

Refer to: B.A. Sjølie
Direct Line: (780) 497-4818
E-mail: bsjolie@brownleelaw.com
Your File #:
Our File#: 48,989-001/BAS

Please refer to the Edmonton address

May 7, 1999

TOWN OF CANMORE **BY COURIER**
600 - 9th Street
Canmore, Alberta
T1W 2T2

ATTENTION: Mr. Glenn Pitman, CAO

Dear Sir:

RE: Indemnity Agreement – Undermining Liability

We confirm that the Indemnity Agreement has now been executed by the Provincial Treasurer and we enclose herein a photocopy of the signed Agreement. We will keep the original copy on our file.

We trust the foregoing is satisfactory.

Yours truly,

BROWNLEE FRYETT

PER: 

BARRY A. SJØLIE
BAS/bn Encl.

**TOWN OF CANMORE
RECEIVED**

MAY 9 8 1999

Mayor _____
C.A.O.  _____ C. _____
Finance _____ M. _____
Plan _____

INDEMNITY AGREEMENT

made ^{MAY 5}~~April 16~~, 1999

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA,
as represented by the Provincial Treasurer
(the "Province")

AND:

TOWN OF CANMORE
("Canmore")

The Alberta Natural Resources Conservation Board has approved the development of certain lands within Canmore on certain conditions, including the condition that undermining issues be addressed to Canmore's satisfaction. Canmore has been reluctant to consider approval of development of the lands because of potential liability on its part in relation to undermining of the lands. The Province, in order to facilitate development of the lands by providing a measure of comfort to Canmore, has agreed to grant this indemnity.

Now therefore in consideration of one dollar and other valuable consideration from Canmore, the Province grants the following indemnity, on and subject to the following terms and conditions:

1. Definitions - In this Agreement:

- (a) The expressions "**Canmore's Agents**", "**Development**", "**Designated Land**", and "**Undermining and Related Conditions**" have the meanings ascribed to those words by the *Canmore Undermining Indemnity Regulation* made under the *Financial Administration Act* (Alberta); and
- (b) "**Losses**" means any liabilities, losses, costs, damages, legal fees (on a solicitor and client basis), disbursements, fines, penalties and expenses reasonably paid or incurred by Canmore or Canmore's Agents in consequence of a claim against Canmore or any of Canmore's Agents:

- (i) that arise during development on the Designated Land or that arise from the use of the Designated Land as a result of Development on the Designated Land, and
- (ii) that are directly or indirectly caused by the Undermining and Related conditions in respect of the Designated Land.

2. Indemnity - The Province agrees to indemnify Canmore and Canmore's Agents against any Losses.

3. Notice of Claims - Canmore undertakes that, upon becoming aware of any claim or pending or threatened claim that may involve Losses, it will promptly give the Province notice of the claim or pending or threatened claim, including all available particulars. After giving such notice, Canmore will promptly notify the Province of all significant developments in relation to the claim or pending or threatened claim.

4. Handling of Claims - The Province may at any time at its option, by notice to Canmore, assume exclusive handling of any claim against Canmore that may involve Losses, including carriage in the name of and on behalf of Canmore of any legal actions or proceedings against Canmore. In that event:

- (a) Canmore agrees to fully cooperate with and assist the Province's handling of the claim, and to that end to procure the cooperation and assistance of Canmore's Agents as reasonably required from time to time by the Province (including but not limited to supplying witnesses as reasonably required for the defence of the claim);
- (b) The Province will keep Canmore advised of all significant developments in relation to the claim;
- (c) The Province may consult with Canmore from time to time regarding strategic decisions in relation to the claim, but the Province is exclusively entitled to make such decisions in relation to the claim and any proposals for settlement of the claim;
- (d) Canmore will not:
 - (i) publicly comment on or express an opinion on the merits of the claim;
 - (ii) settle or offer to settle the claim; or

- (iii) in any other way interfere with the Province's exclusive handling of the claim;
and will similarly instruct Canmore's Agents;
- (e) The Province, after consulting with the Town, will be entitled to select and retain legal counsel to act for Canmore in respect of the claim, which legal counsel may also act for the Province if the Province is a party to the same proceedings or matter;
- (f) From the time the Province assumes carriage of the claim, the Province will be exclusively responsible for:
 - (i) all legal costs incurred in the defence of the claim; and
 - (ii) any award of court costs; and
- (g) If the claim is or becomes the subject of legal proceedings that also involve causes of action or proceedings against Canmore that are not indemnified by this Agreement, and if the proceedings cannot reasonably be severed, then notwithstanding any other clause of this section 4 the Province and Canmore shall jointly and cooperatively conduct the carriage of the proceedings in a manner that reflects their respective legitimate interests.

5. Claims Against Canmore's Agents - In the case of a claim against any of Canmore's Agents, Section 4 of this Agreement applies, with such changes as are necessary to the context, and, notwithstanding any other provision of this Agreement:

- (a) The Province is entitled to assume carriage of a claim against any of Canmore's Agents only with their prior written permission and instruction to do so;
- (b) If the Province requests written permission and instruction from any of Canmore's Agents under clause (a), and if any of Canmore's Agents fail to provide such written permission and instruction in a timely manner, then this Indemnity Agreement shall not apply to any Losses incurred by them after notice to that effect is served upon Canmore by the Province;
- (c) The Province may, as a precondition to making any payment under this Agreement to any of Canmore's Agents, require that the payee agree in writing to be bound by the provisions of this Agreement; and
- (d) The Province is obligated to indemnify Canmore's Agents only to the extent that:

- (i) they acted honestly and in good faith; and
- (ii) in the case of a criminal or administrative action or proceeding enforceable by a monetary penalty, they had reasonable grounds for believing that their conduct was lawful.

6. Payment - The Province will promptly reimburse Canmore and Canmore's Agents for all Losses upon receipt of such documentation of the Losses as the Province may reasonably require in order to establish that the Losses are indemnified by this Agreement.

7. Subrogation - Upon the Province paying any Losses under this Agreement, the Province shall be subrogated to any claim that Canmore or Canmore's Agents, as the case may be, may have against any third party in respect of those Losses; and upon request by the Province, Canmore and Canmore's Agents shall assign any such claim or the applicable portion thereof.

8. Notices - Any notice under this Agreement must be in writing and is effective when delivered by any means, including fax transmission, to the following respective addresses:

- (a) in the case of the Province:

Alberta Treasury
Loans and Guarantees
401 Terrace Building
9515 - 107 Street
Edmonton, Alberta
T5K 2C3
Attention: Deputy Provincial Treasurer
fax # (403) 422-0981

- (b) in the case of Canmore:

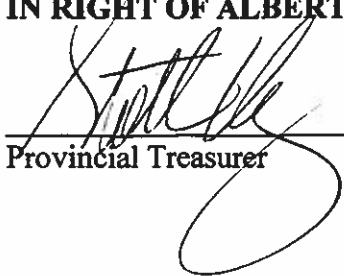
Town of Canmore
600 - 9th Street
Canmore, Alberta
T1W 2T2
Attention: Glenn Pitman
fax # (403) 678-1524

The Province and Canmore have therefore signed this Agreement (or have each signed a counterpart of this Agreement, in which case such counterparts together constitute one agreement), each by its duly authorized officer.

**HER MAJESTY THE QUEEN
IN RIGHT OF ALBERTA**

Date: MAY 5, 1999

Per:


Provincial Treasurer

TOWN OF CANMORE

Date: April 16, 1999

Per:


Signature

Ron Casey
Name

MAYOR
Office Held

Per:


Signature

G. Pirman
Name

C.A.O
Office Held