

# COVENANT

DRAFT of October 17, 2018

This Agreement is between:

The GABRIOLA COMMONS FOUNDATION, a Non-profit Society at 675 North Road, Gabriola Island, BC.

and

XXXXXXXXXXXXXXXXXXXX

These are collectively referred to in this document as the Parties and the document is dated: **DD MM YYYY**.

The Gabriola Commons acknowledges with gratitude that we are on the traditional and unceded territory of the Snuneymuxw First Nation.

## PREAMBLE

Every Commons is defined within the parameters of a specific site and historic cultural background.

The Gabriola Commons binds the land and the people in a vibrant, affirmative and synergetic relationship. The land provides gifts of nature and is a source of diversity, abundance and well-being. The integrity of the land is sustaining and restores in people a sense of purpose, belonging and commitment.

The land anchors the community in local geography, history and a set of traditions. The community cares for and stewards the land with deep knowledge, imagination and responsibility so its living systems flourish.

The Gabriola Commons is an entrusted and emergent commonwealth passed on in perpetuity to future generations. It is centered in a global commons resurgence that offers an ethics of sufficiency, community determination, ecological resilience, social equity and cultural connection to a beloved landscape.

## RECITALS

GIVEN THAT:

A) The **Legal Owner** is the registered oowner of the **Land**.

B) 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**.

C) The Legal Owner has agreed to grant the Covenant Holder a covenant pursuant to Section 219 of the *Land Title Act* to protect the use of the Land as a Community Commons.

D) A statutory right of way in favour of the Covenant Holder is necessary for the exercise of the specific rights granted to the Covenant Holder of this Agreement.

E) The Covenant Holder has been designated by the British Columbia Minister of the Environment & Climate Change, as authorized to accept a statutory right of way, pursuant to Sections 218 and 219 of the *Land Title Act*.

**NOW THEREFORE**, in consideration of the payment of \$2 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 Covenant:

1.1.1 *Amenities* means the ecological, agricultural and multipurpose use features relating to the Land.

1.1.2 *Baseline Report* means the documentation 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 at the addresses set out in Section 16, an overview of which is attached to this Agreement as Schedule A, *Gabriola Commons Baseline Report Overview*.

1.1.3 *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.

1.1.4 *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, while excluding for profit commercial enterprises on the Land.

1.1.5 *Covenant Holder* means XXX and includes its permitted successors and assigns.

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

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

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

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

1.1.10 *Land* means the parcel of land legally described as Lot 1, Plan VIP27281, Section 19, Land District 32, Gabriola Island (PID 002-600-994).

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

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

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

1.1.14 *Natural State* means the state of the Land as described in the attached *Gabriola Commons Baseline Report Overview*.

1.1.15 *Rent Charge* means the rent charge granted by the Legal Owner under Section 11.1, below.

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

1.1.17 *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.

1.1.18 *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*.

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

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

1.1.21 *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 comprises the recitation of the Parties, the Recitals to this Agreement, and Part 1 of the Land Title Act Form C to which this Agreement is attached.

## 2. REPRESENTATIONS AND WARRANTIES

2.1 The Legal Owner warrants that the facts set out in Recital A and Recital C are true as of the date of this Agreement.

2.2 The Agreement Holder warrants that the facts set out in Recital E are true as of the date of this Covenant.

2.3 The Parties warrant that the facts set out in Recitals B and D are true as of the date of this Agreement.

## 3. INTENT OF THE COVENANT

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

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

3.1.2 to protect, preserve and steward the Land and the Amenities as a Community Commons.

3.1.3. to restrict any occupation or use of the Land that will impair or interfere with the state of the Land and Amenities as a Community Commons.

3.2 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.

## 4. RESTRICTIONS ON USE OF THE LAND

4.1 The Legal Owner agrees that the Land shall only be used as a Community Commons in a manner that:

4.1.1 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;

4.1.2 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

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

4.2 Except as expressly permitted in this Agreement, the Owner must not do anything, omit to do anything, allow anything to be done, or allow any activity or use which:

4.2.1 permits **Industrial Agriculture**;

4.2.2 causes erosion of the Land;

4.2.3 causes or allows the Land to be removed from the Agricultural Land Reserve;

4.2.4 places any financial encumbrance on the Land;

4.2.5 subdivides the Land by any means;

4.2.6 permits use pursued primarily for profit.

4.2.7 interferes with the protection of the Natural State of the Land or the Amenities, or facilitates any action that may destroy, diminish, or negatively alter the Natural State of the Land;

4.2.8 uses toxic substances on the Land;

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

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

4.2.11 permits **Hunting, Fishing, Trapping** or **Logging** on the Land; or

4.2.12 interferes with the ecological values as specified in the *Gabriola Commons Baseline Report Overview*.

4.3 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.

## **5. STEWARDSHIP PLAN**

5.1 The Legal Owner and the Covenant Holder agree that it is in the public interest to enter into a **Stewardship Agreement** that includes an outline for a **Stewardship Plan** and which are attached in Schedule B: *Gabriola Commons Stewardship Agreement*.

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

## **6. BASELINE DOCUMENTATION REPORT**

6.1 The Land and the Amenities are as described in the **Baseline Report** (see Schedule A, *Gabriola Commons Baseline Report Overview*).

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

6.3 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.

## **7. STATUTORY RIGHT OF WAY**

7.1 The Legal Owner grants to the Covenant Holder a license and a statutory right of way, pursuant to Section 218 of the Land Title Act permitting the Covenant Holder:

7.1.1 to enter upon and inspect the Land:

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

7.1.1 b) 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; and

7.1.2 to recommend actions which protect, preserve and steward the Land or the Amenities:

7.1.2 a) 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; and

7.1.2 b) 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;

7.1.3 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.

7.2 If any Party intends to act as permitted in Section 7.1.2 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 7.1.2. The Party to whom notice is given may comment on the proposed action, and the Party intending to take action under Section 7.1.2 shall take those comments under consideration before doing anything under that Section.

## **8. LEGAL OWNER'S RESERVED RIGHTS**

8.1 Subject to Sections 3 and 4, 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 by-laws, so long as the use or maintenance is consistent with the intent of this Covenant.

8.2 In an emergency situation such as fire or threat to human safety, the Legal Owner may, without the consent of the Covenant Holder, act reasonably to prevent injury or death. The Legal Owner must notify the Covenant Holder of the circumstances of such action within 30 days, including the actual or likely effect on the Land or the Amenities.

## **9. LEGAL OWNER'S OBLIGATIONS**

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

9.2 The Legal Owner retains all responsibilities and bears all costs and liabilities related to the legal ownership, use and maintenance of the Land.

9.3 The Legal Owner must indemnify the Covenant Holder, its directors, officers, employees, agents and contractors, from and against any and all liabilities, damages, losses, personal injury or death, causes of action, actions, claims, and demands by or on behalf of any person, arising out of any act or omission, negligent or otherwise, by the Legal Owner in the use and maintenance of the Land or the Amenities.

9.4 The Legal Owner shall not be liable for:

9.4.1 injury or alteration to the Land or the Amenities resulting from natural causes, or causes beyond the Legal Owner's reasonable control, including vandalism and any use by a third party contrary to the Agreement, but excluding injury or alteration resulting from actions of the Legal Owner or any other person with the actual or constructive knowledge of the Legal Owner;

9.4.2 any prudent action taken by the Legal Owner under emergency conditions to prevent, abate, or mitigate significant injury to the Land or Amenities resulting from natural causes; or

9.4.3 injury or alteration to the Land caused by the Agreement Holder exercising their rights under this Covenant.

9.5 Without limiting the generality of Sections 9.1, 9.2, 9.3 and 9.4 the Legal Owner:

9.5.1 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

9.5.2 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, in any way associated with anything described in Section 9.5.1.

9.6 Where, as provided under Section 9.3, the Legal Owner is not responsible for damage or theft due to unauthorized use, the Legal Owner shall take all reasonable steps to identify and seek **Restorative Justice** with the person responsible for the damage or theft. Failing restorative justice, the wronged party may pursue remedies available to it under the law.

9.7 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.

9.8 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.

9.9 The indemnities granted by the Legal Owner to the Covenant Holder under 9.3 and 9.5.2 are an integral part of the Covenant granted under Section 219 of the Land Title Act.

9.10 Nothing in this Agreement restricts or affects the right of the Legal Owner to act reasonably to:

9.10.1 prevent injury or death to any individual; or

9.10.2 prevent, abate or mitigate any damage or loss to any real or personal property.

## **10. ENFORCEMENT REMEDIES OF THE COVENANT HOLDER**

10.1 If the Covenant Holder believes that the Legal Owner has neglected or refused to perform any of the obligations set out in this Agreement, or is in breach of any term of this Agreement, the Covenant Holder may serve on the Owner a notice setting out particulars of the breach and of the Covenant Holder's estimated maximum costs of remedying the breach.

10.2 The Legal Owner has 30 days from receipt of the notice given under Section 10.1 or from the conclusion of a dispute resolution process under Section 13 if it is invoked, to remedy the breach or make arrangements to the Covenant Holder's satisfaction for remedying the breach, including the time within which the breach must be remedied.

10.3 If the Legal Owner does not remedy a breach described in Section 10.2 within the time acceptable to the Covenant Holder under this Section, the Covenant Holder may enter upon the Land and remedy the breach or carry out the arrangements referred to in Section 10.2.

10.4 Expenses incurred by the Covenant Holder under this section, until paid, are a debt owed by the Legal Owner to the Covenant Holder.



## 11. RENT CHARGE AND ITS ENFORCEMENT

11.1 As security for the performance of the Owner's obligations under this Agreement, the Owner grants to the Covenant Holder a perpetual **Rent Charge** 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 Rent Charge is granted both under section 219 of the Land Title Act as an integral part of the statutory covenant created by this Agreement and as a fee simple rent charge at common law.

11.2 The Rent Charge secures payment to the Covenant Holder by the Owner of the sum of \$\_\_\_\_\_ per year, subject to adjustment under section 11.3, for each violation occurring within that year. For clarity, only one Rent Charge Amount is payable by the Owner for each violation.

11.3 The **Rent Charge Amount** is to be adjusted on January 1 of each year by increasing or decreasing, as the case may be, the Rent Charge Amount by the amount determined by multiplying the Rent Charge Amount on December 31 immediately preceding by the percentage increase or decrease, as the case may be, in the Consumer Price Index (CPI) between the previous January 1 and that December 31, and adding the amount so determined to the Rent Charge Amount as it stands on that December 31. If Statistics Canada, or its successor in function, ceases to publish a CPI or comparable indicator as determined by the Covenant Holder in its sole discretion, the Parties agree that the factor to be used in determining the Rent Charge Amount for each year shall be an increase of 3%.

11.4 At the date of any breach of this Agreement, the Rent Charge Amount shall be increased by a sum equal to 110% of the market value of any flora or fauna, soil, rock, gravel or minerals which have been altered, damaged, destroyed, moved, harvested or removed.

11.5 The Rent Charge Amount shall be doubled if, in the sole opinion of the Covenant Holder, the damage resulting from a breach of this covenant cannot be repaired or remediated.

11.6 The Covenant Holder shall be entitled to recover from the Owner all reasonable expenses incurred as a result of enforcement of the Rent Charge.

11.7 The Rent Charge is suspended unless and until the Owner is in breach of any provision of this Agreement and has not cured the breach, cannot cure the breach or is not diligently proceeding to cure the breach in accordance with article 10 of this Agreement.

11.8 The Covenant Holder may enforce the Rent Charge by any of the following:

- a) an action against the Owner for the Rent Charge Amount;
- b) distraint against the Land to the extent of the Rent Charge Amount;
- c) an action for appointment of a receiver in respect of the Land; or
- d) an order for sale of the Land.

11.9 If the Covenant Holder wishes to enforce the Rent Charge, it shall provide notice to that effect to the Owner. This notice may be given at any time after notice is given under section 10.1.

11.10 Within ten Business Days of receipt of a notice given under section 11.9, the Owner must pay the full Rent Charge Amount to the Covenant Holder.

## **12. WAIVER**

12.1 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.

12.2 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.

## **13. DISPUTE RESOLUTION**

13.1 The Parties agree to use best practices in dispute resolution before utilizing the process outlined in this section.

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

13.3 All activities giving rise to a breach or threatening a breach of this Agreement, or giving rise to a disagreement as to the meaning of this Agreement, must immediately cease upon receipt of written notice.

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

13.5 If the Parties are not able to resolve the matter within that time, the Parties may 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 in an attempt to resolve the matter within 30 days after the mediator is appointed.

13.6 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).

13.7 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.

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

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

## **14. 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.

## **15. ASSIGNMENT OF COVENANT OR DISSOLUTION OF THE COVENANT HOLDER**

15.1 A Covenant Holder may assign all its rights and obligations under this Agreement, but only to a non-profit society qualified by law at the time of transfer to hold covenants under Section 219 of the Land Title Act (or any successor provision then applicable) and any applicable regulations.

15.2 The Covenant Holder agrees that before assigning its rights and obligations under this Section, it must consult with the Legal Owner with respect to the proposed assignee. The Covenant Holder must give notice to the Legal Owner of the proposed assignment. Such notice shall set out in reasonable detail the identity of the proposed assignee and the qualifications and experience of the proposed assignee relevant to performance by the assignee of the rights and obligations of the Covenant Holder under this Agreement. The Legal Owner has 60 days after the Covenant Holder gives notice to the Legal Owner under this Section to accept or reject the proposed assignee. At the end of this period, if the Legal Owner has not commented on the proposed assignee, the Legal Owner is conclusively deemed to have declined to comment on the proposed assignee and to have consented to the assignment.

15.3 In the event of the winding-up or dissolution of a Covenant Holder, the Covenant Holder must use its best efforts to assign and transfer all its interest under this Agreement to a non-profit society authorized to accept covenants under Section 219 of the Land Title Act. If the Covenant Holder does not assign and transfer all its interest under this Agreement as set out in this Section, it shall be deemed to have assigned and transferred all its interests under this Agreement to Her Majesty the Queen in Right of the Province of British Columbia until a new covenant holder can be found.

## **16. NOTICE**

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

16.1.1 sent by registered mail addressed to the Parties at their respective addresses set out in Section 16.2, and

16.1.2 sent to the Parties using electronic means specified in Section 16.2, followed by a copy sent by ordinary mail as set out in Section 16.2.

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

To the Legal Owner, the Gabriola Commons Foundation:  
 Postal Address: PO Box 94, 675 North Road, Gabriola BC V0R 1X0  
 Electronic Address: [info@gabriolacommons.ca](mailto:info@gabriolacommons.ca)

To the Covenant Holder: XXXX:  
 Postal Address: YYYY  
 Electronic address: ZZZZZ

16.3 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 16.2.

16.4 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.

## **17. PUBLICATION**

17.1 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.

17.2 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.

## **18. 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.

## **19. 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.

## **20. COVENANT RUNS WITH THE LAND**

20.1 Every obligation and covenant of the Legal Owner in this Agreement constitutes a covenant with the Land and also a covenant granted under Section 219 of the Land Title Act (British Columbia) and a statutory right of way granted under Section 218 of the Land Title Act (British Columbia) in respect of the Land. This Agreement is tied to the Land and runs with it and binds the Successors in title to the Land.

## **21. REGISTRATION**

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

21.2 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 in the Land Title Office at any time.

## **22. 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.

## **23. NO OTHER AGREEMENTS**

This Agreement is the entire Agreement between the Parties.

## **24. INDEPENDENT ADVICE**

24.1 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.

24.2 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.

## **25. AMENDMENTS**

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

## **26. 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.

## **27. GENERAL**

27.1 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.

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

## **LIST OF SCHEDULES**

- A. Gabriola Commons Baseline Report Overview**
- B. Gabriola Commons Stewardship Agreement**