

LANDFILL NUISANCE EASEMENT

THIS AGREEMENT made this ____ day of _____, 2020.

BETWEEN:

ISLAND WOLF PROPERTIES LTD.
#305 - 1788 West 5th Avenue
Vancouver, BC
V6J 1P2

(the "**Grantor**")

AND:

REGIONAL DISTRICT OF NANAIMO
6300 Hammond Bay Road
Nanaimo, BC V9T 5N2

(the "**Grantee**")

WHEREAS:

- A. The Grantor is the registered owner of those lands located in Nanaimo, British Columbia and legally described as follows:

No PIDs
Lot 1 Sections 2 and 3 Nanaimo District Plan EPP19870;
Lot 2 Section 3 Nanaimo District Plan EPP19870;
Lot 3 Section 3 Nanaimo District Plan EPP19870
Lot 4 Sections 2 and 3 Nanaimo District Plan EPP19870;
Lot 5 Section 2 Nanaimo District Plan EPP19870;
Lot 6 Section 2 Nanaimo District Plan EPP19870;
Lot 7 Section 2 Nanaimo District Plan EPP19870; and
Lot 8 Sections 2 and 3 Nanaimo District Plan EPP19870,
(collectively, the "**Grantor's Lands**");

- B. The Grantee is the registered owner of those lands located in Nanaimo, British Columbia and legally described as follows:

PID: 015-715-434
Lot A Section 2 Nanaimo District Plan 49841 except that part
in Plans VIP58345 and VIP66090

-and-

PID: 013-239-813
Lot 1 Sections 2 and 3 Nanaimo District Plan 48020 except
part in Plan VIP66090
(together, the "**Grantee's Lands**");

- C. The Grantee operates a landfill site on the Grantee's Lands (the "Landfill") that may create noise, dust, emissions, vibrations and have other impacts on the use and enjoyment of the Grantor's Lands; and
- D. Due to the proximity of the Landfill to the Grantor's Lands and the possible impact of the Landfill on the Grantor's Lands, the Grantor has agreed to grant to the Grantee an easement on the terms hereinafter set forth for the benefit of the Grantee's Lands.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the premises, the mutual covenants and agreements contained herein and other good and valuable consideration and the sum of Ten Dollar (\$10.00) now paid by the Grantee to the Grantor (the receipt and sufficiency whereof is hereby acknowledged), the parties hereto covenant and agree that:

ARTICLE 1 – GRANT OF EASEMENT

1.1 Grant of Easements by the Grantor

The Grantor, as the owner of the Grantor's Lands, does hereby grant, convey and confirm unto the Grantee, as the owner of the Grantee's Lands, for the benefit of the Grantee's Lands as dominant tenement and to be appurtenant to the Grantee's Lands and to bind all of the Grantor's Lands as servient tenement, the full, free and uninterrupted right, licence, liberty, privilege, permission and easement at all times hereafter, by day and by night and without interference by the Grantor, to create or emit any thing that may interfere with the use and enjoyment of the Grantor's Lands, including without limitation, noise, odour, dust, litter, emissions, leachate, vibration, the presence of birds or rodents, over, onto, across, above, below and near the Grantor's Lands, arising from the operations and existence of the Landfill on the Grantee's Lands, subject to the terms, conditions, reservations and limitations stated herein.

1.2 Easement Runs With Lands

The rights hereby granted shall constitute an easement charging the Grantor's Lands, appurtenant to the Grantee's Lands, and shall run with the Grantor's Lands for the benefit of the Grantee's Lands.

1.3 Expiration of Rights

The rights granted in section 1.1, and any and all other rights, liberties and privileges granted elsewhere in this Agreement to the Grantee shall expire and terminate on the date which is two hundred (200) years after the last day on which waste is deposited on the Landfill.

1.4 No Liability and Release

In addition the Grantor grants the full right to the Grantee to use the Landfill on the Grantee's Lands freed, released and discharged from any claim which may arise in future at law or in equity against the Grantee, its successors and assigns and any of their employees, agents, contractors, tenants, subtenants or licensees, on account of any damage or nuisance to the Grantee's Lands, the property, the soil, vegetation, crops, trees, grass, buildings, improvements or chattels situation thereon from the emission or production of noise, odour, dust, litter, emissions, leachate, visual blight, the presence of birds or rodents and vibration emanating from the Landfill on the Grantee's Lands.

1.5 Damage to Grantor's Lands

- (a) Notwithstanding anything contained herein to the contrary, the rights granted in section 1.1, and any and all other rights, liberties and privileges granted elsewhere in this Agreement to the Grantee do not permit or allow the Grantee to cause or permit the Release of any Hazardous Substances into or onto the Grantor's Lands.
- (b) For greater certainty, the parties acknowledge and agree that this Agreement, including section 1.4 hereof, is not intended to, and will not, serve as an indemnity or release in favour of the Grantee, its successors and assigns and any of their employees, agents, contractors, tenants, subtenants or licensees for any liabilities, actions, claims, losses, costs, expenses, reduction in the market value of the Grantor's Lands, damages for loss or restriction in use of the Grantor's Lands, sums paid in settlement of claims, and damages (including reasonable legal costs on a solicitor-client basis) suffered or incurred by the Grantor as a result of the Release of any Hazardous Substances into or onto the Grantor's Lands.
- (c) In this section 1.5:
 - (i) **"Environmental Laws"** means:
 - A. any and all statutes, laws, by-laws, regulations, rules, codes, orders, directives, guidelines, permits, policies, interpretations, decisions and other lawful requirements now or hereafter in effect, of any governmental body having jurisdiction in connection with or pertaining to any Hazardous Substance, the protection of the environment, land use, zoning, health, chemical use, safety, sanitation or the health or welfare of any living thing; and
 - B. any international treaties to which Canada or a province of Canada is a party, relating to the protection of the environment and governing the use, storage, treatment, generation, transportation, manufacture, processing, handling, production, remediation, release or disposal of Hazardous Substances;
 - (ii) **"Hazardous Substance"** has the same meaning as hazardous waste as defined in the Hazardous Waste Regulation, B.C. Reg 63/88, as amended.
 - (iii) **"Release"** means discharge, spray, inject, inoculate, abandon, deposit, dispose, spill, leak, seep, pour, emit, empty, throw, dump, place, exhaust and any and all similar actions.

ARTICLE 2- ADDITIONAL TERMS

2.1 Further Assurances

Each of the parties hereto easements and agrees to execute and deliver such additional agreements and other documents as to take all such additional steps as may be reasonably required to implement this Agreement.

2.2 Use of the Grantor's Lands

The rights hereby granted shall constitute an easement charging the Grantor's Lands, appurtenant to the Grantee's Lands, and shall run with the Grantor's Lands but no part of the fee or soil thereof will pass or vest in the Grantee under or by virtue of these presents and the Grantor may fully use and enjoy the Lots subject only to the rights and privileges granted under this Agreement.

2.3 Expressions

The expressions "Grantor" and "Grantee" herein contained will be deemed to include the heirs, executors, administrators, successors, assigns, employees, servants, agents, officers and invitees of such parties wherever the context or the parties hereto so permit or require.

2.4 Waiver of Any Default

Waiver of any default by any party will not be deemed to be a waiver of any subsequent default by that party.

2.5 Gender

Whenever the singular or masculine is used herein the same shall be construed as meaning the plural, feminine or body corporate or politic where the context or parties require, and vice versa.

2.6 Severability

The easements and agreements herein shall be severable and if any of the easements or agreements herein contained or the application to any person or circumstance is to any extent held to be or rendered invalid, unenforceable or illegal, by a court of competent jurisdiction, the remaining easements or agreements or the application thereof shall not be affected thereby and shall continue to be applicable and enforceable to the fullest extent permitted by law.

2.7 Enurement

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors, assigns and successors in title, except that the Grantor shall not be liable for a breach of this Agreement after the Grantor has ceased to be the owner of the Grantor's Lands.

2.8 Subdivision

If the Grantor's Lands are subdivided (including consolidation) at any time either under the provisions of the *Land Title Act* or the *Strata Property Act*, as amended from time to time, or under the provisions of any similar legislation enacted from time to time:

- (a) on the deposit of a plan of subdivision, the burden and the benefit of the easement granted in Section 1.1 and the covenants in this Agreement will continue and will be annexed to and run with each of the new parcels, lots, or other subdivided parcels and areas so created; and

- (b) on the deposit of a strata plan, the burden and the benefit of each of the easement granted in Section 1.1 and the covenants in this Agreement will continue and will be annexed to and run with each of the strata lots so created, provided that the liability of each strata lot owner for the performance and observance of the covenants and obligations under this Agreement of the owner of the parcel for which the strata plan was deposited will be in proportion to the unit entitlement of such strata lot as established by the strata plan. The owners of the strata lots will cause the strata corporation to observe and perform the obligations of such owners under this Agreement on behalf of such owners.

2.9 Discharge

Notwithstanding anything contained herein to the contrary, upon the expiration and termination of the rights granted to the Grantee pursuant to section 1.3 herein, the Grantee upon request by the Grantor, will execute a full discharge (the "Discharge") of this Agreement (including, without limitation, the easement granted herein) from title to the Grantor's Lands including all subdivided portions thereof, provided that:

- (a) the Grantee will have a reasonable amount of time to execute and return the Discharge to the Grantor, and
- (b) the preparation and registration of the Discharge will be without cost to the Grantee.

Upon registration of the Discharge, the rights, liberties and privileges granted to the Grantor under this Agreement will terminate.

2.10 No Effect on Powers

This Agreement does not:

- (a) affect or limit the discretion, rights, duties or powers of the Grantee under the common law or any statute, bylaw or other enactment;
- (b) affect or limit the common law or any statute, bylaw or other enactment applying to the Grantor's Lands; or
- (c) relieve the Grantor from complying with the common law or any statute, bylaw or other enactment.

2.11 Amendment

No amendment of this Agreement is valid or binding unless it is in writing and executed by the parties.

2.12 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date noted above.