

5/2/80

WATER RIGHTS GUARANTEE AGREEMENT

AGREEMENT made this 23rd day of May, 1980.

B E T W E E N:

HORSESHOE VALLEY LIMITED, an Ontario Corporation duly incorporated under the laws of the Province of Ontario,

hereinafter referred to as "Horseshoe Valley"

-and-

THE CORPORATION OF THE TOWNSHIP OF MEDONTE

hereinafter referred to as "Medonte"

-and-

SALVIL INVESTMENTS LIMITED,

hereinafter referred to as "Salvil"

WHEREAS Horseshoe Valley Limited is the owner of certain wells located on the lands described in Schedule "A" to this Agreement, having a flow of water certified to the said Horseshoe Valley by Ian D. Wilson and Associates Limited of 850 Imperial gallons per minute.

AND WHEREAS the water from such wells constitutes the water supply to the Cross Country Lodge and principal lodge of Horseshoe Valley, its subsidiary buildings, the Cedar Hills Road condominiums, and all houses, condominiums, inns, hotels and facilities heretofore constructed or to be constructed on any lands of Horseshoe Valley and for the single family domestic use of the houses now constructed or hereafter to be constructed on Plan 1587 in the Township of Oro and Plans 1531, M-10, M-11, and M-23 located in the Township of Medonte, as well as the water supply for the snow making and grass watering equipment on Horseshoe Valley Ski Hills and Golf Course, and all other projects and undertakings of Horseshoe Valley.

AND WHEREAS there has been installed by Horseshoe Valley and Salvil, an in-ground water system as shown outlined in red on Schedule "B" herein, to service the said Plans in the Township of Medonte and the said Plan in the Township of Oro, inter alia.

AND WHEREAS Horseshoe Valley and Salvil are desirous of Medonte assuming certain water mains, pumps, connections and services (the system) now owned by Salvil and Horseshoe Valley and operated by Horseshoe Valley, being that part of the system better shown and described in red ink on Schedule "B" attached hereto.

AND WHEREAS the owners of the lands in Registered Plans 1531, M-10, M-11 and M-23 (the owners) serviced by such water mains, pumps, connections and services now operated by Horseshoe Valley have petitioned the Corporation of the Township of Medonte (Medonte) that certain improvement work be undertaken by Medonte as a Local Improvement under the provisions of the Local Improvement Act, Chapter 255, R.S.O. 1970, Section 11 (the Act) and Medonte deems it expedient that such system as shown on Schedule "B" outlined in red and as improved under the Local Improvement petition, be dedicated to Medonte and title thereto transferred as hereinafter provided and the local improvements petitioned be constructed.

AND WHEREAS such works form but part of the total water works system operated by Horseshoe Valley as described above.

AND WHEREAS Medonte has requested and Horseshoe Valley has agreed to give security by this Agreement for the supply of water into the system and for the due operation and performance of

those portions of the system upon which the dedicated and assumed mains, pumps and connections and the local improvements contemplated rely or will hereinafter rely.

NOW THEREFORE THIS AGREEMENT WITNESSETH:

1. (a) Horseshoe Valley and Salvil hereby dedicate and the Township of Medonte hereby, subject to the completion of the local improvement works shown outlined in yellow on Schedule "B", hereby accepts and assumes, subject to the provisions of this Agreement, the water system as shown outlined in red on Schedule "B" attached hereto, as improved and added to by local improvements.

Notwithstanding this dedication and assumption, it is clearly understood that it shall continue to be the responsibility of Horseshoe Valley to operate the entire system without remuneration other than payment by owners for water supplied to the system as hereinafter provided. Horseshoe Valley and Salvil shall be responsible to repair, maintain and replace all capital components of the system as required.

The words "system" and "entire system" used in this Agreement and particularly in this paragraph, refer to the existing water system shown outlined in red on Schedule "B" attached, as constructed and installed, and the local improvement work outlined in yellow on Schedule "B", to be installed and constructed in accordance with the Plans and Specifications approved by the Township and its Engineer. The responsibility of repair and replacement herein shall not extend to improving, adding to or changing the said "system" to meet the requirements of any changed municipal or governmental regulations or standards arising out of changes in technology or otherwise.

(b) Horseshoe Valley hereby grants to the Corporation of the Township of Medonte all such water rights and privileges of every kind and description which it now has, as shall be required to adequately meet the domestic needs of the single family homes now or hereafter constructed upon Plans 1531, M-10, M-11, and M-23 and covenants and agrees with Medonte that the same shall, from this date, be dedicated to the supply of water equally to the existing operation now carried on by Horseshoe Valley and the said single family residential premises, and Cedar Hills Road condominium development, <sup>4 PINE RIDGE SKI RESORT.</sup> all in the Township of Medonte and Plan 1587, Township of Oro, and, provided such supply shall be certified by a competent Hydrologist to be sufficient from time

to time for maintaining the domestic requirements to which it is hereby dedicated, then such surplus flow as may be certified to remain may be dedicated to such additions and expansions as such water supply shall be sufficient to supply, upon filing with Medonte a copy of the certificate of said competent Hydrologist so certifying

Horseshoe Valley reserving unto itself both the right to all such surplus flow and the operation of the total water system.

2. The installation of the works shown in Schedule "B" outlined in yellow, which Schedule is hereby incorporated into and forms part of this Agreement, as a local improvement under the Act shall be accomplished in the manner and for such cost as may be agreed between Medonte and Salvil upon tender and shall be charged to the owners as provided in the Act and shall not be included in the cost base of Horseshoe Valley for purposes of setting any rate applicable to water purchased by the owners.

3. The rate for domestic water supply, hereinafter to be charged by Horseshoe Valley to the owners of lands serviced in the Township of Medonte as above, shall be the rate charged in the base year 1980 adjusted as hereinafter provided.

It is agreed that the charge for 1980 per dwelling unit collected by Medonte is \$90.00 per year, of which, \$5.00 is retained by Medonte to cover its collection costs and \$85.00 per dwelling unit is paid to Horseshoe Valley.

It is agreed that Medonte shall continue to collect Horseshoe Valley's charges for water with its tax levy and shall remit not less frequently than annually, the monies so collected, to Horseshoe Valley.

It is agreed that the Township may adjust its collection charge as it shall be required by administrative cost fluctuations.

It is further agreed that the monies to be received by Horseshoe Valley for the supply of water shall be adjusted annually to increase or decrease by that proportion by which the hydro electric power rates (or other source of power which may be used to provide water pumping services) change from those costs incurred by Horseshoe Valley for such pumping in the calendar year 1980.

Notwithstanding the foregoing, the percentage increase shall not be higher than the percentage increase in the cost of living as indexed by Statistics Canada during the calendar year preceding such water billing, i.e., for the year 1981, the increase in water charges will be the lesser of the percentage increase in hydro rates in 1980 over rates in 1979 or the increase in the cost of living as indexed by Statistics Canada, over the calendar year 1980 expressed as percentage.

REPAIR DUE TO ACTS OF GOD AND QUEEN'S ENEMIES, ETC.

Further, notwithstanding the foregoing, in the event that Horseshoe and Salvil shall be required to repair or replace the system or any part thereof by reason of damage caused by war, Acts of God or Queen's enemies, civil commotion, riot, explosion, insurrection or acts of vandalism or other casualty, then in every such event, the cost of such repair, amortized over the appropriate period, shall be added to the water charges in addition to the adjustment for the charges of the supply of water referred to above and notwithstanding any limitations placed on such adjustment above.

4. Medonte shall be advised by Horseshoe Valley of any adjustment in water rates to be charged by Horseshoe Valley prior to the Township preparing and mailing its water bills in any year. In the event that there is a dispute as to the proper adjustment of water charges, the chartered accountants from time to time appointed by Horseshoe Valley and Medonte respectively, shall agree between them the proper adjustment of charges to the owners provided that if such accountants cannot agree, they shall together, within ten(10) days of demand by either party, appoint a third chartered accountant whose decision shall be final. Provided further that upon the failure of either party to act, the party demanding may, ten(10) days after notice of intention so to do, appoint such third accountant.

5. There shall be no charge made to Medonte for water supplied for fire fighting, road cleaning or cleaning or testing of the system or like operations as may from time to time be required of the Municipality.

6. Horseshoe Valley and Salvil Investments Limited shall protect and hold Medonte harmless from and against all claims, liens, charges, suits or damages made, brought or claimed against Medonte directly or indirectly arising out of its ownership of the system including local improvements or the conduct of the operation for water supply by Horseshoe Valley, including any legal costs to which Medonte may be put to defend against any such claims, liens, charges, suits or damages, provided such claims do not arise from the default of Medonte in the maintenance and/or operation of any part of the system as it shall have elected to maintain and operate or from the Township having prevented Horseshoe Valley by its act or omission from properly maintaining or operating the system or any part thereof.

7. Horseshoe Valley, by this Agreement hereby covenants and agrees, on the terms herein provided, to supply water to the Medonte portion of the water supply system operated by Horseshoe Valley, which portion is shown outlined in red and yellow on Schedule "B" hereto attached.

It is acknowledged that the wells to provide such system and the mains from the wells, pumps and storage reservoir traverse land owned by Horseshoe Valley in the Township of Oro. Medonte shall be entitled to register a notice on Horseshoe Valley lands, that it has an interest in the water supply emanating from such lands under the provisions of this Agreement. Further, should a bona fide question arise as to the title of Horseshoe Valley to the water supply, Medonte shall be



entitled to demand and Horseshoe Valley shall forthwith deliver, easements to a width of five(5) feet on one side and fifteen(15) feet on the other side of the relevant water mains shown outlined in green on the sketch attached as Schedule "B", in the form attached hereto, which Medonte shall be entitled to cause to be registered and which would permit Medonte access to the water mains, wells and reservoirs over those areas approximately as shown in green on Schedule "B", for the purpose of maintaining, repairing or otherwise securing a continued supply of water to the Medonte section of the sytem as is dedicated hereunder and constructed by local improvement as per Schedule "B" attached.

It is further understood and agreed that in the event such easements shall reserve the privilege to Horseshoe Valley at any time and from time to time, to relocate water mains, pumping facilities, and/or water storage reservoirs, at its own expense, provided that such relocated facilities shall serve the Medonte system as well as those facilities now constructed and easements covering all such relocations shall be delivered to the Township, which it shall be entitled to cause to be registered, whereupon it shall release the easements or sections of the easements being so replaced.

8. NOTWITHSTANDING anything contained in this Agreement, Medonte shall not be obliged to retain title to the system and to the easement on which it is or shall be installed, until completion of the local improvement work outlined in yellow in Schedule "B", the Agreement continuing an executory contract until such local improvement as is contemplated hereunder is completed to the satisfaction of the Medonte Township Engineer and such Engineer has so certified to Medonte.

9. IT IS distinctly declared that nothing in this Agreement

shall be taken as constituting Horseshoe Valley, the agent of Medonte, for any purpose by implication or otherwise or from any position or situation of the parties at any time, it being clearly understood and agreed that the express contracts, covenants and agreements contained herein and made by Medonte with Horseshoe Valley are and shall be the only contracts, covenants and agreements upon which any rights against Medonte or Horseshoe Valley may be founded and any other rights or obligations are to be and shall be contained in corporate written contracts under seal, to the extent that such be required or intended.

10. No waiver of exercise of its rights by Medonte and no condoning, excusing or overlooking, whether by the Council of the Corporation of the Township of Medonte or any agent acting on its authority from time to time, of any breach, default or omission or commission of a material obligation hereunder shall be taken to operate as a waiver of any provision of this Agreement nor to defeat or prejudice in any way the right of Medonte to rectify, implement or enforce its rights hereunder, it being the intention of this Agreement that Horseshoe Valley be afforded the widest latitude in the operation of the total system consistent with the protection of Medonte and of the owners.

11. Horseshoe Valley, its employees and representatives, shall at all times comply with any applicable laws, ordinances, statutes, rules and regulations, federal, provincial and municipal, relating in any way to the operation and maintenance of the water system, procuring at its own expense all inspections, licenses, permits and certifications required from time to time, including deposits if any, required to permit the performance of any work or the operation of any vessel, pump or storage

facility in and about the water system.

12. ANY NOTICE or communication required or intended to be given hereunder may be served personally on Horseshoe Valley

at:           Box 10,  
              Horseshoe Valley,  
              R.R.#1,  
              Barrie, Ontario.  
              L4M 4Y8.

by service on its Area Manager, or forwarded by prepaid mail addressed to it:

              c/o Mr. Lloyd Lawrence,  
              A. F. MacLaren & Co.,  
              43 Collier Street,  
              Barrie, Ontario. L4M 1G5.

and on Salvil Investments Limited by personal service on:

              Mr. William Lohuaru or Mrs. Salme Lohuaru,  
              Box 28,  
              Horseshoe Valley,  
              R.R.#1,  
              Barrie, Ontario.  
              L4M 4Y8.

or by prepaid mail addressed to it at:

              Box 28, Horseshoe Valley,  
              R.R. #1,  
              Barrie, Ontario. L4M 4Y8.

and on Medonte at the Township office in Moonstone during business hours or forwarded by prepaid mail addressed to:

              Clerk,  
              Township of Medonte,  
              Moonstone, Ontario.

and any notice so mailed shall be deemed to be delivered upon the third day following such mailing.

13. NEITHER Horseshoe Valley nor Medonte shall assign or transfer any water rights passing or herein agreed to be conveyed, to any other person without the prior written approval of the party against whom such right is intended to

be enforced and the failure to obtain such prior right shall constitute any purported transfer or assignment a nullity.

Notwithstanding the foregoing, it is clearly understood and agreed that nothing in this Agreement or this provision thereof is intended to in any way restrict or require the consent of the Township of Medonte to the sale of any of the physical assets of Horseshoe Valley and this Agreement relates solely to Horseshoe Valley water rights under this Agreement, it being contemplated that in the event of a sale of any assets of Horseshoe Valley which shall affect its wells or water system, any purchaser will be required to covenant to continue to carry out Horseshoe Valley's obligations under the provisions of this Agreement including the provision of easements as required hereunder.

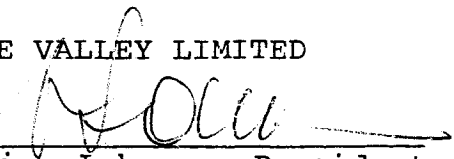
14. Horseshoe Valley shall report to Medonte promptly any unsafe condition of the works or relating to the water supply disclosed by any inspection or otherwise reported to it or brought to its attention and shall so long as it continues operation of the system be responsible for the security of the system including any leakage therefrom or damage thereto caused by natural causes.

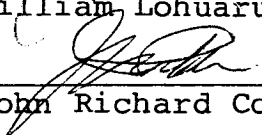
15. IT IS UNDERSTOOD AND AGREED that in the event that the Township of Oro takes over the Horseshoe Valley water system and/or such part of the system as shall provide the source for the Medonte water service, Medonte shall enter into such agreement with the Township of Oro as shall be reasonably required to maintain the spirit of this Agreement and the supply of water dedicated hereby, and shall thereupon release Horseshoe Valley and Salvil from any further obligations hereunder.

This Agreement shall be interpreted and governed by the laws of the Province of Ontario.

IN WITNESS WHEREOF the proper officers of the Parties hereto have hereunto set their hands and affixed their corporate seals by the hands of their proper officers duly authorized in that behalf as of the day and year first above written.

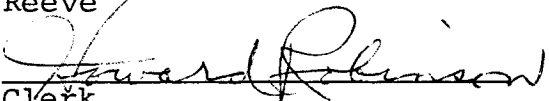
HORSESHOE VALLEY LIMITED

Per:   
William Lohuaru, President

  
John Richard Cockburn,  
Vice-President

THE CORPORATION OF THE TOWNSHIP  
OF MEDONTE

Per:   
Reeve

  
Clerk

SALVIL INVESTMENTS LIMITED

Per: 

SCHEDULE "A"

Those parts of Lots 1 and 2, Concession 3 and  
Lots 1 and 2, Concession 4, in the Township of Oro, known  
and described as Part 1, Plan 51R-8162.

DATED: May 23, 1980

HORSESHOE VALLEY LIMITED

and

THE CORPORATION OF THE  
TOWNSHIP OF MEDONTE

and

SALVIL INVESTMENTS LIMITED

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WATER RIGHTS  
GUARANTEE AGREEMENT

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Livingston, Myers & Cockburn  
Barristers and Solicitors  
89 Collier Street,  
Barrie, Ontario  
L4M 4Y5