

COVENANT

This Covenant is granted by:

THE GABRIOLA COMMONS FOUNDATION

in favour of:

COVENANT HOLDER #1

and:

COVENANT HOLDER #2

These three are collectively referred to in this document as the Parties.

and is dated: **DD MM, YYYY**

PREAMBLE

The Gabriola Commons is an ongoing, reciprocal relationship; the people care for the Land and the Land nurtures the people.

This Land without its people would have no social role, the people without this Land would be reduced as a community. But the people of Gabriola and the Land on which the Commons is situated together enhance the potential of both.

The interdependence of Gabriolans and the Commons Land is symbiotic, each increasing the richness of the other.

The diversity on this Land and the commitment of its people ensures the flourishing of each, separately and collectively, in perpetuity.

RECITALS

GIVEN THAT:

- A) the Legal Owner is the registered owner of the Land;
- B) the Land exists as a community commons, containing significant amenities including flora,

fauna, other natural, agricultural and cultural features, and the power to bring the community together; these, individually and collectively, are of great importance to the Legal Owner, the Beneficial Owner, and the Covenant Holders;

- C) the Legal Owner has agreed to grant the Covenant Holders 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 Holders is necessary for the exercise of the specific rights granted to the Covenant Holders of this Covenant;
- E) the Covenant Holders have each been designated by the British Columbia Minister of the Environment, Lands and Parks, as authorized to accept a statutory right of way, pursuant to Sections 218 and 219 of the *Land Title Act*;
- F) the Legal Owner and Covenant Holders will protect the Land and the interaction with its community, yet allow for change to happen to both within the parameters set in the Gabriola Commons Charter (Appendix A); the Legal Owner and Covenant Holders will acknowledge that the Gabriola Commons is greater than its tangible elements; that the ever-renewed relationship between the Land and the people of Gabriola creates a quality beyond either, a space to which the community is drawn, a space which brings community members together; and
- G) the Covenant Holders hold the Gabriola Commons accountable for adhering to the terms of the Covenant according to the guidelines spelled out in the Stewardship Plan and pertinent Islands Trust Zoning By-laws.

THUS, the Gabriola Commons is a distinct and uniquely zoned space on Gabriola Island; it includes the Land, the Amenities and their uses, and it also includes the community which in turn nurtures the Land. It is stewarded by a volunteer community association, non-hierarchical and collaborative in nature, in a manner generated by the community, although excluding commercial, for-profit enterprises. Its governance includes a society charged with the trusteeship of the Gabriola Commons; it is a place where sustainability, community and agriculture meet and mutually support one another. The legacy of the Gabriola Commons exists in perpetuity.

THEREFORE, the Parties agree as follows:

1. INTERPRETATION

1.1 In this Covenant:

- 1.1.1 *Amenities* include any features identified in the Baseline Report as having ecological, agricultural or cultural value relating to the Gabriola Commons.

- 1.1.2 *Agriculture* means the purposeful care or cultivation of the Land with the intention of growing plants for food or medicine, horticulture, and the nurturing of animals.
- 1.1.3 *Baseline Report* means the baseline documentation report that describes the Land and the Amenities in the form of text, maps, photographs and other records of the Land and its Amenities as of the date of approval of the Board of Trustees of the Gabriola Commons of this Covenant. A copy of the Baseline Report is attached as Appendix A.
- 1.1.4 *Beneficial Owner* means the community of residents on Gabriola Island for whose benefit the Legal Owner holds the Land.
- 1.1.5 *Commons* means any resource that is sustained collectively, interactively and collaboratively, and is enjoyed by its users.
- 1.1.6 *Commons Charter* is the document which states the guiding principles of the Gabriola Commons, and is identified by that name as Appendix B of this Covenant.
- 1.1.7 *Community Benefit* means anything which promotes or enhances the well-being of the Beneficial Owner.
- 1.1.8 *Covenant Holders* means [Names go here].
- 1.1.9 *Fishing* means the activity of catching fish by techniques such as angling, netting, trapping, spearing or hand-gathering.
- 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 *Land* means the parcel of land legally described as Lot 1, Section 19, Gabriola Island, Nanaimo District, Plan 27281 (PID 002600994).
- 1.1.13 *Legal Owner* means the Gabriola Commons Foundation as represented by the elected Trustees; the Legal Owner acts as trustee in the best interests of the Land and the Beneficial Owner in perpetuity in accordance with the Gabriola Commons Charter.
- 1.1.14 *Logging* means the harvesting, by felling, delimiting and bucking and/or transporting of trees for commercial profit.
- 1.1.15 *Natural State* means the state of the Land as described in the Baseline Report and as the Land evolves over the years within the guidelines of the Stewardship Plan.

- 1.1.16 *Nature Reserve* means the area on the Land designated in the Baseline Report as a protected ecological reserve, including the pond, waterway, and adjacent land rich in the flora and fauna characteristic of a marshland, especially those species whose survival is recognized as threatened.
- 1.1.17 *Stewardship Plan* determines how the affairs of the Gabriola Commons are coordinated and cared for over the short and long term, and is created in accordance with Section 6.
- 1.1.18 *Successor* means any non-profit charitable society that becomes the Legal Owner of the Land, a Party to this Covenant, and adheres to the guidelines of the Gabriola Commons Charter. *Successor* is a term required in a legal covenant, but in actual practice there can never be a successor to the present legal owner.
- 1.1.19 *Trapping* means the live capture of animals for their pelts, use as bait, as food or for other commercial purposes.
- 1.2 This Covenant shall be interpreted in accordance with the laws of British Columbia and the laws of Canada applicable in British Columbia.

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 Covenant.
- 2.2 The Covenant Holders warrant 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, D and F are true as of the date of this Covenant.

3. INTENT OF THE COVENANT

Every commons is defined within the parameters of a specific site and historic cultural background. For the Gabriola Commons, it is a unique balance between the ecology of the Land, its potential within the Agricultural Land Reserve and the enhancement of a deep sense of community in perpetuity. Therefore, the Parties agree that the general intent of this Covenant includes the following:

- 3.1 To advance certain principles and practices that will expand conventional understandings of conservation to include cultural dimensions, by applying the following ideas:

- 3.1.1 that Commons activities bring the people of Gabriola together on the Land working in shared purpose without expectation of compensation;
 - 3.1.2 that this be achieved through open communication and principles of reciprocity, in keeping with historical precedents of self-governing commons;
 - 3.1.3 that solidarity between the community members and the Land strengthens capacity for biospheric and social ethics as well as sustainability in both spheres;
 - 3.1.4 that the Land known as the Gabriola Commons will be held, protected and stewarded in perpetuity as an enduring resource for the use and enjoyment of the Gabriola community;
 - 3.1.5 that access to the Land shall not be restricted, impeded or limited except as set out in this Covenant;
 - 3.1.6 that the Land and Amenities are respected and protected as they evolve, in accordance with the Baseline Report and developing Stewardship Plans;
 - 3.1.7 that the Land and Amenities, where and when used, will be used only for purposes that enhance Community Benefit and reflect the agricultural, socio-cultural and ecological potential of the Gabriola Commons;
 - 3.1.8 that this Covenant represents an evolving, ecological consciousness based on peaceful, interdependent and empathic sensibility in all areas of Land use and community benefit.
- 3.2 To require the Gabriola Commons to take primary responsibility for advancing the intent outlined in 3.1; further, the Beneficial Owner shares in the guidance of the Gabriola Commons. The role of the Beneficial Owner is imperative in safe-guarding the vision which animates the Gabriola Commons through a model of participation based on volunteerism, fully collaborative decision making and transparency in all undertakings.
 - 3.3 To clarify the role of key documents (for example, the Gabriola Commons Charter, the Baseline Report and the Stewardship Plan) as vehicles through which the Commons will be held accountable;
 - 3.4 To clarify the role of the Covenant Holders, jointly and severally, in holding the Commons accountable in its commitment both to the Land and the Beneficial Owner.
 - 3.5 To reflect Gabriola Island community interests in the protection, maintenance, and enhancement of the Land and Amenities.

4. PRESCRIPTIONS ON USE OF THE LAND

- 4.1 The Legal Owner, in collaboration with the Covenant Holders, recognizes and perpetuates the Gabriola Commons as a community commons, a legacy for the ongoing benefit of the people of Gabriola, a place where people work side by side on projects they mutually care about.
- 4.2 The Legal Owner agrees that it will use the Land and allow the Land to be used, in accordance with the Stewardship Plan, in a manner that will:
 - 4.2.1 protect the Natural State of the Land and the Amenities, maintaining the assets and the Land of the Gabriola Commons in ways that respect its ecology while enhancing the agricultural potential of the Land,
 - 4.2.2 sustain and nourish the fabric of the community by talking together, by practising cooperation, by building agreement, and by working together.
 - 4.2.3 maintain the Gabriola Commons' stewardship as multiply interactive and equitable, drawn from principles of mutual engagement, and carried out by many in cooperation and collaboration with each other.

5. RESTRICTIONS ON USE OF THE LAND

- 5.1 The Covenant Holder shall ensure that the Legal Owner not use the Land nor permit the use of the Land for an activity or use which:
 - 5.1.1 allows large-scale, industrial agriculture;
 - 5.1.2 causes erosion of the Land;
 - 5.1.3 causes or allows the Land to be removed from the Agricultural Land Reserve;
 - 5.1.4 places any new financial encumbrance on the Land;
 - 5.1.5 subdivides the Land;
- 5.2 The Legal Owner shall not, except with the prior written approval of the Covenant Holders, or except as expressly permitted in this Covenant or in the Stewardship Plan, use the Land

or permit the use of the Land for an activity or use which:

- 5.2.1 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;
 - 5.2.2 brings deleterious substances onto the Land;
 - 5.2.3 brings Garbage onto the Land except for waste materials to be transformed into non-deleterious and usable form for ecologically useful purposes;
 - 5.2.4 causes or facilitates the loss of water, soil, gravel or rock from the Land;
 - 5.2.5 allows Hunting, Fishing, Trapping or Logging on the Land; or
 - 5.2.6 interferes with the designated Nature Reserve.
- 5.3 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 Covenant, and entitles the Legal Owner to terminate the agreement if any of the provisions of this Covenant or the Stewardship Plan are breached.

6. STEWARDSHIP PLAN

- 6.1 A Stewardship Plan for the Gabriola Commons includes goals, objectives, operational guidelines, and financial and cultural planning, and will be initiated by the Board of Trustees.
- 6.2 The Stewardship Plan will be reviewed and revised no less often than every three (3) years.
- 6.3 The Stewardship Plan will include specific guidelines that protect, sustain and enhance the Land and while providing on-going community benefit.
- 6.4 The Stewardship Plan process shall include
 - 6.4.1 activation by the Legal Owner and the Covenant Holders;
 - 6.4.2 participation by the Beneficial Owner, the Legal Owner and the Covenant Holders;
 - 6.4.3 public notification, reception of written or electronic input, open consultative meetings, and a public record, begun within 90 days of activation;

6.4.4 creation of a stewardship group composed of individuals selected to represent the Gabriola community and Legal Owner in accordance with the Stewardship Plan;

6.4.5 a written stewardship agreement, signed by representatives of the Legal Owner and the stewardship group.

6.5 The Stewardship Plan will be created with reference to long term planning.

7. BASELINE REPORT

7.1 The Land and the Amenities are as described in the Baseline Report.

7.2 The Baseline Report serves as objective information for reviewing stewardship practices within the terms of this Covenant. The Parties agree that the Baseline Report provides an accurate description of the Land and the Amenities as of the date of this Covenant.

7.3 The Parties acknowledge that the flora and fauna on the Land will evolve naturally without human intervention and, unless otherwise expressly stated, references to the Baseline Report in this Covenant are intended to take into account this natural evolution.

8. STATUTORY RIGHT OF WAY

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

8.1 to inspect the Land:

8.1.1 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

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

8.2 to recommend actions which protect and rehabilitate the Land or the Amenities:

8.2.1 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 as the Land has evolved as documented in successive Stewardship Plans; and

8.2.2 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 Covenant;

8.3 to assess progress of any plan agreed upon between the Parties for the protection or restoration of all or any portion of the Land or the Amenities.

9. LEGAL OWNER'S RESERVED RIGHTS

9.1 Subject to Sections 3, 4 and 5, the Legal Owner reserves all of its rights in the best interests of the Beneficial Owner. This reservation includes all of 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 Covenant, provincial laws or local by-laws, so long as the use or maintenance is consistent with the intent of this Covenant, the Gabriola Commons Charter, and the current Stewardship Plan.

9.2 Without limiting the generality of Section 8.1, and subject to Section 5, the Beneficial Owner may enjoy and exercise the following rights, which are consistent with preserving the Natural State of the Land and the Amenities in perpetuity:

9.2.1 access to the Gabriola Commons for use and enjoyment;

9.2.2 participation in decision-making within Gabriola Commons; and

9.2.3 participation in the review and revision of the Stewardship Plan.

9.3 If any Party intends to act as permitted in Section 8.3, that Party shall give at least 30 days prior written notice to each 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 each Covenant Holder to enter upon and inspect the Land if any action is proposed under Section 8.3. The Parties to whom notice is given may comment on the proposed action, and the Party intending to take action under Section 8.3 shall take those comments under consideration before doing anything under that Section.

9.4 Despite Section 9.3, in an emergency situation such as fire or threat to human safety, the Legal Owner may, without the consent of the Covenant Holders, act reasonably to prevent injury or death. The Legal Owner must notify the Covenant Holders of the circumstances of such action within 30 days, including the actual or likely effect on the Land or the Amenities.

10. LEGAL OWNER'S RESPONSIBILITIES

- 10.1 The Legal Owner and Covenant Holders share responsibility for upholding the Covenant.
- 10.2 The Legal Owner retains all responsibilities and bears all costs and liabilities related to the legal ownership of the Land.
- 10.3 The Legal Owner is obliged to uphold the Gabriola Commons Charter, and preserve and protect the Gabriola Commons as a community Commons. The Legal Owner is accountable to the Covenant Holders for ensuring the Covenant is upheld, subject to auditing by the Covenant Holders.
- 10.4 The Legal Owner must indemnify the Covenant Holders, their 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.
- 10.5 The Legal Owner shall not be liable for:
- 10.5.1 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 Covenant, 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;
 - 10.5.2 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
 - 10.5.3 injury or alteration to the Land caused by the Covenant Holders exercising their rights under this Covenant.
- 10.6 Without limiting the generality of Sections 10.1 and 10.2, the Legal Owner:
- 10.6.1 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
 - 10.6.2 must indemnify each 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 Holders, jointly or severally, in any way associated with anything described in Section 10.5.1.

- 10.7 Where, as provided under Section 10.4, 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.
- 10.8 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.
- 10.9 Any debts or other amounts due from the Legal Owner to the Covenant Holders under this Covenant, 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, at its main branch in Vancouver, BC, for demand Canadian dollar commercial loans and designated from time to time by Vancouver City Savings Credit Union as its prime rate.
- 10.10 The indemnities granted by the Legal Owner to the Covenant Holders under Sections 9.3 and 9.5 are an integral part of the Covenant granted under Section 219 of the Land Title Act.
- 10.11 The Legal Owner must consult with the Covenant Holders and the Stewardship Team regarding any proposed substantive change to the Land.
- 10.12 Nothing in this Covenant restricts or affects the right of any Party to act reasonably to:
- 10.12.1 prevent injury or death to any individual; or
 - 10.12.2 prevent, abate or mitigate any damage or loss to any real or personal property.

11. COVENANT HOLDERS' RESPONSIBILITIES

- 11.1 The Covenant Holders and the Legal Owner share responsibility for upholding the Covenant
- 11.2 The Covenant Holders are responsible for auditing the Legal Owner's actions to ensure compliance with the Covenant, the Gabriola Commons Charter, and the Stewardship Plan.
- 11.3 If either Covenant Holder believes that the Legal Owner has neglected or refused to

perform any of the obligations set out in this Covenant or is in breach of any term of this Covenant, that Covenant Holder may serve on the Owner and the other Covenant Holder a notice setting out particulars of the breach and of the Covenant Holder's estimated maximum costs of remedying the breach.

- 11.4 The Legal Owner has 30 days from receipt of the notice given under Section 11.3 immediately above or from the conclusion of a dispute resolution process under Section 13 if it is invoked, to remedy the breach or make arrangements satisfactory to the Covenant Holder for remedying the breach, including the time within which the breach must be remedied.
- 11.5 If the Legal Owner does not remedy a breach described in Section 11.3 within the time acceptable to the Covenant Holder under Section 11.4, either Covenant Holder may enter upon the Land and remedy the breach or carry out the arrangements referred to in Section 11.4.
- 11.6 Expenses incurred by the Covenant Holder under this section, until paid, are a debt owed by the Legal Owner to the Covenant Holder.
- 11.7 By this section, each Covenant Holder appoints the other its agent for the purpose of recovering any debt owed by the Legal Owner to the Covenant Holder who incurred expenses under this section, including through legal proceedings, and the Covenant Holder who recovers the debt holds it, less reasonable legal fees and disbursements and other reasonable expenses of recovery, as agent for the Covenant Holder that incurred the expenses.
- 11.8 Nothing in this Covenant restricts or affects the right of any Party to act reasonably to:
- 11.8.1 prevent injury or death to any individual; or
 - 11.8.2 prevent, abate or mitigate any damage or loss to any real or personal property.

12. WAIVER

- 12.1 An alleged waiver of any breach of this Covenant is effective only if it is a written waiver signed by each of the Covenant Holders, 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 a Covenant Holder to require performance by the Legal Owner at any time of any obligation under this Covenant does not affect that Covenant Holder's right to subsequently enforce that obligation.

13. DISPUTE RESOLUTION

- 13.1 Disputes need not be considered negative, but can result in the building of understanding.
- 13.2 It would be best if disputes between the Legal Owner and any of the Covenant Holders were resolved informally or through existing mechanisms.
- 13.3 If a breach of this Covenant occurs or is threatened, or if there is disagreement as to the meaning of this Covenant, any party may give notice to the other Parties requiring a meeting of all Parties within 10 days of receipt of the notice.
- 13.4 All activities giving rise to a breach or threatening a breach of this Covenant, or giving rise to a disagreement as to the meaning of this Covenant, must immediately cease upon receipt of written notice.
- 13.5 The Parties must attempt to resolve the matter, acting reasonably and in good faith, within 20 days of receipt of the written notice.
- 13.6 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 among 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.
- 13.7 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 Commercial Arbitration Act (British Columbia).
- 13.8 If the Parties cannot agree on a single arbitrator, then the Covenant Holders must present to the Legal Owner a list of three arbitrators, and the Legal Owner must choose one arbitrator from the list.
- 13.9 The decision of the arbitrator shall be final and binding.
- 13.10 The cost of the arbitration shall be borne equally among the Parties.

14. SUCCESSORS OF THE LEGAL OWNER

This Covenant shall enure to the benefit of and be binding on the Legal Owner (see #1.1.13) and any Successor of the Legal Owner (see #1.1.18).

15. RE-ASSIGNMENT OF COVENANT OR DISSOLUTION OF THE COVENANT HOLDERS

- 15.1 A Covenant Holder may assign all of its rights and obligations under this Covenant, but only to a 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 Holders agree that before either of them assigns 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 Holders under this Covenant. The Legal Owner has 60 days after the Covenant Holder gave 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, it is deemed that it has 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 of its interest under this Covenant to a society authorized to accept covenants under Section 219 of the Land Title Act. If the Covenant Holder does not assign and transfer all of its interest under this Covenant as set out in this Section, it shall be deemed to have assigned and transferred all of its interest under this Covenant to the other Covenant Holder to hold until another qualified and suitable covenant holder can be found.

16. NOTICE

- 16.1 Any notice or other communication required under this Covenant 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.
 - 16.1.2 sent to the Parties using electronic means specified in Section 16.2, followed by a copy sent by ordinary mail; or
- 16.2 For providing notice, the methods of contact for the Parties are as follows:
- To the Legal Owner: The Gabriola Commons Foundation

Postal Address of the Legal Owner: PO Box 94, 675 North Road, Gabriola BC V0R 1X0
Secure Electronic Address of the Legal Owner: info@gabriolacommons.ca

To the Covenant Holder **A**
Postal Address of the Covenant Holder **A**
Secure electronic address of the Covenant Holder **A**

To the Covenant Holder **B**
Postal Address of the Covenant Holder **B**
Secure electronic address of the Covenant Holder **B**

- 16.3 Each Party agrees to give notice immediately to the other Parties of any change in its method of contact from those set out in Section 16.2.
- 16.4 If 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. If notice is sent electronically, it shall be deemed to have been received on the day following transmission of the notice.

17. NOTICE OF COVENANT

- 17.1 The Legal Owner agrees to allow the Covenant Holders to publicize the existence of this Covenant.
- 17.2 Without restricting the generality of the foregoing, the Legal Owner agrees to allow the Covenant Holders to erect a plaque or other sign on the Land, and at the expense of the Covenant Holders, indicating that they hold a covenant on the Land. The size, style and location of the plaque or sign shall be approved by the Legal Owner prior to its placement, such approval not to be unreasonably withheld.

18. NO LIABILITY IN TORT

The Parties agree that this Covenant 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. JOINT AND SEVERAL OBLIGATIONS

Where there is more than one Party comprising the Covenant Holders in this Covenant, the obligations of those Parties are joint and several.

20. REMEDIES NOT EXHAUSTIVE

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

21. COVENANT RUNS WITH THE LAND

Unless it is otherwise expressly provided in this Covenant, every obligation and covenant of the Legal Owner in this Covenant 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 Covenant is tied to the Land and runs with it and binds the successors in title to the Land.

22. REGISTRATION

- 22.1 Subject to the Legal Owner's obligations under its mortgage to Vancouver City Savings Credit Union, and as soon as possible after those obligations have been satisfied, the Legal Owner shall do everything necessary to ensure that this Covenant, and the interests it creates, are registered against title to the Land.
- 22.2 The Legal Owner shall do everything necessary and possible to ensure that this Covenant, 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.

23. SEVERANCE

If any part of this Covenant 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.

24. NO OTHER COVENANTS

This Covenant is the entire Covenant between the Parties.

25. INDEPENDENT ADVICE

- 25.1 The Legal Owner has sought and obtained, independent advice from an accountant or other income tax expert with respect to the income tax implications of this Covenant.
- 25.2 The Legal Owner acknowledges and agrees that the Legal Owner should seek independent legal advice as to the meaning and effect of this Covenant, and the Legal Owner further acknowledges and agrees that no legal advisor of either of the Covenant Holders has advised the Legal Owner on the meaning or effect of this Covenant or in connection with this Covenant.

26. AMENDMENTS

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

27. DEED AND CONTRACT

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

28. RIGHTS OF COVENANT HOLDERS

A Covenant Holder may exercise its rights under this Covenant through its directors, officers, employees, agents or contractors.

List of Appendices

- A. Commons Charter (attached)**
- B. Baseline Report (TBA)**
- C. Stewardship Plan (TBA)**

APPENDIX A – GABRIOLA COMMONS CHARTER

1. *The Gabriola Commons*

The Gabriola Commons is a source of ecological and community well-being that exists in perpetuity for the benefit of the people of Gabriola Island.

As a source of well-being, the Gabriola Commons contributes to our sense of community, of belonging, and of our bonds to one another. It is a magnet that draws the community in, and brings members of the community closer to each other. It is a space for human creativity and social justice, for art and learning, and for fairness and openness.

The Gabriola Commons demonstrates local community actions which enhance sustainability, preserves ecosystems and biodiversity, and contribute to the promotion of equity both on this island and the larger world.

The land includes a number of significant natural gifts and community amenities in one contiguous property: rich wildlife habitats; a pond and wetland area; open vistas and meadows; cedar groves and forests; age-old pathways linking neighbourhoods; a rural agricultural heritage and landscape for farming and gardening; indoor gathering places for community celebrations and events, for solitude and sanctuary, performance and festivity.

The property of the Gabriola Commons is a gift from an earlier generation which we in turn must pass on, undiminished and enriched, to those who follow us, as others will pass it on in perpetuity.

[May 21, 2008]

2. *Guiding Principles for the Gabriola Commons*

- *Public Trust:* The assets, including the natural and community resources of the Gabriola Commons, exist in perpetuity for the ongoing benefit of the people of Gabriola, including generations yet to come, not favouring one generation over another.
- *Ecological Sustainability:* The assets and the land of the Gabriola Commons are used only in ways that respect its ecology.
- *Social Sustainability:* The Gabriola Commons sustains and nourishes the fabric of the community for generations yet to come.
- *Local Democracy:* The Gabriola Commons stewardship is democratic, equitable and local.
- *Community Service:* The Gabriola Commons is a community legacy, serving community needs.

[GC Foundation Bylaws, Part 1, 3 – June 2009]