lands.

2.9 Replacement of the Pumphouse or Transformers shall be done at the Grantee's request by the Grantor or mutually agreed upon contractors at the Grantee's expense. Any replacement of the Pumphouse or Transformers must be in accordance with the colour and design of other golf course structures.

2.10 In the event that:

- (a) the Grantee voluntarily winds up its affairs;
- (b) the Grantee becomes bankrupt;
- (c) the Grantee is dissolved;
- (d) a receiver is appointed in respect of the Grantee's assets;
- (e) the Grantee fails to remedy any default under the Agreement within thirty (30) days after receipt of written notice of default from the Grantor;
- (f) the Grantee ceases to use the Water System for a period in excess of three (3) months, other than for reasons of repair or maintenance; or
- (g) the Water System is abandoned;

the Right-Of-Way and other rights and benefits granted hereunder shall terminate and be null and void. The Grantee shall forthwith execute and register at the Grantee's expense such instruments as may be required to discharge this Private Utility Right-Of-Way Agreement and any Caveat filed with respect thereto against the Lands. The Grantee shall be responsible for removing from the Grantor's Lands the Water System, or such part thereof, as the Grantor requests, which work shall be done by the Grantor or mutually agreed upon contractors at the Grantee's expense.

2.11 In the event that outside contractors are required or determined to be desirable by the parties, the Grantor and Grantee shall jointly enter into such contract. Such contract shall provide, inter alia, for the work to be done at the expense of the Grantee; for indemnities and insurance coverage to be provided to the Grantor at Grantee's expense for injury to persons or damage to property of the Grantor by the contractors, its subcontractors, officers, agents or employees; for

access to the Right-Of-Way Lands; for the same protection to the Grantor as is provided for in clause 2.4; and such other provisions as the parties, acting reasonably, may require. The Grantee shall compensate the Grantor for its out of pocket expenses in connection with the preparation and administration of the contract.

2.12 It is understood and agreed that this grant does not extend to the right to drill additional wells or place additional facilities on the Grantor's Lands unless done with the consent of the Grantor in writing; the granting of such consent being in the Grantors sole discretion.

2.13 The Grantee will indemnify and save harmless the Grantor from and against all claims, damages, debts, dues, suits, actions and causes of actions, costs or sums of money that the Grantor may suffer or be put to by reason of anything done or not done by the Grantee in the exercise or failure to exercise of the rights and privileges herein granted.

2.14 The Grantee shall at all times maintain general liability insurance with limits not less than two million dollars inclusive for bodily injury, death and damage to property including loss of use thereof (with a deductible of five hundred dollars) caused by the Grantee, its contractors, subcontractors, officers, agents or employees by reason of the operation, maintenance, repair or replacement of the Water System or by reason of any escape of water from the Water System or any part thereof. The Grantee shall provide to the Grantor upon execution of this Agreement and fifteen days prior to the expiry of any policy of insurance, a certificate of insurance evidencing such insurance or any renewal thereof.

2.15 The Grantor shall at all times maintain general liability insurance with limits not less than two million dollars inclusive for bodily injury, death to any person or damage to property including loss of use thereof (with a deductible of five hundred dollars) caused by the Grantor, its contractors, officers, agents or employees. The Grantor shall provide to the Grantee upon execution of this Agreement and fifteen days prior to the expiry of any policy of insurance, a certificate of insurance evidencing such insurance or any renewal thereof.

2.16 The Grantee will indemnify and save harmless the Grantor from and against any taxes, assessments or liens imposed upon the Grantor or the Lands by reason of the granting of this Agreement or the placing and maintaining of the Water System upon the Lands of the Grantor.

2.17 Any provision herein found or made void or unenforceable by any court under law shall not void or render unenforceable the remaining provisions hereof.

2.18 The rights, privileges, covenants and easements granted and the restrictive covenants and conditions made herein shall run with and be legally annexed to each of the lots forming part of the Subdivisions and shall extend to and enure to the benefit of and be binding upon the parties hereto, their successors and assigns and the Grantor and owners of the lots in the Subdivisions, respectively and their successors in title.

2.19 The rights, privileges, covenants and easements hereby granted shall not be extinguished in the event that title to or ownership of the Lands or the lots in the Subdivisions shall be vested in the same person. The successors entitled to such Lands or the lots in the Subdivisions shall be and remain bound to and in respect of the rights, privileges, covenants and easements hereby granted and entitled to the benefits thereof as rights, privileges and obligations which are created under and by virtue of this Agreement.

2.20 The Grantor and Grantee hereto further agree that the rights, privileges, covenants and easements hereby granted shall only be extinguished by both parties agreeing in writing.

2.21 This Agreement and the covenants herein contained are and shall be covenants running with the Right-of-Way Lands.

2.22 For the purposes of this Agreement and the Right-of-Way herein granted, the Lands shall, in respect to each of the lots contained in the Subdivisions, be the Servient Tenement and the lots contained in the Subdivisions shall in respect to the Lands, be the Dominant Tenement.

2.23 The parties hereto covenant and agree on their own behalf and on behalf of their respective successors and assigns, to execute such other and further documents as shall be required from time to time to better perfect this Agreement.

2.24 The Grantee shall have the right to register this Agreement in the Land Titles Office of the South Alberta Land Registration District as a Right-Of-Way Agreement against the Right-Of-Way Lands and by way of caveat against the Lands with respect to the easement relating to the Auxiliary Well, the Auxiliary Well Transmission Line and the Co-op Power Lines.

2.25 Except as hereinafter provided, any notice or communication sent by the Grantor to the Grantee or by the Grantee to the Grantor pursuant hereto shall be in writing addressed to the Grantor or the Grantee at their respective addresses set forth under their respective names on page 1 of this Agreement, or to its registered office from time to time as shown on the files of the Registrar of Corporations, Province of Alberta, and shall be deemed to be effective notice if delivered personally or when sent by registered mail; provided, however, in the case of emergencies notices may be given orally in person, or by telephone to any one of the following designated representatives:

If to the Grantor:

- (a) the General Manager;
- (b) the Golf Director; or
- (c) the Grounds Superintendent.

If to the Grantee:

- (a) the President; or
- (b) the Secretary;

or such other person as either party may advise the other party in writing from time to time.

Each of the parties shall notify each other from time to time of the names of its designated representatives and their respective telephone numbers.

IN WITNESS WHEREOF the Grantor and the Grantee has hereunto caused their respective corporate seals to be affixed, attested by the hand of their proper officers in that behalf, at the City of Calgary, in the Province of Alberta this 25th day of July, 1989.

THE GLENCOE GOLF AND
COUNTRY CLUB LTD. (GRANTOR)

Per: _____

ELBOW RIVER ESTATES
CO-OPERATIVE LTD. (GRANTEE)

Per: _____

