

Terms of Instrument - Part 2

Section 219 Conservation Covenant and Section 218 Statutory Right of Way

This Agreement dated for reference XXX XX, 2026 is
BETWEEN:

The GABRIOLA COMMONS FOUNDATION, a Non-profit Society at 675 North Road,
Gabriola Island, BC (the “**Legal Owner**”)

AND

Gabriola Island Local Trust Committee, 200 – 1627 Fort Street,
Victoria, BC (the “**Covenant Holder**”)
(collectively, the “Parties”)

WHEREAS:

- A) The **Legal Owner** is the registered owner in fee simple of the **Land, located on Gabriola Island within the Gabriola Island local trust area established by the *Islands Trust Act***
- B) Pursuant to section 3 of the *Islands Trust Act*, the **object of the Trust** is to preserve and protect the Trust Area and its unique amenities and environment for the benefit of the residents of the Trust Area and of British Columbia generally, in cooperation with municipalities, regional districts, improvement districts, First Nations, other persons and organizations and the government of British Columbia;
- C) The Land contains significant amenities including flora, fauna, and natural features of great importance to the Legal Owner, the Covenant Holder and the public;
- D) The **Legal Owner**, and the **Covenant Holder** agree that it is in the public interest to protect, preserve and steward the Land and **Amenities** as a **community commons**;
- E) The Legal Owner has agreed to grant the Covenant Holder a covenant pursuant to Section 219 of the *Land Title Act* to restrict the use of the Land as a Community Commons, and a statutory right of way over the Land pursuant to section 218 of the *Land Title Act*.
- F) The statutory right of way granted in this Agreement in favour of the Covenant Holder is necessary for the operation and maintenance of the undertakings of the Covenant Holder.
- G) The Covenant Holder is authorized to accept covenants and statutory rights of way pursuant to **Sections 219 and 218 of the *Land Title Act***, respectively

NOW THEREFORE, in consideration of the payment of \$2.00 by the Covenant Holder to the Legal Owner, the receipt and sufficiency of which is acknowledged by the Legal Owner, and in consideration of the promises exchanged below, the Parties agree as follows, in

accordance with Sections 218 and 219 of *the Land Title Act* (British Columbia).

1. INTERPRETATION

1.1 In this Agreement:

1.1.1 *Amenities* means the ecological, agricultural and multipurpose use features relating to the Land as identified in the Baseline Report.

1.1.2 *Baseline Report* means the baseline documentation report that describes the Land and the Amenities in the form of text, maps, and other records of the Land and the Amenities as of the date of registration of this Agreement, a copy of which is on file with each of the Parties, and a condensed version of which is attached to this Agreement as Schedule A.

1.1.3 *Breach Fee* means the amount set out in Section 10, the payment of which by the Legal Owner is to cover the cost to remedy any breach of this Agreement.

1.1.4 *Community Agriculture* means multi-functional agricultural uses of the Land shared by a community of users whose focus is local cooperative food production using sustainable practices.

1.1.5 *Commons* means a resource that belongs to everyone, is inherited jointly and is held in trust for future generations; plus, the values and protocols are determined by a defined community with a special regard for equitable access, use and long-term stewardship.

1.1.6 *Community Commons* means the Land and Amenities to be used by the community through practices of shared responsibility and to provide the community with agricultural, environmental and social benefits on a sustainable basis. Both non-profit and for-profit enterprises are welcome at the Commons provided that they are: consistent with agricultural, community, and environmental stewardship; do not use Commons facilities to the exclusion of others; and are connected to Gabriola and the surrounding communities.

1.1.7 *Covenant Holder* means the Gabriola Island Local Trust Committee and includes its permitted successors and assigns.

1.1.8 *Covenant Holder Annual Fee* means the yearly payment granted by the Legal Owner to the Covenant Holder to serve as the Covenant Holder.

1.1.9 *Fishing* means the activity of catching fish by techniques such as angling, netting, trapping, spearing or hand-gathering for food, recreation or trade.

1.1.10 *Garbage* means unsolicited waste materials potentially harmful to the land, air, water or wildlife.

1.1.11 *Hunting* means the practice of pursuing wildlife for food, recreation or trade.

1.1.12 *Industrial Agriculture* means monocropping and dependence on the unsustainable use of artificial amendments, chemical pesticides and herbicides.

1.1.13 *Land* means the parcel of land legally described as Lot 1, Section 19, Gabriola Island, Nanaimo District, Plan VIP27281 (PID 002-600-994).

1.1.14 *Legal Owner* means the Gabriola Commons Foundation and includes any successor of the Legal Owner.

1.1.15 *Logging* means the harvesting of trees for commercial profit.

1.1.16 *Multi-purpose Use* means educational and interpretive activities, space for both not-for-profit and for-profit enterprises, including the storage of materials, indoor and outdoor gatherings, meetings and events, except where specifically restricted in this Agreement.

1.1.17 *Natural State* means the state of the Land as described in the Baseline Report.

1.1.18 *Rent Charge* means the rent charge granted by the Legal Owner under Section 11.1.

1.1.19 *Rent Charge Amount* means the amount set out in Section 11, the payment of which is secured by the Rent Charge.

1.1.20 *Restorative Justice* means a theory of justice that emphasizes repairing the harm caused by criminal behavior. It is best accomplished through cooperative processes that allow all willing stakeholders to meet, leading to transformation of people, relationships and communities.

1.1.21 *Stewardship Agreement* means a document in which the Parties agree to long-term stewarding of the Land in accordance with Section 5 which is attached to this Agreement as Schedule B: Gabriola Commons Stewardship Agreement.

1.1.22 *Stewardship Plan* means a document through which the Parties are guided by the usages and practices of stewarding a Community Commons in accordance with this Agreement and Baseline Report.

1.1.23 *Successor* means any non-profit society that, any time after registration of this Agreement, becomes owner of the Land.

1.1.24 *Trapping* means the live capture of animals for their pelts, use as recreation, as food or for other commercial purposes.

1.2 This Agreement shall be interpreted in accordance with the laws of British Columbia and the laws of Canada applicable in British Columbia.

1.3 This Agreement is comprised of the recitation of the Parties, the Recitals to this Agreement, the Schedules to this Agreement, Part 1 of the *Land Title Act* Form C to which this Agreement is attached, and these Terms of Instrument.

2. INTENT OF THE COVENANT

2.1 The Parties each agree that the intent of this Agreement is:

2.1.1 to protect the unique balance between the ecology of the Land, its agricultural value within the Agricultural Land Reserve, and the multi-purpose use of space and facilities on the Land.

2.1.2 to protect, preserve and steward the Land and the Amenities as a Community Commons as described in the Baseline Report.

2.1.3 to prevent any occupation or use of the Land that will impair or interfere with the state of the Land and Amenities as a Community Commons as described in the Baseline Report.

2.3 This Agreement shall be perpetual to reflect the public interest in the protection, preservation and stewardship of the Land and Amenities as a community commons.

3. RESTRICTIONS ON USE OF THE LAND

3.1 The Legal Owner agrees that the land shall only be used as a community commons in a manner that:

3.1.1 protects, preserves and stewards the **Natural State** of the Land in ways that respect its ecology, sensitive environmental ecosystems, species at risk, wildlife habitats, wetlands and riparian areas while not diminishing or negatively impacting the agricultural use/values of the Land;

3.1.2 supports the agricultural significance of the Land and allows for specified farm activities and **Community Agriculture** in locations that will not impact or diminish the identified environmental values; and

3.1.3 ensures access to the Land and Amenities for **Multi-Purpose Use** that benefits the community with social, recreational, and interpretive values. Access shall not be restricted, impeded or limited except as set out in this Agreement.

3.2 Except as expressly permitted in this Agreement, the Owner must not do anything, omit to do anything, allow anything to be done, or allow the omission of anything, that does or could be reasonably expected to destroy, impair, diminish, negatively affect or alter the Land or the Amenities from the condition described in the Baseline Report (Schedule B).

3.3 Without restricting the generality of Section 3.2, the Legal Owner must not use or permit the use of the Land for an activity which:

3.3.1 permits **Industrial Agriculture**;

3.3.2 causes erosion of the Land to occur;

3.3.3 places any financial encumbrance on the land;

3.3.4 permits use primarily for profit;

3.3.5 interferes with the protection of the Natural State of the Land or the Amenities;

3.3.6 facilitates any action that may destroy, diminish, or negatively alter the Natural State of the Land;

3.3.7 uses toxic substances on the Land;

3.3.8 brings **Garbage** onto the Land except for waste materials to be transformed into non-deleterious and usable form for ecologically useful purposes;

3.3.9 causes or facilitates the loss of water, soil, gravel or rock from the Land; or

3.3.10 permits **Hunting, Fishing, Trapping or Logging** on the Land.

3.4 The Legal Owner shall not enter into any agreement for the use of the Land or any part thereof unless the agreement is made subject to the provisions of this Agreement.

4. STEWARDSHIP AGREEMENT AND PLAN

4.1. The Legal Owner and the Covenant Holder shall enter into a **Stewardship Agreement** substantially in the form set out in Schedule B, which shall include an outline for a **Stewardship Plan**.

4.2 The Stewardship Plan addresses the stewarding activities that will be conducted and the roles and responsibilities of the people involved.

5. BASELINE REPORT

5.1 The Land and the Amenities are described in the **Baseline Report**, Schedule B.

5.2 The Parties agree that the Baseline Report provides an objective baseline of information within the terms of this Agreement and that the Baseline Report provides an accurate description of the Land and the Amenities as of the date of this Agreement.

5.3 The Parties acknowledge that the natural flora and fauna on the Land will evolve over time without human intervention and, unless expressly permitted by this Agreement, references to the Baseline Report in this Agreement are intended to take account of this natural evolution.

6 STATUTORY RIGHT OF WAY

6.1 Pursuant to Section 218 of the *Land Title Act*, the Legal Owner grants to the Covenant Holder the full, free and uninterrupted right to enter upon and inspect the Land:

6.1.1 at all reasonable times upon prior written notice by the Covenant Holder to the Legal Owner of at least 24 hours unless, in the opinion of the Covenant Holder, there is an emergency or other circumstance which prevents the giving of reasonable notice;

6.1.2 in order to take soil, water or other samples, photographs, video, or sound recordings as may be necessary to monitor the terms of this Agreement;

6.1.3 to recommend actions which protect, preserve and steward the Land or the Amenities;

6.1.4 if an act of nature or any person destroys, diminishes or negatively affects or alters the Land or the Amenities from the condition described in the Baseline Report and/or as the Land has evolved as documented in successive Stewardship Plans;

6.1.5 at the Legal Owner's expense, if an action of the Legal Owner, or any other person acting with the actual or constructive knowledge of the Legal Owner, contravenes any term of this Agreement;

6.1.7 to assess progress of any plan agreed upon between the Parties for the protection, preservation and stewardship of all or any portion of the Land or the Amenities.

6.2 If any Party intends to act as permitted in Section 6.1, that Party shall give at least 30 days' prior written notice to the other Party. Such notice shall describe in reasonable detail the intended action, the purpose for it, and its likely effect on the Land or the Amenities. The Legal Owner shall request the Covenant Holder to enter upon and inspect the Land if any action is proposed under Section 6.1.3. The Party to whom notice is given may comment on the proposed action, and the Party intending to take action under Section 6.1.3 shall take those comments under consideration before doing anything under that Section.

7 LEGAL OWNER'S RESERVED RIGHTS

7.1 Subject to Sections 2 and 3, the Legal Owner reserves all its rights as Legal Owner of the Land, including the right to use and maintain the Land in any way that is not expressly restricted or prohibited by this Agreement, federal or provincial laws or local bylaws, so long as the use or maintenance is consistent with the intent of this Agreement.

8 LEGAL OWNER'S OBLIGATIONS

8.1 The Legal Owner is obliged to preserve, protect and steward the Land as a Community Commons.

8.2 The Legal Owner retains all responsibilities and bears all costs and liabilities related to the legal ownership, use and maintenance of the Land, and acknowledges that the Covenant Holder shall not be liable for any such costs and liabilities except where specifically provided in this Agreement.

8.3 The Legal Owner covenants to and does hereby indemnify and save harmless the Covenant Holder, its elected and appointed officials, officers, employees, contractors and agents at all times from all losses, damages, actions, suits, claims, demands, costs, expenses, fines and liabilities of any nature whatsoever by whomsoever brought, made or suffered for which the Covenant Holder shall or may become liable, incur or suffer by reason or any injury to person (including death) or loss or damage to property or economic loss:

8.3.1 arising directly or indirectly from a breach or non-performance of this Agreement and the covenants herein by the Legal Owner, its officers, employees, agents, contractors, licensees, and invitees;

8.3.2 arising directly or indirectly from the proper exercise by the Legal Owner of any rights to use the Land pursuant to this Agreement or in the fulfilling of its obligations pursuant to this Agreement; or

8.3.3 arising directly or indirectly from any intentional act, or from any omission, default or negligence of the Owner, its officers, employees, agents, licensees, contractors, or invitees in the use or maintenance of the Land.

8.4 Without limiting the generality of Sections 8.1, 8.2 and 8.3, the Legal Owner:

8.4.1 is solely responsible and liable for any loss or damage of any kind (whether civil criminal or regulatory) resulting from the Legal Owner's action or negligence, in any way connected with the existence in, on, or under the Land of any pollutant, contaminant, or any matter that impairs the environment; and

8.4.2 must indemnify the Covenant Holder from and against any loss, damage, liability, cause of action, action, penal proceeding, regulatory action, order, directive, notice or requirement, including those of any government agency, incurred, suffered, brought against or instituted against the Covenant Holder, jointly or severally.

8.5 The Legal Owner shall pay when due all levies, fees and charges of whatever description which may be assessed against the Land, and shall pay any arrears, penalties and interest in respect thereof.

8.6 Any debts or other amounts due from the Legal Owner to the Covenant Holder under this Agreement, if not paid within 30 days after notice, will bear interest at the annual interest rate that is 1% greater than the prime rate of interest. For the purposes of this Section, the prime rate of interest is the annual rate of interest charged from time to time by Vancouver City Savings Credit Union for demand Canadian dollar commercial loans and designated from time to time by Vancouver City Savings Credit Union as its prime rate.

8.7 The indemnities granted by the Legal Owner to the Covenant Holder under 8.3 are an integral part of the Covenant granted under Section 219 of the Land Title Act.

9. ENFORCEMENT REMEDIES OF THE COVENANT HOLDER

9.1 If the Covenant Holder, in its sole discretion, believes that the Legal Owner has neglected or refused to perform any of the obligations set out in this Agreement, or is otherwise in breach of any term of this Agreement, the Covenant Holder may serve on the Owner a notice of breach setting out particulars of the breach together with an estimate of the Covenant Holder's maximum costs of remedying the breach.

9.2 The Legal Owner shall have 30 days from receipt of the notice of breach given under Section 9.1 to remedy the breach to the Covenant Holder's satisfaction.

9.3 If the Legal Owner does not remedy the breach within the time acceptable to the Covenant Holder, the Covenant Holder may, but is not required to, enter upon the Land and take any required actions to cease any activities giving rise to the breach, and to remedy the breach or carry out the arrangements referred to in Section 9.2. The Legal Owner must reimburse the Covenant Holder for any expenses incurred by the Covenant Holder in taking any action under this section.

9.4 Expenses incurred by the Covenant Holder under this Section, until paid, constitute a debt owed by the Legal Owner to the Covenant Holder, payable within 30 days of demand by the Covenant Holder and recoverable by all remedies available to a creditor in respect of a debtor.

10. COVENANT HOLDER ANNUAL FEE, BREACH FEE, AND THEIR ENFORCEMENT

10.1 As security for the performance of the Legal Owner's obligations under this Agreement, the Owner grants to the Covenant Holder a perpetual Covenant Holder Annual Fee of \$_____ per year against the Land, ranking prior to all other financial charges and encumbrances registered against the Land, including options to purchase and rights of first refusal. The Covenant Holder Annual Fee is granted both under Section 219 of the Land Title as an integral part of the Statutory Covenant created by this Agreement and as a fee simple charge at common law.

10.2 If the Covenant Holder identifies a breach of this Agreement, and if the Covenant Holder wishes to enforce remediation of the breach, it shall provide written notice to that effect to the Legal Owner.

10.3 Breach Fee is to be paid by the Legal Owner to pay for the full cost to remedy a breach of this Agreement identified by the Covenant Holder. The amount of the Breach Fee is to be determined by the Covenant Holder.

10.4 The Breach Fee for any breach of this Agreement is to be paid within 30 business days by the Legal Owner to a dedicated trust established by the Covenant Holder.

10.5 If the breach cannot be remedied, the amount paid to the dedicated trust will not be paid back to the Owner but will instead remain in the trust to pay for any breach of this Agreement.

10.6 Upon remedying a breach, the Covenant Holder will confirm in writing to the Legal Owner that the remedy is satisfactory or if other actions are required. Once the remedy is deemed satisfactory by the Covenant Holder, the Covenant Holder will return the amount in full that was paid to the dedicated trust back to the Legal Owner within 30 business days.

10.7 Any interest earned shall remain in the dedicated trust to help pay for non-Rent Charge costs of administering this Agreement.

10.8 The Covenant Holder shall be entitled to recover from the Legal Owner all reasonable expenses incurred as a result of enforcement of this Agreement;

10.9 The Covenant Holder may enforce the Rent Charge by all remedies available to a creditor in respect of a debtor.

11 WAIVER

11.1 An alleged waiver of any breach of this Agreement is effective only if it is written and

signed by the Covenant Holder and is only effective to the extent of that waiver and does not operate as a waiver of any other breach.

11.2 The failure of the Covenant Holder to require performance by the Legal Owner at any time of any obligation under this Agreement does not affect the Covenant Holder's right to subsequently enforce that obligation.

12 DISPUTE RESOLUTION

12.1 If a breach of this Agreement occurs or is threatened, or if there is disagreement as to the meaning of this Agreement, either the Legal Owner or the Covenant Holder may give notice to the other Party requiring a meeting of both Parties within 10 days of receipt of the notice.

12.2 Upon receipt of a notice under section 12.1, the Parties must immediately cease any activity giving rise to a breach or a threatened breach of this Agreement or a disagreement as to the meaning of this Agreement, as applicable.

12.3 The Parties shall attempt to resolve the matter, acting reasonably and in good faith, within 20 days of receipt of the written notice under Section 12.1.

12.4 If the Parties are not able to resolve the matter within the time set out in section 12.3, the Parties may, by agreement, appoint a mutually acceptable person to mediate the matter, with the costs to be borne equally between the Parties. The Parties, in good faith, must act reasonably and cooperate with the mediator and with each other to resolve the matter within 30 days after the mediator is appointed.

12.5 If the Parties are not able to resolve the matter within that time with the assistance of a mediator, the Parties shall submit the matter to a single arbitrator, appointed jointly by them, under the Arbitration Act (British Columbia).

12.6 If the Parties cannot agree on a single arbitrator, then the Covenant Holder must present to the Legal Owner a list of three arbitrators, and the Legal Owner must choose one arbitrator from the list.

12.7 The decision of the arbitrator shall be final and binding.

12.8 The cost of the arbitration shall be borne equally between the Parties.

12.9 This Section does not affect the right of the Covenant Holder to pursue any other legal or equitable remedy in relation to a breach or a threatened breach of this Agreement, including without limitation Section 10, and the Covenant Holder may pursue other remedies concurrently with any dispute resolution under this Article, such as **Restorative Justice**.

13 SUCCESSORS OF THE LEGAL OWNER

This Agreement shall enure to the benefit of and be binding on the Legal Owner and any Successor of the Legal Owner.

14 NOTICE

14.1 Any notice or other communication required under this Agreement shall be in writing and shall be:

14.1.1 sent by registered mail addressed to the Parties at their respective addresses set out in Section 14.2, and

14.1.2 sent to the Parties using electronic means specified in Section 16.2, followed by a copy sent by Canada Post mail as set out in Section 14.2.

14.2 The addresses and contact information of the Parties for notice are as follows:

To the Legal Owner:

Gabriola Commons Foundation

Postal Address: PO Box 94, 675 North Road, Gabriola, BC V0R 1X0

Electronic Address: info@gabrielacommons.ca

To the Covenant Holder:

Gabriola Island Local Trust Committee

Postal Address: 200 -1627 Fort Street, Victoria, BC V8R 1H8

Electronic Address: northinfo@islandstrust.bc.ca

14.3 Each Party agrees to give notice immediately to the other Party of any change in its addresses or other contact information from those set out in Section 14.2.

14.4 When notice is sent by registered mail, it shall be deemed to have been received on the seventh business day following the day on which the notice was sent. When notice is sent electronically, it shall be deemed to have been received on the day following transmission of the notice.

15 PUBLICATION

15.1 The Legal Owner agrees to allow the Covenant Holder to publicize the existence of this Agreement. The style and location of the publicity shall be approved by the Legal Owner prior to its placement.

15.2 The Legal Owner agrees to allow the Covenant Holder to publicize, at the expense of the Covenant Holder, that they hold a covenant on the Land. The style and location of the publicity shall be approved by the Legal Owner prior to its placement.

16 NO LIABILITY IN TORT

The Parties agree that this Agreement creates contractual obligations, and obligations arising only out of the nature of this Covenant, as a covenant under seal. Without limiting the

generality of the foregoing, the Parties agree that no tort or fiduciary obligations or liabilities of any kind are created or exist between the Parties. The intent of this Section is to exclude, among other things, tort liability of any kind and to limit the Parties to their rights and remedies under the law of contract and the law pertaining to covenants under seal.

17 REMEDIES NOT EXHAUSTIVE

Exercise or enforcement by a Party of any remedy or right under or in respect of this Agreement does not limit or affect any other remedy or right which that Party may have against the other Party under this Agreement.

18 COVENANT RUNS WITH THE LAND

Every obligation and covenant of the Legal Owner in this Agreement constitutes both a personal covenant and also a covenant granted under Section 219 of the *Land Title Act* (British Columbia) in respect of the Land, and the provisions of Section 6 constitute a Statutory Right of Way granted under Section 218 of the *Land Title Act* (British Columbia) in respect of the Land. This Agreement burdens the Land and runs with the Land.

19 REGISTRATION

19.1 The Legal Owner agrees to do everything necessary at the Legal Owner's expense to ensure that this Agreement, and the interests it creates, are registered against Title to the Land.

19.2 The Legal Owner shall do everything necessary and possible to ensure that this Agreement, and the interests it creates, are registered with priority over any financial charges, liens and encumbrances registered with the Land Title and Survey Authority at any time.

20 SEVERANCE

If any part of this Agreement is held by a court or arbitrator to be invalid, illegal or unenforceable, that part is to be considered to have been severed from the rest of this Covenant, and the rest of this Covenant is to remain in force unaffected by that holding or by the severance of that part.

21 NO OTHER AGREEMENTS

This Agreement is the entire Agreement between the Parties.

22 INDEPENDENT ADVICE

22.1 The Legal Owner has sought and obtained independent advice from an accountant or other tax expert with respect to the tax implications of this Agreement as appropriate.

22.2 The Legal Owner has sought and obtained independent legal advice as to the meaning and effect of this Agreement. The Legal Owner further acknowledges and agrees that no legal advisor of the Covenant Holder has advised the Legal Owner on the meaning or effect of this Agreement or in connection with this Agreement.

23 AMENDMENTS

This Agreement is meant to be perpetual and may only be changed by a written instrument signed by all the Parties.

24 DEED AND CONTRACT

By executing and delivering this Agreement, each Party intends to create a contract and a deed and Covenant executed and delivered under seal.

25 GENERAL

25.1 As evidence of their agreement to be bound by the above terms, the Parties each have executed and delivered this Agreement under seal by executing Part 1 of the Land Title Form C to which this Agreement is attached and which forms part of this Agreement.

25.2 The schedules referred to throughout the document are attached after this page.

LIST OF SCHEDULES

- A. Stewardship Agreement and Plan
- B. Gabriola Commons Baseline Report 2026