

TERMS OF INSTRUMENT - PART 2
SECTION 219 COVENANT - (NO BUILD)

THIS AGREEMENT, dated for reference the date of execution by the RDOS on the Form C to which this Agreement is attached and which forms part of this Agreement,

BETWEEN:

TWIN LAKES GOLF COURSE LTD., of
730-475 West Georgia Street, Vancouver, B.C., V6B 4M9
Incorporation Number: BC0813811

(the “**Owner**”)

AND:

REGIONAL DISTRICT OF OKANAGAN SIMILKAMEEN,
a Municipal Corporation having its offices at 101 Martin Street,
Penticton, B.C. V2A 5J9

(the “**RDOS**”)

WHEREAS:

- A. The Owner is the registered owner of the properties situated, lying and being in the Regional District of Okanagan Similkameen, in the Province of British Columbia, described in Item 2 of Form C to which this Terms of Instrument is attached (the “**Lands**”);
- B. Section 219 of the *Land Title Act*, R.S.B.C. 1996, c. 250, and amendments thereto (the “**Land Title Act**”), state that a covenant in favour of a regional district may be registered as a charge against the title to land and is enforceable against the covenantor and its successors in title even if the covenant is not annexed to land owned by the regional district;
- C. The Owner wishes to develop the Lands with a two-phase mixed residential development comprising a total of approximately 226 dwelling units (the “**Development**”) and it is a condition of the RDOS granting its approval for such development that the Owner enter into this Agreement with the RDOS; and
- D. The Owner has agreed to grant this Section 219 Covenant against the Lands.

NOW THEREFORE pursuant to Section 219 of the *Land Title Act* and in consideration of \$1.00 now paid by the RDOS to the Owner, the receipt and sufficiency of which is hereby acknowledged, and of the premises herein contained, the parties covenant and agree as follows:

Definitions

1. The terms defined in this Paragraph 1 for all purposes of this Agreement, unless specifically provided herein, will have the following meanings hereinafter specified. The defined terms are:
 - a. **“Agreement”** means this agreement together with any schedules attached hereto;
 - b. **“CAO”** means the Chief Administrative Officer of the RDOS, or his or her designate or another person acting in his or her position;
 - c. **“Golf Course”** means the golf course situated on the Lands and surrounding area;
 - d. **“Phase 1”** means the first of two planned phases in the Development, as shown shaded in yellow and denoted as “Phase 1” on the plan attached hereto as Schedule A;
 - e. **“Phase 2”** means the second of two planned phases in the Development, as shown shaded in red and denoted as “Phase 2” on the plan attached hereto as Schedule A;
 - f. **“RV Park”** means the recreational vehicle area that is situated on the Lands;
 - g. **“Technical Committee”** means the technical committee established pursuant to the Terms of Reference; and,
 - h. **Terms of Reference”** means the terms of reference for ongoing monitoring and hydrogeological assessment to confirm a sustainable water supply for the Development (Phase 1 and Phase 2), a copy of which is attached to this Agreement as Schedule B.

Proof of water

2. The Owner covenants and agrees with the RDOS that where paragraph 4 of this Agreement requires proof of groundwater sustainability and availability to warrant further development, the Owner must satisfy the CAO, acting reasonably, that there is an adequate supply of groundwater to meet the anticipated water supply needs of the number and type of units the Owner proposes to construct, and for this purpose the CAO must take into account any recommendation provided by the Technical Committee, which recommendation must not be provided unless the Technical Committee has monitored, or reviewed the results of monitoring of, the water supply and use for existing occupied buildings in the development, in accordance with the monitoring and modelling methodology set out in the Terms of Reference.
3. If the Technical Committee is dissolved or is otherwise unavailable to make a recommendation under paragraph 2, the CAO may accept a written certification that there is an adequate supply of groundwater to meet the anticipated water supply needs of the number and type of units the Owner proposes to construct, from a person the

CAO considers qualified to provide the certification, provided that the person providing the certification must first review and take into account the Terms of Reference.

No Build Covenant – Phase 2

4. The Owner covenants and agrees with the RDOS that no permanent building or structure, or any part thereof, including any fixed equipment, mobile home or modular home will be constructed, reconstructed, moved, extended or located on the Lands and that no building permits will be issued in respect of Phase 2 of the approved development until:
 - a. Groundwater sustainability and availability is proven to warrant further development; and
 - b. 36 dwelling units in Phase 1 have been constructed, issued occupancy permits have been issued for all 36 of those dwelling units.
5. Notwithstanding the above, the Owner will be permitted to continue operating under the current existing zoning of the Lands and, if necessary, to supply, construct, operate, occupy and/or remove any existing, additional or ancillary buildings for the purpose of operating the Golf Course, RV Park and any other business which is permitted under the current existing zoning of the Lands.
6. The Owner covenants and agrees with the RDOS that should the Owner omit, fail or neglect to carry out any one of its obligations contained in this Agreement or do some act contrary to its obligations contained in this Agreement:
 - a. the Owner shall rectify such default within 30 days' of receipt of written notice thereof by the RDOS, provided however if such default is not capable of being remedied within such thirty (30) days then, provided that the Owner has commenced remedying such default and is continuously and diligently pursuing the remedying thereof, the Owner shall have such time as is reasonable in the circumstances to remedy such default;
 - b. if the Owner fails to cure such default to the satisfaction of the RDOS within the time specified herein, or if the RDOS, in case of emergency, does not consider that it has time to deliver such notice, the RDOS may (but is under no obligation to) enter onto the Lands and rectify such default to the extent considered necessary by it;
 - c. if the Owner fails to take such positive action as the RDOS considers necessary to rectify any default as provided for herein, the RDOS may apply to court for a mandatory injunction requiring the Owner to take such action; and

- d. the Owner shall pay to the RDOS on demand the aggregate of the RDOS's costs of rectifying any default of the Owner with respect to this Agreement and a sum equal to 15% of those costs on account of the RDOS's overhead, and any other money the Owner may owe to the RDOS from time to time pursuant to this Agreement, and if the Owner does not pay the RDOS within 30 days from the date the Owner receives any such demand, the arrears will bear interest from the date of demand to the date of payment at the prime rate of Bank of Montreal plus 3% per annum.
7. The Owner hereby agrees to indemnify and save harmless the RDOS, and its elected or appointed officials, officers, employees, and agents (collectively, the "**RDOS Personnel**") from and against any loss, damage, debts, claims, liabilities, obligations, costs (including solicitor and own client costs incurred by the RDOS in the enforcement of the Owner's obligations under this Agreement) or causes of action which the RDOS and the RDOS Personnel, or any of them, may suffer, incur, or be put arising, whether directly or indirectly, arising from the granting or existence of this Agreement, from the performance by the Owner of this Agreement, or any breach of any covenant or condition of this Agreement by the Owner or its directors, officers, employees, or agents, or any person for whom it is legally responsible, including any claims of contribution made by third parties in respect of damage for which the Owner has released the RDOS and the RDOS Personnel under this Agreement.
8. Notwithstanding anything to the contrary herein contained, the RDOS is a party to this Agreement for the purpose only of receiving the covenants, promises and agreement as provided in the terms of this Agreement and, without limiting the generality of the foregoing, neither the RDOS nor any of the RDOS Personnel will be liable for anything done or not done pursuant to or associated with any provision of this Agreement or anything contemplated hereby and the Owner hereby releases the RDOS and the RDOS Personnel from any and against all liabilities, actions, causes of action, claims, damages, expenses, costs, debts, demands or losses suffered or incurred by the Owner arising from the granting or existence of this Agreement, or any default of the Owner under or in respect of this Agreement.
9. Notwithstanding anything contained herein, the Owner covenants and agrees that this Paragraph 9 and Paragraphs 6, 7 and 8 hereof shall survive termination or release of this Agreement.
10. Whenever it is required or desired that either party will deliver or serve a notice on the other, delivery or service will be deemed to be satisfactory if and deemed to have occurred when:
 - a. the CAO of the RDOS or the Owner, or its successor in title, or a director of the Owner or successor in title, if applicable, has been served personally, on the date of service; or
 - b. mailed by prepaid registered mail, on the date received or on the sixth day after receipt of mailing by any Canada Post office, whichever is the earlier, so long as

the notice is mailed to, in the case of the RDOS, at the address provided in this Agreement, or in the case of the Owner, or its successor in title, at the address noted on the Certificate of Title for the Lands, or to whatever address a party may from time to time provide to the other party.

11. The RDOS may register this Section 219 Covenant against the Owner's title to the Lands in priority to all other charges excepting only exceptions and reservations contained in the original Crown grant thereof and any statutory rights of way, Section 219 covenants and reservations in favour of the RDOS. The Owner shall execute and deliver this Agreement to the RDOS in form acceptable for registration, and will cause the holders of all liens, charges, and encumbrances in respect of which the RDOS requires priority to execute and deliver to the RDOS instruments of priority acceptable for registration and in form and substance acceptable to the RDOS.
12. The covenants set forth herein shall charge the Lands pursuant to Section 219 of the *Land Title Act* and shall be a covenant the burden of which shall run with the Lands and bind the successors in title to the Lands. This Agreement burdens and charges all of the Lands and any parcel into which it is subdivided by any means and any parcel into which the Lands are consolidated. It is further expressly agreed that the benefit of all covenants made by the Owner herein shall accrue solely to the RDOS and that this Agreement may only be modified or discharged by agreement of the RDOS, pursuant to the provisions of the *Land Title Act*.
13. An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach in respect of which the waiver is asserted. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.
14. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
15. Wherever the singular or masculine is used in this Agreement the same is deemed to include the plural or the feminine or body politic or corporate as the context so requires or the parties so require and every reference to each party to this Agreement is deemed to include the heirs, executors, administrators, successors and assigns of such party wherever the context so requires or the parties so require.
16. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns, as applicable.
17. The parties shall do and cause to be done all things and execute and cause to be executed all documents which may be necessary to give proper effect to the intention of this Agreement.

18. Time shall be of the essence of this Agreement, and if any party expressly or impliedly waives that requirement, a party may re-instate it by delivering notice to the other.
19. If the Owner consists of more than one person, firm, or corporation, the Owner's obligations under this Agreement shall be joint and several.
20. This Agreement shall be the entire agreement between the Owner and the RDOS regarding the matters set out in this Agreement and shall supersede all prior agreements or understandings about such matters.
21. This Agreement will be governed by and construed according to the laws of the Province of British Columbia.

IN WITNESS WHEREOF the parties have executed this Agreement on Forms C and D to which this Agreement is attached and which form part of this Agreement, effective as of the date first above written.

CONSENT AND PRIORITY AGREEMENT

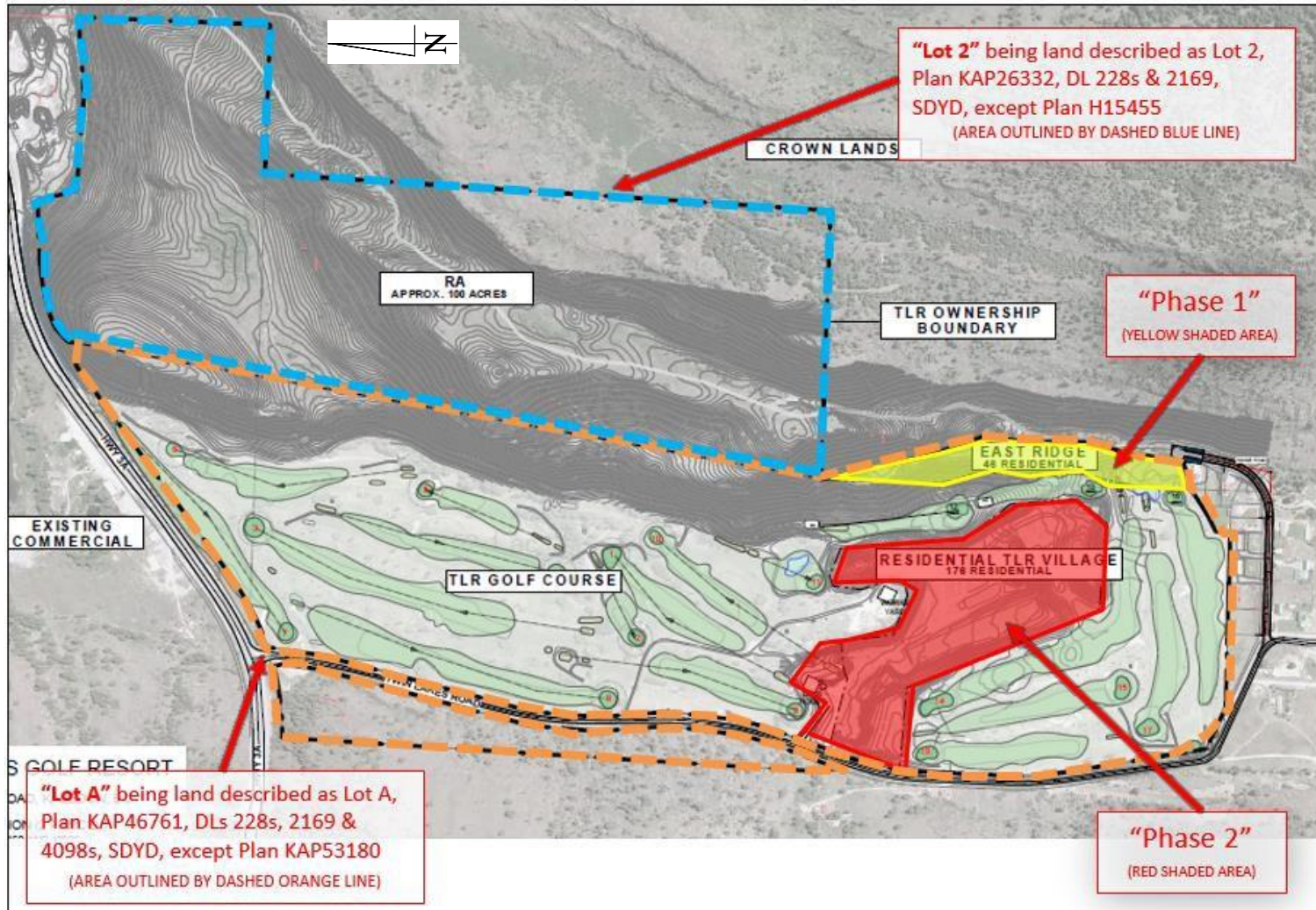
WHEREAS (the “**Chargeholder**”) is the holder of Mortgage No., registered against the Lands at the Kamloops Land Title Office on respectively (the “**Interest**”).

NOW THEREFORE THIS CONSENT AND PRIORITY AGREEMENT WITNESSES THAT:

In consideration of \$1.00 now paid to the Chargeholder and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Chargeholder hereby joins in and consents to the granting of this Section 219 Covenant, postpones the Interest to this Section 219 Covenant and covenants that this Section 219 Covenant will bind the Interest in the Lands and rank in priority upon the Lands over the Interest as if this Section 219 Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Interest and prior to the advance of any funds thereunder.

IN WITNESS WHEREOF the Chargeholder has executed this Consent and Priority Agreement by executing the Form D attached to Part 1 of the Form C attached to and forming part of this Agreement.

Schedule "A" – Map Showing Phase 1 and Phase 2



Schedule “B” – Terms of Reference

Terms of Reference

Based on the results of the Phase 1 Groundwater Availability Study (Golder 2016), and conversations with the Regional District of Okanagan Similkameen (RDOS), Golder Associates Ltd. (Golder) provides the following Terms of Reference for ongoing monitoring and hydrogeological assessment to confirm a sustainable water supply for TLGR’s proposed development. The Terms of Reference provides a framework of requirements to ascertain the feasibility of Phase 2 of TLGR’s development, and outlines funding and oversight, monitoring and modelling requirements, and water management.

Funding and Oversight

- TLGR has agreed (in principal) to continue funding the ongoing monitoring program through RDOS, with RDOS overseeing the program.
- RDOS will create a Technical Committee, the purpose of which is to provide input and oversight during future works, specifically regarding the question of a sustainable water supply for the Twin Lakes watershed. The Technical Committee will consist of members recommended by the RDOS, and should include members knowledgeable in hydrogeology. They will confirm the project area within the Twin Lakes watershed and reach a consensus regarding the suitability of the numerical model to conduct the water balance analyses. The Technical Committee will apply reasonable and fair assumptions regarding the suitability of the numerical model and its fit for purpose, in its application of information, and in its decision making processes.
- On completion of the model, and provided the results indicate what a sustainable withdrawal for TLGR’s Phase 2 development is, the Technical Committee will provide recommendations to the RDOS that are consistent with the technical report regarding the Phase 2 development.

Monitoring

- Ongoing, long-term monitoring of surface water levels at Horn Lake, Twin Lake and Trout Lake and groundwater levels within FLNRORD observation wells and private wells (TLGR and others if possible) should be conducted (currently, TLGR has collected approximately nine years of water level information as part of the ongoing monitoring program). Specifically:
 - Water levels should be measured continuously using pressure transducers, with data corrected for barometric pressure.
 - Manually recorded water levels to be collected at a minimum of once a month using a water level meter (for groundwater) and a staff gauge (for surface water) for calibration of the transducer data.

- Data loggers should be downloaded, at a minimum, two times per year and reviewed by a Qualified Professional (i.e. a hydrogeologist registered and in good standing with Engineers and Geoscientists BC).
- A geodetic survey of surface water elevations, reference bench marks and/or staff gauges should be conducted annually to account for possible data logger/ staff gauge movement within the surface water body and to be used to correct water level data.
- It is understood that a climate station has been established by the Okanagan Basin Water Board (OBWB) within the Twin Lakes watershed; however, due to poor communications services in the area, the station is not active. The collection of data from the climate station should be re-established as soon as possible. The OBWB, FLNRORD and/or RDOS will be approached by the Technical Committee regarding the re-establishment of the climate station. Dependant upon the location of the climate station, the need for additional climate stations will be evaluated. Ideally, a climate station would be present within each of the upper and lower reaches of the Twin Lakes watershed so that precipitation, temperature, evaporation and wind data can be collected, and used to support refinement of model parameters, as well as additional studies associated with the watershed.
- Metering of irrigation water that is used at the TLGR will continue, with weekly irrigation volumes pumped out of the TLGR irrigation wells reported to RDOS quarterly. Flow meters are to be calibrated annually, or as recommended by the manufacturer.

Modelling

- Confirmation of data (types [surface water, groundwater, climate, water use], length of record, reliability) is required to assess drought, normal and wet conditions within the model.
- Following collection of a minimum of ten years of reliable and approved monitoring data, agreement within the Technical Committee regarding conditions representative of drought, average and flood conditions and, prior to the Phase 2 development, the numerical model recommended by the Technical Committee should be recalibrated with the approved data to confirm/refine analytical results. Consensus regarding the suitability of the model will be reached by the Technical Committee.
- Revisiting of the model used by Golder for Phase 1 to determine whether or not it is suitable will include:
 - reasonable and agreed upon assumptions regarding drought years, peak uses and summer conditions
 - annual average water usage rates of 2,200 litres per unit per day (Golder, 2016)
- The following minimum design flows for domestic demand per unit shall be:
 - Average Daily Flow to 2,200 L / day

- Maximum Daily Domestic Flow from 5,500 L / day
- Peak hour domestic flow from 10,000 L / day

It is further understood that additional information may be available in the next year regarding the watershed (RDOS proposed future watershed studies); this information would be included in the model, and may include reconciliation of the surface water licenses and volumes with the BC Ministry of Environment and Climate Change Strategy (see below).

Water Management

- TLGR should adhere to their water management plan and irrigation best management practices, as outlined in MSR (2012).
- Water conservation measures (i.e., xeriscaping, low-flow appliances) and irrigation watering restrictions during periods of drought will be implemented for all phases of the development.
- Water metering of the Phase 1 development will be implemented.
- Future bylaws adopted by the RDOS Board will regulate domestic and irrigation water use and conservation within the Twin Lakes community water service areas. These bylaws will be consistent with, and based on, current water use and management practices.
- Possible Actions of the Technical Committee:
 - Approach the Ministry of Environment and Climate Change Strategy (and/or other appropriate regulatory agencies) to address the overallocation of historical surface water licenses in the Twin Lakes watershed area.
 - Request and obtain all and any water information from regulated water users within the Twin Lakes watershed (e.g. Lower Nipit Improvement District) regarding pumping rates, frequencies and water use. If feasible, this information may be accounted for in the numerical model.
 - Approach the FLNRORD and/or RDOS regarding the re-establishment of the hydrometric stations on Horn Creek (Horn Creek near Olalla; 08NM147) and Twin Lakes (Twin Lakes Near Olalla; 08NM148), such that surface water flows at these locations can be measured, and to confirm surface water runoff values for the upper watershed for Horn Creek.