

## Schedule B: Gabriola Commons Stewardship Agreement

DRAFT October 27, 2018

THIS AGREEMENT dated for reference [insert date] is

BETWEEN:

*Gabriola Commons Foundation, PO Box 94, 675 North Road, Gabriola Island, BC. V0R 1X0*

AND:

Name and address of covenant holder

(collectively, the “Parties”)

**BECAUSE:**

A. The **Legal Owner** is the registered owner in fee simple of the **Land**;

B. The Gabriola Commons binds the land and the people in a vibrant, affirmative and synergetic relationship. The land provides gifts of nature and is the source of diversity, abundance and well-being. The integrity of the land is sustaining and restores in people 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 can 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, self governance, ecological resilience, social equity and cultural connection to a beloved landscape.

C. The stewardship and use of the Land will protect and preserve the Land and **Amenities** as a **Community Commons**;

D. The Owner has granted the **Covenant Holder** a covenant pursuant to S. 219 of the Land Title Act, respecting the protection, preservation, and stewardship of the Land and the Amenities and a statutory right of way pursuant to S. 218 of the Land Title Act;

E. The Parties agree that the Land will be stewarded in accordance with the terms of the **Covenant** and this Agreement;

The Covenant requires the Parties to enter into a written Stewardship Agreement for the stewardship of the Land;

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 Owner, and in consideration of the promises exchanged below, the Owner, and the Covenant Holder agree as follows:

## **1. DEFINITIONS**

In this Agreement:

- 1.1 *Amenities* means the ecological, agricultural and multipurpose use features relating to the Land.
- 1.2 *Baseline Report* means the baseline 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 12.
- 1.3 *Commons Coordinating Council* means the shared governance stewardship structure with ongoing responsibility to hold the Gabriola Commons as a Community Commons in trust for current and future generations, to uphold the practices and protocols determined by the participants and to ensure the mutual interests of all participants are represented.
- 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.
- 1.5 *Community Commons* means the Land and Amenities to be used by the community through practices of shared responsibility that provide the community with agricultural, environmental and social benefits on a sustainable basis, while excluding for-profit commercial enterprises.
- 1.6 *Covenant* means the covenant agreement between the Owner and [insert name of covenant holder] to which this Agreement is attached.
- 1.7 *Covenant Holder* means XXX and includes its permitted successors and assigns.
- 1.8 *Covenant Purposes* means the purposes set out in Section 3 of the Covenant;
- 1.9 *Land* means the parcel of land legally described as Lot 1, Plan VIP27281, Section 19, Land District 32, Gabriola Island (PID 002-600-994).

- 1.10 *Legal Owner* means the Gabriola Commons Foundation and includes any successor of the Legal Owner.
- 1.11 *Multi-purpose use* means educational and interpretive activities, the distribution of food produced on the property at no charge, space for the management and direction of activities on the Land and the provision of administration space for other non-profit or not for profit enterprises, including the storage of materials, indoor and outdoor gatherings, meetings, and events except where specifically restricted in this Agreement.
- 1.12 Stewardship *means* the action of caring for and sharing responsibility for the Land and Amenities.
- 1.13 *Stewardship Plan* means a document in which the Parties agree to long-term stewarding of the Land and is guided by the usages and practices of a community commons, an overview of which is attached to this Agreement as Schedule A: Stewardship Plan for the Protection and Preservation of the Gabriola Commons.
- 1.14 *Stewardship Team* means the group of individuals and representatives entrusted with implementing and overseeing the periodically reviewed and revised Stewardship Plan.
- 1.15 *Successor* means any non-profit society or group that, any time after registration of this Agreement, becomes an owner of the Land.

## **2. GRANT OF LICENSE**

This section does not grant any property right or interest in the Land and the non-exclusive contractual license created by this section is only for the purpose of enabling stewardship rights and obligations under this Agreement.

## **3. STEWARDSHIP AND USE OF THE LAND**

The Owner and the Covenant Holder agree that the Land must be stewarded:

- (a) according to the terms of the Covenant;
- (b) according to the terms of this Agreement;
- (c) according to the terms of the **Stewardship Plan**;
- (d) according to the terms of the **Baseline Report**;

(e) only for the Covenant Purposes, and

(f) subject to all applicable laws, statutes, bylaws, regulations, orders and directives.

#### **4. TERM OF THIS AGREEMENT**

This Agreement starts on the reference date noted above and runs with the Covenant.

#### **5. STEWARDSHIP VISION AND GOALS**

Subject to Section 3 the concept of Stewardship is central to the ethos of the Gabriola Commons “where land and people meet”.

#### **6. STEWARDSHIP PLAN**

6.1 The creation, review and revision of a Stewardship Plan for the Land and Amenities shall be initiated by the Legal Owner.

6.2 The Stewardship Plan shall include goals, objectives, operational and fiscal guidelines, and planning in accordance with maintaining and sustaining a Community Commons.

6.3 The Stewardship Plan shall ensure public notification, reception and consideration of paper or electronic input, open consultative meetings, and a public record, begun within 90 days of activation.

6.4 The Stewardship Plan shall be reviewed and revised at least once every three (3) years.

6.5 Each Stewardship Plan shall be signed by representatives of the Legal Owner and the Covenant Holder.

6.6 The Legal Owner must consult with the Covenant Holder regarding any proposed substantive change to the Land as referenced in the Stewardship Plan.

#### **7. STEWARDSHIP PLAN IMPLEMENTATION**

7.1 Once the Stewardship Plan is approved and adopted, the Stewardship Team is mandated to implement the Plan.

7.2 A duly constituted Stewardship Team shall be determined by the Commons Coordinating Council.

## **8. STEWARDSHIP COSTS**

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

8.2 The Covenant Holder bears all costs for monitoring and enforcement.

8.3 Costs associated with implementing the Stewardship Plan and the Plan's operational and maintenance costs are determined and set out in each version of the Plan.

## **9. INDEMNIFICATION**

The Owner and the Covenant Holder are released from any claim, right, remedy, action, cause of action, loss, damage, expense or liability against the Owner and Covenant Holders in respect of this Agreement or its performance or breach.

## **10. INSURANCE**

The Owner agrees to obtain and maintain in effect throughout the term of this Agreement, public liability insurance against liability to anyone for personal injury, death, property loss and property damage. The insurance must be underwritten by an insurance company licensed in British Columbia.

## **11. ASSIGNMENT**

The Owner and Covenant Holder may not assign this Agreement or sub-contract any of its rights or obligations under this Agreement.

## **12. NOTICE**

12.1 Any notice or other communication required under this Covenant shall be in writing and shall be:

12.1.1 sent by registered mail addressed to the Parties at their respective addresses set out in Section 12.2, and

12.1.2 sent to the Parties using electronic means specified in Section 12.2, followed by a copy sent by ordinary mail as set out in Section 12.2.

12.2 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

12.3 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 12.2.

12.4 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.

### **13. NO LIABILITY IN TORT**

This Agreement creates only contractual obligations. No tort obligations or liabilities of any kind exist between the parties in connection with the performance of, or any default under or in respect of, this Agreement. The intent of this section is to exclude tort liability of any kind in connection with this Agreement and to limit the parties to their rights and remedies under the law of contract.

### **14. WAIVER**

14.1 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.

### **15. INTERPRETATION**

15.1 This Agreement is comprised of the recitation of the parties, the recitals to this Agreement, and the Schedules to this Agreement.

15.2 In this Agreement:

15.2.1 Every reference to a party is deemed to include successors, assigns of such parties wherever the context so requires or allows; and

15.2.2 The headings are inserted for reference and convenience only and must not be used to construe or interpret the provisions hereof.

## 16. SEVERANCE

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.

## 17. NO OTHER AGREEMENTS

This Agreement is the entire agreement between the parties regarding its subject.

## 18. ENUREMENT

18.1 This Agreement binds the parties to it and their respective successors.

18.2 As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement.

## APPENDIX A

### STEWARDSHIP PLAN FOR THE PROTECTION AND PRESERVATION OF THE GABRIOLA COMMONS

For the time period \_\_\_\_\_ to \_\_\_\_\_

This Stewardship Plan has effect through the statutory covenant entered into with the Covenant Holder registered by the \_\_\_\_\_ (Registration Number \_\_\_\_\_).

The statutory covenant is registered over the **Land** and is binding on future owners. The **Legal Owner** and **Covenant Holder** to this agreement are:

The Gabriola Commons Foundation

And

Covenant Holder

## 1. GENERAL PROPERTY DETAILS

### 1.1 Property Name and Ownership Details

Property Name: Gabriola Commons

Legal Owner: Gabriola Commons Foundation

### 1.2 Real Property Description

Lot 1, Section 19, Gabriola Island, Nanaimo District, Plan 27281 (PID 002600994)

### 1.3 Area of Property and Covenanted Area

Total property area 26.51 acres (10.73 Hectares)

Total area protected by covenant 26.51 acres (see attached map – Page #)

## 2. PROPERTY DESCRIPTION, LAND USE AND ATTRIBUTES

### 2.1 Permitted Uses of the Land

The Land is designated Agricultural Land Reserve (ALR). The Agricultural Land Reserve is a British Columbia provincial zone in which agriculture is recognized as the priority use. Farming is encouraged and non-agricultural uses are restricted.

ALR land is the responsibility of the BC Provincial Agricultural Land Commission (ALC), an independent administrative tribunal dedicated to preserving agricultural land and encouraging farming in British Columbia.

The Land is zoned “Gabriola Commons – Comprehensive Development Zone” (Islands Trust – Gabriola Official Community Plan (OCP) – Consolidated Version July 2015).

The zoning is included in the Official Community Plan - Section 5: Agriculture. The Land is recognized as a unique and distinct property on Gabriola. Managed as a Community Commons by a community-based association, it is a place where sustainability, community and agriculture meet. The Gabriola Commons is intended to exist in perpetuity for the benefit of the community, a community legacy serving community needs.

The permitted principal uses are Commons Agriculture and Commons Institutional and the Gabriola Land Use Bylaw for the Land regulates uses, buildings and structures, siting requirements, coverage and maximum floor area for the principal and accessory uses.

Community agriculture and institutional uses are supported for this property, and zoning that specifies agriculture and institutional uses as principal permitted uses is supported by this Plan. The institutional uses permitted will include non-profit and not-for-profit enterprises that provide services of benefit to the residents of Gabriola. Educational uses also fall under the definition of institutional. It is intended that the Commons will be a place for learning about agriculture, food production, and sustainability practices (Gabriola Island Official Community Plan, 2015 & 2016).

## **2.2 Land Description**

High rocky ridges near north and west edges of the Land dominantly podzolic soils; from Bellhouse bedrock with shallow sandy overburden and glacial drift, draining rapidly, sloping down to Fairbridge or Cowichan soil (shallow loam over marine deposits over deep silty clay with high ground water levels and poor drainage). The major Hogan Lake watershed crosses the land with Goodhue Creek, swale-formed, flowing from east into excavated pond and exiting to south.

## **2.3 Agricultural Attributes**

There are two main agricultural zones, following topography:

- Poor to medium soil nutrient regime in dry soil with rapid drainage;
- High and medium bench floodplain (poor to medium soil nutrient regime over deep clay with poor drainage (frost pocket).

## **2.4 Ecological Attributes**

There are two zones in the covenanted area: Coastal Douglas-Fir (CDF) and Coastal Western Hemlock (CWH), with dominant subzones (both identified as sensitive ecosystems):

- CDF Moist Maritime (w/Ocean Spray, Salal, Kindbergia)
- CWH Moist Maritime (w/Alder, Red Cedar, Sword Fern)

## **2.5 Multi-Purpose Attributes**

As stated in the Gabriola Official Community Plan (OCP), the Land may be used for non-profit and not-for-profit enterprises that provide benefit to the community without purpose of private gain or commercial profits.

Provision of administration space for other non-profit or not for profit enterprises is permitted and includes the storage of materials necessary for conducting activities on the Land.

Public assembly, indoor and outdoor gatherings, meetings, and events for the benefit and use of the public are all permitted. The provision of special purpose services includes educational and interpretive activities.

### **3. ELEMENTS OF SIGNIFICANCE**

#### **3.1 Agricultural Significance**

The Land is in the Agricultural Land Reserve which exists to preserve agricultural land and to encourage farming in the Province of BC.

Agricultural activities are considered to be important to the Gabriola community as they contribute to the local economy, the Island's rural character, and provide a visual open space benefit.

Agricultural objectives in the community plans include preserving land with agricultural potential; protecting and encouraging agriculture conducted in conformity with recognized standards and codes of practice; and recognizing the importance of locally grown food.

With particular reference to the Land, an OCP objective recognizes and encourages involvement in Community Agriculture and supports a range of agriculturally-related uses on the Land.

The Land is a place for learning about agriculture, food production, and sustainability.

#### **3.2 Ecological significance**

The Covenant Area includes two sensitive ecosystems identified by the Islands Trust mapping and designation: Wetlands/Marshland and Moist Maritime Coastal Douglas Fir zones.

The Coastal Douglas Fir Zone, one of the rarest of BC's 16 biogeoclimatic zones occurs only on the East Coast of Southern Vancouver Island, islands of the Salish Sea and small areas of the BC Mainland.

The riparian area and stream are parts of a continuous waterway running through the property from and to neighbouring properties. The Land is located in the largest watershed area on Gabriola Island.

Considerable biodiversity exists within the ecosystem including: woodland (open forest); woodland (open mixed conifer/deciduous); herbaceous; freshwater pond; freshwater stream; riparian area.

Endangered, rare or threatened species and habitat are found in the Covenant Area and designated as red or blue listed.

### **3.3 Social and Cultural Significance**

The Gabriola Commons is an ongoing reciprocal relationship between the Land and the people of Gabriola that is interdependent and contributes to the common good and education of the community.

The Land is held in trust for the community and that trust is grounded in effective and vigorous stewardship rooted in community vision, use and sense of place.

## **4. VISION FOR THE STEWARDSHIP PLAN**

4.1 The intent of the Plan is to protect, preserve and steward the Land and the Amenities as a Community Commons.

4.2 Stewardship involves balancing ecological protection, a working agricultural landscape and multi-purpose community use. Stewardship pays attention to the right of public access to the land and participation in stewardship activities. Public restrictions only apply to ecologically sensitive areas and from time to time areas off limits due to restoration or enhancement work.

4.3 The stewardship of the shared resources and assets is open, equitable and transparent. There are opportunities for creative and substantial community engagement.

## **5. PRINCIPLES FOR THE STEWARDSHIP PLAN**

5.1 Stewardship is rooted in committed engagement of people with the land, paying both objective and empathetic attention to shifting conditions and the needs arising from these such as the need to limit its use or pursue remedial action.

5.2 It is critical to an overall stewardship plan that the environmental, agricultural and community spaces are looked at as a whole.

5.3 The Baseline Report provides the benchmark against which to measure changes in the land and its features. It describes the existing state of the Land, its flora, fauna, natural and agricultural features and amenities at the time the covenant is placed on the land.

## **6. GUIDELINES FOR THE STEWARDSHIP PLAN**

6.1 Guidelines for stewardship of the agricultural use of the land:

- *uphold Community Agriculture*
- *promote agricultural education*
- *enhance food security*
- *protect agricultural land*
- *promote farming*

- 6.2 Guidelines for the stewardship of the environment:
- *strengthen the ecological integrity of the Land*
- *protect sensitive ecosystems*
- *maintain biodiversity*
- *cultivate deep knowledge of the land*
- *eliminate invasive species*

6.3 Guidelines for the stewardship of community space use (indoors & out):

- *Ensure the community benefits of the buildings, the gathering places (indoors & out) by balancing the widest possible range of permitted community use with quiet peaceful sanctuary*
- *Maintain buildings and infrastructure to safety and accessibility standards*
- *Ensure the built environment is mindfully and carefully planned using best building practices and principles*
- *Integrate design elements and patterns to achieve a visually pleasing, beautifully integrated public space*
- *Ensure compliance with ALC approval of “non-farm” uses*

6.4 Without limiting the generality of Sections 6.1, 6.2 and 6.3, the Stewardship Plan addresses:

6.4.1 The condition of the Land and degree of alterations at time of covenant registration

6.4.2 Pertinent Government Regulations

6.4.3 The Islands Trust Official Community Plan: Development Permit Areas for Riparian Area Protection

6.4.4 Agricultural Land Commission

6.4.5 Climate Change Considerations

All future stewardship plans for the Covenant must include consideration of the impacts of climate change and plan for adaptation and mitigation efforts to preserve and protect the ecological values of the land.

6.4.6 Social and Human Impact Considerations

The unique blend of the Land and people in ongoing relations of interaction poses a unique stewarding challenge. This requires a willingness to limit the scale and/or pace of human activity on the Commons so as to remain within the carrying capacity of both the land and the social infrastructure.

## **7. Strategies for the Gabriola Commons Stewardship Plan**

### **7.1 Agricultural Stewardship Strategies**

Objective: To encourage community agriculture that supports a range of agriculturally-related uses on the land.

Strategies for successive stewardship plans to meet the objective include:

- *Promote agricultural knowledge and importance of locally grown food.*
- *Pursue sustainable agricultural practice.*
- *Prepare periodic inventory of agricultural areas.*
- *Assess and review scale of agricultural activities to meet ALC agricultural and farming requirements.*
- *Prepare and apply maintenance and repair plans for agricultural buildings, structures and infrastructure.*

### **7.2 Ecological Stewardship Strategies**

Objective: To protect sensitive ecosystems and biodiversity of the land as identified in the Baseline Report.

Strategies for successive stewardship plans to meet the objective include:

- *Review inventory of the flora and fauna*
- *Identify features or areas that are degrading*
- *Restore ecological features that have suffered degradation and can be enhanced through restorative actions*
- *Maintain the Land and its Amenities to ensure ongoing protection*
- *Regularly monitor the land to ensure compliance with the provisions of the ecological values of covenant*
- *Protect watercourses and riparian areas that meet or exceed Riparian Areas Regulations*
- *Ensure that work undertaken in any part of the ecological areas is done in a manner that causes the least amount of disruption.*

### **7.3 Multi-purpose Stewardship Strategies**

Objective: To provide community benefits and enjoyment of indoor and outdoor space for social, recreational and cultural purposes.

Strategies for successive stewardship plans to meet the objective include:

- *Prepare and apply maintenance and repair plans for buildings, structures and infrastructure.*
- *Address safety and security issues*
- *Reflect mindful planning for integrated public space in all design elements.*
- *Pursue synergy between buildings and outdoor space.*

7.4 Successive Plans require a detailed budget attached to the Plan that outlines projected revenues and expenses for the time of the Plan and identifies in detail the human and material resources required to carry out the Plan.

## **8. Administrative Provisions**

For details regarding release and indemnity, waiver, default, and settlement of disputes, refer to general provision in the statutory Covenant.

## **9. Map of Covenanted Area**

See attached plan of Land and Amenities which are covered by the Covenant.

## **10. Reference**

Gabriola Island Official Community Plan (Consolidated Version, July 2015). Section 5.3: Agriculture; Agriculture Objectives 5.3.3, Agriculture Policies Section 5.3.i. Gabriola Island Land Use Bylaw (Consolidated Version, November 2016) – D.2.8.