

SCHEDULE "N": EASEMENT FOR GOLF COURSE IRRIGATION

[attach *Land Title Act* Form C General Filing Instrument – Part 1]

TERMS OF INSTRUMENT - PART 2

This Easement dated for reference the _____ day of _____, _____.

BETWEEN:

REGIONAL DISTRICT OF NANAIMO

6300 Hammond Bay Road
Nanaimo, BC
V9T 6N2

(the "**Grantor**")

AND

3536696 CANADA INC.

c/o Bentall Kennedy (Canada) LP
Suite 1800, 1055 Dunsmuir Street
Vancouver, BC
V7X 1C4

(the "**Grantee**")

WHEREAS:

A. The Grantor is the registered owner of the those lands and premises situate in the Province of British Columbia, legally described in Part 2 of the Form C General Instrument –Part 1 attached hereto (the "**Servient Tenement**");

B. The Grantee is the registered owner of those lands and premises situate in the Province of British Columbia, more particularly known and described as:

PID: 002-730-421



PID: 006-598-439



(collectively, the "**Dominant Tenement**"); and

C. The Grantor has agreed to grant to the Grantee an easement for the benefit of the Dominant Tenement on the terms and subject to the conditions contained herein to allow the Grantee, and its agents, designates and employees, to operate, maintain, upgrade and replace, as the Grantee requires, the irrigation system for the Fairwinds Golf Course (which receives and pumps Enos Lake water from an intake through a submerged pipe to Dolphin Lake for use in golf course irrigation); and

NOW THEREFORE, THIS INDENTURE WITNESSES that in consideration of the premises and the mutual grants and covenants herein contained and the sum of Ten Dollars (\$10.00) and other valuable consideration now paid by each of the parties to the other, the receipt of which is hereby acknowledged, the parties covenant and agree as follows:

1. The Grantor, for itself, its successors and assigns hereby gives, grants, and conveys in perpetuity, to and in favour of the Grantee and its licencees, permittees, invitees, agents, servants, guests, successors and assigns, in common with the Grantor its licencees, permittees, invitees, agents, servants, guests, successors and assigns, the full, free and uninterrupted right, licence, liberty, easement, privilege and permission at all times to enter upon, pass and repass on, across, over and through that portion of the Servient Tenement heavy dark line on Explanatory Plan EP◆- _____, a copy of which is attached hereto as Schedule A (the "**Easement Area**"), for the following purposes:
 - (a) to pass and repass over the Easement Area with or without vehicles, machinery or equipment and to use the Easement Area as a road, for the purpose of free and uninterrupted access to and egress from the Dominant Tenement to the dam, intake, pump and pumphouse located on the west side of Enos Lake, outlet, weir, water line, and road providing access to same (the "**Irrigation Works**");
 - (b) to operate, maintain, upgrade and replace, as the Grantee requires, the Irrigation Works; and
 - (c) to construct, repair and maintain the Easement Area (at the expense of the Grantee), with or without the consent of the Grantor, in order to ensure that the Easement Area can be used by the Grantee and its licencees, permittees, invitees, agents, servants, guests, successors and assigns for the foregoing purposes.

2. The Grantor covenants and agrees with the Grantee that:
 - (a) the Grantor will not erect, construct or place or permit to be erected, constructed or placed on the Easement Area any improvements which will interfere with, injure or impair the Grantee's free and uninterrupted use of the Easement Area at all times for the purposes herein contemplated;
 - (b) the Grantee may clear the Easement Area as is reasonably necessary for the purposes set out in section 1 and keep it clear of anything which in the reasonable opinion of the Grantee constitutes a danger or obstruction to the use of the Easement Area by the Grantee as herein contemplated;
 - (c) the Grantee will not preclude park use of the Easement Area by members of the public, except for the pumphouse and, if desired by the Grantee, all areas 6 metres from the pumphouse;
 - (d) from time to time and at all times upon every reasonable request and at the sole cost and expense of the Grantee, the Grantor will do and execute or cause to be made, done or executed all such further and other lawful acts, deeds, things, devices, conveyances and assurances in law whatsoever for the better assuring unto the Grantee of the rights, liberties and easement hereby granted; and

- (e) the Grantor may call upon the Grantee to provide a release of this Easement registerable in the Land Title Office in the event that the Grantee's water licence for golf course irrigation is cancelled and the Grantee is unable to obtain a renewal or replacement of same within five years after the cancellation, and the Grantee will promptly provide same.
- 3. The Grantor shall not be responsible or liable for any loss, damage or injury caused to the Grantee or anyone else using the Easement Area unless same arises as a result of the gross negligence of the Grantor.
- 4. The Grantee covenants and agrees to indemnify and save harmless the Grantor from and against any loss, damage or liability suffered by the Grantor as a result of the use of the Easement Area by the Grantee and its licencees, permittees, invitees, agents, servants, guests, successors and assigns.
- 5. All references to any party, whether a party to this Agreement or not, will be read with such changes in number and gender as the context or reference requires. When the context hereof makes it possible, the word "person" appearing in this Agreement includes in its meaning any firm and any body corporate or politic.
- 6. Neither party hereto will be liable for any breach of covenant or agreement contained herein occurring after it has ceased to be the owner of the Servient Tenement or the Dominant Tenement, as the case may be.
- 7. The right, liberty and easement herein granted by the Grantor and the Grantee will be construed as being extended to and may be exercised by the Grantee, and its successors and assigns.
- 8. The easement herein granted will be construed as running with the lands but no part of the fee simple thereof will pass to or be vested in the Grantee under or by these presents.
- 9. This Indenture will be governed by and construed in accordance with the laws of British Columbia.
- 10. The parties hereto will do and cause to be done all things and execute and cause to be executed all documents, instruments and agreements that may be necessary to give proper effect to the intention of this Indenture.

IN WITNESS WHEREOF the Grantor and Grantee have duly executed this Easement as of the day, month and year first above written by executing the Form C attached hereto.

Schedule "A"

Reduced Copy of Explanatory Plan showing Easement Area